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Senate

The Senate met at 2 p.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Merciful God, Who lives and reigns forever, You know every heart and mind. You are the shield and protection of those whose hearts are right. We thank You for being so near to us. We thank You also for the gift of life and for the blessing of this new day.

Give wisdom to our lawmakers in their work. Let kindness and justice characterize their deliberations. May the decisions they make help build defenses for the weak and shelters for the strangers. Give them words that will bring healing and a renewal of hope.

Destroy the power of evil and give strength to those who follow You. God all powerful, listen and answer, for we trust in You. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 256, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 256) to amend title 11 of the United States Code, and for other purposes.

Pending:

Leahy amendment No. 26, to restrict access to certain personal information in bankruptcy documents.

Feinstein amendment No. 19, to enhance disclosures under an open end credit plan.

Kennedy amendment No. 44, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

Dorgan/Durbin amendment No. 45, to establish a special committee of the Senate to investigate the awarding and carrying out of contracts to conduct activities in Afghanistan and Iraq and to fight the war on terrorism.

Pryor amendment No. 40, to amend the Fair Credit Reporting Act to prohibit the use of any information in any consumer report by any credit card issuer that is unrelated to the transactions and experience of the card issuer with the consumer to increase the annual percentage rate applicable to credit extended to the consumer.

Reid (for Baucus) amendment No. 50, to amend section 524(g)(1) of title 11, United States Code, to predicate the discharge of debts in bankruptcy by a vermiculite mining company meeting certain criteria on the establishment of a health care trust fund for certain individuals suffering from an asbestos related disease.

Dodd amendment No. 52, to prohibit extensions of credit to underage consumers.

Dodd amendment No. 53, to require prior notice of rate increases.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today, we are resuming consideration of the bankruptcy legislation. Under the order from last week, at 2:30, we will begin 3 hours of debate in relation to the Kennedy and Santorum amendments regarding minimum wage. That consent agreement provides for two votes to begin at 5:30 today on the Kennedy and Santorum minimum wage amendments.

I do remind my colleagues that a cloture motion was filed on Friday, and that cloture vote will occur at 2:15 on Tuesday. Senators should also be aware that under the provisions of rule XXII, and pursuant to our unanimous consent agreement, all first-degree amendments should be filed by 2:30 today and second-degrees by noon tomorrow. We also have a unanimous consent agreement that provides for a vote in relation to the Schumer amendment at 12:15 p.m. tomorrow, on Tuesday.

With that said, we will have busy sessions over the next couple of days as we try to finish our work on the bankruptcy bill. I do hope we can invoke cloture tomorrow afternoon and bring this bill to a final vote. As all Senators know, if cloture is invoked, germane amendments are still in order, and there could be up to an additional 30 hours of consideration.

Last week, we had a productive week. We had full days of debate and votes. Therefore, I expect we will complete action on the bill either Tuesday or Wednesday of this week.

Mr. President, I would be happy to turn to the Democratic leader.

Mr. President, I would like to make a few comments on another issue now because at 2:30 today we will be going to the debate on the minimum wage amendments.

PILGRIMAGE TO SELMA AND THE 40TH ANNIVERSARY OF BLOODY SUNDAY

Mr. President, I rise to spend a few moments reflecting on a historical event that occurred 40 years ago today. Historians view the 1965 Selma to Montgomery Voting Rights March as one of the emotional high points of the modern civil rights movement that began in the 1950s.

Yesterday, a number of Members of Congress went on a pilgrimage to Selma and marched across that Edmund Pettus Bridge. I was part of that delegation. I had that opportunity to do that same march in remembrance of the Selma to Montgomery 1965 crossing of that bridge in the past.

From a historical standpoint, as we look back, we recall that 40 years ago today—actually on a Sunday—but 40 years ago today, on that Sunday, on

that march, approximately 600 people left historic Brown Chapel and walked a few blocks and then went around the corner and over that Edmund Pettus Bridge, going east toward Montgomery. They went on the other side of that arching bridge, and they encountered local law enforcement officers. The group of officers and some others drove the marchers back across the bridge in a violent episode and series of actions over the next few minutes. They were pushed back the equivalent of several blocks over the bridge and then back to the church.

The activity was chaotic. They had billy clubs, tear gas. Most of us are familiar with the tragic story. That Sunday now has become known, since that time, as Bloody Sunday, and thus today is the 40th anniversary of Bloody Sunday. That Bloody Sunday earned, appropriately, national attention. And much of what happened in terms of the evolution of the civil rights movement, reaching that huge landmark on August 6, 1965, when President Johnson signed the Voting Rights Act, was realized.

Just a couple of comments about the course of the day. Again, it was a large bipartisan delegation of House and Senate Members. We arrived in Selma early yesterday morning and visited two of the museums there. We then went to the church service at the historic Brown Chapel AME, African Methodist Episcopal, Church.

I had the opportunity to visit and worship in that church before, but yesterday it captured me. The church itself was packed. It is a historic church, and there is a large balcony in the back and balconies on either side.

As our delegation, which was probably 40 or 50 House and Senate Members, crowded in with another several hundred people, with the balconies full, you could not help but to imagine what it must have been like 40 years ago—41, 42 years ago. In that period, that church became the real refuge, sense of security for the movement that evolved and really instigated, in many ways, the ability for all Americans to vote today, culminating in that signing by President Johnson later in 1965, on August 6, 1965.

Yesterday, in the church service, Rev. James Jackson, the pastor of that church, opened the service itself. And we had a wonderful sermon that was delivered in commemoration by the Rev. C.T. Vivian. Reverend Vivian was an inspirational speaker in his presentation.

But what was fascinating to me was it was his early participation, really, in Nashville, TN, working alongside others who were there yesterday, Congressman JOHN LEWIS and so many others, that in Nashville that nonviolent movement, and the discipline involved in that movement, was developed. It was developed in meetings, in churches all over Nashville, TN, setting out a defined curriculum based on the great teachings in the Bible and from Gandhi and so many others.

It was that same discipline that yesterday now-Congressman JOHN LEWIS shared with us, as they marched from Brown Chapel, two by two by two, where he and Hosea Williams led that march up on that sidewalk, dressed in their suits, recognizing that once they got over that bridge, or to the peak of that bridge, at the bottom of the hill down there, there were law enforcement officers whom they knew in all likelihood would drive them back.

Yesterday was a gorgeous day. To be able to march arm in arm, linked across that bridge, with people like Congressman JOHN LEWIS and Fred Shuttlesworth, who played such a prominent role in Birmingham, and Bernard Lafayette, a close personal friend of mine who now lives in Connecticut, was a great privilege and a great opportunity.

I share all this with my colleagues to thank those who could be with us but also in recognition of today being that 40th anniversary that, yes, was called Bloody Sunday, but did become a turning point and led to the rights that we all enjoy today, but underscoring the importance of fighting for, with discipline and nonviolence, those rights of justice and equality and freedom.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The Senator from Oregon.

ENERGY PRICES

Mr. WYDEN. Mr. President, with crude oil prices at almost $54 a barrel, and OPEC meeting in 9 days, I have come to the floor this afternoon to urge the administration to pursue what they promised; that is, to stand up for our consumers who are facing high oil and gasoline prices.

The news just this last weekend was not good on the pricing front as it relates to the American consumer. The Lundberg survey of American gasoline retailers came out Sunday and confirmed what a lot of Americans suspected. The price of gas is rising high, and it is rising fast.

According to the survey that came out Sunday, the price of gasoline has risen nearly 7 cents per gallon in the last 2 weeks, across the board, for all grades. And the Lundberg survey indicates that this is just the beginning, that higher prices are on the way.

Now, last week, Mr. President and colleagues, I asked the U.S. Secretary of Energy, Mr. Bodman, whether he was going to do what the administration promised; that is, to stand up for the consumer and try to push OPEC as hard as possible to get some pricing relief when they meet in a few days.

Mr. Bodman said, in response to my questions, that he had not made that call and, well, he had a whole lot on his plate. I do not think that is good enough. I think we have to ask this administration, and the President specifically, about using their political capital now to stand up for the American consumer who is getting clobbered by these gasoline and oil prices.

If they are not going to use it now, when are they going to use it? Why not use it on behalf of American consumers when there is such a demonstrable cause and effect between the price of crude oil rising and the price of gasoline rising?

Over the weekend, the Secretary of the Treasury, Secretary Snow, said rising energy prices have the potential to stifle economic growth in the near future. Maybe Secretary Snow is willing to get on the phone with OPEC if Secretary Bodman will not. But I know somebody ought to be doing it. And that is exactly what the President of the United States promised in 2000. He said that if the country elected him, he would push OPEC very hard to try to turn on the spigot and get some pricing relief.

OPEC is making all the usual noises. They are concerned, they have said, about rising prices. They think the market has plenty of oil.

As I said before, OPEC is going to look out for OPEC. The question is whether this administration is going to stand up for the American consumer as they promised in 2000. If the Secretary of Energy won't pick up the phone to do that, the American people deserve a better answer than to say, Well, gosh, I have a whole lot on my plate. If the average American didn't send their tax return in on April 15 saying, Gosh, I have a lot on my plate, I don't think that would be acceptable, not to this administration, not to me, not to anybody. So the excuse doesn't wash when it comes to the Energy Department's duty to go to bat against high oil prices.

We need, at home, on a bipartisan basis, as it relates to OPEC abroad, to stand up for our consumers who are faced with escalating energy prices that seem to go up by the day. I don't think it is right to let OPEC run roughshod over the American consumer and we make no comment other than to say, Gosh, we have a lot on our plate.

Nine days from now OPEC is going to meet. Time is ticking away. But there is still time for the administration to deliver on what they promised to the American people; that is, to protect our consumers from high oil and gasoline prices. I urge they take just that action. If Mr. Bodman won't do it, as he indicated last Thursday, maybe somebody else in the Bush administration will.

I yield the floor.

The PRESIDENT pro tempore. As a Senator from the State of Alaska, I suggest the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. SUNUNU). Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is S. 256 which has been reported.

Mr. MCCONNELL. Mr. President, I rise today on behalf of every American who each year is forced unknowingly to pay a hidden tax. We all know we have to pay an income tax, a sales tax, a payroll tax, but what about a bankruptcy tax? You may not have heard of this tax, but you and every other man, woman, and child in America pay it every single year. It is the accumulated cost of higher interest rates on credit, higher downpayments on a car or other essential items, and higher penalty fees and late charges for financial transactions. It is the result of the abuse of America's bankruptcy system which allows people who still have the ability to pay back some or all of their debt to declare bankruptcy and escape responsibility for what they owe.

Somebody has to pay those unpaid bills. And that somebody is you. Companies have no choice but to pass them on to the consumer.

When I mention this bankruptcy tax, you may think I am talking about small change, the kind of money you can find under your couch cushions. You would be wrong. According to a Department of Justice study, the bankruptcy tax amounts to a staggering $400 for every man, woman, and child in America once a year every year. Let me repeat that so I can be sure it soaks in. That is $400 for every man, woman, and child in America once a year every year.

That amount of money would mean a lot to a family in my home State of Kentucky where the median income is $36,936 a year. That means the average Kentuckian has to work 4 days a year to pay the bankruptcy tax. In fact, it is the lower income families who feel the sting of the bankruptcy tax the most. Higher interest rates can stop them from getting access to credit for a home, transportation to a necessary job, or even higher education.

Our bankruptcy system was originally created to give those who were hopelessly mired in debt a way out and a second chance. As long as it was used sparingly and applied only to those who most needed its mercy, it was the compassionate way for America to make sure that none of her neediest became trapped in a lifetime of deficit and despair. But in recent years, too many are abusing the bankruptcy system. Last year nearly 1.6 million individuals filed for bankruptcy, a record high. This number is five times greater than the number of individual bankruptcy filings 20 years ago.

It seems odd so many more Americans would choose bankruptcy over that 20-year period, especially when you recognize that the last 20 years have set new records for economic growth, low unemployment, and low interest rates. The answer to this mystery is fraud and abuse of the bankruptcy system. In fact, the FBI has estimated over 10 percent of all bankruptcy filings involve at least some fraud.

Bankruptcy was created as a ladder to greater economic opportunity. It should not be an escape hatch to avoid responsibility. A few weeks ago this Senate, on a bipartisan basis, passed the moderate, commonsense Class Action Fairness Act to curb some of the abuses of our legal system. It was the first substantive bill passed by this new Congress. It was supported by Democrats and Republicans and has been signed into law by President Bush. I am very pleased that this 109th Congress has started off in a tone of bipartisan agreement and cordiality. I think passing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 can be the next step in furthering that sense of cooperation. Like the Class Action Fairness Act, this bill is a moderate, commonsense bill with bipartisan support. It passed out of the Judiciary Committee with bipartisan support. It has passed this Senate with bipartisan majorities before. It should be entirely within our power to pass it now and send it on to the President for his signature.

Right now individuals have two options for declaring bankruptcy. They may file under chapter 7, surrender their assets to be sold, and then be released from all debt. They start again with a fresh slate, leaving their creditors unpaid.

The second option is to file under chapter 13. In that case an individual must work with a bankruptcy court and draft a payment plan to satisfy as much outstanding debt as possible, given the debtor's income. The problem is too many people are filing under the more lenient chapter 7, leaving their debts unpaid even when they have sizable income and sizable assets. Some are choosing it as an avenue to commit fraud.

The bill currently before the Senate will institute a means test to sort out those who file chapter 7 but actually have the ability to live up to their obligations. This is not a draconian measure, by any means. Only about 7 to 10 percent of chapter 7 filers will be screened out by the means test which will be administered by a bankruptcy court.

Any debtor who earns less than their State's median income—and that includes about 80 percent of the debtors in question—will remain in chapter 7. Those earning more than the State median income will be allowed to deduct certain obligations and expenses from their net worth, thus allowing some of them to also remain in chapter 7. And anyone left will be able to show special circumstances for why they should be allowed to still file under chapter 7. So there will be plenty of opportunities for the neediest among us to file chapter 7 and use the safe haven of bankruptcy as it was originally intended.

Those remaining will be required to file under chapter 13. It is not too much to ask people to pay back what they owe when they clearly have the means to do so. And those who are abusing the system will be exposed. Catching the individuals who are defrauding the system to avoid responsibility will save America $3 billion a year—a good start for reforming our system. That $3 billion rightfully belongs to the American people who are forced to pay the egregious bankruptcy tax. They are being robbed by an unscrupulous few.

It is our responsibility to end the fraud and abuse in the bankruptcy system by passing this bill. It will strengthen our economy, and it is also the right thing to do.

I yield the floor and 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. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Under the previous order, the hour of 2:30 having arrived, there will now be 3 hours of debate, equally divided, on the Santorum and Kennedy amendments.

The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, as I understand it, we have an hour and a half on our side.

The PRESIDING OFFICER. The Senator is correct.

AMENDMENT NO. 44

Mr. KENNEDY. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside.

The PRESIDING OFFICER. Without objection, it is so ordered. The pending amendment is laid aside.

Mr. KENNEDY. Mr. President, at 5:30, the Senate will have an opportunity to vote on an increase in the minimum wage, and we have not had an opportunity to increase the minimum wage for some 8 years. The purchasing power of the minimum wage is now probably at its second lowest purchasing level in the history of the minimum wage and is deteriorating every single day, in terms of purchasing power.

These individuals that work at the minimum wage are hard-working individuals, men and women of great pride—primarily women, and women with children, and in many instances men and women of color. Historically, this issue has not been a partisan issue. Republicans and Democrats have joined together to raise the minimum wage because we have believed as a country and as a society that work is important, work should be rewarded, and that men and women who work hard, 40 hours a week, should not have to live in poverty, particularly those who have children. Nonetheless, we have seen that those millions of workers who work hard and work at the minimum wage have been falling farther and farther behind.

People can ask, why is this relevant to the bankruptcy bill? In fact, a third of all bankruptcies take place from people who have income below the poverty level.

What we see on this chart is the fact that the real minimum wage has fallen now to just about $10,000 a year for a family of three. It is about $5,000 below the poverty line. If you are able to get individuals up so they have more purchasing power, particularly against the background which has seen an explosion of health care premiums, housing costs—in my own State of Massachusetts, we have the second highest housing costs of any State in the country. The cost of the general standard of living has put enormous pressure on these individuals that are hard-working and are at the lower end of the economic ladder. So this has a direct relevancy to the bankruptcy bill—trying to raise individuals to a point where they are going to be able to meet their financial obligations; that is extremely important. We have seen, as I just mentioned, over the period of these past 5 years what has happened with health insurance, college tuition, housing, and gasoline.

Most of these minimum wage workers have no such thing as health insurance, few are able to save for college tuition, housing has gone up dramatically, and many of them are dependent upon driving in order to get to available jobs. So they have been enormously impacted by the increase in costs. We have seen that four million more Americans have gone into poverty over the last 4 years. As a result of the census, more than 1 million more children have gone into poverty over the last 4 years.

These statistics tell the story. What also tells the story is this chart, which shows that Americans' work hours have increased more than any other industrialized country in the world. This chart indicates, using a baseline, what has happened from 1970, the last 30 years, in terms of people working. We found out that Americans are working longer and harder than in most other industrial nations in the world. What we find is that they are working longer and harder and, look at the results of working long and hard. They are producing more but making less. The increase in terms of productivity has been anywhere from 25 to 30 percent American workers. Do you think that has been reflected in any increase in the minimum wage? Absolutely not. That is because Congress has been unwilling to increase the minimum wage. As a matter of fact, when I offered this legislation even on the welfare bill, which my friend and colleague from Pennsylvania says is where it belongs, the legislation was pulled last year, rather than having a debate and vote on an increase in the minimum wage.

I offered it on State Department reauthorization because the other side—the Republican leadership—would not give us an opportunity or a vehicle on which to consider this legislation, or by itself, so it was necessary to try to amend existing legislation. They said, oh, no, and they pulled that legislation. When I offered it last year on the class action bill, they pulled the class action bill because they did not want to vote on an increase in the minimum wage.

So we find that Americans are working harder; we find a dramatic increase in productivity; we see explosions in cost; we see the purchasing power of the minimum wage going down to its second lowest level; and we see that so many of these individuals who are below the line of poverty end up in bankruptcy.

This is just the background. There will be those who will say we cannot really afford to have an increase in the minimum wage because it is going to add a great deal to the problems of inflation. Right? Wrong.

First of all, this chart indicates exactly what the impact of the increase in the minimum wage is in our budget. All Americans combined earn $5.4 trillion a year. A minimum wage increase to $7.25 would be less than one-fifth of 1 percent of national payroll. Do we understand that? The payroll is $5.4 trillion a year and we are talking about less than one-fifth of 1 percent. This doesn't have an adverse impact on inflation in terms of this country. We have seen from the various studies, which we will refer to later, that neither does it have in terms of employment.

This is an issue, ultimately, about fairness. That is why this is so important. It is interesting that this Congress has not hesitated to vote itself a pay increase during this period of time, but not for the minimum wage earners. The height of hypocrisy will be this afternoon. The height of hypocrisy will be this afternoon when those individuals in the U.S. Senate say no to $7.25 an hour for hard-working Americans after they have accepted a $28,500 pay increase for themselves over the last 8 years.

Do you understand that? They have been willing to vote on a pay increase for themselves, and we will find out whether they are going to vote for hard-working Americans who are trying to make ends meet and provide for their families and their children.

It is as stark as that. That is what happened. This is where the minimum wage has been since the last increase in 1997. It has been flat over all these years—but not for the Members of Congress. You can understand why Members don't want to vote on increasing the minimum wage; it is because of that.

It is not very surprising to me because we had an increase under the first President Bush. We had an increase in the minimum wage under President Ford and one under President Eisenhower. We have had it in a bipartisan way throughout history. But absolutely not now. The Republican leadership in the House of Representatives and the Senate of the United States says, no way. This is the record of where we have seen it: Dwight Eisenhower, Jerry Ford, the first President Bush, Franklin Roosevelt, John Kennedy, Lyndon Johnson, Jimmy Carter, and Bill Clinton. It has been bipartisan over the period of history.

It is baffling to me why in the world we cannot get an increase now. What is the reason? What is the reason we hear so much about values? Don't we figure that working hard is a value in our society? Don't we think that rewarding work is a value in our society? We will find out this afternoon. We will find out this afternoon, at 5:30, whether our colleagues think that rewarding the men and women who work hard, not just on one minimum wage job but often two or three minimum wage jobs, is a value.

A principal, in surveys of children of these minimum wage workers, asked the children what their biggest complaints are. It is not that they are not able to get Christmas presents at Christmastime. It is not that they cannot afford to buy a birthday present for a fellow student's birthday. It is not that they cannot afford any skates to be able to join the other children skating. It is that they say they don't see their parents enough. They don't see their parents enough. There is not enough time with their parents. That is repeated time in and time out, again and again, as one of the primary concern of the children of minimum wage workers.

Here we are debating the bankruptcy bill that has been written by the credit card companies, which have $30 billion in profits this year and are looking to collect billions of dollars more as a result of this legislation. That is going to turn our bankruptcy courts into collecting agencies for the credit card industry. And we are going to say, oh, no, no, we cannot afford $7.25 for working men and women.

We can afford billions of dollars for the credit card companies—and I mean billions of dollars, probably the most profitable industry in this country—but we cannot afford to have an increase in the minimum wage. No, it adds to the payrolls of companies. It is going to be inflationary. Why are we setting a minimum wage? Let these people work harder.

At 5:30 p.m., we are going to have two votes. One is going to be to increase the minimum wage to $7.25 an hour in three steps: 70 cents 60 days after enactment, 70 cents a year later, and 70 cents a year after that. My friend from Pennsylvania has offered an alternative amendment, the Santorum amendment. For those who are giving some thought to the fact that maybe going to $7.25 is a little bit too much, maybe the Santorum amendment makes more sense. I hope they will listen to me now.

The Santorum amendment gives half of the increase to minimum wage workers with one hand and then—listen to me—takes away minimum wage, overtime, and equal pay rights from over 10 million workers with the other hand. It takes just one page of the

Santorum amendment—here is my amendment, Mr. President. It is three pages to raise the minimum wage to $7.25. Here is the Santorum amendment—85 pages. If he was only raising the minimum wage half of what I propose, he would be able to do it in three pages, too. That ought to say something to our colleagues.

What else is in the amendment? It is extraordinary. It takes one page, as I mentioned, to raise the minimum wage, and 84 pages are special interest giveaways that take rights away from workers.

The Senator from Pennsylvania has a record of opposing the increase in the minimum wage, and I understand that. That is his record. He has voted against it at least 17 times in the last 10 years, so today is really no different.

The Santorum amendment will increase the minimum wage by $1.10 cents an hour. It will benefit 1.8 million workers. Do we understand that—1.8 million workers. He goes up to $6.25. Ours goes to $7.25 and benefits 7.3 million directly and an additional 8 million more Americans; 3.4 million of those are parents with children. But Santorum benefits only 1.8 million. He is not just saying we will take $6.25 in place of $7.25; we only want that. Oh, no, he is only covering 1.8 million. That is enormously important.

So what does he do? The Santorum amendment makes more than 10 million workers no longer eligible for the minimum wage, no longer eligible for overtime pay, no longer eligible for equal pay rights by repealing the individual coverage under the Fair Labor Standards Act and raising the threshold to $1 million a year from $500,000. Those workers who work in the small stores that are involved in interstate commerce who are covered under minimum wage, not under Santorum, are excluded. If there is a State minimum wage, they are covered. We have a number of States that do not have any minimum wage whatsoever. Then he raises the level from $500,000 to $1 million as a threshold for the coverage.

This is what he does: By eliminating the individual Fair Labor Standards Act coverage and raising the business exemption to $1 million, the Republican proposal jeopardizes worker protections for over 10 million workers. Those workers will lose minimum wage, overtime, and equal pay protections.

What do I mean by they lose overtime? This is what the Santorum amendment does. Under current law, if the employer wants to work out flexible time with their employees, they can do it as long as it is done within the 40-hour workweek. That is all legitimate and fair. But under the current law, if an employer wants to work a worker 50 hours this week and 30 hours the next, they have 10 hours of overtime. Under the Santorum amendment, they can work 50 hours one week and 30 hours the next and no overtime. This affects millions of workers who are going to find out they are going to get a real pay cut. That is what is in the Santorum amendment.

The Santorum amendment also prohibits States from providing stronger wage protections than the Federal Government for waiters, waitresses, and other employees who rely heavily on their tips for earnings. Do we understand that, Mr. President? The Santorum amendment puts the long Federal arm right at the throats of the States and tells them there is no way they can provide the extra reimbursement to these workers.

In the State of Pennsylvania, employers are required to pay their tipped employees $2.83 an hour. Yet this amendment would deny the hard-working waiters and waitresses the 70 cents an hour employee-provided wages. That is not true in every State, but Pennsylvania made that decision. And here on the floor of the Senate is an amendment to deny the people of Pennsylvania from carrying forward their judgment.

Mr. President, 22-year-old Julie Phillips in Johnstown, PA, is working two part-time jobs—one at minimum wage making $5.15 an hour and another as a waitress at a Chinese restaurant. This amendment would deny Julie 70 cents an hour in wages from her minimum wage job. She would have to rely on unpredictable tips from her second job instead.

The amendment also gives a free pass to violators of a broad range of consumer, environmental, and labor protections by prohibiting the Federal agencies from assessing civil fines for first-time reported violations. It also preempts the ability of States to enforce these laws. The States are enforcing these laws, but under the Santorum amendment, they will be denied the opportunity to enforce those laws. Those laws are there to protect the workers, but he preempts the ability of States to enforce these laws.

Once again, we are on the Senate floor with legislation written by special interests which will help them the most. The bankruptcy bill was written by the credit card companies, the class action bill was written by corporations, deceiving and overcharging their customers, and now we have the minimum wage bill written by the restaurant industry and retailers looking for a way to fatten their bottom lines. If the Republicans were truly interested in raising the minimum wage, they would not have loaded their proposal with these antiworker poison pills that are special interest giveaways. It is hard to believe our Republican colleagues are serious about this thinly veiled attack on low-income workers.

There are many ways to help small businesses without denying rights to millions of minimum wage workers. We worked together in the past to provide reasonable small business tax relief, along with the minimum wage. I would be willing to do that again. Three times in the last Congress, the Republican leadership brought down a bill rather than let us vote on it. So their actions speak louder than words.

A week ago, our Republican friends were touting their so-called anti-poverty agenda. But as we see with their agenda, what they really are doing is creating a deeper poverty agenda. If they are truly serious about helping hard-working families rise above the poverty line, they will support our amendment to give a fair raise to America's low-income workers.

It is shameful that in America today, the richest, most powerful Nation on Earth, nearly one-fifth of all children go to bed hungry because their parents are working full time at the minimum wage and still cannot make ends meet. That is a key part of any real anti-poverty agenda: ending childhood poverty. But the Republican proposal will actually plunge even more children into poverty.

Mr. President, 3.4 million children have parents who would get an immediate raise under our proposal. Hundreds of thousands of those children will be left behind by the Santorum amendment. The poison pills in the Santorum amendment will be particularly harsh for children. Think about the single mother with two children working as a waitress in Minnesota. Under the Santorum amendment, she will lose her guaranteed right to the minimum wage, leaving her paycheck smaller and her children less secure. Think about a garment worker working 80 hours a week to provide for her family. Her husband, a janitor, relies on overtime as well to pay for food, rent, and clothes for their children. They will lose their overtime coverage under this amendment, and both parents will take a pay cut. Some anti-poverty agenda.

According to the Families and Work Institute, among the most important aspects children would most like to change about their working parents are these: They wish their parents were less stressed out by their work; they wish they were less exhausted by their work; and they wish they could spend more time with them. But this amendment will deny overtime for more than 10 million workers, leaving them less time to spend with their children.

What is more, this amendment would tie the hands of Federal and State agencies trying to enforce the Federal laws that protect families, children, and communities. It weakens the gun safety protections under the Brady Act, which could lead to an increase in weapons sales to criminals, jeopardizing our neighbors and children's safety. It weakens environmental laws that require companies to disclose their toxic emissions. It weakens reporting requirements under the Clean Water Act and Safe Drinking Water Act. It undermines consumer protection laws that require companies to report on the safety of their food. These provisions put all Americans, especially

children, at risk of increased exposure to pollution, toxic substances, and serious illness from unsafe foods.

We teach our children the importance of hard work. We encourage them to do their best in school and be good citizens. We tell them their reward will be good jobs that fulfill their hopes and dreams and enable them to support healthy families. That is what America is about. But for the 36 million Americans who live and work in poverty today, that dream is unfulfilled. They work as hard as any American—often harder—but too often they are forced into bankruptcy because the minimum wage will not cover their bills and give their families the support they need.

We can no longer turn our back on our fellow citizens, but that is exactly what is happening in the Senate. Raising the minimum wage is critical to preventing the economic free-fall that often leads to bankruptcy. Amending the bankruptcy bill to increase the minimum wage will help many of the people this so-called reform is likely to hurt: low-income families, minorities, and women.

As I mentioned, nearly a third of those who file for bankruptcy are in poverty at the time they file. That is half a million families who are already living below the poverty line and will be plunged into further hardship with this bankruptcy bill, and many of them are minimum wage earners.

In the current economy, millions of Americans are suffering: 8 million are unemployed, 45 million are without health insurance, and 13 million children live in poverty. Poverty has doubled for full-time, full-year workers since the 1970s. Minimum wage employees work 40 hours a week, 52 weeks a year, and they deserve to be fairly paid.

Low-income families are being squeezed in every direction by the economy, and families are just barely balancing on a cliff of piling bills, hoping they will not topple over. Their costs are rising but not their wages.

To make matters worse, the credit card companies prey on low-income workers. They know these workers are desperate. They offer loans at exorbitant interest rates that are made to seem cheaper than they are by three of the most deceptive words in the English language: minimum monthly payment.

While workers struggle, credit card companies reap skyrocketing profits from their hardships. This is not only an economic issue, it is a family issue and women's issue. Divorced women are 300 percent more likely than single or married women to find themselves in bankruptcy court, often because they are owed child support or alimony and cannot collect it. They are trying to raise their children but they face a daunting challenge. This bill will make it harder for them to meet that challenge.

Sixty-one percent of those who will benefit from the minimum wage increase are women and one-third of those women are mothers. The minimum wage is so low today that many workers have to work several minimum wage jobs in order to make ends meet.

Look what our program will do: Raise the minimum wage to $7.25. That is $4,400 to a minimum wage family. That is 2 years of child care. That is full tuition for a community college. That is a year and a half of heat and electricity. It is more than a year of groceries. It is more than 9 months of rent. That may not sound like a lot for people around here, but that means a great deal to the people who can benefit from this.

History clearly shows that raising the minimum wage does not have a negative effect on jobs, employment, or inflation. In the first 4 years after the last minimum wage increase, the economy had its strongest growth in three decades. More than 11 million new jobs were added at a rate of 200,000 a month. Compare that to the 530,000 private sector jobs lost since this administration took office.

Minimum wage will not cause more job losses, but staying the course on failed economic policies will. Overwhelming numbers of our fellow citizens in Nevada and Florida showed the way last November by voting for a higher minimum wage in their States. It is time for the Republican Party to stop obstructing a fair increase in the minimum wage for all employees across the Nation, and I hope that our Members would support this.

I ask unanimous consent that Senators LIEBERMAN, DURBIN, SARBANES, and HARKIN be added as cosponsors to the amendment.

The PRESIDING OFFICER (Mr. MARTINEZ). Without objection, it is so ordered.

The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I rise to oppose the Kennedy amendment. I appreciate very much the Senator's remarks and his commitment and passion on this issue, but I did want to make a couple of brief points before Senator SANTORUM, who is offering an alternative, has a chance to talk about the provisions of his amendment.

While I appreciate the belief of the Senator from Massachusetts, I do think it is important to take a step back and allow this debate to include a sense of what the deeply held concerns are about raising the minimum wage, because it is not all a single-sided story. I do not support the Kennedy amendment because I do not support raising the minimum wage, and the reason is as follows: When the minimum wage is raised, workers are priced out of the market. That is the economic reality that seems to be missing, at least so far, from this discussion.

When the minimum wage is raised, some workers are priced out of the labor market, and we could have a discussion about how many are priced out of the market, what mechanisms we might have to deal with that fact, but it is an economic fact and the proponents of raising the minimum wage like to dismiss this by saying, well, we have a hard time measuring it, or the economy is large, or we have not been able to measure significant increases in inflation as a result of increasing the minimum wage.

I am not talking about inflation necessarily or economic growth. I am talking about the workers themselves who are priced out of the market, and if one does not believe that or they want to dismiss the economics, think about this: If there was not an economic impact, why are we not debating raising the minimum wage to $20 an hour?

Well, the answer is obvious. Because if the minimum wage were raised to $20 an hour, even the proponents of the Kennedy amendment would have to admit it would be cost prohibitive. Thousands, if not millions, of people would be priced out of the market. The number of jobs would shrink. Certainly the number of entry level jobs would be reduced.

Oh, but they say, we are not proposing raising the minimum wage to $20 an hour because we know that is not a good idea. Well, then why are they not proposing to raise it to $10 an hour? Because at $10 an hour they would still have to admit the negative economic effects on prices and on the total number of jobs, especially those at the entry level that would be priced out of the market. So instead they seek a lower level where the negative consequences are much more difficult to measure but they still exist, because it is an economic fact of life that when the minimum wage is raised, people are being priced out of the markets.

The same economic fact is true for $8, $7, or $6 an hour. People are being priced out of the market. I think this is most disturbing because those priced out of the market are the very ones who most need the opportunity. They are entry level workers. They are first-time job seekers. They are people making the transition from welfare to work and they are teenagers experiencing their first time in the labor force. They are the ones who most need that job opportunity to build a foundation to develop the experience that will enable them to earn even more money in the future.

If one does not believe that, they can go to any small business and ask them if they are hiring in at minimum wage—and there are very few firms that do hire in at minimum wage, but if they do, how long those employees actually earn at the minimum wage level. It is not long because once a person has shown 3, 4 or 6 months of ability in a role with an employer, their value has been proven and they are very quickly going to move above whatever the entry level threshold was.

Those who are going to be priced out of the labor market by an increase in the minimum wage are those who most

need that first job opportunity, and that is why I strongly disagree with the Senator from Massachusetts and his amendment. The impact may be small, and our economy is $11 trillion. It may only be 10 jobs that are affected or 20,000 or 30,000 who never get that first job opportunity at a job. Unfortunately, it is very difficult to measure 10,000, 20,000, or 30,000 jobs in an economy the size of America's, but it is there. The economic consequences are real. Again, if one does not believe it, if they believe there are no economic consequences, then they should be willing to step down to the Senate floor and offer an amendment to raise the minimum wage to $20 or $30. Or why even stop there?

One final point I do want to make is in regard to a phrase that was used by the Senator from Massachusetts. It was a question or a phrase about rewarding work. The question was whether we were willing to stand up in the Congress or, I suppose, the Senate in particular, and reward work by supporting an increase in the minimum wage.

I have a concern about this phrase because it suggests that as Federal legislators it is our job to reward work. That may sound nice, but it suggests that it is our job to set prices, that it is our job to set wages, that it is our job to decide whether the work any citizen is doing in the economy, in the private sector, is worth a particular amount of money, whose work is worth more than someone else's and what kind of rewards does the Federal Government give the taxpayer for doing their job. That is not the role of the Federal Government. We should not be deciding who gets rewarded for work, whose work is of value and whose work is not of value.

In fact, there are few countries left on Earth where the central government has the responsibility of rewarding work in and of itself, and those are countries such as Cuba and North Korea that decide only the federal government should be able to determine what one earns or does not earn, how much one can charge and or not charge for a given good. Our job is to pass good legislation that creates an economic environment where people have incentives to commit capital to start businesses to create economic opportunity and to create jobs and a good quality of life.

It sounds nice to say we should reward work in the Senate, but the only way to do that in passing Federal legislation is to start and to try to set wages, to try to set prices, and to try to control the levers of the economy. We have seen where that slippery slope can be taken. We do not have to look farther than the former Soviet Union and the former eastern European countries that have rejected that kind of centralized state economy.

I appreciate the passion and the commitment of those on the other side. I think they are wrong on the economics because the economics hurt the very individuals who most need these entry level, first-time job opportunities. They are certainly wrong with the idea that setting prices for labor, setting prices for goods and deciding whose work has value and whose work does not have value should start in Washington, D.C. That is not the way our market economy works.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I rise to offer an alternative to the Kennedy amendment on minimum wage. I listened in part to my colleague from Massachusetts describe that. Obviously I have a slightly different take on what my amendment does than the Senator from Massachusetts suggests, and I will go through that point by point and point out where the Senator from Massachusetts may have exaggerated some of the claims about what destruction this amendment would do to workers in my State or any State.

I start out by suggesting why I am offering an increase in the minimum wage. On this first chart it is important to see this green line which is the percentage of hourly workers who are paid the minimum wage. Since the minimum wage was instituted—actually not since it was instituted but in the last 25 years we can see that the percentage of workers now covered by the minimum wage is actually the lowest it has been in quite some time. It is 2.7 percent of hourly paid workers who now get paid the minimum wage. When one looks at that number, it sort of cries out a bit and says it is time to bring it back up to be not the absolute bottom where no one is paying that and there is effectively no minimum wage—very few people are paid it—to a point which sort of comports with at least recent history. That is what we are trying to accomplish with our amendment, which is to bring it back up to about here.

Our $1.10 increase over a period of 2 years would cover about 7.4 percent of all workers, which is actually slightly higher than it has been over the last 15 years and is a little above historic trends. Senator KENNEDY's increase would actually put it to about almost 17 percent of workers in the economy who would be making minimum wage, which at least going back to the 1970s would be much higher than it has ever been as a percentage of wages.

So I think what we are suggesting is something that comports with the current economy, certainly the way the economy has worked over the last 20-plus years, as opposed to something that harkens back to long ago days where this was not just a minimum, it actually had, as Senator SUNUNU suggested, a dramatic impact on the economy and a potentially very inflationary impact if one looks at where the wages were of this percentage of payroll and we have hyperinflation. You remember the 20-percent mortgages and all the other things that were going on during the time. That set the wages at a very high level. So look at how we are providing a responsible floor for workers without having, as Senator SUNUNU suggested, an impact on the economy, which could be inflationary and damaging to all workers, as well as, particularly, lower wage workers, looking at high rates of inflation, as well as making sure we do not disadvantage businesses by pricing them out of the ability to have workers, and also pricing laborers out of the marketplace.

When you have extraordinarily high rates, as Senator SUNUNU suggested, $20-an-hour, $30-an-hour minimum wage, you are going to be pricing a lot of people out of the workforce.

I think what we are suggesting is a responsible approach. It keeps up with the tradition over the past few years of a responsible floor for a minimum wage. I am very comfortable that our proposal keeps the balance between the ability of lower skill employees to enter the workforce at a wage in which they are compensated for the skills they bring to the job, and at the same time not forcing employers—because, again, see, we are pretty far down on the number of people working at this level—not forcing employers to forego employment with people in that slightly increased amount we are suggesting. So it is not going to hurt employment, it is not going to hurt their businesses dramatically, and to the extent it does, as Senator KENNEDY, at least, described the provisions—I don't know that he accurately described the provisions—we do have provisions in the legislation that deal with the smaller businesses.

It is a general rule in the Federal Government that we have lots of requirements—family and medical leave is one example, but there are others, labor laws—that exempt small businesses. We either do it by the number of employees or, in the case of the Fair Labor Standards Act, by the amount of revenue that employer happens to take in.

In this case, we do raise the cap from $500,000 of revenue for your business as being exempt from this provision to $1.2 million. That provision was set, by the way, back in 1990. If you would have indexed that for inflation, it would be $1.5 million today. So we are not even keeping up with inflation. We are actually well below inflation in the proposal that is being put forward, but we are capturing more small businesses that are not affected.

This just affects the States that sort of tie their minimum wage laws to the Federal laws. If you have a State that has no minimum wage—I think there are six or seven of those—they would stay at the $500,000 level. We left that provision in place, in a sense to protect workers because the States have not spoken on this. But for States that are tied to the Federal level, we raised it. Obviously, if the States want to go back, they are certainly welcome to do

so. But it does provide an exemption for smaller businesses—those that are mom-and-pop stores, those who are just starting to build their business—from the Fair Labor Standards Act.

It is important to understand. There are other things I will go through, but before I move off into the other areas of the bill I want to talk about how important it is not to dramatically increase the minimum wage the way Senator KENNEDY has suggested.

What we have seen about overtime is that this is where we are today with the real value, if you add in a combination of the minimum wage and the earned-income tax credit. Why do we say the earned-income tax credit? You heard the Senator from Massachusetts talk about trying to support a family, trying to make a living. I am sure he is not going to go out and try to argue for the teenage son of a wealthy businessman, that we have to make sure they earn a minimum wage because that wealthy businessman's son needs the money. He may need it in his own right, but that is not the purpose of the minimum wage. That is not what it is for.

The argument for the minimum wage is we have to make sure those out there in society whom the Senator from Massachusetts talked about—the young lady in Johnstown, PA, making sure she had coverage. By the way, the provision we authored that Senator KENNEDY said applied to her with the tip credit doesn't apply to the State of Pennsylvania. It is written specifically to exclude States that have spoken on the tip credit. It is only those that have not that this covered. So the young woman in Johnstown, PA, is not covered by the provision. So the example given by the Senator is inaccurate.

But, again, going back to the central point, which is what are we trying to accomplish with the minimum wage, what we are trying to accomplish is helping those people trying to support a family or themselves out there working at low-wage jobs, welfare-to-work—that is the example that is used. I am someone, in my office, who takes that responsibility of making sure those who are on welfare have opportunities for employment and, in fact, in my office we have hired, over the course of my time in the Senate, eight people off of welfare-to-work. I take that responsibility as an employer, and also going out and talking to employers about the importance of giving people who are transitioned off of welfare, trying to make a living for themselves and their families, the opportunity to do so.

One of the ways we have done that is through the earned-income tax credit. What the earned-income tax credit does is target those who are trying to sustain a family. It helps them by building, on top of the minimum wage, some Federal support. But it is targeted support. That earned-income tax credit doesn't go to the teenager who is claimed on his father's income taxes who is a wealthy businessman. It goes to the mom who has two kids, who needs some help from the Federal Government to be able to support those children.

This is much more targeted relief, if you will, than the blunt instrument of a minimum wage increase.

Having said that, in this chart you see a decline—go all the way back to 1939. You see the earned-income tax credit comes in and you see the difference it makes up here recently. We are suggesting to bring it back up by $1.10. If you add $1.10 to $7.22, you are at $8.32, which would be higher than it has ever been with the combination of earned-income tax credit and minimum wage.

So, again, to suggest somehow or another, as the Senator from Massachusetts suggested, that his increase that would bring it off the chart, if you will, is a responsible increase—it is a blunt instrument that would benefit teenage kids of millionaires much more than it would benefit these moms here. Why? Because as you get into the higher income area, the earned-income tax credit goes away, it starts to phase out. So this blunt instrument of the minimum wage helps folks who are not the point of what a minimum wage is all about. When people come out here and say they need the minimum wage, they don't talk about the son of the wealthy businessman as the point. They talk about this mom. Increasing the minimum wage, yes, helps everyone—if you want to say ''helps.'' Obviously, it will hurt many because they will not be able to keep their job at this high rate of pay, for the maybe low skills that the employee may bring to the business.

But here is what we do. What we do is balance it. We raise it slightly to bring the level up to at least this level, which is where it was several years ago when we last raised the minimum wage, without affecting employers and the ability for low-skill workers to get the jobs they need and to hold on to them and not to disproportionately benefit a lot of workers out there making minimum wage who are not the point of the minimum wage, and that is folks who are doing so sort of as a side line and are not in need of Government interference in the market to make sure that they have plenty to eat and a place to sleep.

It is a much more surgical attempt. I think what we are attempting makes a lot more sense, to help those in need more directly, more surgically, than the blunt instrument the Senator from Massachusetts has suggested. I encourage our colleagues, when they look at our amendment, I encourage Republican and Democrat colleagues to look at what we want to accomplish.

Let me talk about another provision the Senator from Massachusetts seemed to focus on quite a bit, which is the issue of flextime. The Senator from Massachusetts talked about how flextime in this legislation is going to force workers into working more than 40 hours a week and deny them all of these—I will not repeat it. Read the transcript. Read the Senator's arguments about how devastating this would be to people, to have flextime imposed upon them.

No. 1, this provision as written does not impose anything. What it says is that the employer and the employee have to enter into a written agreement, where both have to sign, to agree that the employee will work more hours in 1 week—no more than 10 in addition to the 40 hours, in exchange for commensurate hours off the following week. Again, it is mutual agreement. It has to be in writing. Of course, the employee can decide to withdraw himself or herself from that agreement.

I happen to believe that flextime is a good thing. We have several employees in my office who job share, who use flextime. Federal employees have been able to use flextime for a long time. It is something that is very popular in the Federal workforce. What we are trying to do is make it available to others outside. Why? I can tell you an example in my own office. The people who job share and have flexible hours are moms who are in the workplace. Obviously, we have seen a dramatic change in the workplace in the United States since the minimum wage laws and the 40-hour workweek was put in place. This entry into the workforce of nontraditional workers, if you will, has given rise to a lot of workers seeking to have their hours reflected with their obligations at home. What we are trying to do is have the laws of the Federal Government reflect the changing dynamics in the workplace without forcing anybody into a situation where they are not getting fairly compensated.

But as I talked to I don't know how many parents who are friends and neighbors and constituents, they suggested to me the most important thing they would like to get out of the workplace is more flexibility and more time to be able to do the things that their other job—most people think their more important job, and that is being a husband or a wife or a father or a mother—requires them to do at home.

The most amazing thing is the Senator from Massachusetts opposes this. I know many who are supporters of the Kennedy amendment and oppose this, also. We just went on to the AFL–CIO Web site and just pulled off some things. This is their Web site. You can read the small print, the exact Web page:

> Alternative work schedules encompass work hours that do not often necessarily fall inside the perimeters of the traditional and often rigid 8-hour workday or 40 hour work week. Such schedules allow working people to earn a paycheck while having the flexibility to take care of children, older relatives and other needs.

The AFL–CIO says they want that, and we are providing that. And all of a sudden, maybe because we are providing it, maybe because it is in a Republican alternative, maybe this is not

a good idea. Again, this is right off the AFL–CIO Web site:

Changes in the workforce and in the kinds of hours people work are making alternative work schedules increasingly important for working families trying to balance job and family responsibilities.

Suggested family friendly provisions: Compressed work week.

Common examples of things asked are schedules that allow workers to work eight 9-hour days and one 8-hour day for an extra day off every 2 weeks.

Under the provisions we have in this law, that is exactly what we have, allowing a mother or father who wants to stay at home instead of working 10 8-hour days a week, work 9 10-hour days. Work extra hours the days that you work for the day off. Again, that is not allowed under the current law. We would have provided that flexibility. Again, it would be upon a mutual agreement of both the employee and the employer.

Look, there are some suggestions as to how we can make this more explicit, although from everything I read it is very explicit in the legislation as to how that would work. I am certainly happy to sit down and talk with the Senator from Massachusetts and see what we can work out in the future.

What we do in these provisions—yes, we do provide some tax benefits for smaller businesses. We allow for small business expensing. We allow for restaurants to be depreciated. Again, who is going to be affected by this predominantly? It is going to be the restaurant industry that pays employees at this level, and the travel and tourism industry. Those are the folks who will be most affected. Those are the ones paid at the lower end of the wage scale. So, yes, we do provide some support for them because it is going to cost some of these businesses a substantial amount of money.

We want to provide some relief from a Government mandate, mandating additional cost. So we want to provide additional relief in doing so.

What I think we are trying to do is find an acceptable compromise to be able to pass in the Senate.

I candidly don't believe—and I told the Senator from Massachusetts when I spoke to him last week—this is the appropriate place for his amendment. I understand there are a lot of dynamics at play here. But the Senator from Massachusetts feels compelled to offer it on the bankruptcy bill. I don't think there is any secret, after listening to the debate over the past week, that we very much would like to keep this bill on the Senate floor the way it came out of committee and the way it has been forged over a period of three Congresses. This compromise has almost passed this year, and time and time again for the last three Congresses. Now we have an opportunity to actually get this thing signed—passed by the House in the form it is right now on the floor of the Senate, and then to the President.

I was hoping the Senator from Massachusetts would not offer his amendment and would allow this amendment to the minimum wage laws to be offered at a different time. I think we are marking up the welfare reform bill this week. It is an extension of the 1997 act. It is an appropriate place, in my opinion. We are talking about welfare-to-work, and we are talking about helping low-income individuals transition into the workplace and providing them with a quality of life that is family sustaining. I was hoping the Senator from Massachusetts would wait until that time, and maybe we could sit down and work out some sort of compromise that the President would sign. During the campaign, he talked about his willingness to sign a minimum wage proposal similar to what I put forward. I don't think he would support what the Senator from Massachusetts proposed.

If you want to actually do something to bring this level up, and do it in a sort of targeted way that actually helps the people you are really wanting to help focus on—that is, those who are trying to provide for themselves and their families, not working summer jobs or part-time jobs or going to school; that is really what we are focusing on—we can do that in a way that I would argue does not have a poison pill attached to it.

I take great exception to what the Senator from Massachusetts said. These are not poison pills. These are responsible, proworker, pro-small-business provisions that greatly help the people in this new and dynamic workplace of America. It is a very different one than when the 40-hour week was established.

The Senator wants to offer his amendment and lock in a vote. But I hope, candidly, that we don't agree to either amendment at this time, although I would certainly vote for my amendment and vote against the amendment offered by the Senator from Massachusetts.

But I am hopeful that we can get the requisite number of votes down the road on a welfare bill, actually pass this legislation, and get it over to the House. House leadership has not expressed a willingness to bring this up.

Again, as we work on this, we have an opportunity to get it to conference and hopefully be able to do something which provides much more targeted relief to workers who are in need, as opposed to Senator KENNEDY's approach which is very blunt, forceful, and destructive, I would argue, and brings a measure of damage to a lot of lower skilled, lower income workers. And it would be very damaging to business at the same time in that the economy is recovering very nicely right now.

This is a modest approach. It has half the increase the Senator from Massachusetts is suggesting. It focuses on those who are most in need. At the same time, it doesn't hurt the small business community. In fact, it provides a much needed incentive for them to be able to continue to hire employees and grow, which is obviously the ticket to middle-class America.

There are other provisions in the bill that I certainly want to talk about a little later. But we have other speakers. I don't want to use up all the time.

With that, let me yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will take a moment or two to respond to my good friend from New Hampshire and then also to the Senator from Pennsylvania with regard to the points they have made.

First of all, I will respond to the Senator from New Hampshire about the question of whether the increase in minimum wage is really good for low-income working people and whether this isn't going to create more problems for working people because of the increase in the minimum wage.

He mentioned, if this was such good medicine—$7.25—why aren't we going for $20 or $25? The obvious simple answer for that is we are talking about a minimum wage, we are not talking about a maximum wage.

I haven't even gotten into discussing what has been happening at the upper end of the economic ladder and the stories over the weekend that showed the bonuses are going to the wealthiest individuals in the corporate world. They have increased astronomically in a period of the last few years.

Since the midthirties, we have had a minimum wage because we believed as a matter of social justice men and women who are going to work in this country and have families should at least have some minimum standard, some minimum safety net; that this society is not the society of survival of the fittest, but it is also a ''we'' society, not just a ''me'' society.

There has been a recognition of the importance of the minimum wage.

I will include in the RECORD the support for the increase of the minimum wage.

Mr. President, 552 economists agree, including a number of Nobel laureates. This is a summation of what they say.

We believe that a modest increase in the minimum wage would improve the well being of low-wage workers and would not have the adverse effect that critics have claimed. In particular, we share the view of the Council of Economic Advisers' economic report, that the weight of evidence suggests that the modest increase in the minimum wage has had very little or no effect on employment.

That is what an outstanding group of economists have said. Let us not just take what they have said, let us take a look at the facts in terms of employment and job growth.

If you look over at this chart, you will find the increase in the minimum wage in October of 1996. We had an increase in the minimum wage. In October of 1997, it went up again. The minimum wage increased to $4.75 in 1996, and then it went up to $5.15 an hour.

This red line is an indication of the job growth during this period of time.

I don't accept the arguments that my good friend from New Hampshire has made—that this is going to mean the loss of jobs. It just has not been so.

If you look at the historic lows of unemployment after the minimum wage, if you look again in 1996, the minimum wage went to $4.75, and unemployment went up. It picked up a tenth of a point, but then it started down.

The minimum wage goes up to $5.15, and what happened? It continues to go down.

Here is the last time that we have the increase in the minimum wage, and we see it had absolutely no impact—none, zero—in terms of unemployment, as we reported, for good reason, because it is less than one-fifth of 1 percent of total payroll. So it has no impact in terms of unemployment, and it has virtually no impact in terms of inflation. But it does have an important impact in terms of social justice.

This chart is interesting. It indicates that the States with the higher minium wage add more jobs. These are the 39 States with the minimum wage at $5.15. Their employment growth has been 4.1 percent, and some have been somewhat higher at 6.2 percent.

We have debated this time in and time out. The most inclusive studies were the Card-Krueger studies and the conclusions they have made. They are from Princeton, NJ.

Contrary to the central prediction of the textbook model of the minimum wage, but consistent with a number of recent studies based on a cross-sectional time series comparison of affected and under-affected communities of unaffected markets or employees, we find no evidence that the rise in New Jersey's minimum wage reduced employment.

This is pretty well established. It has a dramatic impact in other areas.

I listened with interest to the Senator from Pennsylvania talking about the increase in the minimum wage. Better than 60 percent of the increase in the minimum wage goes for the lowest 40 percent on the economic ladder.

Let us look at what has been happening in our country in the recent times since the last increase in the minimum wage.

This is in the area of hunger. We have the survey of hunger and homelessness by the Conference of Mayors. This is December 2004. This is in their summary:

Officials in the survey estimate that during the past year, requests for emergency food assistance increased by an average of 14 percent, with 96 percent of the cities registering an increase; requests for food assistance by families with children increased by an average of 13 percent; 56 percent of the people requesting emergency food were members of families, children and parents; 34 percent of adults requesting food assistance were employed.

These are people who just can't make it with the $5.15 increase in the minimum wage.

Then I heard about flextime. We are all for flextime. The argument is very simple on the issue of flextime. Our Republican friends want flextime when the employer can decide it. They have flextime now under current minimum wage. They can work that out with regard to flextime, up to 40 hours. Then, if it is going to be more than 40 hours, they have the overtime. But they negotiated that out. That is permitted today under the law.

But that isn't what the Senator's amendment would say. If the employer wants that individual to work 50 hours 1 week, and 30 hours the next week, the employer can make up their mind.

Why is it always the individual employer who makes it up?

It was nice to hear my friend from Pennsylvania say they work it out over in their office, and sometimes they work longer hours.

I would say, by and large, they work it out—the employees work it out.

I doubt very much for many of us in the Senate, if we just told our people what they were going to have to do, if they did not do it in the sense of expectation and teamwork, I don't think we are going to be very much value to many of our constituents.

The fact is, under the Santorum amendment one person makes that decision on flextime, and that is the employer. If the employee says, Look, I have a child who is in a play that I would like to go to, and the employer says, No, you can't go—you don't go.

We tried for many years. I mentioned before the Senator arrived on the floor of the Senate, I think he has been against any increase in the minimum wage 17 times. It is a little difficult to get much encouragement.

I think the Murray amendment asked that an employee would be able to take 24 hours off with sufficient notice because of a child with medical appointments, or because a child might be in a play, or a child might have some special event. I was here many times when the Senator from the State of Washington offered that amendment. It was voted down every single time. The only way we get flextime is when the employer does it. That is not fair. That is not right. He is correct. That is what this bill does. And he will permit the employer to make that judgment.

I want to make another point or two about the U.S. Conference of Mayors study.

Seventeen percent of the homeless people in cities, according to the Conference of Mayors, are employed. Ten percent are veterans.

The demand for emergency shelter is increasing. Seventy percent of the cities are reporting an increase in the last year, and the percentage of cities reporting an increase with homeless families with children is even greater.

This is what is happening. It isn't just the Senator from Massachusetts. This is the Conference of Mayors telling about what is happening in urban and rural America. It is also about growth.

This is the general challenge. We have too many Americans who are now living in poverty.

One in every 10 families, up to 44 million Americans, live poverty—one out of every six children; one out of every five Hispanics; one out of every four Americans. The greatest impact of raising the minimum wage is going to be lifting up Hispanics and African American workers. That is what the statistics demonstrate.

I don't know why we have the imperative of constantly saying no, that we are just not going to help people who are working and want to work.

An interesting point—not a major one—is that when we raise the minimum wage, it not only affects the 15 million lowest income people; some of those people then will not be eligible for some of the other programs. So it saves the taxpayer some money. We move them out and work with the earned-income tax credit. We have the earned-income tax credit that works with families who have children. If there is an increase in the earned-income tax credit, if you have two or three children, that is the way to go. For a single worker, if we are talking about a single mom with one or two children, an increase of the minimum wage is the way to go.

As a society, if you are interested in trying to do something about poverty and working families, you are trying to do something about both of those.

My friend from Iowa is here and I want to mention to him, because he has been a leader in the Senate regarding overtime compensation, under the Santorum amendment, this will take away the overtime rights that exist for minimum wage workers because it excludes 10 million workers from the Fair Labor Standards Act—6 million last year—and it will result in millions losing their overtime coverage.

The second point I mention to my friend from Iowa, in this legislation there is a prohibition for States to enforce their tax credit provisions. We have the tip credit for $2.12 or $2.13, and that is the Federal credit. Under the Santorum amendment, we are taking away any kind of enforcement of that, not just by the Federal Government but the State government.

I brought this up earlier because I want to remind the Senator from Iowa the amendment on the increase in the minimum wage happens to be 3 pages long; his is 85 pages. That includes not only the tip credit, not only eliminating from coverage those workers who work even in companies that are capitalized at $500,000, if they are in interstate commerce—That has been part of the minimum wage since the 1930s—but the Senator from Pennsylvania wants to take out that kind of coverage. Hundreds of thousands of workers will lose their coverage.

I don't understand why he is targeting those individuals. Quite frankly, the most incredible provision in this amendment is to eliminate any kind of enforcement.

The Senator might have difficulty in following all of the points I am raising

on the amendment, but on page 14 of the Santorum amendment it sounds very appealing. Small Business Paperwork Reduction; skip over to page 16 and we find out on the bottom of that, line 22, what it is about.

Notwithstanding any other provision, no State may impose a civil penalty on a small business concern.

And it applies that to every kind of unsafe work conditions, including air pollution, toxic substances, unsafe food. What in the world are we thinking of? Why would we include those? What is the reason we are doing that?

I don't understand it. I can understand the Senator from Pennsylvania saying he wants a lower increase in the minimum wage, but then to have provisions in his amendment which are so punitive to millions of workers—not just on the overtime but in terms of protecting those workers that get the tip credit of $2.12 and then depend on tips for the rest of it, and to say, no, we are not going to enforce the $2.12.

Mr. SANTORUM. Will the Senator yield?

Mr. KENNEDY. Briefly.

Mr. SANTORUM. Mr. President, I point out to the Senator page 20 of my amendment discusses the tip credit. It specifically refers to only States that are covered by this provision as States that do not have a tip credit. I believe it is seven States that are the only States covered by this provision.

So I don't know where you get ''millions'' of workers.

Mr. KENNEDY. If you read from page 21, the top line from 2 down to line 16, it effectively states: ''may not establish or enforce any laws that require employers to tip credit employee.''

Mr. SANTORUM. I refer the Senator to line 20 through line 25. If the Senator would read that, he will find that any State which prohibits any portion of employee tips from being considered as wages, so that is the operative language that limits this provision—just in the States that do not allow a tip credit.

Mr. KENNEDY. The Senator understands that every State has to have the tip credit at the present time. They have to have the $2.12.

Mr. SANTORUM. My understanding is that is not the case and there are seven States that do not.

Mr. KENNEDY. Under Federal law at the present time, every State has to have a minimum of $2.13 and then the States can add on top of that. Many of the States do. The State of Pennsylvania has added, I believe, 60 or 70 cents on top of that.

So when you talk about not permitting any States to enforce the tip credit, you are talking all the States. That is the way we read it.

Mr. SANTORUM. I say to the Senator from Massachusetts—

Mr. KENNEDY. If the Senator can clarify that language, we would be glad to work with him.

I see my friend and colleague. We have pointed out the fact that we have not increased the minimum wage now in 8 years. It is at the second lowest purchasing level in nearly 60 years. A third of all those that go into bankruptcy are those below the poverty line. This has a direct relevancy to the underlying bill because we are trying to raise up people with the minimum wage. We are not going to get them up to the poverty line, but we will probably raise up some people as a result of the increase.

Therefore, it is appropriate to this legislation. It is long, long overdue. It seems to me at a time we are doing so much for the credit card industries, companies that have billions of dollars in profits, that we ought to be willing to make work pay.

I know that bothers some Senators. It bothers the Senator from New Hampshire who criticized this and said, Well, we do not want to be like the Soviet Union and like communist countries.

It is interesting that Great Britain just went up to more than $9 for the minimum wage last week. They have the most successful economy in Europe at the present time. They have taken 1.2 million children out of poverty. They have the lowest home mortgages in 50 years. They brought unemployment down. And they are trying to do better for the children that are living in poverty. They have just raised their minimum wage in Great Britain.

I will include the other countries that are not, allegedly, Communist. That includes a good many of the European countries: Belgium, Ireland, U.K., Portugal, France, Spain, and Greece.

I don't think the argument was serious.

Mr. HARKIN. Will the Senator yield?

Mr. KENNEDY. I am happy to yield.

Mr. HARKIN. Did I hear the Senator correctly that someone was suggesting the minimum wage is communistic?

Mr. KENNEDY. I think the argument made by my friend—and I want to be careful about how I explain it. He took issue when I said in the Senate Chamber what I believed, that this is a value issue. We hear a great deal about the importance of values, having work pay, respecting that work is a value issue. It is a family issue that affects children. However, it is a value issue. It indicates that we believe work should pay.

My good friend, and he is my friend from New Hampshire, said that sounded an awful like a government establishing pay like Communist economies did. I don't want to go into it a great deal more.

Mr. HARKIN. If the Senator would yield, it seems we have settled that issue in this country. Going back how many years now have we had a minimum wage?

Mr. KENNEDY. More than 60 years.

Mr. HARKIN. More than 60 years we have had a minimum wage in this country.

I don't have the data with me right now, but I have seen the data that indicates when the minimum wage was higher relative to, say, corporate salaries and what CEOs were making, that, in fact, our country enjoyed a higher standard of living. Is it not true that if people are making a more decent minimum wage, it lifts them out of poverty; they are better able to provide food and clothing and shelter for their kids and their family, better able to pay tuition to go to college.

It seems to this Senator, and I ask my friend from Massachusetts, under the underlying bill, the bankruptcy bill, we are providing all kinds of support, immunities, coverage, for creditors and especially credit card companies; we are providing them all protection, but now when it comes to providing minimum protection for the lowest income people in this country, we cannot seem to do it.

It seems incongruous that we would protect the biggest, but for the smallest we cannot seem to do that.

The PRESIDING OFFICER (Mr. VITTER). The Senator from Massachusetts.

Mr. KENNEDY. The Senator is absolutely right.

I want to catch my friend from Pennsylvania before he walks out. The Senator is quite correct. In a more basic way, this has been something Republicans and Democrats have worked on together. President Eisenhower, the first President Bush, President Ford—all supported an increase. Since the time I have been here we have had bipartisan coalitions. But as the Senator remembers, under the Republican leadership they have refused to do so.

I mention one thing to my friend from Pennsylvania. I have a letter, which I will include in an appropriate place, from Ohio State University, from a professor of law who said the proposed Santorum legislation would also reduce existing protections provided to tip employees by prohibiting State and local governments from enforcing any State or local law that fails to grant a 100 percent tip credit. That is, employers would be allowed under State and local law to pay nothing to tip employees as long as their tips from customers add up to the minimum wage. This provision would even override the laws of States that have eliminated the tip credit entirely or that require tip employees to be paid minimum wage by their employers.

That is the reason I mentioned this earlier. If that was not the intention of the Senator, hopefully we can correct that.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, I will be brief. I know the Senator from Iowa is here. I do not want to stop him from making his remarks. I just want to respond to several of the things the Senator from Massachusetts said.

First, I would be happy to look at the letter from the Ohio State professor and see how he, in my opinion, misread the provision we had. I think I am very

clear on the intent. If there is some language clarification, I would be happy to sit down and work on that. I know Senator ENZI, of course, from the HELP Committee worked on this language and would be willing to do so also.

A couple of comments. The Senator from Massachusetts talked at length about economists and others who are suggesting that we need—I think I am using the Senator's words—a modest increase in the minimum wage. I did not see any of the charts that he brought out that supported his particular minimum wage increase. And he used the term ''modest'' repeatedly. I am not sure there would be too many economists in the economy of today who would say a 40-percent increase in the minimum wage would be modest. I think a 40-percent increase, by definition, probably is outside the bounds of what most people would consider modest.

I would make the argument that a 20-percent increase—this is what we are suggesting—a 21-percent increase would probably be extending the bounds of modesty, but it would certainly be much more within what most people consider to be the traditional definition.

I would just like to thank the Senator from Massachusetts for bringing up support for my amendment because I think, in comparing the two, the increase we are putting forth of $1.10 comports very well with what the economists are saying would not be damaging to the economy and fit in very well with what would not be damaging to employees and employers. So the $1.10, fits the modest framework.

Secondly, the issue of flextime. Again, I would just point the Senator to the actual language in the amendment. On page 3 of the amendment, it says:

> Except as provided in paragraph (2), no employee may be required to participate in a program described in this section.

So it is purely voluntary. It says employers may do this. Employees may participate. It provides for a written agreement arrived at with collective bargaining. Obviously, the collective bargaining unit, the labor union, would be responsible for any kind of flextime, which is the way it would be under the law.

Here, with respect to an employee who is not represented by a labor organization: No. 1, ''a written agreement arrived at between the employer and employee before the performance of the work involved if the agreement was entered into knowingly and voluntarily by such employee and was not a condition of employment.''

Now, again, I would ask the Senator from Massachusetts, if there is stronger language he would like us to use to make sure this is a voluntary agreement and that the employee and employer enter into it willingly—there are quadruple damages if the employer violates this.

Also, the Senator from Massachusetts talks about how onerous this is on employees. The Senator from Massachusetts voted for this with respect to Federal employees. He voted for this provision, as we see here, flextime, for Federal employees on more than one occasion. As you know, we now have this provision, this ''onerous'' provision, which, I can tell you, my employees do not see as onerous. They see it as something that is of a great benefit to them and their families.

So again, if the Senator from Massachusetts has some tougher language he would like—but I think the language I have read from my amendment—and I am not reading the summary. This is my amendment.

AMENDMENT NO. 128

(Purpose: To promote job creation, family time, and small business preservation in the adjustment of the Federal minimum wage)

In fact, Mr. President, I send the amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

> The Senator from Pennsylvania [Mr. SANTORUM] proposes an amendment numbered 128.

Mr. SANTORUM. I ask unanimous consent reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. SANTORUM. So I am reading from the text of the amendment. And again, the Senator from Massachusetts may quibble, and certainly has, with the voluntariness of this program. I think the language certainly expresses my intent and the intent of all those who are supporting this amendment, that it is a voluntary program and an employee goes into it knowingly and voluntarily with a written agreement. If there is other language that the Senator from Massachusetts would like, obviously we are not going to do that today, but I would be happy to sit down and see if there is a word that is more voluntary than ''voluntary.''

I think usually when you use the word ''voluntary'' that sums up voluntary very well. But if there is a better word for voluntary than the word ''voluntary,'' then I am pretty happy to do so. If there is a better word—whether it is ''discretionary''—than the word ''may,'' I am happy to look at a better word than ''may.'' ''May'' is usually a pretty good word when it describes ''you do not have to.'' ''May,'' that is what we usually use. But if ''voluntary'' and ''may'' are not strong enough words, I will be happy enough to sit down with the Senator from Massachusetts and come up with a better one.

I repeat, the Senator from Massachusetts has voted for this for Federal employees, and there are quadruple damages—quadruple damages—for employers who violate this provision and impose this on their workers unknowingly and involuntarily or as a condition of employment. So I would just suggest there are pretty high and threatening damages to employers who abuse this provision.

One final point I want to make. The Senator talks about its importance, that this is the only way we are going to help people out of poverty. I would suggest that is simply not the case. There are lots of ways, in fact, I would say very much more complicated ways that people get out of poverty than just by the blunt instrument of the Government setting minimum wages.

In fact, looking at this chart, the welfare reform bill we passed in 1996 shows just how effective other ways are. Requiring work is the best way. The Senator put up poverty statistics. What he did not tell you is what those numbers looked like before 1996 and the welfare reform law, which I stood on the floor and argued passionately for. And I was called a whole number of things as to what I was going to do to all these poor children.

What happened as a result of the welfare reform bill was that poverty among African-American children, the thing Senator KENNEDY referred to, was at its lowest rate ever by the year 2000. It has crept up slightly during the economic decline of the early part of this decade, but it is going back down.

So the idea that the minimum wage solves these problems is just a fallacy. There are lots of things that work. One of them is work. Another is marriage. We are going to have an opportunity on the floor of the Senate, when the welfare bill comes up, to talk about how we shift Government policy away from, at best—I think it is ''at best''—neutrality toward marriage, how we shift Government policy when it comes to interacting with families and being neutral with respect to marriage. See what the huge impact is on the poor, the huge impact on poor communities and poor children, when moms and dads are helped to stay together in marriage and, more importantly, when they are introduced to the concept because many women and, unfortunately, men choose not to marry when children are born out of wedlock.

So there will be plenty of time for debate on this issue of other things we can do. But I can tell you, if you look at all these other things we are studying, the thing that is most powerful is, No. 1, jobs. The concern many have—and there are studies we can put into the RECORD about what the impact of a dramatic increase—not a small increase, as we are proposing, but a dramatic increase—in the minimum wage would have to the employment picture of these very people who came off welfare and their ability to find work and get out of poverty. It will have a dramatically negative impact on them, a 40-percent increase in the minimum wage.

But again, there are positive things we can do as we look to the future.

This bill, in my opinion, belongs on welfare legislation, requiring work, more work, which is what is going to be required in this bill, as well as some things to bring fathers back into the home with the Father Initiative that Senator BAYH and Senator DOMENICI and I have been pushing for several years, as well as the marriage initiative that the President has talked about.

This is a complex picture and blunt instruments like minimum wages are not the answer. Yes, I am proposing an increase. I am doing one that I think comports with balancing the interest of low-income workers having a better wage with making sure they have a job in the first place because that is the most important thing. I think we have done so with this $1.10 increase and the provisions I have.

Yes, it is a long amendment. But there are a lot of things in here that I think will add to the quality of life of many workers and certainly help small businesses absorb some of the costs of the increase in the minimum wage.

So with that, Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Iowa is recognized.

Mr. HARKIN. Parliamentary inquiry: Who controls the time?

The PRESIDING OFFICER. The Senators from Pennsylvania and Massachusetts control the time.

Mr. HARKIN. Mr. President, how much time is left on either side?

The PRESIDING OFFICER. The Senator from Massachusetts has 32½ minutes and the Senator from Pennsylvania has 48 minutes 17 seconds.

Mr. HARKIN. I will take 12 minutes. Will the Chair please remind the Senator when 10 minutes is used up?

The PRESIDING OFFICER. The Chair will so notify the Senator.

Mr. HARKIN. I appreciate that.

Mr. President, with the increase in the unemployment rate that we learned of last Friday, it is clear we are in the midst of a two-tiered economic recovery. We have one recovery for high-income Americans, for people on Wall Street, and we have a very different recovery for people working on Main Street.

The Neiman Marcus crowd is popping champagne corks, but it is a very different story for Wal-Mart and K-mart shoppers and for the Americans who work at Wal-Mart and K-mart and in other jobs paying low wages. The number of Americans in poverty has increased by more than 4 million since President Bush took office. Nearly 36 million people live in poverty, 13 million children. Among full-time year-round workers, poverty has doubled since the late 1970s, from about 1.3 million then to 2.6 million now. Every day that the minimum wage is not increased, it continues to lose value and workers fall further and further behind.

Unfortunately, the Bush administration's priority is not lifting working Americans out of poverty; its priority is keeping labor costs low for corporate America. But this is not surprising. The President has been quite frank and open about taking care of what he calls his ''base.''

I strongly support Senator KENNEDY's amendment to raise the minimum wage to $7.25 in three steps. It is long overdue. It has been 5 years since we last had a vote on the minimum wage, and it has been 8 years since we last voted to raise the minimum wage. To have the same purchasing power it had in 1968, the minimum wage would have to be nearly $8.50 today, not $5.15. Since the last increase in 1997, the value has eroded by more than 15 percent.

I noticed that the Senator from Pennsylvania was saying that this would increase the minimum wage by 40 percent. Actually, it is 37 percent that Senator KENNEDY's amendment would raise the minimum wage. In three stages, it would increase it by 37 percent. The Senator from Pennsylvania said this was unprecedented. Under Franklin Roosevelt, it went up 53 percent; under Truman, 47 percent. Under Eisenhower, it went up 33 percent. Under the first President Bush, it went up 25 percent. The point is that since 1997, the last time we raised it, the value has eroded by 15 percent. So if we are going to boost it up over the next 3 years and it increases by 37 percent, you are really only going up by 22 percent more than what it was in 1997. I don't think that is an undue burden on business in America.

Since 1997, the last time we raised the minimum wage, Members of Congress have raised their own pay seven times in the last 8 years by $28,500. Think about that. We vote to raise our pay seven times in 8 years by $28,500, but for minimum wage workers earning $10,700 a year, we can't vote to raise their minimum wage—shame on the Senate.

We have heard in the past that it is mostly teenagers and part-time workers who are working for the minimum wage. That is not the case. The facts are, 35 percent of those earning the minimum wage are the family's sole breadwinners, 61 percent are women, and almost a third of those women are raising children.

The Senate Finance Committee may soon be marking up a welfare reauthorization bill. As the Senate contemplates welfare reauthorization, as we address the goal of moving people from welfare to work, it is especially important we act to raise the minimum wage. Since 1996, we reduced the number of welfare cases by half.

I was intrigued by the chart the Senator from Pennsylvania put up because many of the people who moved off of welfare did not move out of poverty. Why? Because the minimum wage is not a living wage; it is a poverty wage. But an increase to $7.25, such as Senator KENNEDY wants to do, would make a dramatic difference. For a full-time year-round worker, that would add $4,370 in income. That could be a real value to a family living in poverty. For a low-income family of three, let's say one wage earner, single mother, two children, that would be enough money to pay for a year and a half of heat and electricity or a full tuition for a family member pursuing a community college degree.

The Senator from Pennsylvania said what really lifts people out of poverty is more work, not raising the minimum wage. I ask: How can a single mother of two working a minimum wage job work more? What is she supposed to do—work 16 hours a day at the minimum wage? How much more can people be expected to work?

The amendment of the Senator from Pennsylvania changes the 40-hour workweek to an 80-hour work period over 2 weeks, with the maximum that anyone can work in 1 week of 50 hours. Add it up. It doesn't take a mathematician. Eighty hours for 2 weeks; you can work up to 50 hours in 1 week. So you work 50 hours 1 week, 30 hours the next week. Guess what. You just got cheated out of 10 hours of overtime. Before, you would work 40 hours. If you worked 50, you would get 10 hours of overtime. Now you don't get any overtime. That is what is happening to low-income workers in America today.

First of all, we have a bankruptcy bill that slaps them in the face. It makes them pay through the nose. I don't know if anyone read the article in the Washington Post yesterday. I will ask consent to print this article at the conclusion of my remarks. They mention a Ruth Owens in Cleveland who tried for 6 years to pay off a $1,900 balance on her Discover card, sending the credit company a total of $3,492 in monthly payments from 1997 to 2003. Yet her balance grew to $5,564.28 even though she never used the card to buy anything more. So she paid $3,492 on a $1,900 balance, and she still has yet to pay off her balance.

They mention another person, a special education teacher, Fatemeh Hosseini, who worked a second job to keep up with the monthly payment she collectively sent to five banks to try to pay $25,000 in credit card debt. Even though she had not used the cards to buy anything more, her debt nearly doubled to $40,574 by the time she filed for bankruptcy last June.

That is what is happening to poor people. The credit card companies suck them in with a credit card, go out and charge it up, nice and easy. They find they have a $1,900 bill to pay. They start paying a little bit here and there. They miss a couple of payments. All of a sudden they have $5,564 to pay.

Nearly 7.5 million workers would directly benefit from the Kennedy amendment. In Iowa, 87,400 workers would benefit from the increase. That is over 6 percent of Iowa's workforce. The minimum wage needs to be raised to a level that is not a subsistence wage. The way to do that is to raise the

minimum wage to a level that respects work, honors it, and rewards work at a reasonable level.

Just last week our friends on the other side of the aisle were touting what they called their ''Republican poverty alleviation agenda.'' I say watch what they do, not what they say. The President sent up a budget request replete with cut after cut to anti-poverty programs. Now the Senator from Pennsylvania has launched a new attack on the minimum wage and the 40-hour workweek. Now the Senator from Pennsylvania says he wants to increase the minimum wage, albeit only $1.10 an hour over the next 2 years, about half of the Kennedy amendment. But again, he guts it by ending the 40-hour workweek and going to this 50-hour max, 80-hour work period over 2 weeks.

The PRESIDING OFFICER. The Senator has used 10 minutes to this point.

Mr. HARKIN. I thank the Chair.

Last year, the Bush administration's new rule effectively eliminated overtime pay protection for some 6 million American workers. The Senator from Pennsylvania is opening a second front in the war on the minimum wage and the 40-hour workweek. While 1.2 million workers would qualify for the minimum wage increase under the Santorum amendment, another 6.8 million workers would lose their current minimum wage protection.

As I said, then we get the 80-hour work period for a 40-hour workweek. This has only one purpose: to allow more employers to avoid paying overtime compensation. In my 30 years in Congress, I don't recall such a bold, brazen assault on the compensation of American workers than what we see in the Santorum amendment. It ought to be called the shock-and-awe amendment. Workers get the shock, and corporate America sits back in awe at the latest gift from the party it financed in the last election.

I am proud to stand with Senator KENNEDY to raise the minimum wage to $7.25. The present one, at $5.15, is a poverty wage. It doesn't respect the dignity of their work, including the most humble. As Senator KENNEDY said, of all the issues we are debating, this is a values issue. Think about this compared to all the things we are doing to help the credit card companies with the bankruptcy bill. Think about that. We are going to stick it to low-income people, hard-working Americans like Ruth Owens and Fatemeh Hosseini, and then we are going to stick it to them again by not allowing them to even have an increase in the minimum wage.

I would have hoped that the President would have come and asked for an increase in the minimum wage and got his party in the Congress to work with us to increase it. We have done it under Republican Presidents in the past and Democratic Presidents. I don't know why we cannot do it again.

Mr. President, I ask unanimous consent that the Washington Post article entitled ''Credit Card Penalties, Fees Bury Debtors'' by Kathleen Day and Caroline E. Mayer, which appeared yesterday, be printed at this point in the RECORD.

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

[From the Washington Post, Mar. 6, 2005]

CREDIT CARD PENALTIES, FEES BURY DEBTORS

(By Kathleen Day and Caroline E. Mayer)

For more than two years, special-education teacher Fatemeh Hosseini worked a second job to keep up with the $2,000 in monthly payments she collectively sent to five banks to try to pay $25,000 in credit card debt.

Even though she had not used the cards to buy anything more, her debt had nearly doubled to $49,574 by the time the Sunnyvale, Calif., resident filed for bankruptcy last June. That is because Hosseini's payments sometimes were tardy, triggering late fees ranging from $25 to $50 and doubling interest rates to nearly 30 percent. When the additional costs pushed her balance over her credit limit, the credit card companies added more penalties.

''I was really trying hard to make minimum payments,'' said Hosseini, whose financial problems began in the late 1990s when her husband left her and their three children. ''All of my salary was going to the credit card companies, but there was no change in the balances because of that interest and those penalties.''

Punitive charges—penalty fees and sharply higher interest rates after a payment is late—compound the problems of many financially strapped consumers, sometimes making it impossible for them to dig their way out of debt and pushing them into bankruptcy.

The Senate is to vote as soon as this week on a bill that would make it harder for individuals to wipe out debt through bankruptcy. The Senate last week voted down several amendments intended to curb excessive fees and other practices that critics of the industry say are abusive. House leaders say they will act soon after that, and President Bush has said he supports the bill.

Bankruptcy experts say that too often, by the time an individual has filed for bankruptcy or is hauled into court by creditors, he or she has repaid an amount equal to their original credit card debt plus double-digit interest, but still owes hundreds or thousands of dollars because of penalties.

''How is it that the person who wants to do right ends up so worse off?'' Cleveland Municipal Judge Robert J. Triozzi said last fall when he ruled against Discover in the company's breach-of-contract suit against another struggling credit cardholder, Ruth M. Owens.

Owens tried for six years to payoff a $1,900 balance on her Discover card, sending the credit company a total of $3,492 in monthly payments from 1997 to 2003. Yet her balance grew to $5,564.28, even though, like Hosseini, she never used the card to buy anything more. Of that total, over-limit penalty fees alone were $1,158.

Triozzi denied Discover's claim, calling its attempt to collect more money from Owens ''unconscionable.''

The bankruptcy measure now being debated in Congress has been sought for nearly eight years by the credit card industry. Twice in that time, versions of it have passed both the House and Senate. Once, President Bill Clinton refused to sign it, saying it was unfair, and once the House reversed its vote after Democrats attached an amendment that would prevent individuals such as anti-abortion protesters from using bankruptcy as a shield against court-imposed fines.

Credit card companies and most congressional Republicans say current law needs to be changed to prevent abuse and make more people repay at least part of their debt. Consumer-advocacy groups and many Democrats say people who seek bankruptcy protection do so mostly because they have fallen on hard times through illness, divorce or job loss. They also argue that current law has strong provisions that judges can use to weed out those who abuse the system.

Opponents also argue that the legislation is unfair because it ignores loopholes that would allow rich debtors to shield millions of dollars during bankruptcy through expensive homes and complex trusts, while ignoring the need for more disclosure to cardholders about rates and fees and curbs on what they say is irresponsible behavior by the credit card industry. The Republican majority, along with a few Democrats, has voted down dozens of proposed amendments to the bill, including one that would make it easier for the elderly to protect their homes in bankruptcy and another that would require credit card companies to tell customers how much extra interest they would pay over time by making only minimum payments.

No one knows how many consumers get caught in the spiral of ''negative amortization,'' which is what regulators call it when a consumer makes payments but balances continue to grow because of penalty costs. The problem is widespread enough to worry federal bank regulators, who say nearly all major credit card issuers engage in the practice.

Two years ago regulators adopted a policy that will require credit card companies to set monthly minimum payments high enough to cover penalties and interest and lower some of the customer's original debt, known as principal, so that if a consumer makes no new charges and makes monthly minimum payments, his or her balance will begin to decline.

Banks agreed to the new rules after, in the words of one top federal regulator, ''some arm-twisting.'' But bank executives persuaded regulators to allow the higher minimum payments to be phased in over several years, through 2006, arguing that many customers are so much in debt that even slight increases too soon could push many into financial disaster.

Credit card companies declined to comment on specific cases or customers for this article, but banking industry officials, speaking generally, said there is a good reason for the fees they charge.

''It's to encourage people to pay their bills the way they said they would in their contract, to encourage good financial management,'' said Nessa Feddis, senior federal counsel for the American Bankers Association. ''There has to be some onus on the cardholder, some responsibility to manage their finances. ''

High fees ''may be extreme cases, but they are not the trend, not the norm,'' Feddis said.

''Banks are pretty flexible,'' she said. ''If you are a good customer and have an occasional mishap, they'll waive the fees, because there's so much competition and it's too easy to go someplace else.'' Banks are also willing to work out settlements with people in financial difficulty, she said, because ''there are still a lot of options even for people who've been in trouble.''

Many bankruptcy lawyers disagree. James S.K. ''Ike'' Shulman, Hosseini's lawyer, said credit card companies hounded her and did not live up to several promises to work with her to cut mounting fees.

Regulators say it is appropriate for lenders to charge higher-risk debtors a higher interest rate, but that negative amortization and other practices go too far, posing risks to the banking system by threatening borrowers' ability to repay their debts and by being unfair to individuals.

U.S. Bankruptcy Judge David H. Adams of Norfolk, who is also the president of the National Conference of Bankruptcy Judges, said many debtors who get in over their heads ''are spending money, buying things they shouldn't be buying.'' Even so, he said, ''once you add all these fees on, the amount of principal being paid is negligible. The fees and interest and other charges are so high, they may never be able to pay it off.''

Judges say there is little they can do by the time cases get to bankruptcy court. Under the law, ''the credit card company is legally entitled to collect every dollar without a distinction'' whether the balance is from fees, interest or principal, said retired U.S. Bankruptcy Judge Ronald Barliant, who presided in Chicago. The only question for the courts is whether the debt is accurate, judges and lawyers say.

John Rao, staff attorney of the National Consumer Law Center, one of many consumer groups fighting the bankruptcy bill, says the plight consumers face was illustrated last year in a bankruptcy case filed in Northern Virginia.

Manassas resident Josephine McCarthy's Providian Visa bill increased to $5,357 from $4,888 in two years, even though McCarthy has used the card for only $218.16 in purchases and has made monthly payments totaling $3,058. Those payments, noted U.S. Bankruptcy Judge Stephen S. Mitchell in Alexandria, all went to ''pay finance charges (at a whopping 29.99%), late charges, overlimit fees, bad check fees and phone payment fees.'' Mitchell allowed the claim ''because the debtor admitted owing it.'' McCarthy, through her lawyer, declined to be interviewed.

Alan Elias, a Providian Financial Corp. spokesman, said: ''When consumers sign up for a credit card, they should understand that it's a loan, no different than their mortgage payment or their car payment, and it needs to be repaid. And just like a mortgage payment and a car payment, if you are late you are assessed a fee.'' The 29.99 percent interest rate, he said, is the default rate charged to consumers ''who don't met their obligation to pay their bills on time'' and is clearly disclosed on account applications.

Feddis, of the banker's association, said the nature of debt means that interest will often end up being more than the original principal. ''Anytime you have a loan that's going to extend for any period of time, the interest is going to accumulate. Look at a 30–year-mortgage. The interest is much, much more than the principal.''

Samuel J. Gerdano, executive director of the American Bankruptcy Institute, a nonpartisan research group, said that focusing on late fees is ''refusing to look at the elephant in the room, and that's the massive levels of consumer debt which is not being paid. People are living right up to the edge,'' failing to save so when they lose a second job or overtime, face medical expense or their family breaks up, they have no money to cope.

''Late fees aren't the cause of debt,'' he said.

Credit card use continues to grow, with an average of 6.3 bank credit cards and 6.3 store credit cards for every household, according to Cardweb.com Inc., which monitors the industry. Fifteen years ago, the averages were 3.4 bank credit cards and 4.1 retail credit cards per household.

Despite, or perhaps because or, the large increase in cards, there is a ''fee feeding frenzy,'' among credit card issuers, said Robert McKinley, Cardweb's president and chief executive. ''The whole mentality has really changed over the last several years,'' with the industry imposing fees and increasing interest rates if a single payment is late.

Penalty interest rates usually are about 30 percent, with some as high as 40 percent, while late fees now often are $39 a month, and over-limit fees, about $35, McKinley said. ''If you drag that out for a year, it could be very damaging,'' he said. ''Late and overlimit fees alone can easily rack up $900 in fees, and a 30 percent interest rate on a $13,000 balance can add another $1,000, so you could go from $2,000 to $5,000 in just one year if you fail to make payments.''

According to R.K. Hammer Investment Bankers, a California credit card consulting firm, banks collected $14.8 billion in penalty fees last year, or 10.9 percent of revenue, up from $10.7 billion, or 9 percent of revenue, in 2002, the first year the firm began to track penalty fees.

The way the fees are now imposed, ''people would be better off if they stopped paying'' once they get in over their heads, said T. Bentley Leonard, a North Carolina bankruptcy attorney. Once you stop paying, creditors write off the debt and sell it to a debt collector. ''They may harass you, but your balance doesn't keep rising. That's the irony.''

Mr. HARKIN. Again, I urge my colleagues to disavow the Santorum amendment and support the Kennedy amendment. It is the least we can do for the least among us—to raise their minimum wage, give value to their work. This is a values issue. This is at the heart of it. It is an issue of what kind of country we want, what kind of Congress we are, and what kind of Senators we are.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. HAGEL. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business for the purpose of introducing legislation. My time would be charged against Senator SANTORUM's time.

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

(The remarks of Mr. HAGEL pertaining to the introduction of S. 540 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts.

Mr. HARKIN. Will the Senator yield for a unanimous consent request?

Mr. KENNEDY. Yes.

Mr. HARKIN. I ask that the pending amendments be set aside so I can offer a germane filed amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 66

Mr. HARKIN. Mr. President, I call up amendment No. 66.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself, Mr. ROCKEFELLER, Mr. LEAHY, Mr. DAYTON, and Mr. KENNEDY, proposes an amendment numbered 66.

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

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

The amendment is as follows:

(Purpose: To increase the accrual period for the employee wage priority in bankruptcy)

On page 498, strike lines 23 and 24, and insert the following:

(1) in paragraph (4), by striking ''within 90 days'';

Mr. HARKIN. I offer this amendment on behalf of myself, Senators ROCKEFELLER, LEAHY, and DAYTON, and I ask unanimous consent that Senator KENNEDY be added as a cosponsor.

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

Mr. HARKIN. I ask that the amendment be set aside.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Massachusetts is recognized.

AMENDMENT NO. 44

Mr. KENNEDY. Mr. President, there is a point that I would hope our colleagues would pay close attention to, and that is that the Santorum amendment will eliminate the equal pay provision for women working for companies with sales of less than $1 million. This is enormously important.

The Republican amendment gives pennies to minimum wage workers with one hand. With the other, it takes thousands of dollars away from minimum wage, middle-class, and women workers. As I mentioned earlier, it slowed it up with antiworker poison pills, and the pill that is the hardest to swallow of the Republican amendments effectively denies over 10 million more workers minimum wage, overtime pay, and equal pay protections by eliminating the Fair Labor Standards Act coverage completely.

Currently, all employees who work for employers that are engaged in interstate commerce and have gross annual sales of at least $500,000 are guaranteed Fair Labor Standard protections. But even in businesses that have less than $500,000 in annual sales, the employees still have individual Fair Labor Standard coverage if they are engaged in interstate commerce.

The Santorum amendment raises the $500,000 annual sales threshold to $1 million, as he mentioned, and virtually eliminates this individual Fair Labor Standard coverage, even for workers who are engaged in interstate commerce. It makes one exception for workers engaged in industrial housework.

It allows businesses to pay their workers less than the Federal minimum wage, requires them to work longer hours without overtime pay, and to be able to pay men and women differently.

The gross annual sales threshold was created as a way to determine the employers that are engaged in interstate

commerce, not as a way to exempt the workers from the Fair Labor Standards Act.

For over 60 years, Congress has amended the Fair Labor Standards Act to provide even more workers with the minimum wage. Instead of trying to exclude over 10 million workers from the guaranteed minimum wage, we should raise it.

I refer to the paragraph of the Fair Labor Standards Act, paragraph 206, that says each employer shall pay to each of his employees whose work is engaged in commerce, in the production of goods for commerce—that is those who are being paid who are working for companies earning less than $500,000. In the same paragraph it says:

No employer having employees subject to any provisions of this section shall discriminate.

Those are eliminated. So we don't have equal pay for equal work in the United States. There are only a few areas where we do. It is in this particular area that we do and the Santorum amendment eliminates it for those individuals. I say to our colleagues here in the Senate who care about equal pay for equal work for women, this is a bad deal.

The PRESIDING OFFICER. Who yields time? The Senator from Pennsylvania.

Mr. SANTORUM. I would say in response to the Senator from Massachusetts, my understanding of this legislation, the way it is written, there was an error made in the drafting of the statute such that the threshold had been basically ignored because of the provision to which the Senator from Massachusetts refers. It was a difference between an ''and'' and an ''or'' as to how it was written. My understanding is that the intent of the Congress was to exempt small businesses as we do from a variety of different labor laws. I mentioned before the one I am most familiar with, the Family and Medical Leave Act, which has an employee threshold. There are others that have thresholds in the Federal law, where we chose not to include very small businesses in some of the mandates the Federal Government imposes, a variety of different labor mandates. We do so because of the nature of the small business. A lot of these are mom-and-pop businesses, a garage, very small employers, where the burden of complying with a variety of Federal statutes having to do with labor laws when it comes to a small operation can be an onerous one and costly one. It can be a barrier to starting a business.

So many, including Senator HARKIN and Senator REID, your leader, have supported this small business exemption as a clean exemption with no ''or'' provision, ''as engaged in interstate commerce.''

Why? Because we understand that Federal law and these kinds of provisions can be very costly to very small businesses and can be a barrier of entry to businesses and can involve them in a cost which they may not be willing to assume.

So there has always been, to my knowledge, in almost every, if not every, Federal labor law a small business exemption, what the Senator from Massachusetts has said there should not be in this case. That is a very legitimate position. I do not think the Members of this body would agree—on either side of the aisle, I might add—that there should be no exemption for any business from this provision of the Fair Labor Standards Act. That is what we attempt to correct, to make that comport with what was broadly agreed was the intent. Unfortunately, it has never been remedied.

If the Senator from Massachusetts wants to make the argument that there should be no businesses exempt from the Federal Fair Labor Standards Act, fine. Make that argument and we will have that debate and we will find out how many votes we have, whether there should be a small business exemption or not. But don't suggest what I am doing here is some sort of subterfuge other than to clarify that there are exemptions for legitimate reasons for very small businesses. The threshold was set at half a million dollars back in 1990. If you index that to inflation, it would be $1.5 million today. We set it at a million, which is lower than the rate of inflation. That is hardly overreaching on the part of this amendment.

If the Senator wants to say there should be no exemption, that all businesses should be covered and there should be no small business exemption to any labor law, fine, if that is what the Senator from Massachusetts wants. Understand the consequences, that Democrats and Republicans for years have understood here, which is these mandates on very small startup businesses in particular, but any small business, can be damaging to the economy in our poorest neighborhoods, in the cleaning services, in the landscape businesses, and a whole host of other small businesses where people are trying to make ends meet by pursuing their entrepreneurial spirit. By putting these kinds of requirements and labor laws and regulations on these small businesses, we damage and destroy the very small businesses in this country.

I do not think that is where most on his side of the aisle are. That may be where the Senator from Massachusetts is. If that is where he is, fine, but I would be very proud to defend that provision that says the smallest businesses in America should not have these kinds of mandates imposed on them by Federal law.

Mr. DURBIN. Will the Senator yield for a question?

Mr. SANTORUM. I am happy to yield for a question.

Mr. DURBIN. I am sorry that I just arrived. I am trying to catch up with this debate. Would the amendment reduce the number of workers in America eligible for overtime pay and reduce the number of businesses in America required to pay the minimum wage?

Mr. SANTORUM. I think I was pretty clear about that. The answer is yes. Because we raise the threshold from a half million, small business, to a million. As I said before, the half million threshold was set in 1990. It has not been indexed. I hear a lot of comments about why we should index things here. We should index the minimum wage, we should index a whole host of other things that have the benefit of, in this case, increasing workers' pay. If that is the case, if we thought $500,000 was a legitimate threshold in 1990, I don't know why it should not be indexed to include in real terms that same class of small businesses at this time.

Mr. DURBIN. Will the Senator yield for a further question?

Mr. SANTORUM. I am happy to.

Mr. DURBIN. If the Senator is prepared to double the size of the business from $500,000 to $1 million because it should keep up with inflation, would the Senator be prepared to double the minimum wage of 1990 to what it should be today?

Mr. SANTORUM. I say to the Senator from Illinois, we are increasing—in fact, my amendment does increase the minimum wage by 20 percent.

Mr. DURBIN. By 100 percent?

Mr. SANTORUM. I don't recall exactly what the increase was. I will check and see what the wage was in 1990 as compared to what it is today. We are proposing a modest increase. If the Senator is suggesting it should be a smaller increase, I will be happy to negotiate a smaller increase if it makes the Senator comfortable.

The Senator from Massachusetts is not suggesting it should be a smaller increase. He is suggesting there should be no exemption at all and that there was a provision—and that is what the debate is about—that if they included anyone in interstate commerce, even one employee, that they should be covered. In fact, that is my understanding of how the Labor Department has interpreted this provision. In a sense, there has not been any threshold.

Again, if the Senator from Illinois would like to have a threshold that indexes with the minimum wage, I would be happy to accept that as a reasonable index. But I think to suggest it should not change at all over a period of time does, of course, begin to gather and cover more and more businesses that are small by nature and then again it would be a barrier to entry and a difficulty in sustaining those businesses over time.

I am willing, if there is a legitimate concern about this as to how much we are raising the cap, again, we are willing to negotiate that. That is not what the Senator from Massachusetts is saying. What the Senator from Massachusetts is saying is there should not be any threshold at all; we should keep the zero threshold which exists today in law.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. The history for interstate workers is that from 1938, when the minimum wage was first passed, the minimum wage has applied to them. That is being changed by the Senator from Pennsylvania. We understand that. That is being changed. It is going to have a profound effect on millions of workers.

It is not only by the provisions, the coverage of the Fair Labor Standards Act, it is not only the payment, but it is also the equal payment.

Second, there have been different rules with regard to retail workers. There was the overall figure of $1 million that was used on retail workers. That was reduced to $500,000 and even down to $250,000. So we have been dealing with this for many times.

The point of the matter is, under the Santorum amendment, the way it is constructed, there will be millions and millions and millions who will be outside the coverage of the Fair Labor Standards Act. That is plain and simple.

Mr. SANTORUM. Will the Senator yield?

Mr. KENNEDY. I only have a few minutes left now. The point I was making earlier, when I offered our amendment, it is 3 pages long, to deal with the increases in the minimum wage for workers. The Senator from Pennsylvania has an 85-page law. He has opposed the minimum wage 17 times in 10 years. Minimum wagers, beware.

Mr. SANTORUM. Mr. President, does the Senator from Massachusetts yield?

Mr. KENNEDY. I have to withhold my remaining time.

Mr. SANTORUM. Mr. President, I would like to correct the record. I have supported the minimum wage on more than one occasion during my time in Congress. When I started in the House, the last minimum wage that passed I supported. Under the Clinton administration, I voted for an increase. I have voted for an increase in the minimum wage in the past. I voted for a similar minimum wage increase in the last session of Congress, or the time before. I have not had any ideological problems supporting minimum wage. I want to correct the record about what the Senator from Massachusetts said.

I would also say with respect to workers not being covered as a result of this provision of raising the threshold, as you know and as the Senator from Massachusetts knows, there are operative State laws which provide worker protections in addition to Federal law. In fact, for the States that do not have operative State laws which provide these worker protections, we leave the threshold at 500-fold. We don't change the threshold for the States that do not have operative worker protections for the things that the Fair Labor Standards Act applies to.

I want to make the record clear. No one is falling through the cracks here. The States that only have Federal law covering this area do not change. The ones that do have State laws change accordingly. Again, many of those State laws will remain in place and cover workers who are not covered under the Fair Labor Standards Act under their own State labor protection laws.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak for 5 minutes, and I ask the Chair to notify me when I have used 4 minutes.

The PRESIDING OFFICER. Does this time come out of the time of the Senator from Massachusetts?

Mr. KENNEDY. I yield 5 minutes.

Mr. DURBIN. Mr. President, Members of the Senate will have a choice in just a few minutes about the future of the minimum wage.

There was a time when we didn't even debate this. There was a time when Democrats and Republicans agreed that every once in a while you have to raise the minimum wage. The cost of living goes up in America. Republican and Democratic Presidents alike said: Can't we come together and reasonably increase the minimum wage so that the poorest among us have a fighting chance for a decent life?

We used to do it that way. When we stopped doing it 8 years ago when Republicans took control of Congress, they decided this was a partisan issue, that good Republicans didn't support an increase in the minimum wage; only Democrats supported it. Today, we have a choice. The choice is very stark.

Senator SANTORUM comes to the Senate floor and says let us raise the minimum wage for 1.8 million Americans. That is a pretty good thing. At least they are going to get some help. But look at Senator KENNEDY's alternative. In his alternative, 7.3 million Americans would have an increase in the minimum wage.

The Santorum Republican approach helps 1 out of 4 of the workers who Senator KENNEDY's approach helps. But it gets worse. In order for Senator SANTORUM to work up the political courage to bring this to the floor, he said: I have to turn around and do something on the business side. So what I will do is to exempt 10 million workers in America from coverage for overtime pay.

Think about that. You can work 50 hours a week at straight time. That is the deal we are going to offer you for a slight increase in the minimum wage. Does that make sense?

He goes further and says we are going to say that fewer businesses in America are required to pay the minimum wage. What a deal. After waiting 8 years, he helps 1 out of 4 of the workers who Senator KENNEDY helps, and for the 1.8 million he helps, he pushes 5 times as many overboard. He says: You are not going to get overtime. I will vote for an increase in minimum wage, but that is just part of the deal.

It is really appropriate that we have this debate on the bankruptcy bill, isn't it, when you think about it? We are going to force some of the most marginal workers, so many of the hardest working people in America, into a position where they can't pay their bills; then our beautiful Bankruptcy Code reform pushed by the credit card industry will make sure they are saddled with debt for a lifetime. That is what this debate comes down to.

In order to bring up the courage on the Republican side to offer any minimum wage increase, they had to offer to the business community this disqualification for overtime pay the incentive that many businesses would not pay a minimum wage, not to mention adhere to the equal pay provisions. Some of these minimum wage workers across America are young, single mothers struggling to raise kids. Sometimes they are working one or two minimum wage jobs. They would like to be paid equal pay in their workplace. Senator SANTORUM thinks that goes too far when it comes to small businesses. I think this is wrong.

We need to get back to the bipartisan consensus we had on minimum wage. If you stand for moral values—wasn't that the big issue in the last campaign?—wouldn't one moral value be as follows: If you get up and go to work every day in America, if you follow the rules and show up for work, you shouldn't live in poverty in America. That is a fact. Some people working every single day at a minimum wage job are living below the poverty line.

Poverty has doubled since the late 1970s. The poverty rolls have increased by 4 million people since President Bush has taken office. The low minimum wage is a big part of that. Minimum wage employees who work 40 hours a week earn $10,750 a year. Think about how you would get by on $10,700 a year. In fact, we say officially that this is $5,000 less than you need to raise a family of three. We acknowledge that. If you go to work, work hard, and are paid the minimum wage, you are going to live in poverty.

We believe on the Democratic side of the aisle that America, if it is a just nation, should move to the point where hard-working Americans get a decent paycheck.

That is what Senator KENNEDY has been fighting for for 8 years. I would be happy to be part of that fight.

I say in conclusion that we talk a lot in the Senate about what our priorities should be. The top priority of this Senate now is to make the bankruptcy laws more difficult for those swamped by medical bills. We have tried to offer amendments to stand up for the activated Guard and Reserve people who are forced into bankruptcy. The Republican side rejected every single amendment we offered. Now we come with a sensible, just amendment to, frankly, raise the minimum wage up to a decent level in America, and what we are offered on the other side of the aisle is an unacceptable alternative.

I yield the floor.

Mr. HATCH. Mr. President, today the Senate will consider two minimum wage amendments to the bankruptcy reform bill, S. 256. Senator TED KENNEDY's minimum wage amendment proposes to increase the minimum wage by $2.10 per hour in three steps over 26 months, and Senator RICK SANTORUM's amendment would raise the minimum wage by $1.10 an hour over 18 months.

I have always believed that increasing the minimum wage is not an effective way to improve living standards for the Nation's working poor. Simply put, raising the minimum wage is a Federal government mandate which creates negative ripples throughout the national economy by making goods and services more expensive for families. Raising the minimum wage closes the doors of many small businesses, and forces companies to move jobs offshore to less costly countries. Such an increase makes it more difficult for many lower skilled U.S. workers to get started in the job market.

Small businesses are the engine for economic growth in America and represent a powerful vehicle for opportunity. A minimum wage increase would negatively affect small businesses across the nation and in my home State of Utah.

For example, Wangsgard's grocery store of Ogden, UT, offers a full line of groceries, along with a meat shop, oven-fresh bakery, fresh produce, a deli and snack bar, coffee counter, garden center and Ace Hardware. Without a doubt, this store really is a one-stop solution.

Phillip Child, president and owner of Wangsgard's grocery store, informs me that a minimum wage increase would force him to reduce jobs. In fact, Mr. Child confirms that of his 93 employees, those who are earning minimum wage are either in high school or living at home with their parents. These employees are not supporting families. With the goal to open a second Wangsgard's grocery store in the near future, Mr. Child is concerned that an increase in minimum wage would certainly cut the number of new jobs available to the community.

I believe education and job-training programs are the key to raising take-home pay. Of course, it's much easier to pose as the champion of the poor and worry about the consequences later. Yet if Congress does move to increase the minimum wage, it should adopt a small, more gradual increase, and offset the negative consequences of a wage hike with measures to protect the small businesses that generate a majority of all new jobs and employ most Americans. That is why I support the Santorum amendment and oppose the Kennedy amendment.

Mr. CORZINE. Mr. President, I rise today to speak in support of Senator KENNEDY's amendment that would amend the Fair Labor Standards Act of 1938 to provide for gradual increases in the Federal minimum wage.

An increase in the Federal minimum wage is long overdue.

It has now been over 7 years since Congress last raised the minimum wage to its current level of $5.15 per hour. Since that last increase, Congress's failure to adjust the wage for inflation has reduced the purchasing power of the minimum wage to record low levels. In fact, after accounting for the loss of real value due to inflation, the purchasing power of the minimum wage has not been this low since the wage increase of 1945.

When Congress last raised the minimum wage in 1996, the wage was raised from $4.75 to its current $5.15. At the time, this modest increase had real results. The adjustment increased the take home pay of nearly 10 million hard working Americans. But with inflation, the real dollar value of that increase is long gone.

So that we are clear, raising the minimum wage is a family issue. So often in this body we talk about family issues. This is our chance to act.

No family gets rich from earning the minimum wage. In fact, the current minimum wage does not even lift a family out of poverty. A person earning the current minimum wage, working 40 hours a week, 52 weeks a year, earns only $10,700—nearly $4,000 below the poverty line for a family of three.

Seven out of every 10 minimum wage workers are adults, and 40 percent of minimum wage workers are the sole breadwinners of their families. Moreover, a disproportionate number of minimum wage workers are women. Sixty percent of the 11 million minimum wage workers are women, and many are single mothers who must put food on the table, make rent payments, and provide childcare. Increasing the minimum wage by a mere $1.50 per hour would mean an extra $3,000 a year for working families. These additional dollars can provide tangible help to these families in the form of groceries, rent, and the ability to pay one's utility bills.

The problems posed by our insufficient minimum wage are stark in my home State of New Jersey.

According to New Jersey Department of Labor statistics, there are just over 181,000 people making minimum wage in the State. While some States have set higher minimum wage levels, New Jersey is like most States—its minimum wage mirrors the Federal minimum wage. But New Jersey is also different because the cost of living in New Jersey far exceeds the national average and working families in the State are unable to make ends meet at the current minimum wage. As a result, minimum wage workers in New Jersey are worse off than minimum wage workers living in other parts of the country.

Let me quantify the severity of this problem in a high-cost State such as New Jersey. Last year, Legal Services of New Jersey released a self-sufficiency study that found that—without private or public assistance—a New Jersey family of four needs a yearly salary of anywhere from $37,516 to $56,670 to make ends meet. Now remember, as I mentioned earlier, an individual earning the current minimum wage, working 40 hours a week, 52 weeks a year, earns only $10,700. What that then means is that in New Jersey, a family of four that has both parents working full-time for the minimum wage would still face an annual shortfall likely in excess of $20,000 in order to cover basic living needs.

While the Kennedy amendment seeks to provide a real wage increase to workers that will help them keep up with the rising cost of living in our Nation, the Santorum amendment offered by my Republican colleagues is a cruel hoax on hard-working Americans.

It is politics over policy, and it is just plain wrong.

The Santorum amendment only provides about half of the minimum wage increase of the Kennedy amendment. It also denies minimum wage, overtime and equal pay rights from over 10 million workers.

The Santorum amendment will increase the minimum wage by a mere $1.10 per hour. This amendment will benefit only 1.8 million workers—5.5 million fewer than the Kennedy amendment.

The difference between an increase to $7.25 and an increase to $6.25 for a minimum wage worker has a real impact on people's lives, particularly in a State such as New Jersey. It means on average 15 fewer months of child care; over a year less of tuition at a community college; 10 fewer months of heat and electricity; 6 fewer months of groceries; and 5 fewer months of rent.

The Santorum amendment denies more than 10 million workers minimum wage, overtime pay and equal pay rights by ending individual Fair Labor Standards coverage and raising the enterprise coverage threshold to $1 million from $500,000.

The Santorum amendment would be the death of the 40-hour workweek and the American weekend. After the Administration's denial last year of overtime protections for 6 million workers, this proposal would further undermine overtime protections by allowing employers to refuse to pay workers up to 10 hours of earned overtime pay every 2 weeks.

That means a pay cut of $3,000 a year for a median income earner—$43,000 per year—and an $800 pay cut for minimum wage workers. Employers are already free to offer more flexible schedules under current law—the only difference is that now they have to pay workers overtime when they work more than 40 hours in a week.

Finally, the Santorum amendment prohibits states from providing stronger wage protections than the Federal standard for tipped employees like waiters and waitresses.

There are some items in the Santorum amendment that can help our small businesses. But this amendment has been so bloated down with

provisions that are harmful to American workers that as a whole it is not just bad for workers, it is ultimately bad for business.

All of our hard working families nationwide need and deserve a minimum wage that reflects the increased cost of living in America. It is the least we can do for people who work hard and make a positive contribution to our great Nation.

Let's not dishonor them or their efforts. I urge my colleagues to support the Kennedy amendment.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I rise today in opposition to the amendment offered by Senator KENNEDY which would increase the minimum wage by an unprecedented 41 percent. Apart from its numerous other problems, this proposal is fundamentally flawed because it presumes that Congress, by simply imposing an artificial wage increase, will meaningfully address the real issues of the lowest paid workers. That is simply not the case.

Regardless of the size of a wage increase Congress might impose, the reality is that yesterday's lowest paid worker, assuming he still has a job, will continue to be America's lowest paid worker tomorrow. Advancement on the job and earned wage growth can simply not be legislated. We do a disservice to all concerned—most especially the chronic low-wage worker—to suggest that a Federal wage mandate is the answer. What we need to focus on is not an artificially imposed number but on the acquisition and improvement of jobs and job-related skills. In this context, we should recognize that only 68 percent of the students entering the ninth grade 4 years ago are expected to graduate this year. For minority students, this number hovers around 50 percent. In addition, we continue to experience a dropout rate of 11 percent per year.

These noncompletions and dropout rates and the poor earnings capacity that comes with them cannot be fixed by a Federal wage policy. We always have to keep this in mind. The phrase ''minimum wage worker'' is an arbitrary designation. A more accurate description and one that should always be at the center of this debate is that we are seeking to address those workers who have few if any skills that they can use to compete for better jobs and command higher wages. The effect may be low wages, but the cause is low skills. In short, the problem is not a minimum wage. The problem is minimum skills.

I had a Workforce Investment Act bill that the Senate 2 years ago passed unanimously. We cannot get a conference committee to do upgrades in skills for 900,000 people a year. That would have upped the minimum wage, and it would have upped it in a true way. If we are to approach this debate in a constructive and candid way, we need to know certain basic principles of economics. Wages do not cause sales. Sales are needed to provide wages. Wages do not cause revenue. Revenue drives wages. Wages can cause productivity, but the productivity has to come first to be able to afford the wages.

Skills, however, operate differently than wages. Skills do create sales. Sales produce revenue. Skills do create productivity. Skills get compensated with higher wages or else the employee simply goes elsewhere for true higher wages. Wage increases without increased sales or higher productivity have to be paid for by higher prices. Higher prices wipe out wage increases. Skills, not artificial wage increases, produce the true net gains in income.

The minimum wage should be for all workers what it is for most: A starting point; a starting point in an individual's lifelong working career. Viewed as a starting point, it becomes clear that the focus needs to be less on where an individual begins his or her working career. Instead, more emphasis should be placed on how an individual can best progress.

Real wage growth happens every day and it is not the function of a Government mandate. It is the direct result of an individual becoming more skilled and therefore more valuable to his or her employer.

As a former small business owner, I know that these entry level jobs are a gateway into the workforce for people without skills or experience. These minimum skills jobs can open the door to better jobs and better lives for low-skilled workers if we give them the tools they need to succeed.

We have a great example in Cheyenne, WY, of minimum skilled workers who were given the tools and the opportunity to reach the American dream. Mr. Jack Price, the owner of eight McDonald's restaurants in Wyoming—everyone likes to use McDonald's for the example—had three employees who started working for McDonald's at minimum wage. Now those three employees, those minimum wage employees, own a total of 20 restaurants. They got the skills.

This type of wage progression and success should be the norm for workers across our country. However, there are some minimum skilled workers for whom stagnation at the lower tier wage is a longer term proposition. The answer for these workers, however, is not simply to raise the lowest wage rung, which raises all the other rungs, which drives up the price and takes away their advantage; rather, these individuals must acquire the training and skills that result in meaningful and lasting wage growth.

We must equip our workers with skills they need to compete in this technology-driven global economy. It is estimated that 60 percent of tomorrow's jobs will require skills that only 20 percent of today's workers possess. It is also estimated that graduating students will likely change careers some 14 times in their life, and 10 of those jobs have not even been invented yet.

To support these needs, we need a system in place that can support a lifetime of education, training, and retraining for workers. The end result would be the attainment of goals that provide meaningful wage growth. As legislators, our efforts should better focus on ensuring that the tools and the opportunities for training and enhancing skills over a Worker's lifetime are available and are utilized.

We tried to do that through the Work First Investment Act that got blocked in the last Congress; 900,000 people trained to higher skilled jobs each year. That would have been a lot of people getting higher wages each and every year.

Since 1998, the Democrats have been pushing a drastic increase in the Federal minimum wage except—listen to this—except when they were in the majority, when they controlled this body. In the 18 months from mid-2001 through all of 2002, while the Democrats held the majority they did not bring the minimum wage vote to the floor. The question must be asked, who would really be helped? Who would be hurt by this amendment we have today to raise the minimum wage by an unprecedented 41 percent, to $7.25 an hour.

First, we must realize that the large increase in minimum wage will hurt low-income, low-skilled individuals, the very workers proponents claim they want to help. Let us be clear: Mandated hikes in the minimum wage do not cure poverty. They clearly do not create jobs.

The Congressional Budget Office has said most economists would agree that an increase in the minimum wage rate would cause firms to employ fewer low-wage workers or employ them for fewer hours. That is the CBO estimate of October 18, 1999. In 1999, based on a dollar increase, CBO found that a plausible range of estimates for the potential job losses holds that a 10-percent increase—not a 41-percent increase, a 10-percent increase—in the minimum wage would result in a half to 2 percent reduction in the employment level of teenagers and a smaller percentage reduction for young adults ages 20 to 24. These estimates imply employment losses for an increase in the minimum wage of the amount provided in the 1999 proposal of roughly 100,000 to half a million jobs. Applying that same analysis today could actually double this prediction. Upwards of one million low-wage workers, mostly teenagers and young adults, can expect to lose their jobs or lose opportunities due to the proposal before the Senate for the $2.10 an hour increase.

What every student who has ever taken an economics course knows, if you increase the cost of something—in this case, the minimum wage—you decrease the demand for those jobs. Misleading political rhetoric cannot change the basic principles of supply

and demand. The majority of economists continue to affirm the job-killing nature of mandated wage increases.

A recent poll concluded that 77 percent—that is nearly 17,000 economists—believe that a minimum wage hike causes job loss. The argument these economists understand is this: By requiring employers to pay a higher wage for positions they consider entry level, the mandate forces employers to search for higher skilled employees. Moreover, mandated higher entry-level wages force employers to redefine the nature of the job and the expectations they have for their entry-level workers. Unskilled and low-skilled workers without the new qualifications will, therefore, be the first to be displaced and the last to be employed.

In short, Congress can mandate how much employers pay entry-level employees, but they cannot mandate which workers employers pay.

Even Dr. Rebecca Blank, a former member of President Clinton's Council of Economic Advisers, has admitted that without the earned-income credit there would be greater pressure to increase the minimum wage, which has growing disemployment effects as it rises, since it induces employers to substitute away from less-skilled labor toward other technologies.

Let me repeat what President Clinton's Economic Adviser said, because this is something proponents on the Senate floor are unwilling to meet. Minimum wage increases induce employers to substitute away the less-skilled labor toward other technologies. Low-skilled workers will be displaced and lose jobs or will not be hired in the first place.

This massive Federal wage proposal is based on a false assumption that a business that employs 50 minimum wage workers before this wage increase is enacted will still employ 50 minimum wage workers afterwards. Whether a business is in Washington or Wyoming, employers cannot absorb a 41 percent increase in their costs without a corresponding decrease in the number of jobs or of benefits they can provide workers.

So we know there are losers when we raise the minimum wage, but who are the individuals who benefit? While minimum wage supporters often claim the wage floor must be raised in order to lift employees out of poverty, this is simply not the case. Again, the average family income of potential beneficiaries from a $7.25-an-hour minimum wage rate is over $41,000 a year. Clearly, the minimum wage is not a poverty level wage for most employees.

Minimum wage earners who support a family solely based on the wage are actually few and far between. Fully 85 percent—this is very important—of the minimum wage earners live with their parents, have a working spouse, or are living alone without children. Forty percent live with a parent or relative. Twenty-one percent live with another wage earner. Twenty-four percent are single or are the sole breadwinner in a household with no children. And they lack skills. They have minimum skills. They get paid for minimum skills.

Research shows that the poor targeting and other unintended consequences of the minimum wage make it terribly ineffective at reducing poverty in America—the intended purpose of the policy. In fact, two Stanford University economists concluded that a minimum wage increase is paid for by higher prices that hurt poor families the most.

A 2001 study conducted by Stanford University economists found that only one in four of the poorest 20 percent of families would benefit from an increase in the minimum wage. Three in four of the poorest workers would be hurt by a wage hike because they would shoulder the costs of the resulting higher prices.

Artificial wage hikes drive prices up. They have to. You cannot pay the wages without it. Everything but Government spending has to be paid for. To pay a higher minimum wage and other wages that have to go up because of it means prices have to be raised. We should not trick workers into thinking they are earning more when they still cannot pay the bills at the end of the month.

As we discuss the Federal minimum wage, we must keep in mind the dangers, also, of a ''Washington knows best'' and a ''one size fits all'' mentality. An increase in the Federal minimum wage is a classic lesson that Washington does not know best and that one size does not fit all. A Federal wage mandate does not account for the cost of living that varies across the country. It costs over twice as much to live in New York City than it does in Cheyenne, WY. However, a Federal minimum wage hike that applies from coast to coast is like saying a bag of groceries in New York City must cost the same as a bag of groceries in Cheyenne. Local labor market conditions and the cost of living determine pay rates, not Federal minimum wage laws dictated from Washington.

Incidentally, that is why Maine has a higher wage rate than the Federal Government. That is why a lot of States have a higher rate. It fits their State. The States can do it without our help. Isn't that amazing.

Now, proponents of a large, federally mandated increase in the minimum wage repeatedly state that the wage floor is too low and that minimum wage earners earn below the poverty line. This argument neglects to figure in the effects of the earned-income credit.

Proponents of large minimum wage increases argue that we should return the starting wage to its 1968 value, when the minimum wage was at its all-time high when adjusted for inflation. However, it is important to note, that the real value of the current minimum wage in 2004 dollars plus the real value of the Earned income credit for a full-time minimum wage employee with two children comes close to matching the 1968 value Democrats claim they are targeting.

As my colleagues are no doubt aware, the earned income credit is a Federal income tax credit for low-income workers that reduces the amount of tax an individual owes, and is frequently returned in the form of a refund. This can supplement incomes by as much as $4,290, for a single adult with two dependents which works out to a cash credit equal to more than $2 per hour paid directly to the worker.

For every dollar in wages earned by a low-income family with two children, the Federal Government provides a tax credit of 40 percent.

Workers with one child have an effective minimum wage rate of $6.90 per hour, $5.15 per hour, plus a 34-percent credit of $1.75 per hour.

Workers with two or more children have an effective minimum wage rate of $7.22 per hour, $5.15 plus a 40-percent credit of $2.07 per hour.

As a household's income rises above around $15,000 per year, the earned income credit begins to be phased out.

It would take a minimum wage increase of around a dollar per hour to reach the ''appropriate'' 1968 rate, when the earned income credit is applied.

The earned income credit has retained the value of the minimum wage for employed workers with families by supplementing their income while avoiding the adverse effects of minimum wage hikes. In fact, using the earned income credit allows us to more effectively target assistance to those workers raising families on low incomes.

Contrast this targeted policy with massive increases in the minimum wage that inefficiently distribute ''assistance'' to individuals without children—mostly teenagers from wealthy families. In summary, the earned income credit is ignored by wage-hike proponents because it proves the flaws in their arguments. Regardless of whether their arguments made sense in 1938, or even in 1968, their rhetoric has been overridden by newer policies such as the earned income credit. I prefer to promote modern policies that help the poor, and not to dwell on stale arguments that no longer ring true.

My colleagues on the other side of the aisle suggest that the only time low-income workers receive wage increases is when Congress mandates an increase in the minimum wage. It is preposterous and demeaning to argue that only Congress can give low-wage workers a pay raise. More often than not, it is the workers' own dedication, hard work, and willingness to learn that results in their earning higher wages. Workers who were making the minimum wage when it was last hiked in 1997 have learned job skills, received valuable experience, and, as a result, have earned raises above the minimum wage.

Whenever they seek to increase the minimum wage, the Democrats announce the number of workers who will ''benefit'' from the mandate. Interestingly, however, that number has shrunk dramatically over the past 6 years.

On September 3, 1998, Senator KENNEDY issued a press release counting the number of minimum-wage-increase beneficiaries at 12 million. That was when his wage hike went up to $6.65 per hour instead of today's $7.25 per hour increase. Today, however, he puts the number at only 7.5 million. That is 4.5 million fewer workers affected by a minimum wage increase. Where did they go?

Where did the other 4.5 million individuals go? They earned raises, on their own, without Congress imposing a Federal wage hike. In fact, statistics show that most minimum-wage workers will earn raises in their first year on the job. These minimum-skilled workers will earn raises as their skills and experience increase.

I share the same goal as Senator KENNEDY—to help American workers find and keep well-paying jobs. Minimum skills—not minimum wages—are the problem. Education and training will solve that problem and lead to the kind of increased wages and better jobs we all want to create for our Nation's workers. Lets get the Workforce Investment Act passed and conferenced so the President can sign it and get higher skills training accelerated.

The PRESIDING OFFICER (Mr. BURR). The Senator's time has expired.

Mr. ENZI. Mr. President, it is a false economy, and if we really wanted to raise it, we would have done something with the Workforce Investment Act, the job training. We would have raised skills, and then employees would have been compensated well.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. REID. Mr. President, I will use leader time for this presentation.

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

Mr. REID. Mr. President, I have not been on the floor all day to listen to the debate, but I have listened to part of it. I am stunned by some of the remarks by those opposed to raising the minimum wage. To indicate that people who are drawing minimum wage live with their parents or others—they do because they make so little money. And all the denigration of these entry-level jobs—these are jobs that people have to have filled. They may be low, entry-level jobs, but they are jobs people need. People are not hiring these people out of the goodness of their heart, to say: Well, here is somebody. We'll hire a few minimum wage employees.

There are a few people like that, but the reason you have these minimum wage jobs is because people need results. The employer needs the work done. The employee needs the job.

I have heard on this floor a number of times today people saying: It is pushing a drastic increase in the minimum wage. The minimum wage was valid when it was initiated many years ago. It is valid today. We should at least keep up with the cost of living. Using the logic of those who oppose the increase in the minimum wage with these ''drastic,'' as they say, minimum wage increases, the longer you wait, the less chance there would be to raise it because it would become more ''drastic,'' in their words, all the time. All we are trying to do, all Senator KENNEDY is trying to do, is keep up with the cost of living.

My friend, the distinguished Senator from Wyoming, indicated that during the short time we were in control—of course, a lot of the time we were in charge there was no legislative business going on, but keep in mind that every time we have attempted, no matter who is in the majority in the last 8 years, the Republicans have stopped it, either through an actual filibuster or through some parliamentary maneuver. They have opposed raising the minimum wage.

I think the logic of so doing, that it is a ''drastic'' increase—I repeat—means that the longer you wait until you attempt to raise the minimum wage, the less chance it would have to pass because it would become, in their minds, more drastic. Think of the poor people who are trying to earn a living with this minimum wage. It becomes very drastic for them.

I was heartened last week to see my Republican colleagues express their commitment to addressing the issue of poverty. Press conferences were held. But I believe the time has come for them to back up their words with action and vote to increase the minimum wage to $7.25 an hour. It is not going to happen. We understand that the marching orders have been given, and they will all walk up here and vote against increasing the minimum wage.

In a country that values work and the opportunity to get ahead, a hard day's work should bring a decent day's pay, whether it is an entry-level job or a job that is a more skilled job. In America, this is not the case as it relates to entry-level work. We have mothers and fathers working full time in minimum wage jobs but still living in poverty, still struggling to get ahead.

I met with some of these workers in Nevada last month. When you talk with them, you begin to understand that increasing the minimum wage is not about helping teenagers earn more from their summer jobs, it is about helping families realize the promise of America. This fact was driven home during a conversation I had with a woman from Reno named Natasha. She is married, has a child, and works as a server in a popular restaurant. She works hard. In fact, the restaurant is one of my favorites. It is in a little strip mall. The restaurant is called Pinocchio's. It is a wonderful restaurant.

She has served me on a number of occasions. She works hard, as does her husband. But with a minimum wage job, she has trouble making ends meet and affording basics, such as food, clothing, and housing. She has tried to get ahead by taking classes at a community college in the area, but she had to cut back because she could not afford to go to school and also pay for what she needed to take care of her family. She earns the minimum wage, plus her tips.

Now, I would say to my friend from Wyoming, the employer is not going to eliminate her job if the minimum wage is increased. He needs somebody to wait those tables, and she is willing to do this because she needs the work. And the tips are not that bad. She is trying to live the American dream by going to school and getting ahead but unable to do it because the minimum wage in this country is not enough money.

Her story is like many others we have all heard, if we listen—stories of families caught in the cycle of poverty, a cycle we can begin to end today by increasing the minimum wage.

An increase in the minimum wage will help 7 million Americans. This may not sound like a lot of money, but to these people it is a lot of money. An increase of this size can help a family heat their home, pay for transportation to work, or can help a mother afford childcare so she does not have to worry about her kids while she is away.

The majority is calling to increase the minimum wage to $6.25 and further attempting to end the 40-hour workweek with what they call flextime. These measures are unacceptable. Raise the minimum wage, not play games with making it easier for employers to stagger the work of employees. They have already, through the President, eliminated overtime in many instances.

First, a nominal increase in the minimum wage will help millions of Americans. This is important. Ending the 40-hour workweek, replacing it with flextime, would deny over 10 million minimum wage workers the ability to earn overtime pay.

We can do better. Helping our families live more productive lives must be our top priority. Providing workers a wage that is consistent with the rising cost of living is both fair and just. I urge my colleagues to pass this increase in the minimum wage.

The distinguished Senator from Massachusetts has spent a lifetime in the national legislature helping people who don't have lobbyists. When Senators walk up to this door here—sometimes we come in by subway—many times we are overwhelmed by lobbyists, so many that we can't work our way through them. But we will not see lobbyists here representing minimum wage workers.

I send to my friend through the Chair my appreciation for a lifetime of work

helping those who don't have lobbyists, people who are working like Natasha trying to make ends meet. The minimum wage should be increased. It is a shame that we have to fight for it so hard. Frankly, we have not been successful for 8 years. I say to my friend—and I don't like to hear myself say this—they have their marching orders over there. We are going to lose again.

The people who are in these entry-level jobs are again going to be without an increase. There are people out there who had hope. I am sorry. The marching orders have been given, and there will be no increase.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 8 minutes.

Mr. KENNEDY. I ask the Chair to let me know when I have used 7 minutes.

Mr. President, we have had a good discussion with my friend and colleague, the Senator from Pennsylvania. During the course of the debate, I did mention that a range of different groups are supporting our position. I will include those endorsements in the RECORD. One I would like to mention is from the Catholic Bishops. This is their position:

The Catholic Bishops have been long time supporters of the minimum wage. In Catholic teaching, the principle of a living wage is integral to our understanding of human work. Wages must be adequate for workers to provide for themselves and their families in dignity. Because the minimum wage is not a living wage, the Catholic Bishops have supported increasing the minimum wage over the decades.

We are aware that some accommodations are being offered to alleviate possible adverse effects on small businesses . . . that might occur with a modest increase in the minimum wage. However, other changes and modification being contemplated that will affect overtime pay or the 40 hour workweek are unwarranted and unwise. Other workers should not lose minimum wage protection or overtime pay as the price of increasing the wages of America's lowest paid workers. At the very least, such changes to the Fair Labor Standards Act should be considered in the formal legislative process, not attached to a popular increase in the minimum wage as a condition of passage.

They indicate their support for our amendment.

In just a few moments the Senate will have an opportunity to vote either in favor of the Santorum amendment or my amendment. I believe a vote for the Santorum amendment is a vote to deny the minimum wage to more than 10 million workers. Those workers are looking to us for a fair raise to reward their hard work and to help care for their families.

But the Santorum amendment takes away their minimum wage rights entirely. A vote for the Santorum amendment is a vote to deny overtime pay to more than 10 million workers. These workers rely on overtime pay to make ends meet, and overtime pay is compensation for many long hours away from their families.

A vote for the Santorum amendment is a vote for a pay cut for workers who rely on tips—waitresses, taxi drivers, and hairdressers. This is contrary to our values as Americans. We believe that work should have a reward. The Santorum amendment dishonors that. It is an insult to the low-wage workers of this country.

The amendment I offer is about everything that we stand for as a nation. It is about opportunity. It ensures that every American at least has the opportunity to move up and achieve the American dream. It is about fairness. What is fair about working hard 52 weeks of the year and still living in poverty? What is fair when Members of Congress raise their own salaries seven times, by $28,000, over the last 8 years and refuse to vote for an increase in the minimum wage? What is fair about that? What is fair about executives who pay themselves millions of dollars but can't find a way to pay a decent minimum wage?

It is about making our economy work for everyone, not just the privileged few. There is no doubt that this is one of the central moral questions of our time. It is how we treat the least of those among us. It is why religious leaders have supported a minimum wage increase. The Santorum amendment fails the fundamental obligations of a just and fair society. Under the guise of raising the minimum wage, it cuts overtime pay and leaves out too many individuals.

Who are these minimum wage workers? First of all, they are men and women of dignity. They assist in the classrooms every day to teach the children. They work in nursing homes to help care for the elderly who have sacrificed for their children and have made such a difference for this country. This issue is about women working in our society, because a majority of those who will benefit from this minimum wage increase are women. It is a women's issue. It is a children's issue because a third of those women have children. It is a children's and a women's issue—and a family issue. It is a civil rights issue because so many of the men and women who receive the minimum wage are men and women of color. And most of all, it is a fairness issue.

If there is a value which the American people understand, it is fairness. The American people believe if you work 40 hours a week, 52 weeks of the year, you should not have to live in poverty. They are living in poverty today with the second lowest minimum wage in nearly the last 60 years.

The amendment I offer will provide a helping hand to men and women of dignity to live in a decent and fair respect.

I hope the Senate will accept it.

I yield back my time and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 44.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent.

The Senator from Nevada (Mr. ENSIGN) and the Senator from Pennsylvania (Mr. SPECTER).

Mr. DURBIN. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from North Dakota (Mr. CONRAD), and the Senator from Maryland (Ms. MIKULSKI) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 46, nays 49, as follows:

[Rollcall Vote No. 26 Leg.]

YEAS—46

Akaka	Dorgan	Lincoln
Bayh	Durbin	Murray
Biden	Feingold	Nelson (FL)
Bingaman	Feinstein	Nelson (NE)
Boxer	Harkin	Obama
Byrd	Inouye	Pryor
Cantwell	Jeffords	Reed
Carper	Johnson	Reid
Chafee	Kennedy	Rockefeller
Clinton	Kerry	Salazar
Coleman	Kohl	Sarbanes
Corzine	Landrieu	Schumer
Dayton	Lautenberg	Stabenow
DeWine	Leahy	Wyden
Dodd	Levin	
Domenici	Lieberman	

NAYS—49

Alexander	Dole	Murkowski
Allard	Enzi	Roberts
Allen	Frist	Santorum
Bennett	Graham	Sessions
Bond	Grassley	Shelby
Brownback	Gregg	Smith
Bunning	Hagel	Snowe
Burns	Hatch	Stevens
Burr	Hutchison	Sununu
Chambliss	Inhofe	Talent
Coburn	Isakson	Thomas
Cochran	Kyl	Thune
Collins	Lott	Vitter
Cornyn	Lugar	Voinovich
Craig	Martinez	Warner
Crapo	McCain	
DeMint	McConnell	

NOT VOTING—5

Baucus	Ensign	Specter
Conrad	Mikulski	

The PRESIDING OFFICER. Under the previous order, the amendment not having garnered 60 votes in the affirmative, the Senate action on this amendment is vitiated and the amendment is withdrawn.

VOTE ON AMENDMENT NO. 128

The PRESIDING OFFICER. The question is on agreeing to amendment No. 128.

Mr. SANTORUM. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Maryland (Ms. MIKULSKI) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 38, nays 61, as follows:

[Rollcall Vote No. 27 Leg.]

YEAS—38

Allen	Frist	Santorum
Bennett	Graham	Sessions
Brownback	Grassley	Shelby
Bunning	Hagel	Smith
Burns	Hatch	Snowe
Coleman	Hutchison	Specter
Craig	Kyl	Stevens
Crapo	Lugar	Talent
DeWine	Martinez	Thomas
Dole	McCain	Thune
Domenici	McConnell	Voinovich
Ensign	Murkowski	Warner
Enzi	Roberts	

NAYS—61

Akaka	Corzine	Levin
Alexander	Dayton	Lieberman
Allard	DeMint	Lincoln
Baucus	Dodd	Lott
Bayh	Dorgan	Murray
Biden	Durbin	Nelson (FL)
Bingaman	Feingold	Nelson (NE)
Bond	Feinstein	Obama
Boxer	Gregg	Pryor
Burr	Harkin	Reed
Byrd	Inhofe	Reid
Cantwell	Inouye	Rockefeller
Carper	Isakson	Salazar
Chafee	Jeffords	Sarbanes
Chambliss	Johnson	Schumer
Clinton	Kennedy	Stabenow
Coburn	Kerry	Sununu
Cochran	Kohl	Vitter
Collins	Landrieu	Wyden
Conrad	Lautenberg	
Cornyn	Leahy	

NOT VOTING—1

Mikulski

The PRESIDING OFFICER. Under the previous order, the amendment not having garnered 60 votes in the affirmative, the Senate action on this amendment is vitiated and the amendment is withdrawn.

The Democratic leader.

AMENDMENT NO. 19 WITHDRAWN

Mr. REID. On behalf of Senator FEINSTEIN, I ask unanimous consent that amendment No. 19 be withdrawn.

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

The Senator from Connecticut.

AMENDMENT NO. 67

Mr. DODD. Mr. President, I ask unanimous consent that the pending amendment be laid aside and that amendment No. 67 be called up, the reading of the amendment be dispensed with, and the amendment laid aside so that the next amendment may be called up.

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

The amendment is as follows:

AMENDMENT NO. 67

(Purpose: To modify the bill to protect families, and for other purposes)

At the end of the bill, add the following:

TITLE XVI—MODIFICATIONS FOR THE PROTECTION OF FAMILIES

SEC. 1601. MODIFICATIONS FOR THE PROTECTION OF FAMILIES.

(a) DISMISSAL OR CONVERSION.—Section 707(b)(2)(A)(ii) of title 11, United States Code, as amended by this Act, is further amended—

(1) in subclause (IV), by striking ''$1,500'' and inserting ''$5,000''; and

(2) by adding at the end the following:

''(VI) In addition, the debtor's monthly expenses shall include—

''(aa) taxes and mandatory withholdings from wages;

''(bb) alimony, child, and spousal support payments;

''(cc) legal fees necessary for the debtor's case;

''(dd) pension payments;

''(ee) religious and charitable contributions;

''(ff) union dues;

''(gg) other expenses necessary for the operation of a business of the debtor or for the debtor's employment;

''(hh) ownership costs for 1 motor vehicle (or 2 in the case of a joint filing), determined in accordance with Internal Revenue Service transportation standards, reduced by any payments on debts secured by the motor vehicle or vehicle lease payments made by the debtor;

''(ii) expenses for children's toys and recreation for children of the debtor, tax credits for earned income determined under section 32 of the Internal Revenue Code of 1986; and

''(jj) miscellaneous and emergency expenses.''.

(b) DEFINITION OF CURRENT MONTHLY INCOME.—Section 101(10A)(B) of title 11, United States Code, as amended by this Act, is further amended by inserting ''payments received as domestic spousal obligations,'' after ''Social Security Act,''.

(c) PROPERTY OF THE ESTATE.—Section 541 of title 11, United States Code, as amended by this Act, is further amended—

(1) in subsection (a)(5)(B) by inserting ''except as provided under subsection (b)(11),'' before ''as a result''; and

(2) in subsection (b)—

(A) in paragraph (8), by striking ''or'' after the semicolon;

(B) in paragraph (9), by striking the period at the end and inserting a semicolon; and

(C) by inserting after paragraph (9) the following:

''(10) any—

''(A) refund of tax due to the debtor under subtitle A of the Internal Revenue Code of 1986 for any taxable year to the extent that the refund does not exceed the amount of an applicable earned income tax credit allowed under section 32 of such Code for such year and the amount of an applicable child tax credit allowed under section 24 of such Code for such year; and

''(B) advance payment for an earned income tax credit described in subparagraph (A); or

''(11) the right of the debtor to receive domestic spousal obligations for the debtor or dependent of the debtor.''.

(d) PROTECTION OF EARNED INCOME TAX CREDIT AND SUPPORT PAYMENTS UNDER BANKRUPTCY REPAYMENT PLANS IN CHAPTER 12.—Section 1225(b) of title 11, United States Code, as amended by this Act, is further amended by adding at the end the following:

''(3) In determining disposable income, the court shall not consider amounts the debtor receives or is entitled to receive from—

''(A) any refund of tax due to the debtor under subtitle A of the Internal Revenue Code of 1986 for any taxable year to the extent that the refund does not exceed the amount of an applicable earned income tax credit allowed under section 32 of the Internal Revenue Code of 1986 for such year and the amount of an applicable child tax credit allowed under section 24 of such Code for such year;

''(B) any advance payment for an earned income tax credit described in subparagraph (A); or

''(C) child support, foster care, or disability payment for the care of a dependent child in accordance with applicable nonbankruptcy law.''.

(e) PROTECTION OF EARNED INCOME TAX CREDIT AND SUPPORT PAYMENTS UNDER BANKRUPTCY REPAYMENT PLANS IN CHAPTER 13.—Section 1325(b) of title 11, United States Code, as amended by this Act, is further amended by adding at the end the following:

''(5) In determining disposable income, the court shall not consider amounts the debtor receives or is entitled to receive from—

''(A) any refund of tax due to the debtor under subtitle A of the Internal Revenue Code of 1986 for any taxable year to the extent that the refund does not exceed the amount of an applicable earned income tax credit allowed by section 32 of the Internal Revenue Code of 1986 for such year and the amount of an applicable child tax credit allowed under section 24 of such Code for such year;

''(B) any advance payment for an earned income tax credit described in subparagraph (A); or

''(C) child support, foster care, or disability payment for the care of a dependent child in accordance with applicable nonbankruptcy law.''.

(f) EXEMPTIONS.—Section 522(d)(10) of title 11, United States Code, as amended by this Act, is further amended—

(1) in subparagraph (C), by inserting ''or'' after the semicolon;

(2) by striking subparagraph (D); and

(3) by striking ''(E)'' and inserting ''(D)''.

(g) PERSONAL PROPERTY.—

(1) SECTION 521.—Section 521(a)(6) of title 11, United States Code, as amended by this Act, is further amended by striking ''of personal property'' and inserting ''of an item of personal property purchased for more than $3,000''.

(2) SECTION 362.—Section 362(h)(1) of title 11, United States Code, as amended by this Act, is further amended by striking ''to personal property'' and inserting ''to an item of personal property purchased for more than $3,000''.

(h) RESTORING THE FOUNDATION FOR SECURED CREDIT.—Section 1325(a) of title 11, United States Code, as amended by this Act, is further amended in the flush matter at the end by striking ''if the debt was incurred'' and inserting ''to the extent that the debt was incurred to purchase that thing of value''.

(i) HOUSEHOLD GOODS.—

(1) DEFINITION.—Section 101 of title 11, United States Code, as amended by this Act, is further amended—

(A) by redesignating paragraph (27A) as paragraph (27B); and

(B) by inserting before paragraph (27B) the following:

''(27A) 'household goods '—

''(A) includes tangible personal property normally found in or around a residence; and

''(B) does not include motor vehicles used for transportation purposes;''.

(2) FOR PURPOSES OF SECTION 522.—Section 522(f) of title 11, United States Code, as amended by this Act, is further amended by striking paragraph (4).

(j) LIMITATION ON LUXURY GOODS.—Section 523(a)(2)(C)(i) of title 11, United States Code, as amended by this Act, is further amended—

(1) in subclause (I)—

(A) by striking ''$500'' and inserting ''$1,000'';

(B) by striking ''90'' and inserting ''70''; and

(C) by inserting ''if the creditor proves by a preponderance of the evidence at a hearing that the goods or services were not reasonably necessary for the maintenance or support of the debtor or the dependents of the debtor'' after ''nondischargeable''; and

(2) in subclause (II)—

(A) by striking ''$750'' and inserting ''$1,225''; and

(B) by striking ''70'' and inserting ''60''.

(k) EXCEPTIONS TO DISCHARGE.—Section 523 of title 11, United States Code, as amended by this Act, is further amended—

(1) in subsection (c), by inserting ''or (14)(A),'' after ''or (6)'' each place it appears; and

(2) in subsection (d), by striking ''(a)(2)'' and inserting ''(a)(2) or (14A)''.

AMENDMENTS NOS. 68 THROUGH 72, AND 119

Mr. DODD. Mr. President, I ask unanimous consent that the pending amendment be laid aside and, on behalf of Senator KENNEDY, that amendments Nos. 68, 69, 70, 71, 72 and 119 be called up in turn, that reading of each amendment be dispensed with, that each amendment be laid aside so that the next amendment may be called up.

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

The amendments are as follows:

AMENDMENT NO. 68

(Purpose: To provide a maximum amount for a homestead exemption under State law)

On page 191, between lines 11 and 12, insert the following:

(c) FURTHER LIMITATION ON HOMESTEAD EXEMPTION.—Section 522(b) of title 11, United States Code, is amended by adding at the end the following:

''(5) Notwithstanding any other provision of this section, the maximum amount of a homestead exemption that may be provided under State law shall be $300,000.''.

AMENDMENT NO. 69

(Purpose: To amend the definition of current monthly income)

On page 20, line 16, strike ''Act,'' and insert ''Act, income from any job in which the debtor is no longer employed, income from any activity which the debtor can no longer engage in due to disability,''.

AMENDMENT NO. 70

(Purpose: To exempt debtors whose financial problems were caused by failure to receive alimony or child support, or both, from means testing)

On page 19, between lines 13 and 14, insert the following:

''(8)(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the debtor, in any consecutive 12-month period during the 2 years before the date of the filing of the petition, failed to receive alimony or child support income, or both, that such debtor was entitled to receive pursuant to a valid court order, totaling an amount in excess of 35 percent of the debtor's household income for such 12-month period.''.

AMENDMENT NO. 71

(Purpose: To strike the provision relating to the presumption of luxury goods)

Beginning on page 155, strike line 3 and all that follows through page 156, line 5.

AMENDMENT NO. 72

(Purpose: To ensure that families below median income are not subjected to means test requirements)

On page 28, between lines 21 and 22, insert the following:

SEC. 102A. PROTECTION OF FAMILIES BELOW MEDIAN INCOME.

Section 707(b) of title 11, United States Code, as amended by section 102, is further amended—

(1) in paragraph (2)(C), by striking ''calculated'' and inserting ''calculated, except that a debtor described in paragraph (7) need only provide the calculations or other information showing that the debtor meets the standards of such paragraph''; and

(2) in paragraph (7)(A), by striking ''No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2)'' and inserting ''Paragraph (2) does not apply, and the court may not dismiss a case based on any form of means testing,''.

AMENDMENT NO. 119

(Purpose: To amend section 502(b) of title 11, United States Code, to limit usurious claims in bankruptcy)

On page 45, strike lines 22 through 24, and insert the following:

(a) REDUCTION OF CLAIM.—Section 502 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (8), by striking ''or'' at the end;

(B) in paragraph (9), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(10) such claim is for a credit transaction involving a consumer (as defined in section 103(h) of the Truth in Lending Act (15 U.S.C. 1602(g))), and the interest included as part of such claim exceeds the maximum amount allowed by the laws of the State, Territory, or District in which the debtor resides.''; and

(2) by adding at the end the following:

VOTE EXPLANATION

Mr. SPECTER. Mr. President, I have sought recognition to comment on the last two votes. I had traveled with the President to Pittsburgh, PA today so that I was absent during the vote on the Kennedy amendment. Had I been present, I would have voted for the Kennedy amendment. I arrived 7 minutes into the vote on the Santorum amendment. I would like to have made the vote for the first amendment but voted for the Santorum amendment. As between the two, my preference would have been the Kennedy amendment because it raised the minimum wage more, and after a 7½ year hiatus, it seemed to me that that amendment was in order.

I commend Senator KENNEDY for his continuing efforts on the minimum wage, and I commend my distinguished colleague for his efforts which bridged a considerable gap. I wanted to explain or comment for the record why I was absent on the Kennedy amendment but present on the Santorum amendment, even though I would have preferred the Kennedy amendment to the Santorum amendment. But I would have in any event voted for both of them.

The last time Congress voted to raise the minimum wage was in 1996, raising it from $4.25 to $4.75 to eventually $5.15. Since 2000, the number of Americans in poverty has increased by 4.3 million for a grand total of 36 million people, which includes 13 million children. Among full-time, year-round workers, poverty has doubled since the late 1970s from about 1.3 million then to more than 2.6 million. Since 1981 on 10 different occasions, I have voted to increase the minimum wage.

History clearly demonstrates that raising the minimum wage has no adverse impact on jobs, employment, or inflation. In the 4 years after the last minimum wage increase passed, the economy experienced its strongest growth in over three decades. More than 11 million new jobs were added, at the pace of 232,000 per month.

Nearly 7½ million workers will directly benefit from this minimum wage increase while 8 million more will benefit indirectly. That is a total of 15½ million Americans who would get a raise due to this legislation and would enable a working family to afford almost 2 more years of childcare, full tuition for a community college degree, and many other staples for a healthy standard of living. Unfortunately, the current minimum wage fails to meet these standards.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

AMENDMENT NO. 105

Mr. AKAKA. Mr. President, I ask unanimous consent that the pending amendments be set aside so that I may offer an amendment.

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

Mr. AKAKA. Mr. President, I call up amendment No. 105.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Hawaii [Mr. AKAKA] proposes an amendment numbered 105.

Mr. AKAKA. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

AMENDMENT NO. 105

(Purpose: To limit claims in bankruptcy by certain unsecured creditors)

On page 45, strike lines 22 through 24, and insert the following:

(a) REDUCTION OF CLAIM.—Section 502 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (8), by striking ''or'' at the end;

(B) in paragraph (9), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(10) such consumer debt is an unsecured claim arising from a debt to a creditor that does not have, as of the date of the order for relief, a policy of waiving additional interest for all debtors who participate in a debt management plan administered by a nonprofit budget and credit counseling agency described in section 111(a).''; and

(2) by adding at the end the following:

Mr. AKAKA. Mr. President, I ask unanimous consent that my amendment be set aside.

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

The Senator from Wisconsin.

AMENDMENTS NOS. 87 THROUGH 101

Mr. FEINGOLD. Mr. President, I have filed a number of amendments to this bill, most of which I believe are germane and therefore can be offered and debated and voted on even if cloture is invoked tomorrow. I wanted to make sure that my amendments have been called up prior to cloture so that I am assured of getting a vote on any amendment that is germane. It is not my intention to debate these amendments tonight. That is what this request is designed to do, merely to allow my germane amendments to be voted

on prior to a vote on final passage of the bill.

I ask unanimous consent that the pending amendment be laid aside and that each of my amendments Nos. 87 through 101 be called up in turn, that the reading of each amendment be dispensed with, and each amendment in turn be laid aside so that another amendment can become the pending business, and that the last amendment in the list then be laid aside so that the amendment that is now pending is again the pending business.

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

The amendments are as follows:'

AMENDMENT NO. 87

(Purpose: To amend section 104 of title 11, United States Code, to include certain provisions in the triennial inflation adjustment of dollar amounts)

On page 445, strike lines 10 through 13, and insert the following:

SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104(b) of title 11, United States Code, as amended by this Act, is further amended—

(1) by inserting ''101(19A),'' after ''101(18),'' each place it appears;

(2) by inserting ''522(f)(3),'' after ''522(d),'' each place it appears;

(3) by inserting ''541(b), 547(c)(9),'' after ''523(a)(2)(C),'' each place it appears;

(4) in pagagraph (1), by striking ''and 1325(b)(3)'' and inserting ''1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28''; and

(5) in paragraph (2), by striking ''and 1325(b)(3) of this title'' and inserting ''1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28''.

AMENDMENT NO. 88

(Purpose: To amend the plan filing and confirmation deadlines)

Beginning on page 230, strike line 7 and all that follows through page 231, line 6, and insert the following:

''(e) In a small business case—

''(1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—

''(A) extended as provided by this subsection, after notice and a hearing; or

''(B) the court, for cause, orders otherwise;

''(2) the plan and a disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief, unless that period is—

''(A) extended as provided by this subsection, after notice and a hearing; or

''(B) the court, for cause, orders otherwise; and

''(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) within which the plan shall be confirmed, may be extended only if—

''(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;

''(B) a new deadline is imposed at the time the extension is granted; and

''(C) the order extending time is signed before the existing deadline has expired.''.

AMENDMENT NO. 89

(Purpose: To strike certain small business related bankruptcy provisions in the bill)

Beginning on page 221, strike line 1 and all that follows through page 240, line 4, and insert the following:

Subtitle B—Small Business Bankruptcy Provisions

SEC. 431. SCHEDULING CONFERENCES.

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking '', may''; and

(2) by striking paragraph (1) and inserting the following:

''(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and''.

SEC. 432. SERIAL FILER PROVISIONS.

Section 362 of title 11, United States Code, as amended by sections 106, 305, and 311, is amended—

(1) in subsection (k), as so redesignated by section 305—

(A) by striking ''An'' and inserting ''(1) Except as provided in paragraph (2), an''; and

(B) by adding at the end the following:

''(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.''; and

(2) by adding at the end the following:

''(n)(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor—

''(A) is a debtor in a small business case pending at the time the petition is filed;

''(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

''(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

''(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

''(2) Paragraph (1) does not apply—

''(A) to an involuntary case involving no collusion by the debtor with creditors; or

''(B) to the filing of a petition if—

''(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

''(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.''.

AMENDMENT NO. 90

(Purpose: To amend the provision relating to fair notice given to creditors)

Beginning on page 167, strike line 3 and all that follows through page 169, line 25, and insert the following:

(a) NOTICE.—Section 342 of title 11, United States Code, is amended—

(1) in subsection (c), by adding before the period at the end the following: ''unless the creditor cannot with reasonable effort identify the account to which the notice applies without the information required by this subsection''; and

(2) by adding at the end the following:

''(e) At any time in a case under chapter 7 or 13 concerning an individual debtor, a creditor may file with the court and serve on the debtor a notice of the address to be used for service of notice on the creditor in that case. Beginning 10 days after the creditor files and serves the notice, any notice that the court or the debtor is required to give shall be given at the address contained in the creditor's notice of address.

''(f)(1) An entity may file with any bankruptcy court a notice of address to be used by all the bankruptcy courts or by particular bankruptcy courts, as so specified by such entity at the time such notice is filed, to provide notice to such entity in all cases under chapters 7 and 13 pending in the courts with respect to which such notice is filed, in which such entity is a creditor.

''(2) In any case filed under chapter 7 or 13, any notice required to be provided by a court with respect to which a notice is filed under paragraph (1), to such entity later than 30 days after the filing of such notice under paragraph (1) shall be provided to such address unless with respect to a particular case a different address is specified in a notice filed and served in accordance with subsection (e).

''(3) In any case filed under chapter 7 or 13, any notice required to be provided by any party in interest with respect to which a notice is filed under paragraph (1), to such entity later than 120 days after the filing of such notice under paragraph (1) shall be provided to such address unless with respect to a particular case a different address is specified in a notice filed and served in accordance with subsection (e).

''(4) A notice filed under paragraph (1) may be withdrawn by such entity.

''(g)(1) Notice given to a creditor other than as provided in this section is not effective until that notice has been brought to the attention of the creditor. If the creditor designates a person or department to be responsible for receiving notices concerning bankruptcy cases by a filing in accordance with subsection (d) or (e) and establishes reasonable procedures so that bankruptcy notices received by the creditor are actually delivered to the person or department, notice is not considered to have been brought to the attention of the creditor until that person or department receives the notice.

''(2) The court may not impose either a sanction under section 362(h) or a sanction that a court may otherwise impose on account of a violation of the stay under section 362(a) or a failure to comply with section 542 or 543 on account of any action of the creditor unless the action occurs after the creditor has received either notice of the commencement of the case effective under this section or other actual notice reasonably calculated to come to the attention of the creditor, the creditor's attorney, the creditor's agent taking the action, or other appropriate person.''.

AMENDMENT NO. 91

(Purpose: To amend section 303 of title 11, United States Code, with respect to the sealing and expungement of court records relating to fraudulent involuntary bankruptcy petitions)

On page 205, between lines 16 and 17, insert the following:

SEC. 332. FRAUDULENT INVOLUNTARY BANKRUPTCY.

(a) SHORT TITLE.—This section may be cited as the ''Involuntary Bankruptcy Improvement Act of 2005''.

(b) INVOLUNTARY CASES.—Section 303 of title 11, United States Code, is amended by adding at the end the following:

''(*l*)(1) If—

''(A) the petition under this section is false or contains any materially false, fictitious, or fraudulent statement;

''(B) the debtor is an individual; and

''(C) the court dismisses such petition,

the court, upon the motion of the debtor, shall seal all the records of the court relating to such petition, and all references to such petition.

''(2) If the debtor is an individual and the court dismisses a petition under this section, the court may enter an order prohibiting all consumer reporting agencies (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) from making any consumer report (as defined in section 603(d) of that Act) that contains any information relating to such petition or to the case commenced by the filing of such petition.

''(3) Upon the expiration of the statute of limitations described in section 3282 of title 18, for a violation of section 152 or 157 of such title, the court, upon the motion of the debtor and for good cause, may expunge any records relating to a petition filed under this section.''.

(c) BANKRUPTCY FRAUD.—Section 157 of title 18, United States Code, is amended by inserting '', including a fraudulent involuntary bankruptcy petition under section 303 of such title'' after ''title 11''.

AMENDMENT NO. 92

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

AMENDMENT NO. 93

(Purpose: To modify the disclosure requirements for debt relief agencies providing bankruptcy assistance)

On page 112, strike line 17 and all that follows through page 120, line 24, and insert the following:

''(12A) 'debt relief agency' means any person, other than an attorney or an employee of an attorney, who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

''(A) any person who is an officer, director, employee, or agent of a person who provides such assistance or of the bankruptcy petition preparer;

''(B) a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

''(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted person to the creditor;

''(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such depository institution or credit union; or

''(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.''.

(b) CONFORMING AMENDMENT.—Section 104(b) of title 11, United States Code, is amended by inserting ''101(3),'' after ''sections'' each place it appears.

SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

''§ 526. Restrictions on debt relief agencies

''(a) A debt relief agency shall not—

''(1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;

''(2) make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue and misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading;

''(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, with respect to—

''(A) the services that such agency will provide to such person; or

''(B) the benefits and risks that may result if such person becomes a debtor in a case under this title; or

''(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.

''(b) Any waiver by any assisted person of any protection or right provided under this section shall not be enforceable against the debtor by any Federal or State court or any other person, but may be enforced against a debt relief agency.

''(c)(1) Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements of this section, section 527, or section 528 shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

''(2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and a hearing, to have—

''(A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person;

''(B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title that is dismissed or converted to a case under another chapter of this title because of such agency's intentional or negligent failure to file any required document including those specified in section 521; or

''(C) intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

''(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this section, the State—

''(A) may bring an action to enjoin such violation;

''(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and

''(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorneys' fees as determined by the court.

''(4) The district courts of the United States for districts located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).

''(5) Notwithstanding any other provision of Federal law and in addition to any other remedy provided under Federal or State law, if the court, on its own motion or on the motion of the United States trustee or the debtor, finds that a person intentionally violated this section, or engaged in a clear and consistent pattern or practice of violating this section, the court may—

''(A) enjoin the violation of such section; or

''(B) impose an appropriate civil penalty against such person.

''(d) No provision of this section, section 527, or section 528 shall—

''(1) annul, alter, affect, or exempt any person subject to such sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency; or

''(2) be deemed to limit or curtail the authority or ability—

''(A) of a State or subdivision or instrumentality thereof, to determine and enforce qualifications for the practice of law under the laws of that State; or

''(B) of a Federal court to determine and enforce the qualifications for the practice of law before that court.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 525, the following:

''526. Restrictions on debt relief agencies.''.

SEC. 228. DISCLOSURES.

(a) DISCLOSURES.—Subchapter II of chapter 5 of title 11, United States Code, as amended by section 227, is amended by adding at the end the following:

''§ 527. Disclosures

''(a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide—

''(1) the written notice required under section 342(b)(1); and

''(2) to the extent not covered in the written notice described in paragraph (1), and not later than 3 business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons that—

''(A) all information that the assisted person is required to provide with a petition and thereafter during a case under this title is required to be complete, accurate, and truthful;

''(B) all assets and all liabilities are required to be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 must be stated in those documents where requested after reasonable inquiry to establish such value;

''(C) current monthly income, the amounts specified in section 707(b)(2), and, in a case under chapter 13 of this title, disposable income (determined in accordance with section 707(b)(2)), are required to be stated after reasonable inquiry; and

''(D) information that an assisted person provides during their case may be audited pursuant to this title, and that failure to provide such information may result in dismissal of the case under this title or other sanction, including a criminal sanction.

''(b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:

''`IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM A BANKRUPTCY PETITION PREPARER.

''`If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get

help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES A BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.' ''

AMENDMENT NO. 94

(Purpose: To clarify the application of the term disposable income)

Beginning on page 24, strike line 9 and all that follows through page 26, line 7, and insert the following:

(h) APPLICABILITY OF MEANS TEST TO CHAPTER 13.—Section 1325(b) of title 11, United States Code, is amended by striking paragraph (2) and inserting the following:

''(2) For purposes of this subsection, the term 'disposable income' means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

''(A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

''(ii) for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

''(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

''(3) Amounts reasonably necessary to be expended under paragraph (2)(A)(i), shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.''.

AMENDMENT NO. 95

(Purpose: To amend the provisions relating to the discharge of taxes under chapter 13)

On page 265, between lines 18 and 19, insert the following:

SEC. 707A. DISCHARGE UNDER CHAPTER 13.

Section 1328(a) of title 11, United States Code, as amended by this Act, is further amended—

(1) in paragraph (2), by striking ''(1)(B), (1)(C),'';

(2) in paragraph (3), by striking ''or'' after the semicolon;

(3) in paragraph (4), by striking the period at the end and inserting ''; or''; and

(4) by adding at the end the following:

''(5) for taxes with respect to which the debtor filed a fraudulent return.''.

AMENDMENT NO. 96

(Purpose: To amend the provisions relating to chapter 13 plans to have a 5-year duration in certain cases and to amend the definition of disposable income for purposes of chapter 13)

Beginning on page 24, strike line 16 and all that follows through page 26, line 7, and insert the following:

''(2)(A) For purposes of this subsection, the term 'disposable income' means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

''(i)(I) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

''(II) for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

''(ii) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

''(B) However, the debtor's disposable income may be adjusted if the debtor demonstrates special circumstances that justify adjustments of current monthly income for which there is no reasonable alternative, as described in section 707(b)(2)(B) of this title.

''(3)(A) Amounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

''(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(ii) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(iii) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

''(B) However, this paragraph shall not apply if the debtor demonstrates special circumstances that justify adjustments of current monthly income for which there is no reasonable alternative, as described in section 707(b)(2)(B) of this title, and which bring the debtor's income below the applicable amount set forth in this paragraph.''.

(i) REDUCTION OF THE TERM OF THE PLAN FOR CERTAIN DEBTORS.—Section 1329 of title 11, United States Code, is amended by adding at the end the following:

''(d) Notwithstanding paragraphs (1)(B) and (4) of section 1325(b), if the actual income of the debtor, or in a joint case the debtor and the debtor's spouse, has dropped below the applicable amount stated in section 1325(b)(3), either before or after the petition, and is unlikely to increase above such amounts within 1 year, the debtor's plan may be modified to reduce the term of the plan to a time period equal to or greater than the applicable commitment period in section 1325(b)(4)(A)(i) and the debtor shall not be subject to section 1325(b)(3).''.

AMENDMENT NO. 97

(Purpose: To amend the provisions relating to chapter 13 plans to have a 5-year duration in certain cases and to amend the definition of disposable income for purposes of chapter 13)

On page 182, between lines 3 and 4, insert the following:

SEC. 318A. APPLICABILITY OF MEANS TEST AND PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.

(a) APPLICABILITY OF MEANS TEST TO CHAPTER 13.—Section 1325(b) of title 11, United States Code, as amended by this Act, is further amended—

(1) in paragraph (2), by inserting ''or, if lower and not likely to increase substantially in the 2 months after the order for relief, the debtor's monthly income on the date of the order for relief under this chapter'' after ''received by the debtor'';

(2) in paragraph (3), by inserting ''(or, if lower and not likely to increase substantially in the 2 months after the order for relief, the debtor's monthly income on the date of the order for relief under this chapter)'' after ''if the debtor has current monthly income''; and

(3) in paragraph (4)—

(A) in subparagraph (A)(ii), by striking ''debtor and the debtor's spouse combined'' and inserting ''debtor, and in a joint case the debtor and the debtor's spouse, or, if lower and not likely to increase substantially in the 2 months after the order for relief, the monthly income on the date of the order for relief under this chapter'';

(B) in subparagraph (A)(ii)(III), by striking ''and'' after the semicolon;

(C) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following:

''(C) provided that if the debtor's income decreases during the case to less than the amount set forth in subparagraph (A)(ii), and is not likely again to exceed that amount within 1 month, may be reduced to 3 years.''.

(b) CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.—Section 1322(d) of title 11, United States Code, as amended by this Act, is further amended—

(1) in paragraph (1), by striking ''debtor and the debtor's spouse combined'' and inserting ''debtor, and in a joint case the debtor and the debtor's spouse, or, if lower and not likely to increase substantially in the 2 months after the order for relief, the monthly income on the date of the order for relief under this chapter''; and

(2) in paragraph (2), by striking ''debtor and the debtor's spouse combined'' and inserting ''debtor, and in a joint case the debtor and the debtor's spouse, or, if lower and not likely to increase substantially in the 2 months after the order for relief, the monthly income on the date of the order for relief under this chapter''.

AMENDMENT NO. 98

(Purpose: To modify the disclosure requirements for debt relief agencies providing bankruptcy assistance)

On page 112, line 17, insert '', other than an attorney or an employee of an attorney'' after ''any person''.

On page 120, lines 12 and 13, strike ''AN ATTORNEY OR'' and insert ''A''.

On page 120, line 19, strike ''AN ATTORNEY OR'' and insert ''A''.

On page 120, lines 21 and 22, strike ''ATTORNEY OR''.

AMENDMENT NO. 99

(Purpose: To provide no bankruptcy protection for insolvent political committees)

On page 205, between lines 16 and 17, insert the following:

SEC. 332. NO BANKRUPTCY FOR INSOLVENT POLITICAL COMMITTEES.

Section 109 of title 11, United States Code, is amended by adding at the end the following:

''(i) A political committee subject to the jurisdiction of the Federal Election Commission under Federal election laws may not be a debtor under this title.''.

AMENDMENT NO. 100

(Purpose: To provide authority for a court to order disgorgement or other remedies relating to an agreement that is not enforceable)

On page 63, between lines 3 and 4, insert the following:

''(4) Nothing in this section shall preclude a court from ordering disgorgement of payments accepted, or other remedies under this title or other applicable law, when a creditor has accepted payments under such agreement or in anticipation of such agreement and the agreement is not enforceable.

AMENDMENT NO. 101

(Purpose: To amend the definition of small business debtor)

Beginning on page 222, strike line 23 and all that follows through page 223, line 21, and insert the following:

''(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition or the date of the order for relief in an amount not more than $1,250,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

''(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $1,250,000 (excluding debt owed to 1 or more affiliates or insiders);''.

Mr. SESSIONS. Mr. President, on the unanimous consent request, reserving the right to object, I know the Senator from Wisconsin has worked hard on the bankruptcy bill and has a number of relevant, germane amendments. I know he cares about the bill. I think he would like to see it die, but he wants to make it better. How many amendments did he have?

Mr. FEINGOLD. Fifteen total. This is not a number that I would actually offer. I will be able to pare that list down, but I wanted to preserve my right to have any germane amendment voted on postcloture.

Mr. SESSIONS. I have great respect for the Senator from Wisconsin, and I will not object if he will use his best judgment and try to avoid as many votes as we can.

Mr. FEINGOLD. Mr. President, I have found the Senator very reasonable in working on these amendments. Certainly some will not be offered, others are not major amendments, others will require votes, but it will be a list significantly smaller than 15.

Mr. SESSIONS. I will not object.

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

AMENDMENT NO. 121

Mr. TALENT. Mr. President, I ask unanimous consent that the pending amendment be set side and my amendment No. 121 be called up, the reading be dispensed with, and it then be set aside.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 121) is as follows:

(Purpose: To deter corporate fraud and prevent the abuse of State self-settled trust law)

On page 500, between lines 2 and 3, insert the following:

(4) by adding at the end the following:

''(e)(1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if—

''(A) such transfer was made to a self-settled trust or similar device;

''(B) such transfer was by the debtor;

''(C) the debtor is a beneficiary of such trust or similar device; and

''(D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.

''(2) For the purposes of this subsection, a transfer includes a transfer made in anticipation of any money judgment, settlement, civil penalty, equitable order, or criminal fine incurred by, or which the debtor believed would be incurred by—

''(A) any violation of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws; or

''(B) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 781 and 78o(d)) or under section 6 of the Securities Act of 1933 (15 U.S.C. 77f).''.

AMENDMENT NO. 129 TO AMENDMENT NO. 121

Mr. SCHUMER. Mr. President, I offer a second-degree amendment to amendment No. 121, proposed by Senator TALENT.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 129 to amendment No. 121.

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

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

The amendment is as follows:

(Purpose: To limit the exemption for asset protection trusts)

Beginning on page 1 of the amendment, strike all after (4) and insert the following:

''(e)(1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if—

''(A) such transfer was made to a self-settled trust or similar device;

''(B) such transfer was by the debtor; and

''(C) the debtor is a beneficiary of such trust or similar device.

''(2) Paragraph (1) shall not apply to the trusts specified in section 522(d)(12).''.

Mr. SCHUMER. Mr. President, I will be very brief. Late last week, this body, in its wisdom, defeated our amendment to close the millionaire's loophole, an amendment that would allow certain trusts to be set up by anybody, but, of course, they are expensive and only those very wealthy who have a purpose would do it and shield their assets in the trust and then declare bankruptcy and shed their debt.

It meant that if you were very wealthy, and you could afford some fancy lawyers, you were a lot better off than somebody who went bankrupt who made $40,000, $45,000, $50,000, or $55,000. I was hoping the amendment could have been adopted, but it was not.

After that point, a number of my colleagues from the other side said, let's try to work something out. We tried this morning but did not reach agreement. So Senator TALENT, my friend from Missouri, just offered his amendment, which I regret to say does not close the millionaire's loophole at all. It is something of a subterfuge. There are two basic problems with it.

First, you would have to prove that the intent of the filer of the trust was to avoid bankruptcy. I do not have to tell anyone here who is a lawyer that to prove that intent, especially when the filer would want to make sure that intent could not be proven and would leave no paper trail, no documents or anything else, would be next to impossible. So in a sense, it would not close the loophole at all.

But there is a broader point. Whether the intent was to do it or not, why should someone be able to shield millions of dollars of assets and declare bankruptcy? We are trying to close abuses here. Why are the abuses of the wealthy any less worthy of being closed than, say, of the middle class, someone who might gamble their meager assets away?

This amendment removes the requirement that you must prove the intent of setting up the trust was simply to avoid your assets being taken in bankruptcy, as well as doing one other thing. The amendment has another problem with it which deals with pensions, and our amendment corrects that as well.

Their amendment on pensions would subject pensions to these rules, and we do not want to do that. That is quite different than somebody hiding their assets in these trusts. But some of these trusts are used by pension plans. We do not bring pension plans into it. In fact, we take them out.

The Talent amendment has kept the pension proposal. I am sure we will be debating the Talent amendment and my second-degree amendment to the Talent amendment at some point as we

move forward on the bankruptcy bill, but I wanted to let my colleagues know what has happened.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, will the Senator from New York yield for a question?

Mr. SCHUMER. I will be happy to yield for a question.

Mr. SESSIONS. Mr. President, we went through a debate last time over the retirement benefits, the savings plans. I thought we capped those at $1 million.

My question to the Senator from New York, Mr. President, is, how confident is he under the bankruptcy bill as written that these trusts will be held by bankruptcy judges as not subject to being part of the assets of the debtor's estate? Is this something about which the Senator from New York is concerned? And we are not sure or do we have any law that will give the Senator cause to believe that they would not be captured as part of the estate?

Mr. SCHUMER. The lawyers we have consulted have said it is pretty clear-cut that these assets would be held immune from bankruptcy. But probably more important than my opinion, there was an article in the New York Times written by a Pulitzer Prize-winning author who is an expert on the Tax Code who checked this out with many different sources, as I read the article, and said it is pretty clear that these assets would be held immune from bankruptcy.

Let me remind my colleague, only five States allow the setting up of these trusts, but neither Alabama nor New York. Citizens in our States could set up these trusts in Utah. I do not remember all the other States. I remember Utah because Senator HATCH came over to me and said: that is my State you are picking on. They could set up these trusts, use the trusts in those States, and they would be immune from bankruptcy, no matter what the jurisdiction.

Mr. SESSIONS. I thank the Senator from New York. It is a matter that could be significant, and I am glad we are discussing it.

Mr. SCHUMER. If my colleague will yield for a minute, I would prefer not to second degree the amendment of my friend from Missouri. I would like to come to a compromise that truly closes this loophole. I know my friend from Iowa, the leader on this bill, had mentioned in his remarks that he was interested in closing this. My colleague from Utah had mentioned that he was interested in closing this, and rather than having a debate on the amendment of the Senator from Missouri and my second degree, if we could come to a compromise that truly closes the loophole without going further, I would be happy to do that.

Mr. SESSIONS. I thank the Senator for that offer and will look forward to taking him up on that.

Mr. SCHUMER. I thank my colleague, and I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENTS NOS. 110, 111, 112

Mr. DURBIN. Mr. President, I ask unanimous consent that the pending amendment be set aside for the purpose of offering en bloc amendments Nos. 110, 111, and 112.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 110

(Purpose: To clarify that the means test does not apply to debtors below median income)

On page 18, strike line 1 and all that follows through ''(2)'' on line 3, and insert the following:

(7)(A) Notwithstanding paragraph (2), a debtor described in this paragraph need only provide the calculations or other information showing that the debtor meets the standards of this paragraph. Paragraph (2) shall not apply, and the court may not dismiss a case based on any form of means testing,

AMENDMENT NO. 111

(Purpose: To protect veterans and members of the armed forces on active duty or performing homeland security activities from means testing in bankruptcy)

On page 13, between lines 13 and 14, insert the following:

''(D) Subparagraphs (A) through (C) shall not apply, and the court may not dismiss or convert a case based on any form of means testing, if—

''(i) the debtor or the debtor's spouse is a member of the armed forces—

''(I) on active duty (as defined in section 101(d)(1) of title 10); or

''(II) performing a homeland defense activity (as defined in section 901(1) of title 32);

''(ii) the debtor or the debtor's spouse is a veteran (as defined in section 101(2) of title 38), and the indebtedness occurred primarily during a period of not less than 180 days, during which he or she was—

''(I) on active duty (as defined in section 101(d)(1) of title 10); or

''(II) performing a homeland defense activity (as defined in section 901(1) of title 32);

''(iii) the debtor or the debtor's spouse is a reserve of the armed forces, and the indebtedness occurred primarily during a period of not less than 180 days, during which he or she was—

''(I) on active duty (as defined in section 101(d)(1) of title 10); or

''(II) performing a homeland defense activity (as defined in section 901(1) of title 32); or

''(iv) the debtor's spouse died while serving as a member of the armed forces—

''(I) on active duty (as defined in section 101(d)(1) of title 10); or

''(II) performing a homeland defense activity (as defined in section 901(1) of title 32).

AMENDMENT NO. 112

(Purpose: To protect disabled veterans from means testing in bankruptcy under certain circumstances)

On page 13, between lines 13 and 14, insert the following:

''(D) Subparagraphs (A) through (C) shall not apply, and the court may not dismiss or convert a case based on any form of means testing, if the debtor is a disabled veteran (as defined in section 3741(1) of title 38), and the indebtedness occurred primarily during a period during which he or she was—

''(i) on active duty (as defined in section 101(d)(1) of title 10); or

''(ii) performing a homeland defense activity (as defined in section 901(1) of title 32).

AMENDMENT NO. 26, AS MODIFIED

Mr. DURBIN. Mr. President, on behalf of Senator LEAHY, I send a modification of amendment 26 to the desk. This amendment has been cleared on both sides.

The PRESIDING OFFICER. Is there objection to the modification?

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment will be so modified.

The amendment (No. 26), as modified, is as follows:

(Purpose: To restrict access to certain personal information in bankruptcy documents)

On page 132, between lines 5 and 6, insert the following:

SEC. 234. PROTECTION OF PERSONAL INFORMATION.

(a) RESTRICTION OF PUBLIC ACCESS TO CERTAIN INFORMATION CONTAINED IN BANKRUPTCY CASE FILES.—Section 107 of title 11, United States Code, is amended by adding at the end the following:

''(c)(1) The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property:

''(A) Any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title.

''(B) Other information contained in a paper described in subparagraph (A).

''(2) Upon ex parte application demonstrating cause, the court shall provide access to information protected pursuant to paragraph (1) to an entity acting pursuant to the police or regulatory power of a domestic governmental unit.

''(3) The United States trustee, bankruptcy administrator, trustee, and any auditor serving under section 586(f) of title 28—

''(A) shall have full access to all information contained in any paper filed or submitted in a case under this title; and

''(B) shall not disclose information specifically protected by the court under this title.''.

(b) SECURITY OF SOCIAL SECURITY ACCOUNT NUMBER OF DEBTOR IN NOTICE TO CREDITOR.—Section 342(c) of title 11, United States Code, is amended—

(1) by inserting ''last 4 digits of the'' before ''taxpayer identification number''; and

(2) by adding at the end the following: ''If the notice concerns an amendment that adds a creditor to the schedules of assets and liabilities, the debtor shall include the full taxpayer identification number in the notice sent to that creditor, but the debtor shall include only the last 4 digits of the taxpayer identification number in the copy of the notice filed with the court.''.

(c) CONFORMING AMENDMENT.—Section 107(a) of title 11, United States Code, is amended by striking ''subsection (b),'' and inserting ''subsections (b) and (c),''.

Mr. LEAHY. Mr. President, the recent debacles at ChoicePoint and Bank of America remind us that we must vigilantly protect our personal information at all points of vulnerability. The bankruptcy process, which inherently involves the exchange of highly personal information, should be no different.

This is a bipartisan amendment that balances the need to protect personal

information with the needs of creditors, regulators and law enforcement to access critical information. The amendment is strongly supported by the non-partisan Judicial Conference, and also by the Center for Democracy and Technology.

I am pleased that my colleagues Senator SNOWE and Senator CANTWELL have agreed to cosponsor this amendment, and that Chairman SPECTER and Senator GRASSLEY worked so closely with us to improve the amendment even further. They have all been leaders on privacy issues, and I appreciate their support.

Our bipartisan amendment does two things. It enhances court discretion to balance the need to know against the need to protect personal information, and it requires truncation of social security numbers in publicly filed documents. This protection is particularly important in an electronic filing environment, where information once filed is immediately available to the public via the Internet.

The amendment allows the court, for cause, to protect personal information. For example, the court can seal or redact information, such as the home or employment address of a debtor, because of a personal security risk, including fear of injury by a former spouse or stalker. The amendment would also give the court the leeway to protect other information normally considered private, such as personal medical records.

Our bipartisan amendment still protects law enforcement and creditors where necessary. A law enforcement provision ensures that police and regulators can get needed information directly from the bankruptcy court, and a creditor protection provision specifies that creditors, including the IRS, receive the full Social Security number of a debtor in the initial notice of the case. Finally, we also clarify that these protections should not limit the access of the trustees, administrators and auditors to necessary information.

We must be careful that our efforts to require documentation for accuracy and accountability do not inadvertently create problems for privacy and security. As modified, the amendment properly balances these concerns, and protects the needs of those who need to know.

This has been a cooperative, bi-partisan effort, I extend special thanks to Senator SNOWE, Chairman SPECTER, and Senator GRASSLEY for all their hard-work in reaching an agreement, and I am pleased to submit this modification.

Ms. SNOWE. Mr. President, I support the amendment offered by my colleague Senator LEAHY, to ensure that the private, personal identification information filed in bankruptcy proceedings does not fall into the hands of identity thieves, violent stalkers, and other persons with criminal intentions. I, along with my colleague Senator CANTWELL, join as cosponsors to the Leahy amendment and urge its adoption by the Senate. This amendment is endorsed by the Judicial Conference of the United States, which is presided over by Chief Justice Rehnquist, and to which Congress regularly defers in the writing of the rules of our Federal court system.

Bankruptcy court filings, like most other court proceedings, are public record, and most papers filed in these cases are publicly available record. This is a good thing, because the administration of justice in our country should not be a secret affair. It is the public's right to know how its courts are meting out justice. The Bankruptcy Code affirmatively adopts this policy.

At the same time, bankruptcy proceedings are unique in that the explicit financial information of the debtor and its creditors are filed with the court, and likewise available for public review. Such information includes not only a person's name and address, but information such as the person's social security number, date of birth, driver's license number, and electronic addresses and routing codes. This information has long been available for public review at our Nation's courthouses. However, in today's information age, more and more Federal courts are making all of their public documents available on-line as well. While this is an advancement in efficiency in most regards, it opens up a great potential for abuse for identity thieves and others who access the Internet with the intent to commit fraud, physical harm, or other crimes.

More and more agencies today gain access to such personal information through publicly available documents. And as the recent computer hacking incident at Choice Point Corporation demonstrates, such personal information can be obtained even from companies in the businesses of collecting and securely storing such information. Moreover, access to such personal, sensitive information could pose serious risks to victims of domestic abuse, stalking, and other violent crime. Because any person with a computer can obtain these court documents, a person's safety and the safety of her property could be seriously put at risk.

Senator LEAHY, Senator CANTWELL, and I have devised this amendment to help prevent these harmful invasions of privacy from ever occurring. Currently the Bankruptcy Code allows courts to issue protective orders to prevent public disclosure of trade secrets and confidential research and commercial information. Our amendment would expand the court's authority to provide for similar protection of the personally identifiable information that I just described, as well as give the court the ability to shield other information if its release would create an undue risk of either identity theft or of injury to an individual's person or property. It further provides that when publicly available notices are filed with the court, only the last four digits of a person's social security number are required to be included in the documents. A separate filing with the full social security number will be sent privately to each party in interest in the bankruptcy proceeding. This amendment also creates an exception to ensure that law enforcement can gain access, and it has the support of the Department of Justice.

Furthermore, I have worked closely with the sponsors of the underlying bill, which I support, to ensure that this amendment does nothing to harm the efficient functioning of the credit and banking industries. Credit reporting agencies often rely on taxpayer identification numbers—most often social security numbers—to determine a person's creditworthiness. To ensure accuracy in such credit reports, we have modified the original language of this amendment to address the industry's concerns without in any way weakening the protections that we seek to enact. The new language strikes the appropriate balance for all concerned, and I understand that the industry finds the modification acceptable.

Giving the sensitive nature of bankruptcy filings and the increased threat of identity theft in today's society, this is a common sense measure to the underlying bankruptcy reform bill, which I support. I am pleased that all sides have come to agreement, and that this amendment will be adopted.

Ms. CANTWELL. Mr. President, I want to thank my colleagues on the Senate Judiciary Committee and others who have worked together for many years, despite considerable differences in the area of bankruptcy reform, to produce a bill that has passed the Senate a number of times. All that said, the bill is far from perfect, and the Senate should take full advantage of this opportunity to take a number of steps to amend this bill and improve it. I have supported amendments that improve the bill in areas where it affects particularly vulnerable consumers and retirees, and I believe we should also address incidents of corporate abuse. There are also ways to bring the bill up to date with modern technology and crime.

For example, I proudly join my colleague from Vermont, Mr. LEAHY, in recommending to all my colleagues the pending Leahy-Cantwell-Snowe privacy amendment, Amendment No. 26. This amendment is an appropriate response to the recent erosion of informational privacy in our society, demonstrated by the ChoicePoint and Bank of America personal informational security breaches, where the personal information of thousands of people was misappropriated by identity thieves.

Consumers should not have to surrender their privacy rights, just to gain access to our Nation's bankruptcy system. There are a number of reasons why it is simply sound practice for bankruptcy courts to join other Federal courts that already have a viable

mechanism to file personal information of debtors and others under seal. Identity theft is a predictable outcome when criminals have virtually unfettered access to an obvious public database of people who are already vulnerable in public bankruptcy court files. In some instances, a debtor might be a battered woman, a victim of a stalker or another victim of domestic violence, and the disclosure of that person's private information may subject her to further abuse. Congress has recognized the need to render private such personal information in court filings in much of the Federal court system, and this body should now add the bankruptcy courts to the list of properly protected public entities. Although I recognize that bankruptcy courts have some discretion to protect ''scandalous or defamatory matter,'' the point or preserving privacy of this information should also be to protect information that could be used to injure the consumer, either financially or even physically. It is also clear that such courts do not have the same ability to do protect information for cause as do other Federal courts. It is time to fix this unjustifiable distinction between the privacy rights of litigants in one kind of Federal court and another. I ask my colleagues to support Leahy-Cantwell-Snowe, because people's economic and even their physical security may be in jeopardy otherwise. Let's not wait for the inevitable abuse of this loophole, which could lead to stolen identities, or physical harm, before we act.

I urge my colleagues to vote for the Leahy-Cantwell-Snowe amendment.

Mr. DURBIN. Mr. President, I rise to speak very briefly about the amendments I have offered this evening to the pending bankruptcy bill. I have found as I traveled back in Illinois and around the country that some people follow the C–SPAN floor debate very closely. Just over this weekend, having traveled to Arizona and Nevada, I am amazed to find people who heard my speech on the bankruptcy bill, which always intrigues me that so many people suffer from insomnia that they watch C–SPAN gavel to gavel, but in all honesty I admire them for their interest in our Government, and I hope that they follow this debate. But if one is a newcomer to this bankruptcy bill debate, I will say a few words about the bill and the amendments which I have offered.

When it comes to the bill itself, which is 510 pages, it will amend the bankruptcy law of America. It is a bill which has been considered for years. We have had versions of this bill over the last 9 or 10 years. I know because years ago I worked with Senator GRASSLEY on one of the first modifications to the Bankruptcy Code. Some of these changes passed the Senate and failed in the House. Some have passed the House and Senate and been vetoed by President Clinton. The bill has had its ups and downs. It never did become law in that period of time.

Now for the second bill of the session, one of the highest priorities on the Republican side of the aisle—they are pushing for the bankruptcy reform bill. When one thinks of all the challenges in America, the obvious question is, why are we considering bankruptcy reform before we would even consider health care in America or doing something about the economy creating jobs or addressing the budget deficit in America or even addressing Social Security? Why is this bankruptcy bill such a high priority? Well, the reason is this bill makes fundamental changes in the law as to which Americans will qualify for bankruptcy.

Bankruptcy, of course, was created in the law of many civilized nations such as the United States because in the old days if one went deeply into debt they could be put in prison. People decided that was barbaric. They said there should reach a point, if one cannot pay their debts, they can be exonerated or have those debts wiped clean from their record and start new, start fresh. That is what bankruptcy is all about.

Chapter 7 of the Bankruptcy Code is that situation. One walks into the court and they say, here are all of my debts, here are all of my assets, and the court should basically liquidate whatever they have, pay off as much of the debt as possible, and at the end of the day they walk out of the court without much left on this Earth but without any debts, wipe the slate clean. That is bankruptcy.

There are other provisions in the Bankruptcy Code, notably chapter 13. Under chapter 13, one walks into court and says: I have more debts than I can pay, but I can pay something. The court then says: We will work out a schedule for what you will pay over a period of time. That is chapter 13. So one does not walk out with their debts relieved, but they may walk out with fewer debts to pay and a schedule to pay them. The court monitors their progress under chapter 13. So in chapter 7, one walks out with the slate clean. Chapter 13, they walk out still paying off their debts.

In came the credit card companies and the major banks to Congress about 10 years ago and said, we believe that too many people are having the slate wiped clean and that they should continue to pay off their debts, even if they think they should be relieved of all liability. The purpose of this bill is to say that people walking into bankruptcy court are now going to have a much more difficult time wiping the slate clean to start over. More likely than not, particularly if they are making more than the median income in America, which is not a huge, princely sum, the credit card industry comes in and says, we want to make sure that if someone comes into court and wants to file bankruptcy, when it is all said and done, they will still have credit card bills to pay, and not just credit card bills. They could be medical bills. They could be any number of different bills. So they pushed hard for 10 years to get this bill passed by the Senate in the hopes that fewer Americans will have an opportunity to start fresh and to start new. So we have been debating for over a week changes in this bill, changes that were designed to take into consideration special circumstances.

I give credit to my friends on the Republican side of the aisle. They have rejected every single change. Let me say what they have rejected so far. I offered an amendment that said if one served in the Guard or Reserve, if they are in the military and they are serving their country overseas and as a result of their service their family or their business goes into bankruptcy, we are not going to be so harsh on them. We are going to give them an easier time of it in bankruptcy because their circumstances serving our country, risking their lives for America, warrant better consideration than some other circumstances. I thought that was a reasonable amendment. I hear all my fellow Senators praising our men and women in uniform, how they are standing behind them. Well, I had veterans groups and military family groups all supporting my amendment. They said this is a reasonable thing to do. A lot of people who are activated end up losing their businesses, and they should be given some consideration in bankruptcy court.

I lost that amendment 58 to 38. Every Republican Senator voted against it. I cannot quite understand why, but that was their position.

Then came Senator KENNEDY. Senator KENNEDY said we just did a survey, and the No. 1 reason people file bankruptcy now is because of medical bills. Senator KENNEDY said if someone has gone through a medical crisis in their life and they have medical bills they cannot pay, we will at least say that when they go into bankruptcy court because of those bills, they can protect a small home, $150,000 home, which in some communities in America would be a very small home. It says that even though one has been through an illness, they had all of these medical bills, they have been forced into bankruptcy, they will have a roof over their head. That amendment was rejected, too. The thought that we would give people and their families facing medical catastrophes a break to be able to keep a home was rejected.

I then offered an amendment that said, what if the creditor is what we call a predatory lender, somebody who breaks the rules, breaks the law—for example, offers a second mortgage on a home at an unreasonable interest rate, hidden charges, balloon payments that prey upon people like senior citizens—what are we going to do when they come to bankruptcy court? Why should we allow them to take away the home of a person if they have broken the law in giving the loan?

I thought that was pretty obvious. A person coming into bankruptcy court

as a creditor doesn't have clean hands if they have broken the law with the loan they are trying to enforce. I thought at least we would stand for the law, that we would only enforce legal loans, not illegal loans.

Rejected. It was rejected largely on a party-line vote. Every Republican Senator but one voted against it.

As you can see, as we have gone through these amendments, whether we are talking about men and women in the military, whether we are talking about people with medical bills, whether we are talking about victims of predatory loans, even if we are talking about people who are victims of identity theft—we are all following the news accounts of ChoicePoint where a lot of personal information has been disclosed about individuals. It scares a lot of folks that someone will grab their Social Security number and their identity and run up some bills. It happens. Unfortunately it happens a lot.

Senator BILL NELSON of Florida said if you are a victim of identity theft, you should be given a break in bankruptcy court. They weren't debts you incurred; they were debts incurred by someone who stole your identity. I thought that was a reasonable amendment, too.

Rejected. Every Republican voted against it. They don't want to take into consideration the real-life tragedies and misfortunes that bring someone into bankruptcy court. They want to make sure that at the end of the day the credit card companies and the major financial institutions will get more money from people walking into bankruptcy court.

Senator AKAKA offered an amendment and said, shouldn't these credit card companies disclose more in their monthly statements, these companies that just inundate us with applications for credit cards? Shouldn't their monthly statements at least say: If you make the minimum monthly payment, this is how long it will take to pay off the loan and here is how much you will pay in interest? Is that unreasonable? I don't think it is.

These companies are making huge amounts of money. In 2003 the credit card companies made $30 billion in profit.

So Senator AKAKA offered an amendment that said at least these credit card monthly statements should tell the consumer more so they make the right choices for themselves and their families.

Rejected, again, on a party-line vote, with only one Senator from the Republican side of the aisle voting for it.

You think to yourself, if you can't hold the credit card companies to even that minimum standard, what is this debate all about? We are not creating exceptions for real-life situations. We are not giving consumers more tools to decide what is a reasonable amount of credit. All we are doing is saying, at the end of the day, the credit card companies are going to get their bill and they are going to get more money out of people filing in bankruptcy court.

Time and again in this debate, many of my colleagues, whom I respect much, have said: Senator DURBIN, you have it all wrong. If people make less than the median income in America, they will not be affected by this bill. They are going to be off the hook. You have to be making over the median income to possibly get into a situation where you are going to have to pay off more of your debts.

I have listened to that over and over. My staff and I, over the weekend, read the bill. It turns out that is not the case. In order to prove that you are below median income, you have to go through an expensive and extensive process under this bill. So I felt that it was only reasonable to say to my colleagues: Why don't we give those below median income a better chance to prove that they should not be covered by the provisions in this bill?

We make clear in amendment No. 110 that debtors in bankruptcy falling below median income need only provide calculations or other information showing the debtor's situation satisfies the below-median-income standard.

In other words, you don't have to hire a lawyer. You don't have to incur thousands of dollars of legal debt if you are below median income. You establish that to the court and then you move forward.

Second, the amendment says that a court may not dismiss a case based on any forms of means testing if the current monthly income of the debtor falls at or below the median family income of the applicable State. What the language in my amendment does is reinforce every argument we have heard from the other side of the aisle. Time and again they have said: If you make low income in America, you will not be affected by this bill.

We say: Fine, then let's change the bill and clarify that so a person filing for bankruptcy doesn't have to go through all of the pain and all of the expense of filing all the documents required under this bill.

We had a program under President Clinton not that long ago called the COPS Program—you may remember it—bringing more police back to the communities of America. It was a wildly successful program. It brought thousands of policemen to the State of Illinois and many other States. We ended up having a one-page application for that program. We prided ourselves on the fact that we were not absolutely swamping people in communities with all kinds of Federal paperwork and applications. With one page you could qualify for a COPS grant in your community.

What we are saying here is, shouldn't a person in bankruptcy court, already probably embarrassed by the process, already worried about paying the legal bills, if they are below median income, shouldn't we simplify the process for them?

I am going to give my colleagues a chance to vote on that.

The second thing we do is to return to the issue of veterans and members of the Armed Forces on active duty, and whether they are going to be treated the same in bankruptcy as other people. I will go back to the argument. I think if someone is serving our country, risking their lives for America, to protect me and my home, that we should do everything we can to help them. So we say, in this case, if your indebtedness as a veteran or a member of the military is primarily incurred while you are on active duty, that you can go into the bankruptcy court and escape the worst parts of the means test. It is a way to consolidate some of the arguments made earlier and to try to appeal to my friends on the Republican side of the aisle, for one last time, to be sensitive to some of the real hardships that have been created for families of Guardsmen and Reserves who have been activated.

The last point is one I almost offer in desperation, amendment No. 112. I cannot believe my colleagues have rejected all of these amendments when they relate to men and women in the armed services, but the last amendment relates to disabled veterans, men and women who become disabled as a result of their service in America and face bankruptcy. It is a final appeal to my friends on both sides of the aisle: If you cannot work up sympathy for men and women in uniform serving our country, at least have some concern for those who are disabled and come back and face bankruptcy. Don't put them through these unreasonable tests and standards in this bill. I would think all of us could agree that disabled veterans should be given some sort of a helping hand in this bankruptcy process.

So we will try again with the amendments that we offer. I know some of them will be debated at length. I just sincerely hope this week the supporters of this bill will at least take a little time and consider the possibility of amending this bill.

To my knowledge, the only perfect law that was ever written were the Ten Commandments, and they were not written by Senators. They were written by somebody in higher office.

This bill, as good as it may be, can be better. It should be better. It should be more sensitive to some of the real-world challenges that we face. I hope we will consider these amendments favorably, enact them soon, and make them part of this legislation. It will make a bill which I think is unfair in many respects a lot fairer.

AMENDMENT NO. 26, AS MODIFIED

One last thing. I ask unanimous consent the Leahy-Snowe privacy amendment No. 26, as modified, be accepted.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment (No. 26), as modified, was agreed to.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I would just say Senator DURBIN is an excellent advocate, but this is the fourth time that this bill in substantially this form has been before this body. It has been marked up in the Judiciary Committee four times. We have had weeks on it each time it has come up for debate here. After several weeks of debate, the last time it came up it passed 83 to 15.

The issues that he raises are really covered by the bill. If someone, anyone is disabled and they have a continuing extra medical expense, that would be considered in whether or not they would ever have to pay any of their debts back. If their income is below median income, they would never be required to pay their debts back. All they would have to do is introduce some evidence from their pay stubs or their income tax, what their income is. Certainly we have a right to ask that before we discharge, wipe out, eliminate all debts, as people do when they come into bankruptcy.

I really would just say that we have given great consideration to these issues. We could disagree, but these amendments, for the most part, have been up before. I do not believe that most are going to be accepted. But there is every right of my colleague's side to offer them.

MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask unanimous consent there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

TRIBUTE TO FRANCIS P. STEAD

Mr. DURBIN. Mr. President, I rise today to pay tribute to Francis P. ''Frank'' Stead, who passed away at the age of 90 on January 31, 2005, following an extended illness.

Frank Stead and I were neighbors in Springfield, IL starting in 1969 when I returned home to Illinois after graduating from Georgetown University Law School. He was a good neighbor, a good friend, and he will certainly be missed by the many people whose lives he touched.

Frank was one of the many unsung heroes of an era that journalist Tom Brokaw has dubbed ''The Greatest Generation.'' Coming of age during the Great Depression and serving our country during World War II, Frank shared in the values of a generation that helped make our country what it is today: a sense of honor and bravery, a commitment to service, and above all, a love of family and country.

In 1943, at the height of the U.S. action in World War II, Frank enlisted in the U.S. Navy and was assigned to the Pacific theater, leaving behind his sweetheart, Dorothy Mlaker. While on duty in the Pacific, Frank sent a letter to Dorothy proposing marriage. Later, after receiving her acceptance letter, Frank ordered an engagement ring from the catalog of a Chicago jeweler. He sent payment to the jeweler via money order, with instructions for the ring to be mailed to Dorothy. When he was able to take leave, Frank returned to Springfield and wed Dorothy on July 26, 1944.

Frank was honorably discharged from the U.S. Navy in 1945, having been awarded the Asiatic-Pacific and Good Conduct Medals. Upon his return to civilian life, Frank began his 25-year career as a salesman with several of Springfield's finest men's clothiers, including Robert's Brothers, Arch Wilson's, and Myers Brothers.

Frank again answered the call to serve his country when he joined the U.S. Naval Reserve in 1949. He was called to active duty during the Korean war in 1952, and he was stationed with the Department of Defense in Arlington, VA. In 1979, Frank retired from the Naval Reserve, having served 30 years and achieved the rank of chief petty officer yeoman.

Frank demonstrated his commitment to service not only through his career in the military, but also through his many civic activities. He served the community of Springfield as an active member of AFSCME, as a parishioner of Christ the King Catholic Church and Blessed Sacrament Catholic Church, and as a life member of the Knights of Columbus. In addition, Frank Stead served on the board of directors and was past president of Saint John's Hospital Samaritans. He also served on the board of directors of the Illinois chapter of AARP.

In 1974, Frank Stead was appointed executive director of the Springfield Election Commission, serving in that post for 15 years before retiring in 1989. Later, he would serve as a Democratic Precinct Committeeman in Springfield. I came to know Frank and his wife, Dorothy, well through their involvement in Springfield politics. They volunteered countless hours for my campaign when I was running for the House of Representatives.

Frank and Dorothy Stead shared nearly 60 years of marriage before Dorothy passed away on February 4, 2004. They are survived by their four children: one son and three daughters, along with seven grandchildren and four great-grandchildren.

I am honored to have had the opportunity to know this fine member of our Nation's ''Greatest Generation.'' His military service, civic involvement, commitment to his faith, and love of family have left an enduring impression on those of us who had the pleasure of knowing him. He will be missed.

HONORING OUR ARMED FORCES

CORPORAL TRAVIS EICHELBERGER

Mr. BROWNBACK. Mr. President, I rise today to honor a truly heroic Kansan, CPL Travis Eichelberger.

Corporal Eichelberger, a member of the 1st Battalion of the 2nd Marine Division, was one of the thousands of valiant young men and women who fought for the cause of liberty in Operation Iraqi Freedom. Sadly, in March 2003, while lying in a shallow foxhole in the sand, a 67-ton Abrams tank rolled over him, crushing his pelvis and severely damaging his lower body. Corporal Eichelberger, a native of Atchison, KS, returned home to the United States for rehabilitation and, in April 2003, was awarded a Purple Heart for his war injuries.

Recently, the Marine Corps realized their terrible mistake. While this brave young man's wounds occurred in a combat zone, he was not injured by hostile fire, a necessary qualification for the Purple Heart. For the sake of the award and all those who have been honored by it, the Marine Corps decided to revoke Corporal Eichelberger's Purple Heart. GEN Michael W. Hagee, Commandant of the Marine Corps, has appropriately personally offered his apologies to Corporal Eichelberger. I, too, extend my sincere sympathies to Corporal Eichelberger and his family during this trying and confusing time. This error has caused significant embarrassment to my fellow Kansan, as well as to the Marine Corps, and we must take care that it is never repeated.

After speaking with Corporal Eichelberger, I sense that his is a resilient spirit—and no one can doubt his courage. Corporal Eichelberger's service and dedication will long be remembered and honored. His unwavering commitment to our great Nation is a badge of honor he can proudly wear for the rest of his life.

I commend Corporal Eichelberger for his distinguished service and sacrifice.

SECOND LT. RICHARD B. ''BRIAN'' GIENAU

Mr. GRASSLEY. Mr. President, I rise today in tribute to a noble Iowan who has given his life for his country. 2LT Richard ''Brian'' Gienau was killed on Sunday, February 27, in Ar Ramadi, Iraq, when his military vehicle was struck by an explosive device. He was 29 years old, a fellow alumnus of my alma mater, the University of Northern Iowa, and a member of A Company, 224th Engineer Battalion, Army National Guard, Burlington, IA.

Second Lieutenant Gienau is remembered as a hard-working family man with a history of military service. He joined the U.S. Navy in 1994 and enlisted in the Iowa Army National Guard in 1999. After graduating in 2003 from University of Northern Iowa, he was commissioned in the Reserve Officers' Training Corps as a second lieutenant. He was mobilized last October.

Second Lieutenant Gienau is survived by his mother, Debbee Way, of Dunkerton, IA, and his father, Richard Gienau, of Waterloo, IA. He also leaves behind a young son. My prayers go out today to his family and friends in their time of loss. Let us today remember

his life as we honor his sacrifice on behalf of all of us. We are forever in his debt.

VOTE EXPLANATION—S.J. RES. 4

Mr. FEINGOLD. Mr. President, because of a family matter I was unable to take part in Thursday's votes. I regret that I was unable to vote on S.J. Res. 4, a resolution to prevent the Department of Agriculture from going forward with its plan to open the Canadian border to beef and cattle imports. I signed the discharge petition to force a vote on the measure and would have voted to delay the reopening. I am pleased that the Senate approved the resolution.

I also regret that I was unable to vote in favor of several worthy amendments that would have improved a bankruptcy bill that is in dire need of improvement. While my votes would not have affected the outcome of any of those votes, it is unfortunate that the amendments were not adopted.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

The assault of two gay men in San Francisco, CA last Wednesday was apparently motivated by the sexual orientation of the victims. Two gay men were approached by a group of men late in the evening. The group of men, which was comprised of men in their early 20s yelling anti-gay slurs, began assaulting the two gay victims. To escape the assault, the two victims ran inside a nearby bar, but were followed by the group of assailants. Both of the men suffered injuries to their face as a result of the beating.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

SERVICEMEMBERS RETURNING TO THE WORKFORCE

Mr. AKAKA. Mr. President, I rise to discuss how fortunate we are as a nation to have a highly-skilled veteran population able to lend their talents to the workforce. I am very pleased to report that many employers in the defense industry are actively recruiting this Nation's veterans. A recent Washington Post article entitled ''A Few Good Recruits'' highlights the benefits of the defense industry hiring veterans. Companies hiring veterans get highly skilled workers with a deep understanding of the service.

But the reward of hiring veterans is not to be limited to the defense industry. Veterans have skills that make them assets in a variety of occupations. Leadership, integrity, and teamwork—all of which the military teaches—are universal qualities for every industry. I encourage the private sector to consider this in the future when hiring. Veterans possess the skills needed in public service and I encourage officials at all levels of government to recruit veterans.

Our veterans bravely defended our freedoms during their service and it is a great strength of this Nation that after military service is over, our veterans enter the workforce with skills to succeed. It is my hope that both public and private sector employers will take full advantage of this.

I ask unanimous consent that the article from Washington Post be printed in the RECORD.

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

[From the Washington Post, Feb. 28, 2005]

A FEW GOOD RECRUITS

(By Ellen McCarthy)

Army Capt. Lonnie Moore lost his right leg and—he thought—his career last April when his convoy was ambushed on the road to Ramadi, in central Iraq. The injury led to some dark days in Walter Reed Army Medical Center as Moore, 29, began his recuperation and contemplated life outside the military.

Within months, however, he had received job offers from a munitions company, an information technology firm, and the Department of Veterans Affairs itself. And that's without sending out a résumé.

''People tend to seek us out,'' Moore said of the veterans, particularly those who have been injured, returning from Iraq and Afghanistan. ''They know we'll be an asset to their companies, and that we're not going to let our injuries stand in the way. . . . Everybody I've known that's gotten out, they're not having a hard time finding jobs.''

Through broad initiatives and individual requests, corporations have been actively recruiting veterans of the Iraq and Afghanistan conflicts, turning military hospitals like Walter Reed into de facto hiring centers.

Job offers aren't being handed out carte blanche, and companies say talent and fit are still the main priorities. But executives seeking out wounded soldiers claim that many of the skills acquired in the military are applicable in the private sector—particularly within companies that serve the government. A soldier who has led a platoon into war is probably capable of leading a unit at a private company, executives say. With government contracting in the midst of a boom, the security clearances and knowledge that soldiers bring home with them are also highly valued.

''They've got to be able to talk the language. And you can't teach a person that language, it's a language you can only learn by being part of that culture,'' said Paul Evancoe, director of military operations at FNH USA Inc., a McLean weapons manufacturer with about 350 employees in the United States and 16 in the Washington area. The company is among those interested in hiring Moore.

The quest to seek an injured vet was both company-driven and personal, said Evancoe, who received a Purple Heart after being shot in Vietnam. Many FNH employees are veterans, so the company's atmosphere and values largely mirror that of the military, he added.

''If you take a guy and immerse him back into that culture . . . it's going to be very positive. It's going to help the healing,'' Evancoe said. ''It's not like I can hire every single guy, but when I have a job, I'm going to search out a veteran.''

The Labor Department does not have statistics on the job placement rates of veterans disabled in Afghanistan or Iraq. However, the unemployment rate for veterans was lower than that for nonveterans in 2003, the most recent statistics available from the Bureau of Labor Statistics. That year, veterans had an unemployment rate of 4.5 percent, compared with 5.9 percent for nonveterans.

The same study found that 9 percent of veterans suffered from a service-related disability; their unemployment rate was comparable to that of their non-injured peers.

Jeannie Lehowicz, a vocational counselor stationed at Walter Reed Army Medical Center, said she has a steady stream of inquiries from executives and recruiters—sometimes dozens a week, and typically more than the 50 to 75 soldiers she is working with at any given time.

Most of the companies are government contractors around the Capital Beltway, she says, but calls have come in from firms throughout the country. One day it might be a giant defense contractor from Bethesda, and the next a small biomedical firm from Montana, she said.

''It's overwhelming. You want to respond and say 'Oh here's this guy I've got for you,' but that's not always the case,'' Lehowicz said.

More than 11,190 service members have been wounded in Iraq and Afghanistan, according to Pentagon statistics. Some have months of rehabilitation left before they'll be released from the hospital, Lehowicz said, and others are more interested in going back to school than getting a job right away. Many are adamant that they will stay in the military despite their disabilities, she added.

Even if they choose another route, the prospect of having opportunities can be an important buoy for wounded soldiers, Lehowicz and others say.

Potential opportunities were on display at a career fair held at Walter Reed in December. Thrown together in a matter of weeks, the event's organizers expected a dozen or so companies to participate. But more firms requested space at the event, and by the night of the fair, more than 30 companies, including BAE Systems PLC, Science Applications International Corp. and Oracle Corp., had set up booths to pass out brochures and collect names.

''The equipment that we work on and maintain for the military is the same as they would have used,'' said Eugene C. Renzi, president of defense systems at ManTech International Corp., a Fairfax government contractor that sent recruiters to the career fair. ''So when they get out of the military, we can put them right to work and utilize the skills they already have.''

Joe Davis, spokesman for the Veterans of Foreign Wars, said outreach efforts among government contractors is partly driven by executives with military backgrounds. There is a de facto alumni network, he said, and a

collective memory of the way disabled veterans were treated after previous conflicts, particularly Vietnam.

''Who runs the country now? It's the Vietnam era and they vowed never again, and so you got all the corporations, every nonprofit, all the associations and lobby arms doing everything they can,'' for this generation of soldiers, Davis said.

Contractors like ManTech have another incentive to recruit former soldiers, regardless of disability: Many have security clearances that are in short supply in the workforce, but necessary in order to do an increasing number of government projects.

''If you have a security clearance, you are miles ahead of a person applying to a company without a security clearance,'' said Edward F. Lawton, head of the Washington area chapter of the American Military Retirees Association. ''And even if you're missing a limb, that doesn't mean you're incapable of supporting the military through a company.''

But it may mean that jobs are more readily available for soldiers with technical skills and for those willing to work in the Washington area, where many government contractors are based.

That proved to be the case for Brian Garvey, an Army Captain who met his future employer at the Walter Reed career fair.

The platoon leader and father of two young girls was deployed to Iraq last March and for months worked at the Baghdad airport, processing human resources files for soldiers stationed throughout that country.

On Sept. 18, Garvey's unit was assigned a different task—to show a contractor a damaged fence on a highway bridge between the airport and the heavily guarded Green Zone. After assessing the damage, Garvey had just given the signal for his soldiers to return to their vehicles when a suicide bomber drove a car onto the bridge and detonated an explosive—killing two of the crew and wounding 13.

Three days later Garvey was at Walter Reed, recovering from a series of surgeries to repair his hand and remove dozens of pieces of shrapnel from his skin.

''I would say a lot of the time was spent thinking 'What am I going to do? What is the best avenue for my family,''' Garvey recalled of his four-month stay at the hospital. ''Up to this point I had been somewhat selfish. It was what I wanted to do. My wife and kids had been making the sacrifices.''

Garvey had already been thinking about looking for a private-sector job when he stopped by the career fair, hoping to pick up a few business cards and some ideas. Like most of the 150 soldiers crammed into the hall, Garvey was without a résumé or firm career goals.

He grabbed brochures from such big contractors as Northrop Grumman Corp. and Raytheon Co., but spent the longest time talking to a representative from Alliant Techsystems Inc. (ATK), a Minnesota company that makes weapon systems and munitions. He filled out a card with his basic information and three days later got an e-mail from ATK, asking for a phone interview.

A day-long interview at the company's Elkton, Md., site followed; just before Christmas, Garvey was offered a job. Soon he'll become a program manager at ATK, acting as a liaison between the company's engineers and its primary client—the U.S. military.

''Mentally it does me a lot of good, knowing that I'm not out there searching frantically for a job,'' said Garvey, who is now back at Fort Hood, waiting for his unit to rotate back from Iraq in March before he will be discharged. ''It gives me a sense of security. I know what my future has to offer.''

That sense of the future is what a lot of recently wounded soldiers are looking for, said Lehowicz, the VA vocational counselor. When they first return from the battlefield, many focus solely on getting better to return to their unit, she said, but over time they often start thinking about other options.

Moore, the Army Captain, says thoughts of his future now absorb much of his day at Walter Reed. Some days he thinks he would like to stay in the military, to resume life with his friends and become an example for other amputees. But some of the job offers have topped $70,000 and he worries this opportunity may not come around again.

''Veterans are getting good jobs right now,'' said Moore, who will likely remain in the hospital through March. He recently had a second interview with FNH USA, where he is up for a position as deputy director of military operations.

''I'm not sure if I stay in [the Army] for another five years, if the jobs will still be here.''

MEDICAID DRUG REBATE PROGRAM

Mr. GRASSLEY. Mr. President, I am taking this opportunity to talk about the mess we have in the Medicaid Program, a mess that does not properly account for billions of taxpayer dollars. First, allow me to remind everyone about a report released last summer by the Government Accountability Office, GAO. That report on Medicaid Program integrity found that Medicaid's size and diversity made it vulnerable to fraud, waste and abuse. Further, the GAO found that the Centers for Medicare & Medicaid Service, CMS, allocated only $26,000 and only eight employees to work on Medicaid program integrity.

As I said at the time, it does not make sense for CMS to invest so little in Federal oversight when so many Federal taxpayer dollars are at stake. If one considers that Medicaid has surpassed Medicare as the single largest Government health program in the United States, it makes no sense at all. The Congressional Budget Office projects the Federal share of total Medicaid payments for Fiscal Year 2005 at greater than $183 billion. Medicaid's vulnerability to fraud, waste and abuse have also ranked it on the GAO's list of high-risk programs for the past 2 years.

The Medicaid Program continues to pay too much for prescription drugs. CMS estimated that Medicaid expenditures for prescription drugs in Calendar Year 2003 totaled more than $31 billion, triple the $9.4 billion spent in 1994. Each year drug companies pay approximately $6 billion in rebates.

Today, the GAO released a damning report on Medicaid drug spending. Congress established the Medicaid drug rebate program in 1990 to help control spending on drugs. Note that the word choice and intent here was control, not out of control. It should come as no surprise that the GAO's report shows that the drug program has been and continues to be badly mismanaged.

The report—requested by Congressman WAXMAN and me—identified fundamental problems in the program. The mismanagement has been bipartisan and has spanned multiple administrations. According to the GAO, it is a program virtually without regulation. CMS has been sitting on draft regulations since 1995 a decade ago.

It is also a program virtually without oversight. The GAO found that the Office of Inspector General has issued only four audit reports on drug-company reported prices since the inception of the program. Of course, the OIG says in its defense that its efforts have been hampered by unclear CMS program guidance and a lack of documentation by drug companies.

According to the GAO, even when the OIG has managed to identify problems related to the drug companies' reported prices and methodologies for price reporting, CMS has not done much of anything to resolve them.

The drug rebate program is governed by a contractual agreement between the States and each drug company that wants to participate in Medicaid. One of the things that boggles the mind is that this contract allows drug companies to rely upon reasonable assumptions''

Each drug company may craft its own ''assumptions'' as long as they are consistent with the ''intent'' of the law. Consequently, because drug companies can pick their own methods, they in effect set their own prices and amount of rebates they pay.

According to the GAO, ''CMS does not generally review the methods and underlying assumptions that [drug companies] use to determine [the reported prices], even though these methods and assumptions can have a substantial effect on rebates.''

Furthermore, quoting the GAO again, ''CMS sometimes identifies price reporting errors . . . but does not follow up with [drug companies] to verify that errors have been corrected''.

In sum, the GAO report confirms that neither CMS nor the OIG know the extent to which Medicaid overpays for prescription drugs because the program lacks effective management and oversight. A worse state of affairs is not likely. Drug companies have been profiting for the past years on Medicaid drug pricing. We are dealing with a system that unnecessarily costs taxpayers untold hundreds of millions A not billions of dollars annually. The Medicaid drug rebate program is quite simply a mess—a Medicaid mess.

I urge my colleagues to consider this GAO report and its recommendations.

ADDITIONAL STATEMENTS

IN MEMORIAM TO FRANK SOUZA

• Mrs. BOXER. Mr. President, I take this opportunity to honor the memory of one of California's great labor leaders and dedicated social justice activists, Frank Souza. Frank passed away on February 19, 2005. He was 79 years old.

Frank Souza was born in New Bedford, MA in 1925. In 1948, he and his wife Virginia drove across the country to California in search of better job opportunities. Upon his arrival, he took a job with Greyhound as a bus mechanic, and worked there for 13 years. In 1953, Frank became involved in the International Association of Machinists and Aerospace Workers, AFL–CIO.

When I first met Frank many years ago, before I was in elected office, I was struck by his kindness and dedication to working people. That kindness and dedication grew with each passing year. Frank's commitment to social justice earned him the trust and respect of fellow labor activists and allowed him to rise quickly through the ranks at the machinists union. It was not long before Frank was a nationally known leader of the machinists union in northern California. In his capacity as Directing Business Representative of District 190, the largest automotive district of the machinists union in America, Frank was a constant source of pride for both his fellow machinists and the community at large.

Although Frank retired in 1989 after 25 years with the machinists union, he remained an active union leader, holding impressive positions as a machinists union delegate to the National AFL–CIO, vice president of the California Labor Federation for the AFL–CIO, chair of the Western States Trucking Committee for the National Auto Transporters, chair for the Sea Land West Coast negotiating committee, and treasurer for the California Alliance of Retired Americans.

It is not just Frank's accomplishments in the field of labor that made him stand out. Frank was one of the most wonderful people that I have come in contact with in all of my years of public service. His warmth and intelligence were a true inspiration to me. When he talked to me about injustice in the workplace, or in the world, his eyes would tear up. I knew that I could never let him down.

Frank Souza was a deeply loved labor leader who championed the causes of America's working families, not only in this country, but throughout the world. We can take comfort in knowing that future generations will benefit from his spirit, his vision, and his leadership. He taught us about the dignity and soul of working people, and in his memory we won't forget.●

ELIZABETH A. ''BETSY'' DUKE

● Mr. ALLEN. Elizabeth A. ''Betsy'' Duke was recently chosen to be the chairwoman of the American Bankers Association.

The ABA serves as the largest banking trade association in the country, representing most community banks, as well as virtually all large banks of our Nation. She will oversee the day-to-day leadership of the ABA, and all of its 330 employees.

Ms. Duke's one-year term marks the first time that a woman has held this highly visible position, as well as the first since 1951 that the post has been held by a Virginian.

I am confident that Betsy Duke's extensive background in the banking industry, including serving as former director of the Federal Reserve Bank of Richmond and former president of the Virginia Bankers Association has prepared her well for this new and challenging leadership role.

After graduating from the University of North Carolina in 1974 with a degree in drama, Betsy moved back to her native Virginia Beach and found an acting job in a dinner theater. In order to support her dream of becoming an actress, Betsy went looking for a day job. After being turned down by a local dry cleaner, she finally found work as a part-time drive-up bank teller.

The theatrical show in which Betsy was participating in ended about a year later, but by then she had come to a couple of conclusions: that her dream of becoming a great actress would never materialize, and that she really enjoyed her job as a teller. Betsy was soon able to secure a new-accounts job at Bank of Virginia Beach, which changed her life in more ways than one. It was there that she met her mentor, Burt Harrison, who served as the bank's CEO, and a young operations officer and her future husband, Larry Harcum.

As Betsy began taking on more responsibility, she began taking banking courses and was named the bank's accounting officer, but things became complicated when she began dating Larry. The bank had a strict policy regarding this activity, so after a few months, Betsy left the bank to go work at a local car dealership, but was asked to return a few months later by her mentor and bank CEO, Burt Harrison. The very next day, however, Larry quit. Burt quickly caught on, but allowed the two to stay under the condition that they keep their budding romance quiet. About a year later, the two married, but not after receiving the board's approval for the two of them to be able to keep their jobs at the bank. One of the directors actually got confused and thought he was voting on whether or not the two should get married, and voted no.

Betsy's friend, mentor, and boss Burt died suddenly of a heart attack in 1991, and Betsy, who by then had been named president, suddenly found herself thrust into the role of CEO. She and Larry ran the bank successfully for another 10 years until what was now referred to as the Bank of Tidewater was acquired by SouthTrust in 2001. Betsy served as executive vice president for community bank development at SouthTrust.

It was around this time that Betsy Duke became vice-chairman of ABA. Prior to this, she had served as a member of ABA's board of directors. The following year, she was named chairwoman of the ABA.

Betsy Duke is currently executive vice president, Merger Project Team, Wachovia Bank in Virginia Beach. As I previously mentioned, she was executive vice president for Community Bank Development at SouthTrust, but upon the bank's merger with Wachovia, she transferred to the merger integration team.

Beyond her current role as chairman of ABA, her involvement with the organization spans two decades. She began as an instructor for ABA's National School of Bank Investments and has continued in this role to this day. In addition, she has been a member of the trade group's Community Bankers Council, Communication Council, and Grassroots Task Force. Finally she has led the ABA's Government Relations Task Force, and served on its board of directors.

In addition to her bachelor's degree in fine arts from the University of North Carolina, she has a master's degree in business administration from Old Dominion University.

Betsy Duke loves banking. She truly believes that the industry is one of the most important in this country. Betsy believes that no other association comes close to serving the banking industry as does the ABA. I am pleased that Betsy Duke is heading up this great group, not just because she is a Virginian, but because she brings the real life experience needed to continue the successful tradition of the ABA. Congratulations Betsy, you have made your friends, family, and Virginia proud.●

HONORING MICHAEL CREASEY

● Mr. CHAFEE. Mr. President, today I honor Michael Creasey for his work as the Executive Director of the John H. Chafee Blackstone River Valley National Heritage Corridor. For the last 10 years, Michael has been a driving force in the Blackstone Valley, completing projects, building advocacy and partnerships, and instilling pride in the people who live beside this historic river.

Michael has devoted his career to public service and national park stewardship since 1986. After honing his skills in Utah and New Mexico, he was assigned to the Blackstone Corridor in 1995 as Deputy Director and became the Executive Director in 1999. What a gift he has been! His boundless energy and devotion to the Blackstone Corridor, and his skill in working with the Corridor Commission and its large group of stakeholders, have spawned a revitalization that includes the creation of new jobs, the preservation and enhancement of historic sites, and the restoration of valuable wildlife habitat.

In April 2000, shortly after I came to the Senate, Michael took me on a tour of the Valley to point out some of the Federal and private sector investments that had been made in the Heritage Corridor. I could not help but be impressed with his energy and passion as we viewed the Blackstone River Bikeway—or Riverway, as he has dubbed

it—along with renovated mills, a canoe and boat landing, and parks that have been developed since the authorization of the Blackstone Heritage Corridor in 1986. The progress I observed that day was a result of collaboration among the residents of the Valley, State agencies and the Federal Government, and is proof that industrial rivers like the Blackstone can be saved if we all work together.

Above all else, Michael is a ''river guy'' who understands the significance of the ''power of place'' and the potential of people to shape their communities. In a recent news article announcing his appointment as superintendent of the Lowell National Historical Park, he states, ''It's been a great honor to serve the Corridor Commission for nearly a decade. I have always been impressed with the passion, creative ideas and commitment that the people have had for achieving the Heritage Corridor vision.''

The Blackstone River Valley Heritage Corridor is a unique institution that has brought together many divergent groups and raised the national profile of this very special region. I thank Michael for his years of service to this historic slice of Massachusetts and Rhode Island, and I also wish him luck in his new endeavors in Lowell.●

TRIBUTE TO DR. ADRIAN ROGERS

● Mr. ALEXANDER. Mr. President, some say we are living in the post-Christian era, but you would not have known it yesterday if you were among the 13,829 worshippers, as I was, at the retirement tribute to pastor Adrian Rogers at Bellevue Baptist Church in Memphis. I am a Presbyterian—but Presbyterian or Baptist, believer or nonbeliever, one could not help but be inspired by the services on Sunday and especially by Dr. Rogers himself.

Adrian Rogers is one of America's best-known preachers. His ''Love Worth Finding Ministries'' is broadcast in more than 150 counties in both English and Spanish. He has authored 17 books, 48 booklets and 78 cassette tapes. He has been elected three times to lead the Southern Baptist Convention.

Dr. Rogers came to Bellevue in Memphis in 1972 when the Church was in Midtown, the enrollment was 9000 and the annual budget was $625,000. Today the church spreads across 375 acres in Cordova, the enrollment is 29,000 and the budget is $21 million.

What impresses me most is not this growth but the man himself. Like his friend Billy Graham, Adrian Rogers has not allowed his fame to diminish him personally. The most moving statements yesterday came from his children who testified that this man who everyone knows can talk the talk always walks the walk at home. Those who know him best say that he practices what he preaches. When he told his congregation, ''I am what I am by the grace of God,'' it was not mock humility.

There was much love expressed yesterday for Joyce Rogers, who Adrian said ''is the only girl that I have ever dated.'' She has sung in the choir, taught Sunday school and been his partner since their marriage in 1951.

Our founders made sure that we do not have a state church but that we do have freedom of religion. As a result of this constitutional guarantee, there is a church of some denomination on almost every American corner. This freedom has also proved to be a nurturing environment for independent leaders such as Adrian Rogers whose good lives attract us and inspire us and lead us to be among the world's most religious people.

No mortal is perfect. I know of one blemish on my friend Adrian Rogers: He is a Florida Gators fan. In the spirit of yesterday, the Christian thing to do is to forgive him.●

HONORING JOHN ''RED'' BOURG

● Ms. LANDRIEU. Mr. President, today I wish to honor the life of Mr. John ''Red'' Bourg, who passed away last October. Red Bourg served his family, his State and his country well, and deserves the recognition of this body.

Red was a devout Christian, and he made a wonderful home in Baton Rouge with his wife Mildred and their two children, Brenda and Ronnie. Red loved and cared for the people of the State of Louisiana and the United States, and worked to improve their quality of life until the day he died.

In addition to being a great family man, Red Bourg served our country in peace and in war. As a young man, he joined the United States Marine Corps and fought in the Korean War, serving with honor and distinction. Years after returning, Red was selected to become the Louisiana State Commander of the Marine Corps League, an impressive honor, for an equally impressive person.

However, Red was best known for his work with the Louisiana AFL-CIO. He worked his way up the union ladder, beginning as a member of the Local 995 International Brotherhood of Electrical Workers, and climbing all the way to become the president of the Louisiana AFL-CIO. Red joined the staff at the AFL-CIO in 1967, becoming the assistant to the president and in 1997, some 30 years later, he became President of that great organization. I think that says a lot about the hard work and determination of the man.

I once again honor my friend, Mr. John ''Red'' Bourg, for his efforts on Louisiana's behalf. I knew Red my entire adult life and can attest that he is truly missed. I know I speak for many others when I say that Red Bourg will always be fondly remembered for the outstanding service he has rendered to his State and his Nation.●

HONORING SIBAL HOLT

● Ms. LANDRIEU. Mr. President, today I wish to recognize the service of Sibal Holt, who is the first female and the first African American to serve as the President of the Louisiana AFL-CIO. Firsts like these have become commonplace for this barrier-breaking woman.

She has long been a trailblazer in the State of Louisiana. She became the first African American to be hired into the Bell System and also the first registered lobbyist in the State of Louisiana, both remarkable achievements given the climate of the times.

Sibal Holt has been a selfless steward of her community. She formerly served as the president of the Louisiana American Red Cross, as well as other charitable organizations, such as Volunteer Baton Rouge and the Baton Rouge Women's Resource Center. Sibal is probably most recognized for her pioneering efforts in voter registration. Holt once led a statewide voter registration drive, resulting in an astounding 70,000 new voters for Louisiana.

But it is the AFL-CIO where she has left her biggest imprint. Sibal began her work at the AFL-CIO in 1975, not surprisingly becoming the first minority selected to join the Executive Board of any State's AFL-CIO. Twenty-two years later, in 1997, she became the union's Secretary/Treasurer, serving in that capacity until she was elected president of the Louisiana AFL-CIO in November 2004, replacing John ''Red'' Bourg after his untimely death.

I once again congratulate my friend, Sibal Holt, for her groundbreaking accomplishments on behalf of the working class in the State of Louisiana. It is people such as Sibal that continue to make Louisiana such a dynamic State.●

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 539. A bill to amend title 28, United States Code, to provide the protections of habeas corpus for certain incapacitated individuals whose life is in jeopardy, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, without amendment:

S. 177. A bill to further the purposes of the Reclamation Projects Authorization and Adjustment Act of 1992 by directing the Secretary of the Interior, acting through the Commissioner of Reclamation, to carry out an assessment and demonstration program to control salt cedar and Russian olive, and for other purposes (Rept. No. 109–15).

S. 178. A bill to provide assistance to the State of New Mexico for the development of comprehensive State water plans, and for other purposes (Rept. No. 109–16).

S. 214. A bill to authorize the Secretary of the Interior to cooperate with the States on the border with Mexico and other appropriate entities in conducting a hydrogeologic characterization, mapping, and modeling program for priority transboundary aquifers, and for other purposes (Rept. No. 109–17) .

S. 229. A bill to clear title to certain real property in New Mexico associated with the Middle Rio Grande Project, and for other purposes (Rept. No. 109–18).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. FEINGOLD:

S. 534. A bill to amend the Internal Revenue Code of 1986 to repeal the percentage depletion allowance for certain hardrock mines, and for other purposes; to the Committee on Finance.

By Mr. INOUYE (for himself and Ms. CANTWELL):

S. 535. A bill to establish grant programs for the development of telecommunications capacities in Indian country; to the Committee on Indian Affairs.

By Mr. MCCAIN:

S. 536. A bill to make technical corrections to laws relating to Native Americans, and for other purposes; to the Committee on Indian Affairs.

By Mr. BINGAMAN:

S. 537. A bill to increase the number of well-trained mental health service professionals (including those based in schools) providing clinical mental health care to children and adolescents, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BIDEN:

S. 538. A bill to educate health professionals concerning substance use disorders and addiction; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MARTINEZ:

S. 539. A bill to amend title 28, United States Code, to provide the protections of habeas corpus for certain incapacitated individuals whose life is in jeopardy, and for other purposes; read the first time.

By Mr. HAGEL:

S. 540. A bill to strengthen and permanently preserve social security; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 541. A bill to amend the Harmonized Tariff Schedule of the United States to clarify the rate of duty for certain gloves; to the Committee on Finance.

By Mr. DORGAN (for himself, Mr. SMITH, Mrs. MURRAY, Ms. CANTWELL, Mr. JOHNSON, and Mr. HARKIN):

S. 542. A bill to amend the Internal Revenue code of 1986 to extend for 5 years the credit for electricity produced from certain renewable resources, and for other purposes; to the Committee on Finance.

By Ms. SNOWE:

S. 543. A bill to amend the Internal Revenue Code of 1986 to expand the availability of the cash method of accounting for small businesses, and for other purposes; to the Committee on Finance.

ADDITIONAL COSPONSORS

S. 7

At the request of Mr. KYL, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 7, a bill to increase American jobs and economic growth by making permanent the individual income tax rate reductions, the reduction in the capital gains and dividend tax rates, and the repeal of the estate, gift, and generation-skipping transfer taxes.

S. 8

At the request of Mr. ENSIGN, the name of the Senator from South Dakota (Mr. THUNE) was added as a cosponsor of S. 8, a bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

S. 29

At the request of Mrs. FEINSTEIN, the name of the Senator from New Hampshire (Mr. SUNUNU) was added as a cosponsor of S. 29, a bill to amend title 18, United States Code, to limit the misuse of social security numbers, to establish criminal penalties for such misuse, and for other purposes.

S. 37

At the request of Mrs. FEINSTEIN, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 37, a bill to extend the special postage stamp for breast cancer research for 2 years.

S. 65

At the request of Mr. INHOFE, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 65, a bill to amend the age restrictions for pilots.

S. 114

At the request of Mr. KERRY, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 114, a bill to amend titles XIX and XXI of the Social Security Act to ensure that every uninsured child in America has health insurance coverage, and for other purposes.

S. 151

At the request of Mr. COLEMAN, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 151, a bill to amend title 38, United States Code, to require an annual plan on outreach activities of the Department of Veterans Affairs.

S. 181

At the request of Mr. ENSIGN, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 181, a bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for taxpayers owning certain commercial power takeoff vehicles.

S. 188

At the request of Mrs. FEINSTEIN, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 188, a bill to amend the Immigration and Nationality Act to authorize appropriations for fiscal years 2005 through 2011 to carry out the State Criminal Alien Assistance Program.

S. 267

At the request of Mr. CRAIG, the names of the Senator from Colorado (Mr. SALAZAR) and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. 267, a bill to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000, and for other purposes.

S. 290

At the request of Mr. BOND, the names of the Senator from California (Mrs. FEINSTEIN) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. 290, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income certain hazard mitigation assistance.

S. 333

At the request of Mr. SANTORUM, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 333, a bill to hold the current regime in Iran accountable for its threatening behavior and to support a transition to democracy in Iran.

S. 342

At the request of Mr. MCCAIN, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 342, a bill to provide for a program of scientific research on abrupt climate change, to accelerate the reduction of greenhouse gas emissions in the United States by establishing a market-driven system of greenhouse gas tradeable allowances, to limit greenhouse gas emissions in the United States and reduce dependence upon foreign oil, and ensure benefits to consumers from the trading in such allowances.

S. 375

At the request of Mr. BAYH, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 375, a bill to amend the Public Health Service Act to provide for an influenza vaccine awareness campaign, ensure a sufficient influenza vaccine supply, and prepare for an influenza pandemic or epidemic, to amend the Internal Revenue Code of 1986 to encourage vaccine production capacity, and for other purposes.

S. 397

At the request of Mr. CRAIG, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 397, a bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

S. 403

At the request of Mr. ENSIGN, the name of the Senator from South Dakota (Mr. THUNE) was added as a cosponsor of S. 403, a bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

S. 420

At the request of Mr. KYL, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 420, a bill to make the repeal of the estate tax permanent.

S. 424

At the request of Mr. BOND, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of

S. 424, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 450

At the request of Mr. DAYTON, his name was added as a cosponsor of S. 450, a bill to amend the Help America Vote Act of 2002 to require a voter-verified paper record, to improve provisional balloting, to impose additional requirements under such Act, and for other purposes.

S. 461

At the request of Mr. ROCKEFELLER, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 461, a bill to amend title 37, United States Code, to require that a member of the uniformed services who is wounded or otherwise injured while serving in a combat zone continue to be paid monthly military pay and allowances, while the member recovers from the wound or injury, at least equal to the monthly military pay and allowances the member received immediately before receiving the wound or injury, to continue the combat zone tax exclusion for the member during the recovery period, and for other purposes.

S. 471

At the request of Mr. SPECTER, the names of the Senator from California (Mrs. BOXER), the Senator from New Jersey (Mr. CORZINE), the Senator from Washington (Mrs. MURRAY) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 471, a bill to amend the Public Health Service Act to provide for human embryonic stem cell research.

S. 485

At the request of Mr. CRAIG, the names of the Senator from Utah (Mr. BENNETT) and the Senator from Kansas (Mr. ROBERTS) were added as cosponsors of S. 485, a bill to reauthorize and amend the National Geologic Mapping Act of 1992.

S. 490

At the request of Mrs. CLINTON, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 490, a bill to direct the Secretary of Transportation to work with the State of New York to ensure that a segment of Interstate Route 86 in the vicinity of Corning, New York, is designated as the ''Amo Houghton Bypass''.

S. 495

At the request of Mr. KERRY, his name was added as a cosponsor of S. 495, a bill to impose sanctions against perpetrators of crimes against humanity in Darfur, Sudan, and for other purposes.

S. 507

At the request of Mr. DEWINE, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 507, a bill to establish the National Invasive Species Council, and for other purposes.

S. 516

At the request of Mr. MCCAIN, the names of the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. 516, a bill to advance and strengthen democracy globally through peaceful means and to assist foreign countries to implement democratic forms of government, to strengthen respect for individual freedom, religious freedom, and human rights in foreign countries through increased United States advocacy, to strengthen alliances of democratic countries, to increase funding for programs of nongovernmental organizations, individuals, and private groups that promote democracy, and for other purposes.

S. CON. RES. 9

At the request of Mr. ENSIGN, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. Con. Res. 9, a concurrent resolution recognizing the second century of Big Brothers Big Sisters, and supporting the mission and goals of that organization.

S. RES. 43

At the request of Mr. REID, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. Res. 43, a resolution designating the first day of April 2005 as ''National Asbestos Awareness Day''.

S. RES. 44

At the request of Mr. ALEXANDER, the names of the Senator from Georgia (Mr. ISAKSON) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of S. Res. 44, a resolution celebrating Black History Month.

S. RES. 71

At the request of Mr. CRAIG, the names of the Senator from Idaho (Mr. CRAPO), the Senator from Illinois (Mr. DURBIN) and the Senator from Georgia (Mr. ISAKSON) were added as cosponsors of S. Res. 71, a resolution designating the week beginning March 13, 2005 as ''National Safe Place Week''.

AMENDMENT NO. 44

At the request of Mr. KENNEDY, the names of the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Illinois (Mr. DURBIN), the Senator from Maryland (Mr. SARBANES) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of amendment No. 44 proposed to S. 256, a bill to amend title 11 of the United States Code, and for other purposes.

At the request of Mr. CORZINE, his name was added as a cosponsor of amendment No. 44 proposed to S. 256, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FEINGOLD:

S. 534. A bill to amend the Internal Revenue Code of 1986 to repeal the percentage depletion allowance for certain hard rock mines, and for other purposes; to the Committee on Finance.

Mr. FEINGOLD. Mr. President, today I am reintroducing legislation to eliminate from the Federal tax code percentage depletion allowances for hardrock minerals mined on Federal public lands. I thank Senator CANTWELL for joining me as a cosponsor on this legislation.

President Clinton proposed the elimination of the percentage depletion allowance on public lands in his fiscal year 2001 budget. President Clinton's fiscal year 2001 budget estimated that, under this legislation, income to the Federal treasury from the elimination of percentage depletion allowances for hardrock mining on public lands would total $487 million over 5 years and $1.20 billion over 10 years. The Joint Committee on Taxation estimated that it would save $410 million over 5 years and $823 million over 10 years. Percentage depletion allowances are contained in the tax code for extracted fuel, minerals, metal and other mined commodities. These allowances have a combined value, according to estimates by the Joint Committee on Taxation, of $4.8 billion.

These percentage depletion allowances were initiated by the Corporation Excise Act of 1909. That's right, these allowances were initiated nearly one hundred years ago. Provisions for a depletion allowance based on the value of the mine were made under a 1912 Treasury Department regulation, but difficulty in applying this accounting principle to mineral production led to the initial codification of the mineral depletion allowance in the Tariff Act of 1913. The Revenue Act of 1926 established percentage depletion much in its present form for oil and gas. The percentage depletion allowance was then extended to metal mines, coal, and other hardrock minerals by the Revenue Act of 1932, and has been adjusted several times since.

Percentage depletion allowances were historically placed in the tax code to reduce the effective tax rates in the mineral and extraction industries far below tax rates on other industries, providing incentives to increase investment, exploration and output. Percentage depletion also makes it possible, however, to recover many times the amount of the original investment.

There are two methods of calculating a deduction to allow a firm to recover the costs of its capital investment: cost depletion and percentage depletion. Cost depletion allows for the recovery of the actual capital investment—the costs of discovering, purchasing, and developing a mineral reserve—over the period during which the reserve produces income. Under the cost depletion method, the total deductions cannot exceed the original capital investment.

Under percentage depletion, however, the deduction for recovery of a company's investment is a fixed percentage of ''gross income,'' namely, sales revenue from the sale of the mineral. Under this method, total deductions typically exceed the capital that the company invested.

The rates for percentage depletion are quite significant. Section 613 of the

U.S. Code contains depletion allowances for more than 70 metals and minerals, at rates ranging from 10 to 22 percent.

In addition to repealing the percentage depletion allowances for minerals mined on public lands, my bill would also create a new fund, called the Abandoned Mine Reclamation Fund. One-fourth of the revenue raised by the bill, or approximately $120 million, would be deposited into an interest-bearing fund in the Treasury to be used to clean up abandoned hardrock mines in States that are subject to the 1872 Mining Law. The Mineral Policy Center estimates that there are 557,650 abandoned hardrock mine sites nationwide and the cost of clearing them up will range from $32.7 billion to $71.5 billion.

There are currently no comprehensive Federal or State programs to address the need to clean up old mine sites. Reclaiming these sites requires the enactment of a program with explicit authority to clean up abandoned mine sites and the resources to do it. My legislation is a first step toward providing the needed authority and resources.

In today's budget climate, we are faced with the question of who should bear the costs of exploration, development, and production of natural resources: all taxpayers, or the users and producers of the resource? For more than a century, the mining industry has been paying next to nothing for the privilege of extracting minerals from public lands and then abandoning its mines. Now those mines are adding to the Nation's environmental and financial burdens. We face serious budget choices this fiscal year, and one of those choices is whether to continue the special tax breaks provided to the mining industry.

The measure I am introducing is straightforward. It eliminates the percentage depletion allowance for hardrock minerals mined on public lands while continuing to allow companies to recover reasonable cost depletion.

Though at one time there may have been an appropriate role for a government-driven incentive for enhanced mineral production, there is now sufficient reason to adopt a more reasonable depletion allowance that is consistent with depreciation rates given to other businesses. This corporate subsidy is simply not justified.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 534

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Elimination of Double Subsidies for the Hardrock Mining Industry Act of 2005''.

SEC. 2. REPEAL OF PERCENTAGE DEPLETION ALLOWANCE FOR CERTAIN HARDROCK MINES.

(a) IN GENERAL.—Section 613(a) of the Internal Revenue Code of 1986 (relating to percentage depletion) is amended by inserting ''(other than hardrock mines located on lands subject to the general mining laws or on land patented under the general mining laws)'' after ''In the case of the mines''.

(b) GENERAL MINING LAWS DEFINED.—Section 613 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(f) GENERAL MINING LAWS.—For purposes of subsection (a), the term 'general mining laws' means those Acts which generally comprise chapters 2, 12A, and 16, and sections 161 and 162 of title 30 of the United States Code.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 3. ABANDONED MINE RECLAMATION FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to establishment of trust funds) is amended by adding at the end the following:

''SEC. 9511. ABANDONED MINE RECLAMATION FUND.

''(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Abandoned Mine Reclamation Trust Fund' (in this section referred to as 'Trust Fund'), consisting of such amounts as may be appropriated or credited to the Trust Fund as provided in this section or section 9602(b).

''(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Trust Fund amounts equivalent to 25 percent of the additional revenues received in the Treasury by reason of the amendments made by section 2 of the Elimination of Double Subsidies for the Hardrock Mining Industry Act of 2005.

''(c) EXPENDITURES FROM TRUST FUND.—

''(1) IN GENERAL.—Amounts in the Trust Fund shall be available, as provided in appropriation Acts, to the Secretary of the Interior for—

''(A) the reclamation and restoration of lands and water resources described in paragraph (2) adversely affected by mineral (other than coal and fluid minerals) and mineral material mining, including—

''(i) reclamation and restoration of abandoned surface mine areas and abandoned milling and processing areas,

''(ii) sealing, filling, and grading abandoned deep mine entries,

''(iii) planting on lands adversely affected by mining to prevent erosion and sedimentation,

''(iv) prevention, abatement, treatment, and control of water pollution created by abandoned mine drainage, and

''(v) control of surface subsidence due to abandoned deep mines, and

''(B) the expenses necessary to accomplish the purposes of this section.

''(2) LANDS AND WATER RESOURCES.—

''(A) IN GENERAL.—The lands and water resources described in this paragraph are lands within States that have land and water resources subject to the general mining laws or lands patented under the general mining laws—

''(i) which were mined or processed for minerals and mineral materials or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status before the date of the enactment of this section,

''(ii) for which the Secretary of the Interior makes a determination that there is no continuing reclamation responsibility under State or Federal law, and

''(iii) for which it can be established to the satisfaction of the Secretary of the Interior that such lands or resources do not contain minerals which could economically be extracted through remining of such lands or resources.

''(B) CERTAIN SITES AND AREAS EXCLUDED.—The lands and water resources described in this paragraph shall not include sites and areas which are designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 et seq.) or which are listed for remedial action under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

''(3) GENERAL MINING LAWS.—For purposes of paragraph (2), the term 'general mining laws' means those Acts which generally comprise chapters 2, 12A, and 16, and sections 161 and 162 of title 30 of the United States Code.''.

(b) CONFORMING AMENDMENT.—The table of sections for subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''Sec. 9511. Abandoned Mined Reclamation Trust Fund.''.

By Mr. INOUYE (for himself and Ms. CANTWELL):

S. 535. A bill to establish grant programs for the development of telecommunications capacities in Indian country; to the Committee on Indian Affairs.

Mr. INOUYE. Mr. President, I rise today to introduce the Native American Connectivity Act. Senator CANTWELL joins me in sponsoring this measure.

Over 70 years ago, we passed the Communications Act of 1934 and committed ''to make available . . . to all the people of the United States . . . a rapid, efficient, Nationwide, and worldwide wire and radio communication service with adequate facilities at reasonable charges. . . .'' It is now 2005, and the Federal Government has yet to fulfill this commitment in Indian country.

Relying on 2000 Census data, the Federal Communications Commission, FCC, estimates that, on average, only 67.9 percent of Indian households located on Indian reservations have telephone service compared to a national average of 95 percent. Even more alarming is that household telephone rates for some tribes, such as the Kickapoo Reservation in Texas and the Navajo Nation, are as low as 33 percent and 38 percent, respectively. Available data also shows that many Native Americans lack access not only to basic telephone service but also to advanced telecommunications services and information technology.

As a result, many Native Americans lack access to emergency 911 services, are unable to secure employment because they do not have telephone service or Internet, and cannot otherwise participate in many daily activities that non-Native Americans take for granted. Moreover, the lack of telecommunications infrastructure impedes the economic development of tribal communities, educational opportunities, language retention and preservation, and access to adequate health care.

Tribal governments and their citizens must have access to the necessary resources to develop their telecommunications capacities. A recent report by the Harvard Project on American Indian Economic Development credited tribal self-governance for improvements in socioeconomic growth at rates that far exceed progress being made nationally. This bill will provide the resources necessary to enhance and strengthen tribal self-determination to address telecommunications needs. As a result, tribal governments should be able to make further gains in socioeconomic conditions.

I urge my colleagues to give their favorable consideration to this measure.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 535

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Native American Connectivity Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1)(A) disparities exist in the areas of education, health care, workforce training, commerce, and economic activity of Indians due to the rural nature of most Indian reservations; and

(B) access to basic and advanced telecommunications infrastructure is critical in eliminating those disparities;

(2) currently, only 67.9 percent of Indian homes have telephone service, compared with the national average of 95.1 percent;

(3) the telephone service penetration rate on some reservations is as low as 39 percent;

(4) even on reservations and trust land, non-Indian homes are more likely to have telephone service than Indian homes;

(5) only 10 percent of Indian households on tribal land have Internet access;

(6) only 17 percent of Indian tribes have developed comprehensive technology plans;

(7) training and technical assistance have been identified as the most significant needs for the development and effective use of telecommunications and information technology in Indian country;

(8) funding for telecommunications and information technology projects in Indian country remains inadequate to address the needs of Indian communities;

(9) many Indian tribes are located on or adjacent to Indian land in which unemployment rates exceed 50 percent;

(10) the lack of telecommunications infrastructure and low telephone and Internet penetration rates adversely affects the ability of Indian tribes to pursue economic development opportunities; and

(11) primary, secondary, and postsecondary education, job training, health care, disease prevention education, and cultural preservation are greatly enhanced with access to and use of telecommunications technology and electronic information.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to promote affordable and universal access among Indian tribal governments, tribal entities, reservation-based schools, tribal colleges and universities, and Indian households to telecommunications and information technology in Indian country;

(2) to encourage and promote tribal economic development, self-sufficiency, and strong tribal governments;

(3) to enhance the health of Indian tribal members through the availability and use of telemedicine and telehealth;

(4) to improve the quality of kindergarten, primary, secondary, postsecondary, and job-related training, through enhanced and sustained information technology infrastructure; and

(5) to assist in the retention and preservation of native languages and cultural traditions.

SEC. 4. DEFINITIONS.

In this Act:

(1) BLOCK GRANT.—The term ''block grant'' means a grant provided under section 5.

(2) ELIGIBLE ACTIVITY.—The term ''eligible activity'' means an activity carried out—

(A) to acquire or lease real property (including licensed spectrum, water rights, dark fiber, exchanges, and other related interests) to provide telecommunications services, facilities, and improvements;

(B) to acquire, construct, reconstruct, or install telecommunications facilities, sites, improvements (including design features), or utilities;

(C) to retain any real property acquired under this Act for tribal communications purposes;

(D) to pay the non-Federal share required by a Federal grant program undertaken as part of activities funded under this Act;

(E) to carry out activities necessary—

(i) to develop a comprehensive telecommunications development plan; and

(ii) to develop a policy, planning, and management capacity so that an eligible entity can more rationally and effectively—

(I) determine the needs of the entity;

(II) set long term and short term goals;

(III) devise programs and activities to meet the goals of the entity, including, if appropriate, telehealth;

(IV) evaluate the progress of the programs and activities in meeting the goals of the entity; and

(V) carry out management, coordination, and monitoring of activities necessary for effective planning implementation;

(F) to pay reasonable administrative costs and carrying charges related to the planning and execution of telecommunications development activities, including the provision of information and resources about the planning and execution of the activities to residents of areas in which telecommunications development activities are to be concentrated;

(G) to increase the capacity of an eligible entity to carry out telecommunications activities, including the development of telecommunications regulations and related regulatory matters;

(H) to provide assistance to institutions of higher education (including tribal colleges and universities) that have a demonstrated capacity to carry out eligible activities;

(I) to enable an eligible entity to facilitate telecommunications development by—

(i) providing technical assistance, advice, and business support services (including services for developing business plans, securing funding, and conducting marketing); and

(ii) providing general support (including peer support programs and mentoring programs) to Indian tribes in developing telecommunications projects;

(J) to evaluate eligible activities to ascertain and promote effective telecommunications and information technology deployment practices and usages among Indian tribes; or

(K) to provide research, analysis, data collection, data organization, and dissemination of information relevant to telecommunications and information technology in Indian country for the purpose of promoting effective telecommunications and information technology deployment practices and usages among tribes.

(3) ELIGIBLE ENTITY.—The term ''eligible entity'' means—

(A) an Indian tribe or consortium of Indian tribes;

(B) a tribally chartered organization; or

(C) an Indian organization, intertribal organization, tribal college or university, or a private or public institution of higher education acting under an agreement with an Indian tribe.

(4) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) INFORMATION TECHNOLOGY.—

(A) IN GENERAL.—The term ''information technology'' means any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(B) INCLUSIONS.—The term ''information technology'' includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

(6) PLANNING.—The term ''planning'' means community-based planning developed in consultation with the local community based on the needs of the local community.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of Commerce.

(8) TECHNICAL ASSISTANCE.—The term ''technical assistance'' means the facilitation of skills and knowledge in planning, developing, assessing, and administering eligible activities.

(9) TRAINING AND TECHNICAL ASSISTANCE GRANT.—The term ''training and technical assistance grant'' means a grant provided under section 6.

(10) TRIBAL COLLEGE OR UNIVERSITY.—The term ''tribal college or university'' has the meaning given the term ''tribally controlled college or university'' in section 2 of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801), except that the term includes an institution listed in the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

(11) TELEHEALTH.—The term ''telehealth'' means the use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and professional health-related education, public health, and health administration.

SEC. 5. BLOCK GRANT PROGRAM.

(a) ESTABLISHMENT.—There is established within the National Telecommunications and Information Administration a Native American telecommunications block grant program to provide grants on a competitive basis to eligible entities to carry out activities under subsection (c).

(b) BLOCK GRANTS.—The Secretary may provide a block grant to an eligible entity that submits a block grant application to the Secretary for approval.

(c) ELIGIBLE ACTIVITIES.—A grant under this section may only be used for an eligible activity.

(d) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the

Secretary shall promulgate regulations establishing specific criteria for the competition conducted to select eligible entities to receive grants under this section for each fiscal year.

SEC. 6. TRAINING AND TECHNICAL ASSISTANCE GRANTS.

(a) NOTIFICATION AND CRITERIA.—The Secretary—

(1) shall provide notice of the availability of training and technical assistance grants; and

(2) publish criteria for selecting recipients.

(b) GRANTS.—The Secretary may provide training and technical assistance grants to eligible entities with a demonstrated capacity to carry out eligible activities.

(c) USE OF FUNDS.—A training and technical assistance grant shall be used—

(1) to develop a training program to facilitate local use and maintenance of new telecommunications technologies;

(2) to develop and implement—

(A) telecommunications and information technology work study programs; and

(B) postsecondary telecommunications and information technology-related education, development, planning, and management programs;

(3) to develop a training program for telecommunications employees; or

(4) to provide assistance to students who—

(A) participate in telecommunications or information technology work study programs; and

(B) are enrolled in a full-time graduate or undergraduate program in telecommunications-related education, development, planning, or management.

(d) SETASIDE.—

(1) IN GENERAL.—For each fiscal year, the Secretary shall set aside 10 percent of the amount made available under section 12 for training and technical assistance grants, to remain available until expended.

(2) TREATMENT.—A training and technical assistance grant to an entity shall be in addition to any block grant provided to the entity.

(e) PROVISION OF TECHNICAL ASSISTANCE BY THE SECRETARY.—The Secretary may provide technical assistance, directly or through contracts, to—

(1) eligible entities; and

(2) persons or entities that assist tribal governments.

SEC. 7. COMPLIANCE.

(a) AUDIT BY THE COMPTROLLER GENERAL.—

(1) IN GENERAL.—The Comptroller General of the United States may audit any financial transaction involving grant funds that is carried out by a block grant recipient or training and technical assistance grant recipient.

(2) SCOPE OF AUTHORITY.—In conducting an audit under paragraph (1), the Comptroller General shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by the grant recipient that relate to the financial transaction and are necessary to facilitate the audit.

(b) ENVIRONMENTAL PROTECTION.—

(1) IN GENERAL.—After consultation with Indian tribes, the Secretary may promulgate regulations to carry out this subsection that—

(A) ensure that the policies of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and other laws that further the purposes of that Act (as specified by the regulations), are most effectively implemented in connection with the expenditure of funds under this Act; and

(B) assure the public of undiminished protection of the environment.

(2) SUBSTITUTE MEASURES.—Subject to paragraph (3), the Secretary may provide for the release of funds under this Act for eligible activities to grant recipients that assume all of the responsibilities for environmental review, decisionmaking, and related action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and other laws that further the purposes of that Act (as specified by the regulations promulgated under paragraph (1)), that would apply to the Secretary if the Secretary carried out the eligible activities as Federal projects.

(3) RELEASE.—

(A) IN GENERAL.—The Secretary shall approve the release of funds under paragraph (2) if, at least 15 days prior to approval, the grant recipient submits to the Secretary a request for release accompanied by a certification that meets the requirements of paragraph (4).

(B) APPROVAL.—The approval by the Secretary of a certification shall be deemed to satisfy the responsibilities of the Secretary under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the laws specified by the regulations promulgated under paragraph (1), to the extent that those responsibilities relate to the release of funds for projects described in the certification.

(4) CERTIFICATION.—A certification shall—

(A) be in a form acceptable to the Secretary;

(B) be executed by the tribal government;

(C) specify that the grant recipient has fully assumed the responsibilities described in paragraph (2); and

(D) specify that the tribal officer—

(i) assumes the status of a responsible Federal official under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and each law specified by the regulations promulgated under paragraph (1), to the extent that the provisions of that Act or law apply; and

(ii) is authorized to consent, and consents, on behalf of the grant recipient and on behalf of the tribal officer to accept the jurisdiction of the Federal courts for enforcement of the responsibilities of the tribal officer as a responsible Federal official.

SEC. 8. REMEDIES FOR NONCOMPLIANCE.

(a) FAILURE TO COMPLY.—If the Secretary finds, on the record after opportunity for an agency hearing, that a block grant recipient or training and technical assistance grant recipient has failed to comply substantially with any provision of this Act, the Secretary, until satisfied that there is no longer a failure to comply, shall—

(1) terminate payments to the grant recipient;

(2) reduce payments to the grant recipient by an amount equal to the amount of payments that were not expended in accordance with this Act;

(3) limit the availability of payments under this Act to programs, projects, or activities not affected by the failure to comply; or

(4) refer the matter to the Attorney General with a recommendation that the Attorney General bring an appropriate civil action.

(b) ACTION BY THE ATTORNEY GENERAL.—After a referral by the Secretary under subsection (a)(4), the Attorney General may bring a civil action in United States district court for appropriate relief (including mandatory relief, injunctive relief, and recovery of the amount of the assistance provided under this Act that was not expended in accordance with this Act).

SEC. 9. REPORTING REQUIREMENTS.

(a) ANNUAL REPORT TO CONGRESS.—Not later than 180 days after the end of each fiscal year in which assistance under this Act is provided, the Secretary shall submit to Congress a report that includes—

(1) a description of the progress made in accomplishing the objectives of this Act;

(2) a summary of the use of funds under this Act during the preceding fiscal year; and

(3) an evaluation of the status of telephone, Internet, and personal computer penetration rates, by type of technology, among Indian households throughout Indian country on a tribe-by-tribe basis.

(b) REPORTS TO SECRETARY.—The Secretary may require grant recipients under this Act to submit reports and other information necessary for the Secretary to prepare the report under subsection (a).

SEC. 10. CONSULTATION.

In carrying out this Act, the Secretary shall consult with—

(1) other Federal agencies administering Federal grant programs relating to the development of telecommunications capacities or infrastructure; and

(2) the Government Accountability Office and Indian tribes to determine the proportion of grant funds necessary to address training and technical assistance and eligible activity needs.

SEC. 11. HISTORIC PRESERVATION REQUIREMENTS.

A telecommunications project funded under this Act shall comply with the National Historic Preservation Act (16 U.S.C. 470 et seq.) and the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.).

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this Act—

(1) $20,000,000 for fiscal year 2006; and

(2) such sums as are necessary for each subsequent fiscal year.

(b) AVAILABILITY.—Funds made available under subsection (a) shall remain available until expended.

By Mr. MCCAIN:

S. 536. A bill to make technical corrections to laws relating to Native Americans, and for other purposes; to the Committee on Indian Affairs.

Mr. MCCAIN. Mr. President, I am pleased to introduce the Native American Omnibus Act of 2005 to amend a variety of Federal statutes affecting Indian tribes and Indian people. This Act contains nineteen provisions, including technical amendments to several laws, extensions of expiring authorizations, and provisions relating to particular Indian tribes, and certain Native American programs.

Section 101, amends the Indian finance act of 1974 to clarify that nonprofit tribal entities are eligible for the BIA Loan Guaranty program. It also raises the limit on the amount of loans to $1.5 billion from $500 million.

Section 102 extends the authorization for the Indian Tribal Justice Technical and Legal Assistance Act to through fiscal year 2010.

Section 103 extends the Indian Tribal Justice Act for three more years.

Section 104 cures a problem specific to New Mexico and the 1924 Indian Pueblo Lands Act. Recently, the New Mexico State Court of Appeals ruled that a change from Indian to non-Indian title for a parcel of land within a Pueblo land grant area eliminated that parcel's status as ''Indian Country.'' This ruling created a jurisdictional void for criminal acts occurring on

land within the original Pueblo land grant once its' title has changed. Consistent with existing law, this amendment clarifies that the state maintains jurisdiction over non-Indians, the tribe has jurisdiction over Indians and its members, and the federal government has jurisdiction pursuant to the Major Crimes Act. This amendment does not expand Indian civil jurisdiction and only applies to criminal jurisdiction. I understand that it is uniformly support by all affected parties.

Section 105, conveys approximately 1290 acres of the Lock and Dam #3 lands to the Prairie Island Tribe. The provision prohibits gaming or structures for human habitation on the conveyed lands.

Section 106 is a technical amendment to allow binding arbitration in all contracts and not just leases on the Gila River Indian Community reservation.

Section 107 conveys several parcels of land in the State of Washington to be held in trust for Puyallup Indian Tribes.

Section 108 amends Native American graves Protection and Repatriation Act by clarifying that the term ''Native American'' refers to a member of a tribe, a people, or a culture that is or was indigenous to the United States.

Section 109, the amends the Fallon Paiute Shoshone Tribe's water rights settlement act to permit the expenditure of six percent of the average market value of the Fund over three years.

Section 110, the Washoe Tribes Lake Tahoe Access Act, corrects the 1990 settlement and includes 24.3 acres of land near Lake Tahoe for the Tribes. The amendment does not affect the number of acres conveyed to the Tribe in the original settlement.

Section 111 amends the Indian Arts and Crafts Act. A major source of tribal and individual income comes from the sale of handmade Indian arts and crafts, but millions of dollars are diverted each year from these artists and tribes by those who reproduce and sell counterfeit Indian goods. Enforcing the criminal law that prohibits the sale of Indian arts and crafts misrepresented as an Indian product is often stalled by the other responsibilities of the FBI including investigating terrorism activity and violent crimes on Indian lands. This amendment supplements the existing federal investigative authority by authorizing other federal investigative bodies, such as the BIA, in addition to the FBI, to investigate these offenses.

Section 112, the Colorado River Indian Reservation Boundary Correction Act, corrects the south boundary of the Reservation by reestablishing the boundary as it was delineated in the original survey.

Section 113, reauthorizes the Native American Programs Act of 1974 and establishes the Inter-Departmental Council of Native American Affairs.

Section 114 amends the Native Hawaiian Education Act to include research and education activities relating to Native Hawaiian law.

Section 121 amends the Carl D. Perkins Vocational Act to include the registration of Indian students in the Spring semester.

Section 122, the Native Nations Leadership, Management and Policy Act of 2005 authorizes funding for leadership training, strategic and organizational development, and research and policy analysis to assist American Indian nations to achieve effective self-governance and sustainable economic development. This provision renews authorized funding for NNI's programs for a period of 10 years, beginning in fiscal year 2007. Dedicated funding for NNI is necessary to ensure the continuation of these important programs without further draining funds from the Udall Foundation's other educational activities.

Section 132 authorizes the Secretary of Homeland Security, to establish a pilot program to enhance an Indian tribe's response to border activity. Some Indian tribes that inhabit land on or easily accessible to the United States and Canada or Mexico, bear extraordinary costs in responding to illegal immigration crossing and drug smuggling and almost always divert funds intended for local services to do so. While Federal and State law enforcement resources may supplement tribal efforts, tribal police, fire and emergency services provide the first and often only response because of their access to the border. A tribe's proximity to the border and its responsibility to the community for public safety and welfare, requires that they respond. This program would enhance tribal first responder capabilities, provide assistance for aerial and ground surveillance technologies, and communication capabilities, and facilitate coordination and cooperation with Federal, State, local and tribal governments in protecting the border. The Secretary may establish the selection criteria for participation in the program including the tribes' proximity to the border and the extent to which border crossing activity impacts existing tribal resources.

Section 201, Authorization of 99 year leases, amends Title 25 USC Section 415 providing for leases of restricted lands by adding several additional tribes to the list of tribes that have requested 99-year lease authority.

Section 202, Certification of rental proceeds, amends Title 25 USC Section 488 to permit actual rental proceeds from a lease to constitute the rental value of that land, and to satisfy the requirement for appraisal of that land.

Section 211, will permit the Navajo Nation's Sage Memorial Hospital to be considered a tribal contractor under the Indian Self-Determination Act, which will allow the hospital to obtain the benefits of coverage under the Federal Tort Claims Act and secure VA drug discounts.

Section 221, amends the American Indian Probate Reform Act of 2004 by correcting provisions relating to non-testamentary disposition, partition of highly fractionated Indian land, and Tribal probate codes.

I look forward to working with my colleagues on both sides of the aisle to enact this important legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 536

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Native American Omnibus Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. DEFINITION OF SECRETARY.

In this Act, the term ''Secretary'' means the Secretary of the Interior.

TITLE I—TECHNICAL AMENDMENTS TO LAWS RELATING TO NATIVE AMERICANS

Subtitle A—General Provisions

SEC. 101. INDIAN FINANCING ACT AMENDMENTS.

(a) LOAN GUARANTIES AND INSURANCE.—Section 201 of the Indian Financing Act of 1974 (25 U.S.C. 1481) is amended—

(1) by striking ''the Secretary is authorized (a) to guarantee'' and inserting ''the Secretary may—

''(1) guarantee'';

(2) by striking ''members; and (b) in lieu of such guaranty, to insure'' and inserting ''members; or

''(2) to insure'';

(3) by striking ''SEC. 201. In order'' and inserting the following:

''SEC. 201. LOAN GUARANTIES AND INSURANCE.

''(a) IN GENERAL.—In order''; and

(4) by adding at the end the following:

''(b) ELIGIBLE BORROWERS.—The Secretary may guarantee or insure loans under subsection (a) to both for-profit and nonprofit borrowers.''.

(b) LOAN APPROVAL.—Section 204 of the Indian Financing Act of 1974 (25 U.S.C. 1484) is amended by striking ''SEC. 204.'' and inserting the following:

''SEC. 204. LOAN APPROVAL.''.

(c) SALE OR ASSIGNMENT OF LOANS AND UNDERLYING SECURITY.—Section 205 of the Indian Financing Act of 1974 (25 U.S.C. 1485) is amended—

(1) by striking ''SEC. 205.'' and all that follows through subsection (b) and inserting the following:

''SEC. 205. SALE OR ASSIGNMENT OF LOANS AND UNDERLYING SECURITY.

''(a) IN GENERAL.—All or any portion of a loan guaranteed or insured under this title, including the security given for the loan—

''(1) may be transferred by the lender by sale or assignment to any person; and

''(2) may be retransferred by the transferee.

''(b) TRANSFERS OF LOANS.—With respect to a transfer described in subsection (a)—

''(1) the transfer shall be consistent with such regulations as the Secretary shall promulgate under subsection (h); and

''(2) the transferee shall give notice of the transfer to the Secretary.'';

(2) by striking subsection (c);

(3) by redesignating subsections (d), (e), (f), (g), (h), and (i) as subsections (c), (d), (e), (f), (g), and (h), respectively;

(4) in subsection (c) (as redesignated by paragraph (3))—

(A) by striking ''VALIDITY.—'' and all that follows through ''subparagraph (B),'' and inserting ''VALIDITY.—Except as provided by regulations in effect on the date on which a loan is made,''; and

(B) by striking ''incontestable'' and all that follows and inserting ''incontestable.'';

(5) in subsection (e) (as redesignated by paragraph (3))—

(A) by striking ''The Secretary'' and inserting the following:

''(1) IN GENERAL.—The Secretary''; and

(B) by adding at the end the following:

''(2) COMPENSATION OF FISCAL TRANSFER AGENT.—A fiscal transfer agent designated under subsection (f) may be compensated through any of the fees assessed under this section and any interest earned on any funds or fees collected by the fiscal transfer agent while the funds or fees are in the control of the fiscal transfer agent and before the time at which the fiscal transfer agent is contractually required to transfer such funds to the Secretary or to transferees or other holders.''; and

(6) in subsection (f) (as redesignated by paragraph (3))—

(A) by striking ''subsection (i)'' and inserting ''subsection (h)''; and

(B) in paragraph (2)(B), by striking '', and issuance of acknowledgments,''.

(d) LOANS INELIGIBLE FOR GUARANTY OR INSURANCE.—Section 206 of the Indian Financing Act of 1974 (25 U.S.C. 1486) is amended by inserting ''(not including an eligible Native American owned or operated Community Development Finance Institution)'' after ''Government''.

(e) AGGREGATE LOANS OR SURETY BONDS LIMITATION.—Section 217(b) of the Indian Financing Act of 1974 (25 U.S.C. 1497(b)) is amended by striking ''$500,000,000'' and inserting ''$1,500,000,000''.

SEC. 102. INDIAN TRIBAL JUSTICE TECHNICAL AND LEGAL ASSISTANCE.

Sections 106 and 201(d) of the Indian Tribal Justice Technical and Legal Assistance Act (25 U.S.C. 3666, 3681(d)) are amended by striking ''for fiscal years 2000 through 2004'' and inserting ''for fiscal years 2004 through 2010''.

SEC. 103. TRIBAL JUSTICE SYSTEMS.

Subsections (a), (b), (c), and (d) of section 201 of the Indian Tribal Justice Act (25 U.S.C. 3621) are amended by striking ''2007'' and inserting ''2010''.

SEC. 104. INDIAN PUEBLO LAND ACT AMENDMENTS.

(a) IN GENERAL.—The Act of June 7, 1924 (43 Stat. 636, chapter 331), is amended by adding at the end the following:

''SEC. 20. CRIMINAL JURISDICTION.

''(a) IN GENERAL.—Except as otherwise provided by Congress, jurisdiction over offenses committed anywhere within the exterior boundaries of any grant from a prior sovereign, as confirmed by Congress or the Court of Private Land Claims to a Pueblo Indian tribe of New Mexico, shall be as provided in this section.

''(b) JURISDICTION OF THE PUEBLO.—The Pueblo has jurisdiction, as an act of the Pueblos' inherent power as an Indian tribe, over any offense committed by a member of the Pueblo or of another Indian tribe, or by any other Indian-owned entity.

''(c) JURISDICTION OF THE UNITED STATES.—The United States has jurisdiction over any offense described in chapter 53 of title 18, United States Code, committed by or against an Indian or any Indian-owned entity, or that involves any Indian property or interest.

''(d) JURISDICTION OF THE STATE OF NEW MEXICO.—The State of New Mexico shall have jurisdiction over any offense committed by a person who is not a member of an Indian tribe, which offense is not subject to the jurisdiction of the United States.''.

SEC. 105. PRAIRIE ISLAND LAND CONVEYANCE.

(a) IN GENERAL.—The Secretary of the Army shall convey all right, title, and interest of the United States in and to the land described in subsection (b), including all improvements, cultural resources, and sites on the land, subject to the flowage and sloughing easement described in subsection (d) and to the conditions stated in subsection (f), to the Secretary, to be—

(1) held in trust by the United States for the benefit of the Prairie Island Indian Community in Minnesota; and

(2) included in the Prairie Island Indian Community Reservation in Goodhue County, Minnesota.

(b) LAND DESCRIPTION.—The land to be conveyed under subsection (a) is the approximately 1290 acres of land associated with the Lock and Dam #3 on the Mississippi River in Goodhue County, Minnesota, located in tracts identified as GO–251, GO–252, GO–271, GO–277, GO–278, GO–284, GO–301 through GO–313, GO–314A, GO–314B, GO–329, GO–330A, GO–330B, GO–331A, GO–331B, GO–331C, GO–332, GO–333, GO–334, GO–335A, GO–335B, GO–336 through GO–338, GO–339A, GO–339B, GO–339C, GO–339D, GO–339E, GO–340A, GO–340B, GO–358, GO–359A, GO–359B, GO–359C, GO–359D, and GO–360, as depicted on the map entitled ''United States Army Corps of Engineers survey map of the Upper Mississippi River 9-Foot Project, Lock & Dam No. 3 (Red Wing), Land & Flowage Rights'' and dated December 1936.

(c) BOUNDARY SURVEY.—Not later than 5 years after the date of conveyance under subsection (a), the boundaries of the land conveyed shall be surveyed as provided in section 2115 of the Revised Statutes (25 U.S.C. 176).

(d) EASEMENT.—

(1) IN GENERAL.—The Corps of Engineers shall retain a flowage and sloughing easement for the purpose of navigation and purposes relating to the Lock and Dam No. 3 project over the portion of the land described in subsection (b) that lies below the elevation of 676.0.

(2) INCLUSIONS.—The easement retained under paragraph (1) includes—

(A) the perpetual right to overflow, flood, and submerge property as the District Engineer determines to be necessary in connection with the operation and maintenance of the Mississippi River Navigation Project; and

(B) the continuing right to clear and remove any brush, debris, or natural obstructions that, in the opinion of the District Engineer, may be detrimental to the project.

(e) OWNERSHIP OF STURGEON LAKE BED UNAFFECTED.—Nothing in this section diminishes or otherwise affects the title of the State of Minnesota to the bed of Sturgeon Lake located within the tracts of land described in subsection (b).

(f) CONDITIONS.—The conveyance under subsection (a) is subject to the conditions that the Prairie Island Indian Community shall not—

(1) use the conveyed land for human habitation;

(2) construct any structure on the land without the written approval of the District Engineer; or

(3) conduct gaming (within the meaning of section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703)) on the land.

(g) NO EFFECT ON ELIGIBILITY FOR CERTAIN PROJECTS.—Notwithstanding the conveyance under subsection (a), the land shall continue to be eligible for environmental management planning and other recreational or natural resource development projects on the same basis as before the conveyance.

(h) EFFECT OF SECTION.—Nothing in this section diminishes or otherwise affects the rights granted to the United States pursuant to letters of July 23, 1937, and November 20, 1937, from the Secretary to the Secretary of War and the letters of the Secretary of War in response to the Secretary dated August 18, 1937, and November 27, 1937, under which the Secretary granted certain rights to the Corps of Engineers to overflow the portions of Tracts A, B, and C that lie within the Mississippi River 9-Foot Channel Project boundary and as more particularly shown and depicted on the map entitled ''United States Army Corps of Engineers survey map of the Upper Mississippi River 9-Foot Project, Lock & Dam No. 3 (Red Wing), Land & Flowage Rights'' and dated December 1936.

SEC. 106. BINDING ARBITRATION FOR GILA RIVER INDIAN COMMUNITY RESERVATION CONTRACTS.

(a) AMENDMENTS.—Subsection (f) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(f)), is amended—

(1) in the first sentence—

(A) by striking ''Any lease'' and all that follows through ''affecting land'' and inserting ''Any contract, including a lease, affecting land''; and

(B) by striking ''such lease or contract'' and inserting ''such contract''; and

(2) in the second sentence, by striking ''such leases or contracts entered into pursuant to such Acts'' and inserting ''Such contracts''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the Act of August 9, 1955 (69 Stat. 539, chapter 615) and Public 107–159 (116 Stat. 122).

SEC. 107. PUYALLUP INDIAN TRIBE LAND CLAIMS SETTLEMENT AMENDMENTS.

(a) IN GENERAL.—The Secretary shall—

(1) accept the conveyance of the parcels of land within the Puyallup Reservation described in subsection (b); and

(2) hold the land in trust for the benefit of the Puyallup Indian Tribe.

(b) LAND DESCRIPTION.—The parcels of land referred to in subsection (a) are as follows:

(1) PARCEL A.—Lot B, boundary line adjustment 9508150496: according to the map thereof recorded August 15, 1995, records of Pierce County Auditor, situate in the city of Fife, county of Pierce, State of Washington.

(2) PARCEL B.—Lots 3 and 4, Pierce County Short Plat No. 8908020412: according to the map thereof recorded August 2, 1989, records of Pierce County Auditor, together with portion of SR 5 abutting lot 4, conveyed by deed recorded under recording number 9309070433, described as follows:

That portion of Government lot 1, sec. 07, T. 20 N., R. 4 E., of the Willamette Meridian, described as commencing at Highway Engineer's Station (hereinafter referred to as HES) AL 26 6+38.0 P.O.T. on the AL26 line survey of SR 5, Tacoma to King County line: Thence S88°54′30″ E., along the north line of said lot 1 a distance of 95 feet to the true point of beginning: Thence S01°05′30″ W87.4′ feet: Thence westerly to a point opposite HES AL26 5+50.6 P.O.T. on said AL26 line survey and 75 feet easterly therefrom; Thence northwesterly to a point opposite AL26 5+80.6 on said AL26 line survey and 55 feet easterly therefrom: Thence northerly parallel with said line survey to the north line of said lot 1: Thence N88°54′30″ E., to the true point of beginning.

Except that portion of lot 4 conveyed to the State of Washington by deed recorded under recording number 9308100165 and more particularly described as follows:

Commencing at the northeast corner of said lot 4: Thence N89°53′30″ W., along the north line of said lot 4 a distance of 147.44 feet to the true point of beginning and a point of curvature; thence southwesterly along a curve to the left, the center of which bears S0°06′30″ W., 55.00 feet distance, through a central angle of 89°01′00″, an arc distance of 85.45 feet; Thence S01°05′30″ W., 59.43 feet; Thence N88°54′30″ W., 20.00 feet to a point on the westerly line of said lot 4; Thence N0°57′10″ E., along said westerly line 113.15 feet to the northwest corner of said lot 4; Thence S89°53′30″ east along said north line, a distance of 74.34 feet to the true point of beginning.

Chicago Title Insurance Company Order No. 4293514 Lot A boundary line adjustment recorded under Recording No. 9508150496. According to the map thereof recorded August 15, 1995, records of Pierce County Auditor.

Situate in the city of Fife, county of Pierce, State of Washington.

(3) ADDITIONAL LOTS.—Any lots acquired by the Tribe located in block 7846, 7850, 7945, 7946, 7949, 7950, 8045, or 8049 in the Indian Addition to the city of Tacoma, State of Washington.

SEC. 108. DEFINITION OF NATIVE AMERICAN.

Section 2(9) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001(9)) is amended—

(1) by inserting ''or was'' after ''is''; and

(2) by inserting after ''indigenous to'' the following: ''any geographic area that is now located within the boundaries of''.

SEC. 109. FALLON PAIUTE SHOSHONE TRIBES SETTLEMENT.

(a) SETTLEMENT FUND.—Section 102 of the Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990 (104 Stat. 3289) is amended—

(1) in subsection (C)—

(A) in paragraph (1)—

(i) by striking ''The income of the Fund may be obligated and expended only for the following purposes:'' and inserting the following: ''Notwithstanding any conflicting provision in the original Fund plan during Fund fiscal year 2004 and during each subsequent Fund fiscal year, 6 percent of the average quarterly market value of the Fund during the immediately preceding 3 Fund fiscal years (referred to in this title as the 'Annual 6 percent Amount'), plus any unexpended and unobligated portion of the Annual 6 percent Amount from any of the 3 immediately preceding Fund fiscal years that are subsequent to Fund fiscal year 2003, less any negative income that may accrue on that portion, may be expended or obligated only for the following purposes:''; and

(ii) by adding at the end the following:

''(g) Fees and expenses incurred in connection with the investment of the Fund, for investment management, investment consulting, custodianship, and other transactional services or matters.''; and

(B) by striking paragraph (4) and inserting the following:

''(4) No monies from the Fund other than the amounts authorized under paragraphs (1) and (3) may be expended or obligated for any purpose.

''(5) Notwithstanding any conflicting provision in the original Fund plan, during Fund fiscal year 2004 and during each subsequent Fund fiscal year, not more than 20 percent of the Annual 6 percent Amount for the Fund fiscal year (referred to in this title as the 'Annual 1.2 percent Amount') may be expended or obligated under paragraph (1)(c) for per capita distributions to tribal members, except that during each Fund fiscal year subsequent to Fund fiscal year 2004, any unexpended and unobligated portion of the Annual 1.2 percent Amount from any of the 3 immediately preceding Fund fiscal years that are subsequent to Fund fiscal year 2003, less any negative income that may accrue on that portion, may also be expended or obligated for such per capita payments.''; and

(2) in subsection (D), by adding at the end the following: ''Notwithstanding any conflicting provision in the original Fund plan, the Fallon Business Council, in consultation with the Secretary, shall promptly amend the original Fund plan for purposes of conforming the Fund plan to this title and making nonsubstantive updates, improvements, or corrections to the original Fund plan.''.

(b) DEFINITIONS.—Section 107 of the Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990 (104 Stat. 3293) is amended—

(1) by redesignating subsections (D), (E), (F), and (G) as subsections (F), (G), (H), and (I), respectively; and

(2) by striking subsections (B) and (C) and inserting the following:

''(B) the term 'Fund fiscal year' means a fiscal year of the Fund (as defined in the Fund plan);

''(C) the term 'Fund plan' means the plan established under section 102(F), including the original Fund plan (the 'Plan for Investment, Management, Administration and Expenditure dated December 20, 1991') and all amendments of the Fund plan under subsection (D) or (F)(1) of section 102;

''(D) the term 'income' means the total net return from the investment of the Fund, consisting of all interest, dividends, realized and unrealized gains and losses, and other earnings, less all related fees and expenses incurred for investment management, investment consulting, custodianship and transactional services or matters;

''(E) the term 'principal' means the total amount appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund under section 102(B);''.

SEC. 110. WASHOE TRIBE OF NEVADA AND CALIFORNIA LAND CONVEYANCE.

Section 2 of Public Law 108–67 (117 Stat. 880) is amended by striking ''the parcel'' and all that follows and inserting ''a portion of Lots 3 and 4, as shown on the United States and Encumbrance Map revised January 10, 1991, for the Toiyabe National Forest, Ranger District Carson −1, located in the S½ of NW¼ and N½ of SW¼ of the SE¼ of sec. 27, T. 15N, R. 18E, Mt. Diablo Base and Meridian, comprising 24.3 acres.''.

SEC. 111. INDIAN ARTS AND CRAFTS.

(a) CRIMINAL PROCEEDINGS; CIVIL ACTIONS; MISREPRESENTATIONS.—Section 5 of the Indian Arts and Crafts Act of 1990 (25 U.S.C. 305d) is amended to read as follows:

''SEC. 5. CRIMINAL PROCEEDINGS; CIVIL ACTIONS.

''(a) DEFINITION OF FEDERAL LAW ENFORCEMENT OFFICER.—In this section, the term 'Federal law enforcement officer' has the meaning given the term in section 115(c) of title 18, United States Code.

''(b) CRIMINAL PROCEEDINGS.—

''(1) REFERRAL.—On receiving a complaint of a violation of section 1159 of title 18, United States Code, the Board may refer the complaint to any Federal law enforcement officer for appropriate investigation.

''(2) FINDINGS.—The findings of an investigation under paragraph (1) shall be submitted to—

''(A) the Attorney General; and

''(B) the Board.

''(3) RECOMMENDATIONS.—On receiving the findings of an investigation in accordance with paragraph (2), the Board may—

''(A) recommend to the Attorney General that criminal proceedings be initiated under section 1159 of that title; and

''(B) provide such support to the Attorney General relating to the criminal proceedings as the Attorney General determines appropriate.

''(c) CIVIL ACTIONS.—In lieu of, or in addition to, any criminal proceeding under subsection (a), the Board may recommend that the Attorney General initiate a civil action pursuant to section 6.''.

(b) Section 6 of the Indian Arts and Crafts Act of 1990 (25 U.S.C. 305e) is amended—

(1) by striking subsection (d);

(2) by redesignating subsections (a) through (c) as subsections (b) through (d), respectively;

(3) by inserting before subsection (b) (as redesignated by paragraph (2)) the following:

''(a) DEFINITIONS.—In this section:

''(1) INDIAN.—The term 'Indian' means an individual that—

''(A) is a member of an Indian tribe; or

''(B) is certified as an Indian artisan by an Indian tribe.

''(2) INDIAN PRODUCT.—The term 'Indian product' has the meaning given the term in any regulation promulgated by the Secretary.

''(3) INDIAN TRIBE.—

''(A) IN GENERAL.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

''(B) INCLUSION.—The term 'Indian tribe' includes an Indian group that has been formally recognized as an Indian tribe by—

''(i) a State legislature;

''(ii) a State commission; or

''(iii) another similar organization vested with State legislative tribal recognition authority.

''(4) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.'';

(4) in subsection (c) (as redesignated by paragraph (2))—

(A) by striking ''of this section''; and

(B) by striking ''suit'' and inserting ''the civil action'';

(5) by striking subsection (d) (as redesignated by paragraph (2)) and inserting the following:

''(d) PERSONS THAT MAY INITIATE CIVIL ACTIONS.—

''(1) IN GENERAL.—A civil action under subsection (b) may be initiated by—

''(A) the Attorney General, at the request of the Secretary acting on behalf of—

''(i) an Indian tribe;

''(ii) an Indian; or

''(iii) an Indian arts and crafts organization;

''(B) an Indian tribe, acting on behalf of—

''(i) the tribe;

''(ii) a member of that tribe; or

''(iii) an Indian arts and crafts organization;

''(C) an Indian; or

''(D) an Indian arts and crafts organizaion.

''(2) DISPOSITION OF AMOUNTS RECOVERED.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an amount recovered in a civil action under this section shall be paid to the Indian tribe, the Indian, or the Indian arts and crafts organization on the behalf of which the civil action was initiated.

''(B) EXCEPTIONS.—

''(i) ATTORNEY GENERAL.—In the case of a civil action initiated under paragraph (1)(A), the Attorney General may deduct from the amount—

''(I) the amount of the cost of the civil action and reasonable attorney's fees awarded under subsection (c), to be deposited in the Treasury and credited to appropriations available to the Attorney General on the date on which the amount is recovered; and

''(II) the amount of the costs of investigation awarded under subsection (c), to reimburse the Board for the activities of the Board relating to the civil action.

''(ii) INDIAN TRIBE.—In the case of a civil action intitated under paragraph (1)(B), the Indian tribe may deduct from the amount—

''(I) the amount of the cost of the civil action; and

''(II) reasonable attorney's fees.'';

(6) in subsection (e), by striking ''(e) In the event that'' and inserting the following:

''(e) SAVINGS PROVISION.—If''; and

(7) by striking subsection (f) and inserting the following:

''(f) REGULATIONS.—Not later than 180 days after the date of enactment of the Native American Omnibus Act of 2005, the Board shall promulgate regulations to include in the definition of the term 'Indian product' examples of each Indian product to provide guidance and notice to Indian artisans, suppliers of the artisans, and consumers of Indian arts and crafts.''.

(c) CONFORMING AMENDMENT.—Section 1159(c) of title 18, United States Code, is amended by striking paragraph (3) and inserting the following:

''(3) the term 'Indian tribe'—

''(A) has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b); and

''(B) includes an Indian group that has been formally recognized as an Indian tribe by—

''(i) a State legislature;

''(ii) a State commission; or

''(iii) another similar organization vested with State legislative tribal recognition authority; and''.

SEC. 112. COLORADO RIVER INDIAN RESERVATION BOUNDARY CORRECTION.

(a) FINDINGS.—Congress finds that—

(1) the Act of March 3, 1865, created the Colorado River Indian Reservation along the Colorado River in Arizona and California for the ''Indians of said river and its tributaries'';

(2) in 1873 and 1874, President Grant issued Executive orders to expand the Reservation southward and to secure the southern boundary of the Reservation at a clearly recognizable geographic location in order to forestall encroachment by non-Indians and conflicts with the Indians of the Reservation;

(3) in 1875, Chandler Robbins conducted the Robbins Survey, delineating the new southern boundary of the Reservation, which included the La Paz land as part of the Reservation;

(4) on May 15, 1876, President Grant issued an Executive order establishing the boundaries of the Reservation as the boundaries delineated by the Robbins Survey;

(5) in 1907, as a result of increasingly frequent trespasses by miners and cattle and at the request of the Bureau of Indian Affairs, the General Land Office provided for a resurvey of the southern and southeastern areas of the Reservation;

(6) in 1914, the General Land Office accepted and approved the Harrington Survey, which confirmed the boundaries that were delineated by the Robbins Survey and established by Executive order in 1876;

(7) on November 19, 1915, the Secretary of the Interior reversed the decision of the General Land Office to accept the Harrington Survey, and, on the recommendation of the Secretary on November 22, 1915, President Wilson issued Executive Order 2273 to correct the error in location of the southern boundary line of the Reservation, effectively excluding the La Paz land from the Reservation;

(8) historical evidence compiled by the Department of the Interior supports the conclusion that—

(A) the recommendation of the Secretary in 1915 that the President issue an Executive order to correct an error in locating the southern boundary was in error; and

(B) the La Paz land should not have been excluded from the Reservation; and

(9) the La Paz land continues to hold cultural and historical significance, as well as economic development potential, for the Tribe, which has consistently sought to have the La Paz land restored to the Reservation.

(b) PURPOSES.—The purposes of this section are—

(1) to correct the south boundary of the Reservation by reestablishing the boundary as the boundary was delineated by the Robbins Survey and affirmed by the Harrington Survey;

(2) to restore the La Paz land to the Reservation, subject to Federal law;

(3) to provide for continued public access to the La Paz land for recreational purposes; and

(4) to require the Secretary to ensure that the Reservation boundary, as corrected by this section, is resurveyed and marked in accordance with the public system of surveys extended over the land.

(c) DEFINITIONS.—In this section:

(1) HARRINGTON SURVEY.—The term ''Harrington Survey'' means the survey of the Reservation conducted by Guy Harrington in 1912.

(2) LA PAZ LAND.—The term ''La Paz land'' means the approximately 16,000 acres attributed to the Reservation by the Robbins Survey.

(3) MAP.—The term ''Map'' means the map prepared by the Secretary, acting through the Bureau of Land Management, entitled ''Colorado River Indian Reservation Boundary Correction'' and dated January 4, 2005.

(4) RESERVATION.—The term ''Reservation'' means the Colorado River Indian Reservation.

(5) ROBBINS SURVEY.—The term ''Robbins Survey'' means the survey of the Reservation conducted by Chandler Robbins in 1875.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(7) TRIBE.—The term ''Tribe'' includes any tribe a member of which resides on the Reservation.

(d) BOUNDARY CORRECTION.—

(1) IN GENERAL.—The boundaries of the Reservation shall include the boundaries that were delineated by the Robbins Survey, affirmed by the Harrington Survey, including the approximately 15,375 acres of Federal land described as ''Land Identified for Transfer to Colorado River Indian Tribes'' on the Map.

(2) REVIEW.—The Map shall be available for review at the Bureau of Land Management.

(3) RESURVEY AND MARKING.—The Secretary shall ensure that the boundary described in paragraph (1) is surveyed and clearly marked in accordance with the public system of surveys extended over the land.

(e) RESTORATION OF RIGHTS, TITLE, AND INTEREST.—

(1) IN GENERAL.—Subject to paragraph (2) and other provisions of Federal law, all right, title, and interest of the United States to the land in the boundaries described in subsection (d)(1) that were excluded from the Reservation pursuant to Executive Order 2273 (relating to the southern boundary line of the Reservation)—

(A) are restored to the Reservation; and

(B) shall be held in trust by the United States on behalf of the Tribe.

(2) EXCLUSIONS.—

(A) STATE LAND.—The 2 parcels of land belonging to the State of Arizona (totaling 320 acres and 520 acres, respectively) that are identified on the Map as ''State Land'' shall be excluded from the land described in paragraph (1).

(B) WATER RIGHTS.—The land described in subsection (d)(1) shall not include any Federal reserve water right to surface water or ground water from any source.

(C) PUBLIC ACCESS.—The public shall have continued access to the land described in subsection (d)(1) for hunting and other recreational purposes in existence on the date of enactment of this Act, in accordance with any rule or regulation promulgated by the Tribe.

(D) ECONOMIC ACTIVITY.—

(i) IN GENERAL.—The land described in subsection (d)(1) shall be subject to any right-of-way, easement, lease, or mining claim in existence on the date of enactment of this Act.

(ii) RECLAMATION PROJECTS.—The United States reserves the right to continue any reclamation project relating to the land described in subsection (d)(1) in existence on the date of enactment of this Act, including the right to access and remove mineral materials for maintenance of the Colorado River.

(iii) ADDITIONAL RIGHTS-OF-WAY.—Notwithstanding any other provision of law, the Secretary, in consultation with the Tribe, shall grant any additional right-of-way (including an expansion or renewal of an existing right-of-way) for a road, utility, or another accommodation to an adjoining landowner or holder of a right-of-way (or their successors and assigns) if the Secretary determines that—

(I) the proposed right-of-way is necessary to the applicant;

(II) the acquisition of the proposed right-of-way will not cause significant harm to the Tribe; and

(III) the proposed right-of-way—

(aa) complies with part 169 of title 25, Code of Federal Regulations; and

(bb) is consistent with this subsection and other generally applicable Federal laws unrelated to the acquisition of interests on trust land.

(iv) EXCEPTION FOR ROADS AND UTILITIES.—Section 169.3 of title 25, Code of Federal Regulations, shall not apply to the expansion or renewal of a right-of-way in existence on the date of enactment of this Act for a road or utility.

(v) FEES.—If the holder of a lease, easement, or right-of-way substantially complies with all terms of the lease, easement, or right-of-way, the fees charged for the renewal of the lease, easement, or right-of-way under this section shall be not greater than the applicable Federal rate for such a lease, easement, or right-of-way at the time of the renewal.

(e) GAMING.—Land taken into trust under this section shall not—

(1) be considered to have been taken into trust for gaming; or

(2) be used for gaming (as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)).

SEC. 113. NATIVE AMERICAN PROGRAMS ACT OF 1974.

(a) INTRA-DEPARTMENTAL COUNCIL ON NATIVE AMERICAN AFFAIRS.—Section 803B(d)(1) of the Native American Programs Act of 1974 (42 U.S.C. 2991b–2(d)(1)) is amended by striking ''There'' and all that follows and inserting the following: ''There is established in the Office of the Secretary the Intra-Departmental Council on Native American Affairs. The Commissioner and the Director of the Indian Health Service shall serve as co-chairpersons of the Council. The co-chairpersons shall advise the Secretary on all matters affecting Native Americans that involve the Department.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 816 of the Native American Programs Act of 1974 (42 U.S.C. 2992d) is amended—

(1) by striking subsections (a) through (c) and inserting the following:

''(a) IN GENERAL.—There are authorized to be appropriated—

''(1) to carry out section 803(d), $8,000,000 for each of fiscal years 2006 through 2010; and

''(2) to carry out provisions of this title other than section 803(d) and any other provision having an express authorization of appropriations, such sums as are necessary for each of fiscal years 2006 through 2010.

''(b) LIMITATION.—Not less than 90 percent of the funds made available to carry out this title for a fiscal year (other than funds made available to carry out sections 803(d), 803A, 803C, and 804, and any other provision of this title having an express authorization of appropriations) shall be expended to carry out section 803(a).'';

(2) by redesignating subsection (d) as subsection (c); and

(3) by striking subsection (e).

(c) REPORTS.—Section 811A of the Native American Programs Act of 1974 (42 U.S.C. 2992–1) is amended—

(1) by striking the section heading and all that follows through ''each year,'' and inserting the following:

''SEC. 811A. REPORTS.

''Every 5 years, the Secretary shall''; and

(2) by striking ''an annual report'' and inserting ''a report''.

SEC. 114. RESEARCH AND EDUCATIONAL ACTIVITIES.

Section 7205(a)(3) of the Native Hawaiian Education Act (20 U.S.C. 7515(a)(3)) is amended—

(1) by redesignating subparagraphs (K) and (L) as subparagraphs (L) and (M), respectively; and

(2) by inserting after subparagraph (J) the following:

''(K) research and educational activities relating to Native Hawaiian law;''.

Subtitle B—Indian Education Provisions

SEC. 121. DEFINITION OF INDIAN STUDENT COUNT.

Section 117(h) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2327(h)) is amended by striking paragraph (2) and inserting the following:

''(2) INDIAN STUDENT COUNT.—

''(A) IN GENERAL.—The term 'Indian student count' means a number equal to the total number of Indian students enrolled in each tribally-controlled postsecondary vocational and technical institution, as determined in accordance with subparagraph (B).

''(B) DETERMINATION.—

''(i) ENROLLMENT.—For each academic year, the Indian student count shall be determined on the basis of the enrollments of Indian students as in effect at the conclusion of—

''(I) in the case of the fall term, the third week of the fall term; and

''(II) in the case of the spring term, the third week of the spring term.

''(ii) CALCULATION.—For each academic year, the Indian student count for a tribally-controlled postsecondary vocational and technical institution shall be the quotient obtained by dividing—

''(I) the sum of the credit-hours of all Indian students enrolled in the tribally-controlled postsecondary vocational and technical institution (as determined under clause (i)); divided by

''(II) 12.

''(iii) SUMMER TERM.—Any credit earned in a class offered during a summer term shall be counted in the determination of the Indian student count for the succeeding fall term.

''(iv) STUDENTS WITHOUT SECONDARY SCHOOL DEGREES.—

''(I) IN GENERAL.—A credit earned at a tribally-controlled postsecondary vocational and technical institution by any Indian student that has not obtained a secondary school degree (or the recognized equivalent of such a degree) shall be counted toward the determination of the Indian student count if the institution at which the student is enrolled has established criteria for the admission of the student on the basis of the ability of the student to benefit from the education or training of the institution.

''(II) PRESUMPTION.—The institution shall be presumed to have established the criteria described in subclause (I) if the admission procedures for the institution include counseling or testing that measures the aptitude of a student to successfully complete a course in which the student is enrolled.

''(III) CREDITS TOWARD SECONDARY SCHOOL DEGREE.—No credit earned by an Indian student for the purpose of obtaining a secondary school degree (or the recognized equivalent of such a degree) shall be counted toward the determination of the Indian student count under this clause.

''(v) CONTINUING EDUCATION PROGRAMS.—Any credit earned by an Indian student in a continuing education program of a tribally-controlled postsecondary vocational and technical institution shall be included in the determination of the sum of all credit hours of the student if the credit is converted to a credit-hour basis in accordance with the system of the institution for providing credit for participation in the program.''.

SEC. 122. NATIVE NATIONS LEADERSHIP, MANAGEMENT, AND POLICY.

(a) FINDINGS.—Congress finds that—

(1) the policy of the United States favors self-determination for Indian tribes;

(2) consistent with the policy described in paragraph (1), Indian tribes are increasingly taking control of the affairs of the tribes in order to realize in practice most of the status afforded the tribes in treaties, court decisions, and legislation;

(3) as a result of the increasing control of the tribes, tribes require enhanced leadership preparation and greater access to information relating to research and analysis of successful models for tribal government and business operations, similar to the information regularly available to Federal, State, and local government agencies;

(4) enabling Indian tribes to develop strong leadership and governing policy is consistent with Federal policy supporting tribal self-determination and increases the likelihood that tribal governments will achieve political and economic self-determination; and

(5) during the last 5 years, the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, in cooperation with the Native Nations Institute at the University of Arizona, pursuant to section 6(7) of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5604(7)), has provided to Indian tribes the leadership and management training, policy analysis, and research of the quality and type required to assist Indian tribes to achieve self-determination.

(b) DEFINITIONS.—Section 4 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5602) is amended—

(1) by redesignating paragraphs (6) through (9) as paragraphs (7) through (10), respectively; and

(2) by inserting after paragraph (5) the following:

''(6) the terms 'Indian tribe' and 'tribe' have the meaning given the term 'Indian tribe' in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b);''.

(c) AUTHORITY OF FOUNDATION.—Section 7(a)(1) of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5605(a)(1)) is amended by striking subparagraph (C) and inserting the following:

''(C) FIELDS OF STUDY.—

''(i) IN GENERAL.—The Foundation may award scholarships, fellowships, internships, and grants to eligible individuals in accordance with this Act for study in fields relating to the environment and Native American and Alaska Native health care and tribal public policy.

''(ii) MINIMUM CRITERIA.—A scholarship, fellowship, internship, or grant awarded under this section shall be awarded to an eligible individual that meets the minimum criteria established by the Foundation.

''(iii) STATE-RECOGNIZED TRIBES, BANDS, NATIONS, AND GROUPS.—Notwithstanding the definition of 'Indian tribe' under section 4, the Foundation may make an award under this section to an individual that is a member of a Native American tribe, band, nation, or other organized group or community that is recognized by a State.''.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 13 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5609) is amended by striking subsection (c) and inserting the following:

''(c) TRAINING IN TRIBAL LEADERSHIP, MANAGEMENT, AND POLICY.—

''(1) IN GENERAL.—There is authorized to be appropriated to carry out section 6(7)—

''(A) $2,500,000 for each of fiscal years 2007 and 2008;

''(B) $4,000,000 for each of fiscal years 2009 and 2010; and

''(C) $13,500,000 for each of fiscal years 2011 through 2016.

''(2) LIMITATIONS.—An appropriation made pursuant to this subsection shall not be subject to section 7(c).''.

Subtitle C—Border Preparedness

SEC. 132. BORDER PREPAREDNESS ON INDIAN LAND.

Subtitle D of title IV of the Homeland Security Act of 2002 (6 U.S.C. 251 et seq.) is amended by adding at the end the following:

''SEC. 447. BORDER PREPAREDNESS PILOT PROGRAM ON INDIAN LAND.

''(a) DEFINITIONS.—In this section:

''(1) INDIAN LAND.—The term 'Indian land' means—

''(A) all land within the boundaries of any Indian reservation; and

''(B) any land the title to which is—

''(i) held in trust by the United States for the benefit of an Indian tribe or individual; or

''(ii) held by any Indian tribe or individual—

''(I) subject to a restriction by the United States against alienation; and

''(II) over which an Indian tribe exercises governmental authority.

''(2) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community that is recognized by the Secretary as—

''(A) eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

''(B) possessing powers of self-government.

''(3) TRIBAL GOVERNMENT.—The term 'tribal government' means the governing body of an Indian tribe.

''(b) PURPOSE.—The purpose of this section is to require the Secretary, acting through the Under Secretary for Border and Transportation Security, to establish a pilot program for tribal governments on Indian land located on or near the border of the United States with Canada or Mexico in order to—

''(1) facilitate the coordination of the response of an Indian tribe to a threat to the security of an international border of the United States with the responses of Federal, State, and local governments;

''(2) enhance the capability of an Indian tribe as a first responder to an illegal crossing of an immigrant over an international border of the United States; and

''(3) provide assistance to Indian tribes in the use by the tribes of effective aerial and ground surveillance technologies, integrated communication systems and equipment, and personnel training.

''(c) PILOT PROGRAM.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary, acting through the Undersecretary for Border and Transportation Security, shall provide funds and other assistance to tribal governments in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(2) USE OF FUNDS AND ASSISTANCE.—

''(A) IN GENERAL.—A tribal government shall use any funds or assistance provided under paragraph (1) consistent with the purposes of this section.

''(B) ADMINISTRATION BY TRIBAL GOVERNMENTS.—A tribal government that receives any funds or assistance under paragraph (1) shall administer the funds or assistance in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(3) SELECTION CRITERIA.—In selecting a tribal government to receive funds or assistance under paragraph (1), the Secretary may take into consideration—

''(A) the distance between the Indian land in the jurisdiction of the tribal government and an international border of the United States;

''(B) the extent to which a border enforcement effort effects the resources of the Indian tribe; and

''(C) the interests of the Indian tribe.

''(d) REPORTS.—

''(1) TRIBAL GOVERNMENTS.—

''(A) IN GENERAL.—Not later than 1 year after receiving funds or assistance under subsection (c), a tribal government shall submit to the Secretary a report in such a manner and containing such information as the Secretary may require.

''(B) INCLUSION.—A report under subparagraph (A) shall include a description of—

''(i) any funds or assistance received by the tribal government under this section;

''(ii) the use of the funds or assistance by the tribal government; and

''(iii) any obstacle encountered by the tribal government in administering the funds or assistance.

''(2) SECRETARY.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to Congress a report describing—

''(A) the information contained in the reports under paragraph (1);

''(B) the degree of success of the Secretary in implementing the pilot program; and

''(C) any recommendation, including a legislative recommendation, of the Secretary relating to the pilot program.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2006 through 2008.''.

TITLE II—OTHER AMENDMENTS TO LAWS RELATING TO NATIVE AMERICANS

Subtitle A—Indian Land Leasing

SEC. 201. AUTHORIZATION OF 99-YEAR LEASES.

(a) IN GENERAL.—Subsection (a) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(a)), is amended in the second sentence—

(1) by striking ''Moapa Indian reservation'' and inserting ''Moapa Indian Reservation,'';

(2) by inserting ''the reservation of the Confederated Tribes of the Umatilla Indian Reservation,'' before ''the Burns Paiute Reservation,'';

(3) by inserting ''the'' before ''Yavapai-Prescott'';

(4) by inserting ''the Muckleshoot Indian Reservation and land held in trust for the Muckleshoot Indian Tribe,'' after ''the Cabazon Indian reservation,'';

(5) by striking ''Washington,,'' and inserting ''Washington,'';

(6) by inserting ''land held in trust for the Prairie Band Potawatomi Nation,'' before ''land held in trust for the Cherokee Nation of Oklahoma'';

(7) by inserting ''land held in trust for the Fallon Paiute Shoshone Tribes,'' before ''land held in trust for the Pueblo of Santa Clara''; and

(8) by inserting ''land held in trust for the Yurok Tribe, land held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria,'' after ''Pueblo of Santa Clara,''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to any lease entered into or renewed after the date of enactment of this Act.

SEC. 202. CERTIFICATION OF RENTAL PROCEEDS.

Notwithstanding any other provision of law, any actual rental proceeds from the lease of land acquired under section 1 of Public Law 91–229 (25 U.S.C. 488) certified by the Secretary of the Interior shall be deemed—

(1) to constitute the rental value of that land; and

(2) to satisfy the requirement for appraisal of that land.

Subtitle B—Navajo Health Contracting

SEC. 211. NAVAJO HEALTH CONTRACTING.

The Navajo Health Foundation/Sage Memorial Hospital in Ganado, Arizona, shall be considered to be a tribal contractor under the Indian Self-Determination and Education Assistance Act for the purposes of section 102(d) and subsections (k) and (o) of section 105 of that Act (25 U.S.C. 450f(d), 450j) provided that the Hospital remains the authorized tribal organization (as defined in section 4 of that Act (25 U.S.C. 450b)) of the Navajo Nation.

Subtitle C—Probate Technical Correction

SEC. 221. PROBATE REFORM.

(a) NONTESTAMENTARY DISPOSITION.—Subsection (a)(2)(D)(iv)(I)(aa) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) (as amended by section 3(a) of the American Indian Probate Reform Act of 2004 (Public Law 108–374)) is amended—

(1) by striking ''clause (iii)'' and inserting ''this subparagraph''; and

(2) in subitem (BB), by striking ''any co-owner'' and inserting ''not more than 1 co-owner''.

(b) APPLICABLE FEDERAL LAW.—Subsection (h)(2) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) (as amended by section 3(d) of the American Indian Probate Reform Act of 2004 (Public Law 108–374)) is amended—

(1) by inserting ''specifically'' after ''pertains''; and

(2) in subparagraph (B), by striking ''allotted lands'' and inserting ''trust or restricted allotments''.

(c) PARTITION OF HIGHLY FRACTIONATED INDIAN LAND.—Subsection (d) of section 205 of the Indian Land Consolidation Act (25 U.S.C. 2204) (as amended by section 4 of the American Indian Probate Reform Act of 2004 (Public Law 108–374)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (G)(ii)(I), by striking ''a higher value of the land'' and inserting ''a value of the land that is equal to or greater than that of the earlier appraisal''; and

(B) in subparagraph (I)(iii)—

(i) in subclause (III), by inserting ''(if any)'' after ''this section''; and

(ii) in subclause (IV)(bb), by striking ''to implement this section'' and inserting ''under paragraph (5)''; and

(2) in the second sentence of paragraph (5), by striking ''shall'' and inserting ''may''.

(d) PURCHASE OPTION AT PROBATE.—Subsection (p)(6) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) (as added by section 6(a)(2) of the American Indian Probate Reform Act of 2004 (Public Law 108–374)) is amended—

(1) in the first sentence, by striking ''Proceeds'' and inserting the following:

''(A) IN GENERAL.—Proceeds''; and

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

''(B) HOLDING IN TRUST.—Proceeds described in subparagraph (A) shall be deposited and held in an account as trust personalty if the interest sold would otherwise pass to—

''(i) the heir, by intestate succession under subsection (a); or

''(ii) the devisee in trust or restricted status under subsection (b)(1).''.

(e) TRIBAL PROBATE CODES.—Section 206 of the Indian Land Consolidation Act (25 U.S.C. 2205) is amended—

(1) in subsection (b)(3), by striking subparagraph (A) and inserting the following:

''(A) the date that is 1 year after the date on which the Secretary makes the certification required under section 8(a)(4) of the American Indian Probate Reform Act of 2004; or''; and

(2) in paragraph (2)(A)(i)(II)(bb) of subsection (c) (as amended by section 6(a)(3) of

the American Indian Probate Reform Act of 2004 (Public Law 108–374)), by inserting ''in writing'' after ''agrees''.

(f) EFFECTIVE DATE.—The amendments made by this section take effect as if included in the American Indian Probate Reform Act of 2004 (Public Law 108–374).

By Mr. BINGAMAN:

S. 537. A bill to increase the number of well-trained mental health service professionals (including those based in schools) providing clinical mental health care to children and adolescents, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. BINGAMAN. Mr. President, the landmark report Mental Health: A Report of the Surgeon General brought the hidden mental health crisis to the attention of the U.S. public. According to that report, 13.7 million of the Nation's children and adolescents, twenty percent, have a diagnosable mental disorder, the most common of which include Anxiety Disorder, Attention Deficit/Hyperactivity Disorder (ADHD) and Depression. Unfortunately, only one out of five of those in need will receive mental health care. One of the primary reasons for this across the Nation is that mental health services to help treat children are in short supply. Long waiting lists for children seeking care, even those in crisis, are not uncommon. In New Mexico, it's estimated that 56,000 children and adolescents have a mental or emotional disorder. Of these, almost 20,000 have serious emotional disorders. As of June 2003, there were only 13 licensed child and adolescent psychiatrists to serve the entire State of New Mexico. In addition, there are fewer trained psychologists and social workers per 100,000 population in New Mexico than the country as a whole. Children with untreated mental disorders are at a higher risk for school failure and dropping out, violence, drug abuse, suicide, and criminal activity. A 2002 report documented that approximately one in seven youth in New Mexico detention centers incarcerated because mental health care is not available. From January to December 2001, 718 New Mexico youth were collectively incarcerated for 31.3 years just to wait for a mental health treatment opening. Clearly, something needs to be done to address this growing shortage of these important health professionals.

The Surgeon General states that there is a dearth of child psychiatrists, appropriately trained clinical child psychologists, or social workers. Nationwide, 3,543 urban, suburban, and rural localities have been designated Mental Health Professional Shortage Areas by the Federal Government due to their severe lack of psychiatrists, psychologists, social workers and other professionals to serve children and adults. According to the U.S. Bureau of Health Professions, the demand for the services of child and adolescent psychiatrists is projected to increase by 100 percent by 2020, while the number of these professionals is expected to increase by only 30 percent resulting in a shortage of over 4,000 child and adolescent psychiatrists by that year. The National Center for Education Statistics within the U.S. Department of Education reports that the national average student-to-school counselor ratio in U.S. schools is 513:1, more than double the recommended ratio of 250:1.

In the United States, there are approximately 7,000 child and adolescent psychiatrists and only 300 new child and adolescent psychiatrists are trained each year. In 2000, the Bureau of Health Professions projected that between 1995 and 2020, the use of child and adolescent psychiatrists will increase by 100 percent.

While the Nation as a whole is experiencing a shortage of mental health professionals, the problem is most acute in the rural areas. In NM for example, 4/5 of the psychiatrists in NM are located in Bernalillo and Santa Fe Counties. This area is also home to 70 percent of the psychologists, 53 percent of counselors and 47 percent of the social workers—leaving the rest of the State at a severe disadvantage.

It is in response to the mental health workforce crisis that I rise with my colleagues Senator COLLINS of Maine, Senator HARKIN of Iowa, Senator DODD of Connecticut, Senator KENNEDY from Massachusetts, Senator REED from Rhode Island and Senator SARBANES of Maryland, to offer The Child Healthcare Crisis Relief Act. This bill creates incentives to help recruit and retain child mental health professionals providing direct clinical care, and to improve, expand, or help create programs to train child mental health professionals. It provides loan repayment and scholarships for child mental health and school-based service professionals as well as internships and field placements in child mental health services and training for paraprofessionals who work in children's mental health clinical settings. This bill also provides grants to graduate schools to help develop and expand child and adolescent mental health programs. It allows for an increase in the number of Child and Adolescent Psychiatrists permitted under the Medicare Graduate Medical Education Program and, extends the Board Eligibility period for residents and fellows from four years to six years.

Finally, this bill asks the Secretary to prepare a report on the distribution and need for child mental health and school-based professionals with respect to specialty certifications, practice characteristics, professional licensure, practice types, locations, education, and training, broken down by State so that we may better comprehend the mental health workforce needs that are facing our Nation.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 537

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Child Health Care Crisis Relief Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Center for Mental Health Services estimates that 20 percent or 13,700,000 of the Nation's children and adolescents have a diagnosable mental health disorder, and about ⅔ of these children and adolescents do not receive mental health care.

(2) According to ''Mental Health: A Report of the Surgeon General'' in 1999, there are approximately 6,000,000 to 9,000,000 children and adolescents in the United States (accounting for 9 to 13 percent of all children and adolescents in the United States) who meet the definition for having a serious emotional disturbance.

(3) According to the Center for Mental Health Services, approximately 5 to 9 percent of children and adolescents in the United States meet the definition for extreme functional impairment.

(4) According to the Surgeon General's Report, there are particularly acute shortages in the numbers of mental health service professionals serving children and adolescents with serious emotional disorders.

(5) According to the National Center for Education Statistics in the Department of Education, there are approximately 513 students for each school counselor in United States schools, which ratio is more than double the recommended ratio of 250 students for each school counselor.

(6) According to a year 2000 estimate of the Bureau of Health Professions, the demand for the services of child and adolescent psychiatry is projected to increase by 100 percent by 2020.

(7) The development and application of knowledge about the impact of disasters on children, adolescents, and their families has been impeded by critical shortages of qualified researchers and practitioners specializing in this work.

(8) According to the Bureau of the Census, the population of children and adolescents in the United States under the age of 18 is projected to grow by more than 40 percent, from 70,000,000 to more than 100,000,000 by 2050.

SEC. 3. LOAN REPAYMENTS, SCHOLARSHIPS, AND GRANTS TO IMPROVE CHILD AND ADOLESCENT MENTAL HEALTH CARE.

Subpart 2 of part E of title VII of the Public Health Service Act (42 U.S.C. 295 et seq.) is amended by adding at the end the following:

''SEC. 771. LOAN REPAYMENTS, SCHOLARSHIPS, AND GRANTS TO IMPROVE CHILD AND ADOLESCENT MENTAL HEALTH CARE.

''(a) LOAN REPAYMENTS FOR CHILD AND ADOLESCENT MENTAL HEALTH SERVICE PROFESSIONALS.—

''(1) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may establish a program of entering into contracts on a competitive basis with eligible individuals (as defined in paragraph (2)) under which—

''(A) the eligible individual agrees to be employed full-time for a specified period of at least 2 years in providing mental health services to children and adolescents; and

''(B) the Secretary agrees to make, during the period of employment described in subparagraph (A), partial or total payments on behalf of the individual on the principal and

interest due on the undergraduate and graduate educational loans of the eligible individual.

''(2) ELIGIBLE INDIVIDUAL.—For purposes of this section, the term 'eligible individual' means an individual who—

''(A) is receiving specialized training or clinical experience in child and adolescent mental health in psychiatry, psychology, school psychology, psychiatric nursing, social work, school social work, marriage and family therapy, school counseling, or professional counseling and has less than 1 year remaining before completion of such training or clinical experience; or

''(B)(i) has a license in a State to practice allopathic medicine, osteopathic medicine, psychology, school psychology, psychiatric nursing, social work, school social work, marriage and family therapy, school counseling, or professional counseling; and

''(ii)(I) is a mental health service professional who completed (but not before the end of the calendar year in which this section is enacted) specialized training or clinical experience in child and adolescent mental health services described in subparagraph (A); or

''(II) is a physician who graduated from (but not before the end of the calendar year in which this section is enacted) an accredited child and adolescent psychiatry residency or fellowship program in the United States.

''(3) ADDITIONAL ELIGIBILITY REQUIREMENTS.—The Secretary may not enter into a contract under this subsection with an eligible individual unless the individual—

''(A) is a United States citizen or a permanent legal United States resident; and

''(B) if enrolled in a graduate program (including a medical residency or fellowship), has an acceptable level of academic standing as determined by the Secretary.

''(4) PRIORITY.—In entering into contracts under this subsection, the Secretary shall give priority to applicants who—

''(A) are or will be working with high priority populations;

''(B) have familiarity with evidence-based methods in child and adolescent mental health services;

''(C) demonstrate financial need; and

''(D) are or will be—

''(i) working in the publicly funded sector;

''(ii) working in organizations that serve underserved populations; or

''(iii) willing to provide patient services—

''(I) regardless of the ability of a patient to pay for such services; or

''(II) on a sliding payment scale if a patient is unable to pay the total cost of such services.

''(5) MEANINGFUL LOAN REPAYMENT.—If the Secretary determines that funds appropriated for a fiscal year to carry out this subsection are not sufficient to allow a meaningful loan repayment to all expected applicants, the Secretary shall limit the number of contracts entered into under paragraph (1) to ensure that each such contract provides for a meaningful loan repayment.

''(6) AMOUNT.—

''(A) MAXIMUM.—For each year of the employment period described in paragraph (1)(A), the Secretary shall not, under a contract described in paragraph (1), pay more than $35,000 on behalf of an individual.

''(B) CONSIDERATION.—In determining the amount of payments to be made on behalf of an eligible individual under a contract described in paragraph (1), the Secretary shall consider the income and debt load of the eligible individual.

''(7) APPLICABILITY OF CERTAIN PROVISIONS.—The provisions of sections 338E and 338F shall apply to the program established under paragraph (1) to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in subpart III of part D of title III.

''(8) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $10,000,000 for each of fiscal years 2006 through 2010.

''(b) SCHOLARSHIPS FOR STUDENTS STUDYING TO BECOME CHILD AND ADOLESCENT MENTAL HEALTH SERVICE PROFESSIONALS.—

''(1) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may establish a program to award scholarships on a competitive basis to eligible students who agree to enter into full-time employment (as described in paragraph (4)(C)) as a child and adolescent mental health service professional after graduation or completion of a residency or fellowship.

''(2) ELIGIBLE STUDENT.—For purposes of this subsection, the term 'eligible student' means a United States citizen or a permanent legal United States resident who—

''(A) is enrolled or accepted to be enrolled in a graduate program that includes specialized training or clinical experience in child and adolescent mental health in psychology, school psychology, psychiatric nursing, social work, school social work, marriage and family therapy, school counseling, or professional counseling; or

''(B) is enrolled or accepted to be enrolled in an accredited graduate training program of allopathic or osteopathic medicine in the United States and intends to complete an accredited residency or fellowship in child and adolescent psychiatry.

''(3) PRIORITY.—In awarding scholarships under this subsection, the Secretary shall give—

''(A) highest priority to applicants who previously received a scholarship under this subsection and satisfy the criteria described in subparagraph (B); and

''(B) second highest priority to applicants who—

''(i) demonstrate a commitment to working with high priority populations;

''(ii) have familiarity with evidence-based methods in child and adolescent mental health services;

''(iii) demonstrate financial need; and

''(iv) are or will be—

''(I) working in the publicly funded sector;

''(II) working in organizations that serve underserved populations; or

''(III) willing to provide patient services—

''(aa) regardless of the ability of a patient to pay for such services; or

''(bb) on a sliding payment scale if a patient is unable to pay the total cost of such services.

''(4) REQUIREMENTS.—The Secretary may award a scholarship to an eligible student under this subsection only if the eligible student agrees—

''(A) to complete any graduate training program, internship, residency, or fellowship applicable to that eligible student under paragraph (2);

''(B) to maintain an acceptable level of academic standing (as determined by the Secretary) during the completion of such graduate training program, internship, residency, or fellowship; and

''(C) to be employed full-time after graduation or completion of a residency or fellowship, for at least the number of years for which a scholarship is received by the eligible student under this subsection, in providing mental health services to children and adolescents.

''(5) USE OF SCHOLARSHIP FUNDS.—A scholarship awarded to an eligible student for a school year under this subsection may be used to pay for only tuition expenses of the school year, other reasonable educational expenses (including fees, books, and laboratory expenses incurred by the eligible student in the school year), and reasonable living expenses, as such tuition expenses, reasonable educational expenses, and reasonable living expenses are determined by the Secretary.

''(6) AMOUNT.—The amount of a scholarship under this subsection shall not exceed the total amount of the tuition expenses, reasonable educational expenses, and reasonable living expenses described in paragraph (5).

''(7) APPLICABILITY OF CERTAIN PROVISIONS.—The provisions of sections 338E and 338F shall apply to the program established under paragraph (1) to the same extent and in the same manner as such provisions apply to the National Health Service Corps Scholarship Program established in subpart III of part D of title III.

''(8) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $5,000,000 for each of fiscal years 2006 through 2010.

''(c) CLINICAL TRAINING GRANTS FOR PROFESSIONALS.—

''(1) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, and in cooperation with the Administrator of the Substance Abuse and Mental Health Services Administration, may establish a program to award grants on a competitive basis to accredited institutions of higher education to establish or expand internships or other field placement programs for students receiving specialized training or clinical experience in child and adolescent mental health in the fields of psychiatry, psychology, school psychology, psychiatric nursing, social work, school social work, marriage and family therapy, school counseling, or professional counseling.

''(2) PRIORITY.—In awarding grants under this subsection, the Secretary shall give priority to applicants that—

''(A) have demonstrated the ability to collect data on the number of students trained in child and adolescent mental health and the populations served by such students after graduation;

''(B) have demonstrated familiarity with evidence-based methods in child and adolescent mental health services; and

''(C) have programs designed to increase the number of professionals serving high priority populations.

''(3) REQUIREMENTS.—The Secretary may award a grant to an applicant under this subsection only if the applicant agrees that—

''(A) any internship or other field placement program assisted under the grant will prioritize cultural competency;

''(B) students benefitting from any assistance under this subsection will be United States citizens or permanent legal United States residents;

''(C) the institution will provide to the Secretary such data, assurances, and information as the Secretary may require; and

''(D) with respect to any violation of the agreement between the Secretary and the institution, the institution will pay such liquidated damages as prescribed by the Secretary by regulation.

''(4) APPLICATION.—Each institution of higher education desiring a grant under this section shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require including a description of the experience of such institution in working with child and adolescent mental health issues.

''(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $10,000,000 for each of fiscal years 2006 through 2010.

''(d) PROGRESSIVE EDUCATION GRANTS FOR PARAPROFESSIONALS.—

''(1) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, and in cooperation with the Administrator of the Substance Abuse and Mental Health Services Administration, may establish a program to award grants on a competitive basis to State-licensed mental health nonprofit and for-profit organizations, including accredited institutions of higher education, (in this subsection referred to as 'organizations') to enable such organizations to pay for programs for preservice or in-service training of paraprofessional child and adolescent mental health workers.

''(2) DEFINITION.—For purposes of this subsection, the term 'paraprofessional child and adolescent mental health worker' means an individual who is not a mental health service professional, but who works at the first stage of contact with children and families who are seeking mental health services.

''(3) PRIORITY.—In awarding grants under this subsection, the Secretary shall give priority to organizations that—

''(A) have demonstrated the ability to collect data on the number of paraprofessional child and adolescent mental health workers trained by the applicant and the populations served by these workers after the completion of the training;

''(B) have familiarity with evidence-based methods in child and adolescent mental health services; and

''(C) have programs designed to increase the number of paraprofessional child and adolescent mental health workers serving high priority populations.

''(4) REQUIREMENTS.—The Secretary may award a grant to an organization under this subsection only if the organization agrees that—

''(A) any training program assisted under the grant will prioritize cultural competency;

''(B) the organization will provide to the Secretary such data, assurances, and information as the Secretary may require; and

''(C) with respect to any violation of the agreement between the Secretary and the organization, the organization will pay such liquidated damages as prescribed by the Secretary by regulation.

''(5) APPLICATION.—Each organization desiring a grant under this subsection shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require including a description of the experience of the organization in working with paraprofessional child and adolescent mental health workers.

''(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $5,000,000 for each of fiscal years 2006 through 2010.

''(e) CHILD AND ADOLESCENT MENTAL HEALTH PROGRAM DEVELOPMENT GRANTS.—

''(1) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may establish a program to increase the number of well-trained child and adolescent mental health service professionals in the United States by awarding grants on a competitive basis to accredited institutions of higher education to enable such institutions to establish or expand accredited graduate child and adolescent mental health programs.

''(2) PRIORITY.—In awarding grants under this subsection, the Secretary shall give priority to applicants that—

''(A) demonstrate familiarity with the use of evidence-based methods in child and adolescent mental health services;

''(B) provide experience in and collaboration with community-based child and adolescent mental health services;

''(C) have included normal child development education in their curricula; and

''(D) demonstrate commitment to working with high priority populations.

''(3) USE OF FUNDS.—Funds awarded under this subsection may be used to establish or expand any accredited graduate child and adolescent mental health program in any manner deemed appropriate by the Secretary, including improving the coursework, related field placements, or faculty of such program.

''(4) REQUIREMENTS.—The Secretary may award a grant to an accredited institution of higher education under this subsection only if the institution agrees that—

''(A) any child and adolescent mental health program assisted under the grant will prioritize cultural competency;

''(B) the institution will provide to the Secretary such data, assurances, and information as the Secretary may require; and

''(C) with respect to any violation of the agreement between the Secretary and the institution, the institution will pay such liquidated damages as prescribed by the Secretary by regulation.

''(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $15,000,000 for each of fiscal years 2006 through 2010.

''(f) DEFINITIONS.—In this section:

''(1) HIGH PRIORITY POPULATION.—The term 'high priority population' means a population that has a significantly greater incidence than the national average of children who have serious emotional disturbances, children who are racial and ethnic minorities, or children who live in underserved urban or rural areas.

''(2) MENTAL HEALTH SERVICE PROFESSIONAL.—The term 'mental health service professional' means an individual with a graduate or postgraduate degree from an accredited institution of higher education in psychiatry, psychology, school psychology, psychiatric nursing, social work, school social work, marriage and family counseling, school counseling, or professional counseling.

''(3) SPECIALIZED TRAINING OR CLINICAL EXPERIENCE IN CHILD AND ADOLESCENT MENTAL HEALTH.—The term 'specialized training or clinical experience in child and adolescent mental health' means training and clinical experience that—

''(A) is part of or occurs after completion of an accredited graduate program in the United States for training mental health service professionals;

''(B) consists of at least 500 hours of training or clinical experience in treating children and adolescents; and

''(C) is comprehensive, coordinated, developmentally appropriate, and of high quality to address the unique ethnic and cultural diversity of the United States population.''.

SEC. 4. AMENDMENTS TO SOCIAL SECURITY ACT TO IMPROVE CHILD AND ADOLESCENT MENTAL HEALTH CARE.

(a) INCREASING NUMBER OF CHILD AND ADOLESCENT PSYCHIATRY RESIDENTS PERMITTED TO BE PAID UNDER THE MEDICARE GRADUATE MEDICAL EDUCATION PROGRAM.—Section 1886(h)(4)(F) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(F)) is amended by adding at the end the following:

''(iii) INCREASE ALLOWED FOR TRAINING IN CHILD AND ADOLESCENT PSYCHIATRY.—In applying clause (i), there shall not be taken into account such additional number of full-time equivalent residents in the field of allopathic or osteopathic medicine who are residents or fellows in child and adolescent psychiatry as the Secretary determines reasonable to meet the need for such physicians as demonstrated by the 1999 report of the Department of Health and Human Services entitled 'Mental Health: A Report of the Surgeon General'.''.

(b) EXTENSION OF MEDICARE BOARD ELIGIBILITY PERIOD FOR RESIDENTS AND FELLOWS IN CHILD AND ADOLESCENT PSYCHIATRY.—

(1) IN GENERAL.—Section 1886(h)(5)(G) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(G)) is amended—

(A) in clause (i), by striking ''and (v)'' and inserting ''(v), and (vi)''; and

(B) by adding at the end the following:

''(vi) CHILD AND ADOLESCENT PSYCHIATRY TRAINING PROGRAMS.—In the case of an individual enrolled in a child and adolescent psychiatry residency or fellowship program approved by the Secretary, the period of board eligibility and the initial residency period shall be the period of board eligibility for the specialty of general psychiatry, plus 2 years for the subspecialty of child and adolescent psychiatry.''.

(2) CONFORMING AMENDMENT.—Section 1886(h)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(F)) is amended by striking ''subparagraph (G)(v)'' and inserting ''clauses (v) and (vi) of subparagraph (G)''.

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to residency training years beginning on or after July 1, 2006.

SEC. 5. CHILD MENTAL HEALTH PROFESSIONAL REPORT.

(a) STUDY.—The Administrator of the Health Resources and Services Administration (in this section referred to as the ''Administrator'') shall study and make findings and recommendations on the distribution and need for child mental health service professionals, including—

(1) the need for specialty certifications;

(2) the breadth of practice types;

(3) the adequacy of locations;

(4) the adequacy of education and training; and

(5) an evaluation of best practice characteristics.

(b) DISAGGREGATION.—The results of the study required by subsection (a) shall be disaggregated by State.

(c) REPORT.—Not later than 2 years after the date of enactment of this Act, the Administrator shall submit to the appropriate committees of Congress and make publicly available a report on the study, findings, and recommendations required by subsection (a).

SEC. 6. REPORTS.

(a) TRANSMISSION.—The Secretary of Health and Human Services shall transmit a report described in subsection (b) to Congress—

(1) not later than 3 years after the date of the enactment of this Act; and

(2) not later than 5 years after the date of the enactment of this Act.

(b) CONTENTS.—The reports transmitted to Congress under subsection (a) shall address each of the following:

(1) The effectiveness of the amendments made by, and the programs carried out under, this Act in increasing the number of child and adolescent mental health service professionals and paraprofessional child and adolescent mental health workers.

(2) The demographics of the individuals served by such increased number of child and adolescent mental health service professionals and paraprofessional child and adolescent mental health workers.

By Mr. BIDEN:

S. 538. A bill to educate health professionals concerning substance use disorders and addiction; to the Committee on Health, Education, Labor, and Pensions.

Mr. BIDEN. Mr. President, I rise today to introduce legislation to address the problem of substance abuse in our country.

The Robert Wood Johnson Foundation has called substance abuse America's No. 1 health problem. I don't think that overstates it.

Most of us knows someone—a family member, maybe a neighbor, a colleague, or a friend—who is addicted to drugs or alcohol. In fact, nearly 15 million people in this country abuse alcohol or are alcoholics. More than 19 million use drugs, and an estimated 4 million are in need of treatment but not receiving it.

Drug and alcohol abuse has far-reaching consequences. It exacerbates social ills. It is a public safety problem. It is a public health problem. It is a public expenditure problem. There is an undeniable correlation between substance abuse and crime. Eighty percent of the 2 million men and women behind bars today have a history of drug and alcohol abuse or addiction or were arrested for a drug-related crime. Illegal drugs are responsible for thousands of deaths each year. They fuel the spread of AIDS and hepatitis C. They contribute to child abuse, domestic violence, and sexual assault. And we all pay the price.

It costs this Nation almost $275 billion in law enforcement, criminal justice expenses, medical bills, and lost earnings each year. That means that preventing and treating substance abuse makes sense. It makes good criminal justice sense. It makes public health sense. It makes budgetary sense. Not to mention the fact that it is the right thing to do.

Yet there remains a reluctance to recognize substance abuse as a health issue. There is a reluctance to accept addiction as a disease. It is a reluctance that has kept public policy from asserting that addicts should be in treatment. Whether addicts are in prison or out, it seems to me, treatment is the only legitimate choice.

But it is not only about increasing access to treatment. It is also about moving treatment into the medical mainstream. Unless family doctors, nurses, physician assistants, and social workers can identify addiction when they see it, unless they know how to intervene, we will never make any real progress.

That aspect of the challenge came into sharp focus for me when I read a report a few years ago by the National Center on Addiction and Substance Abuse at Columbia University, CASA.

That report said that fewer than 1 percent of doctors presented with the classic profile of an alcoholic older woman could diagnose it properly. Eighty-two percent misdiagnosed it as depression, some treatments for which are dangerous when taken with alcohol. A follow-up study showed that 94 percent of primary care physicians fail to diagnose substance abuse when presented with the classic symptoms, and 41 percent of pediatricians fail to diagnose illegal drug use in teenage patients.

No one recognizes this problem better than the doctors themselves. Fewer than one in five—only 19 percent—feel confident about diagnosing alcoholism. And only 17 percent feel qualified to identify illegal drug use. Having said that, even if they diagnose it, most doctors don't believe that treatment works.

Among practitioners, as well as policymakers, we need to get the message out loud and clear: Addiction is a chronic relapsing disease, and as with other such diseases, while there may not be a cure, medical treatment can help control it.

The medical professionals have to be educated to recognize the signs of substance abuse and to pursue the effective therapies that are available. That is why I am introducing legislation to help train medical professionals to prevent and recognize addiction and refer patients to treatment if they need it. Representative PATRICK KENNEDY will introduce companion legislation in the House of Representatives.

Like treatment, training works. According to a study published in the Brown University Digest of Addiction Theory and Application, 91 percent of health professionals who took part in training on addiction at Boston University were using the techniques they learned 1 to 5 years later.

Every family doctor does not need to be an addiction specialist, but they do need to be able to recognize the signs. And they need to know what help is available.

My legislation does the following three things: authorizes $9 million in grants to train medical generalists to recognize substance abuse in their patients and their families and know how to properly refer them for treatment; authorizes $6 million to fund substance abuse faculty fellows at educational institutions to teach courses on substance abuse, incorporate substance abuse issues into to required courses at the institution, and educate health professionals about issues related to non-therapeutic uses of prescription medications; and establishes centers of excellence at medical centers or universities across the United States to (1) initiate, promote and implement training, research and clinical activities related to special areas of substance abuse and (2) provide opportunities for interdisciplinary collaboration in curriculum development, clinical practice, research and policy analysis. The bill authorizes $6 million for this purpose.

These are additional steps—and, in my view, crucial ones to help bridge the divide between research and practice. They will help chip away at the incredible substance abuse-related costs we face each year in human as well as monetary terms.

I hope my colleagues will join me to support this important legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 538

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Health Professionals Substance Abuse Education Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) Illegal drugs and alcohol are responsible for thousands of deaths each year, and they fuel the spread of a number of communicable diseases, including AIDS and Hepatitis C, as well as some of the worst social problems in the United States, including child abuse, domestic violence, and sexual assault.

(2) There are an estimated 19,500,000 current drug users in America, nearly 4,000,000 of whom are addicts. An estimated 14,800,000 Americans abuse alcohol or are alcoholic.

(3) There are nearly 27,000,000 children of alcoholics in America, almost 11,000,000 of whom are under 18 years of age. Countless other children are affected by substance abusing parents or other caretakers. Health professionals are uniquely positioned to help reduce or prevent alcohol and other drug-related impairment by identifying affected families and youth and by providing early intervention.

(5) Drug addiction is a chronic relapsing disease. As with other chronic relapsing diseases (such as diabetes, hypertension and asthma), there is no cure, although a number of treatments can effectively control the disease. According to an article published in the Journal of the American Medical Association, treatment for addiction works as well as treatment for other chronic relapsing diseases.

(6) Drug treatment is cost effective, even when compared with residential treatment, the most expensive type of treatment. Residential treatment for cocaine addiction costs between $15,000 and $20,000 a year, a substantial savings compared to incarceration (costing nearly $40,000 a year), or untreated addiction (costing more than $43,000 a year). Also, in 1998, substance abuse and addiction accounted for approximately $10,000,000,000 in Federal, State, and local government spending simply to maintain the child welfare system. The economic costs associated with fetal alcohol syndrome were estimated at $54,000,000,000 in 2003.

(7) Many doctors and other health professionals are unprepared to recognize substance abuse in their patients or their families and intervene in an appropriate manner. Only 56 percent of residency programs have a required curriculum in preventing or treating substance abuse.

(8) Fewer than 1 in 5 doctors (only 19 percent) feel confident about diagnosing alcoholism, and only 17 percent feel qualified to identify illegal drug use.

(9) Most doctors who are in a position to make a diagnosis of alcoholism or drug addiction do not believe that treatment works (less than 4 percent for alcoholism and only 2 percent for drugs).

(10) According to a survey by the National Center on Addiction and Substance Abuse at Columbia University (referred to in this section as ''CASA''), 94 percent of primary care physicians and 40 percent of pediatricians presented with a classic description of an alcoholic or drug addict, respectively, failed to properly recognize the problem.

(11) Another CASA report revealed that fewer than 1 percent of doctors presented with the classic profile of an alcoholic older woman could diagnose it properly. Eighty-two percent misdiagnosed it as depression, some treatments for which are dangerous when taken with alcohol.

(12) Training can greatly increase the degree to which medical and other health professionals screen patients for substance abuse. It can also increase the manner by which such professionals screen children and youth who may be impacted by the addiction of a parent or other primary caretaker. Boston University Medical School researchers designed and conducted a seminar on detection and brief intervention of substance abuse for doctors, nurses, physician's assistants, social workers and psychologists. Follow-up studies reveal that 91 percent of those who participated in the seminar report that they are still using the techniques up to 5 years later.

(13) The total economic costs of untreated addiction is estimated to be $274,800,000,000. Arming health care professionals with the information they need in order to intervene and prevent further substance abuse could lead to a significant cost savings.

(14) A study conducted by doctors at the University of Wisconsin found a $947 net savings per patient in health care, accident, and criminal justice costs for each individual screened and, if appropriate, for whom intervention was made, with respect to alcohol problems.

(b) PURPOSE.—It is the purpose of this Act to—

(1) improve the ability of health care professionals to identify and assist their patients in obtaining appropriate treatment for substance abuse;

(2) improve the ability of health care professionals to identify and refer children and youth affected by substance abuse in their families for effective treatment; and

(3) help establish an infrastructure to train health care professionals about substance abuse issues and the impact on families.

SEC. 3. HEALTH PROFESSIONALS SUBSTANCE ABUSE EDUCATION.

Part D of title V of the Public Health Service Act (42 U.S.C. 290dd et seq.) is amended by adding at the end the following:

"SEC. 544. SUBSTANCE ABUSE EDUCATION FOR GENERALIST HEALTH PROFESSIONALS.

''(a) SECRETARY OF HEALTH AND HUMAN SERVICES.—The Secretary shall carry out activities to train health professionals (who are generalists and not already specialists in substance abuse) so that they are competent to—

''(1) recognize substance abuse in their patients or the family members of their patients;

''(2) intervene, treat, or refer for treatment those individuals who are affected by substance abuse;

''(3) identify and assist children of substance abusing parents;

''(4) serve as advocates and resources for community-based substance abuse prevention programs; and

''(5) appropriately address the non-therapeutic use of prescription medications.

''(b) USE OF FUNDS.—Amounts received under this section shall be used—

''(1) to continue grant support through cooperative agreements to the Association for Medical Education and Research in Substance Abuse (AMERSA) Interdisciplinary Faculty Development Project;

''(2) to continue grants to the Association for Medical Education and Research in Substance Abuse (AMERSA) Interdisciplinary Faculty Development Project; and

''(3) to support the Addiction Technology Transfer Centers counselor training programs to train substance abuse counselors and other health professionals such as dental assistants, allied health professionals including dietitians and nutritionists, occupational therapists, physical therapists, respiratory therapists, speech-language pathologists and audiologists, and therapeutic recreation specialists.

''(c) COLLABORATION.—The Secretary shall participate in interdisciplinary collaboration and collaborate with other nongovernmental organizations with respect to activities carried out under this section.

''(d) ACADEMIC CREDITS.—The Secretary shall encourage community colleges and other academic institutions determined appropriate by the Secretary to recognize classes offered by the Addiction Technology Transfer Centers for purposes of academic credit.

''(e) EVALUATIONS.—The Secretary shall conduct a process and outcome evaluation of the programs and activities carried out with funds received under this section, and shall provide annual reports to the Secretary and the Director of the Office of National Drug Control Policy.

''(f) DEFINITIONS.—In this section—

''(1) the term 'health professional' means a allopathic or osteopathic physician, advanced practice nurse, physician assistant, social worker, psychologist, pharmacist, dental health professional, psychiatrist, allied health professional, drug and alcohol counselor, or other individual who is licensed, accredited, or certified under State law to provide specified health care services and who is operating within the scope of such licensure, accreditation, or certification; and

''(2) the terms 'allopathic or osteopathic physician', 'nurse', 'physician assistant', 'advanced practice nurse', 'social worker', 'psychologist', 'pharmacist', 'dental health professional', and 'allied health professional' shall have the meanings given such terms for purposes of titles VII and VIII of the Public Health Service Act (42 U.S.C. 292 et seq and 296 et seq.).

''(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $9,000,000 for each of fiscal years 2006 through 2010. Amounts made available under this subsection shall be used to supplement and not supplant amounts being used on the date of enactment of this section for activities of the types described in this section.

"SEC. 545. SUBSTANCE ABUSE INTERDISCIPLINARY EXPERT EDUCATOR.

''(a) ESTABLISHMENT.—The Secretary shall establish and administer a substance abuse faculty fellowship program through grants and contacts under which the Secretary shall provide assistance to eligible institutions to enable such institutions to employ interdisciplinary faculty who will serve as advanced level expert educators (referred to in this section as 'expert educators').

''(b) ELIGIBILITY.—

''(1) INSTITUTIONS.—To be eligible to receive assistance under this section, an institution shall—

''(A) be an accredited medical school or undergraduate or graduate nursing school, or be an institution of higher education that offers one or more of the following—

''(i) an accredited physician assistant program;

''(ii) an accredited dental health professional program;

''(iii) a graduate program in pharmacy;

''(iv) a graduate program in public health;

''(v) a graduate program in social work;

''(vi) a graduate program in psychology;

''(vii) a graduate program in marriage and family therapy; or

''(viii) a graduate program in counseling; and

''(B) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

''(2) QUALIFICATIONS FOR EXPERT EDUCATORS.—To be eligible to receive an advanced level expert educator faculty appointment from an eligible institution under this section, an individual shall prepare and submit to the institution an application at such time, in such manner, and containing such information as the institution may require. Expert educators should have advanced level training in education about substance use disorders and expertise in such areas as culturally competent and gender specific prevention and treatment strategies for vulnerable populations (such as adults and adolescents with dual diagnosis, older individuals, children in families affected by substance abuse, and individuals and families involved in the criminal justice system) and will serve as resources and advisors for health professional training institutions.

''(c) USE OF FUNDS.—

''(1) IN GENERAL.—An eligible institution shall utilize assistance received under this section to provide one or more fellowships to eligible individuals. Such assistance shall be used to pay a sum of not to exceed 50 percent of the annual salary of the individual under such a fellowship for a 5-year period.

''(2) FELLOWSHIPS.—Under a fellowship under paragraph (1), an individual shall—

''(A) devote a substantial number of teaching hours to substance abuse issues (as part of both required and elective courses) at the institution involved during the period of the fellowship;

''(B) incorporate substance abuse issues, including the impact on children and families, into the required curriculum of the institution in a manner that is likely to be sustained after the period of the fellowship ends (courses described in this subparagraph should be provided as part of several different health care training programs at the institution involved); and

''(C) educate health professionals about issues related to the nontherapeutic use of prescription medications.

''(3) EVALUATIONS.—The Secretary shall conduct a process and outcome evaluation of the programs and activities carried out with amounts appropriated under this section and shall provide annual reports to the Director of the Office of National Drug Control Policy and the appropriate committees of Congress.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $6,000,000 for each of the fiscal years 2006 through 2010. Amounts made available under this subsection shall be used to supplement and not supplant amounts being used on the date of enactment of this section for activities of the types described in this section.

"SEC. 546. CENTER OF EXCELLENCE.

''(a) IN GENERAL.—The Secretary shall establish centers of excellence at medical centers or universities throughout the United States to—

''(1) initiate, promote, and implement training, research, and clinical activities related to targeted issues or special areas of focus such as brief intervention in general health settings, children and families affected by substance abuse, older individuals, maternal and child health issues, individuals with dual diagnosis, prevention in the general health setting, and clinical practice standards for primary care providers; and

''(2) provide opportunities for interdisciplinary collaboration in curriculum development, course development, clinical practice,

research and translation of research into practice, and policy analysis and formulation.

''(b) USE OF FUNDS.—Centers of excellence established under subsection (a) shall use funds provided under this section to—

''(1) disseminate information on evidence-based approaches concerning the prevention and treatment of substance use disorders; and

''(2) assist health professionals and alcohol and drug treatment counselors to incorporate the latest research into their treatment practices.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $6,000,000 for each of the fiscal years 2006 through 2010.''.

By Mr. HAGEL:

S. 540. A bill to strengthen and permanently preserve social security; to the Committee on Finance.

Mr. HAGEL. Mr. President, when I began my first campaign for the U.S. Senate in 1995, I published a booklet entitled ''Where I Stand.'' I wrote it because the first obligation of a candidate is to tell voters what you believe. In that booklet, I wrote:

The Social Security system must be preserved, protected, and improved. We have made this covenant with our senior citizens. However, the long-term future of the Social Security system is in peril. If we do not get this issue resolved soon, this Nation faces an entitlement disaster, eroding the trust between grandchildren and grandparents. We must explore every option in order to fix and strengthen our Social Security system. This will require bold leadership.

A decade later, those words still define my position on Social Security. Social Security has been one of the most important and successful Government programs in the history of America. Almost every American family over the last 70 years has been touched by Social Security. In signing the Social Security Act of 1935, Franklin Roosevelt said:

None of the sums of money paid out to individuals in assistance or insurance will spell anything approaching abundance. But they will furnish that minimum necessity to keep a foothold, and that is the kind of protection Americans want.

A fundamental point that President Roosevelt made was that Social Security was not intended to replace the personal responsibility of individuals saving for and preparing for their own retirements. Social Security was never intended to be a substitute for a retirement or savings plan. It is a safety net for people. Social Security is an insurance contract that protects the most vulnerable in our society from falling into poverty. But Social Security is actuarially unsustainable with its present commitments to future generations.

Today, I am introducing comprehensive Social Security reform legislation. I began my day in Nebraska this morning with some of the people who would be most affected by my bill—America's next generation. It is their generation that will be asked to sustain the future of Social Security.

My generation, the baby boom generation, has been the largest and most productive workforce in the history of man. The impending retirement of the 77 million-strong baby boom generation will impact every aspect of our economy, Government, and society—Medicare and Medicaid, health care, our workforce, and our competitive position in a world filled with countries much younger than ours. The next generation of Americans will respond to these challenges as every generation of Americans has responded to challenges—with innovation and hard work.

However, my generation has a moral obligation to ensure that future generations do not have to bear an increasingly heavy burden of providing retirement resources for future generations. That is why we must reform Social Security. It is a 1935 model trying to operate in a 21st century world. It will soon be incapable of delivering the promises and resources that it was built to provide 70 years ago.

Last week, in testimony before the House Budget Committee, Federal Reserve Chairman Alan Greenspan urged Congress to act on modernizing entitlement programs sooner rather than later. He warned that, unless we act now to meet the huge unfunded liabilities facing our entitlement programs, there will be severe economic consequences for our Nation. Chairman Greenspan is right.

America's largest entitlement programs—Social Security, Medicare, and Medicaid—are on a trajectory that cannot be sustained. For fiscal year 2006, the Congressional Budget Office tells us that 64 percent of the $2.5 trillion Federal budget will be obligated to mandatory spending, of which 42 percent is for Medicare, Medicaid, and Social Security. Those are tax dollars that are committed—money that cannot be used for anything else.

Each year, the percentage of the Federal budget obligated to funding entitlement programs grows larger and larger. The current unfunded liability for Social Security over the next 75 years—this is the horizon that the Social Security Administration uses to calculate benefits and expenditures—is $3.7 trillion. That means over the next 75 years, we are obligated to make the commitments of the retiree benefits a reality. Yet we have $3.7 trillion of debt. We don't know where and how we are going to get that $3.7 trillion. We are now $3.7 trillion in debt in the current obligations over the next 75 years for Social Security. Medicare's unfunded liability is nearly $28 trillion. These liabilities are in addition to America's current national debt of $7.5 trillion.

Medicare costs are growing faster than any other Government or entitlement program. As we see health care costs continue to rise, coupled with the growing number of retirees, it will only continue to put more and more pressure on our Federal budget and squeeze out money for important discretionary Government programs such as education, roads, parks, and housing.

Last Congress, we passed an enormous expansion of Medicare. I voted against it. I thought it was bad policy and would add hundreds of billions of dollars to an already unsustainable program. I am supportive of efforts to reopen the Medicare reform bill and fix it. But for political reasons, I doubt that will happen soon, although we will be forced to deal with it in the future.

The Social Security system is not in crisis today, but there is clearly a crisis on the horizon. In 2018, more money will be paid out of Social Security than comes in. In 2042, the Social Security trust fund will be insolvent. Beyond the next 75 years, there is only a black hole of unfunded liability for future generations. The longer we do nothing, the more difficult it will be to protect Social Security and the promise our Government made to future generations of Americans.

This reality is daunting, but there is good news in all of this. The system can be fixed. It is within our power to preserve the Social Security net for this Nation. It has been done before. In 1983, President Reagan worked with congressional Democrats and Republicans to make tough choices and extend the life of Social Security. Dealing with this problem now means less dramatic and difficult choices later. The earlier we confront the reality of the coming crisis, the more options we will have to come up with a wise and sustainable course of action.

Allow me to now lay out the main points of the Social Security reform bill that I will introduce today.

My bill would ensure the vitality of Social Security for future generations. There are no easy choices to fix the demographic challenges and realities facing Social Security. Understanding this, we must make choices that address the problem responsibly and fairly.

My bill would make changes to Social Security only—only—for those Americans under the age of 45. No American age 45 or older will see a change in Social Security or their benefits. For Americans under 45, my bill would provide the option of voluntary personal accounts. Providing personal accounts is good policy for both the long-term viability of Social Security and for individuals. Government should be about empowering individuals and enhancing personal freedoms and their futures. Personal accounts help do this for those under 45.

My bill would continue to provide a guaranteed Social Security benefit from the Social Security trust fund. Under my plan—under any plan—Americans still need the security of knowing that the portion of their Social Security benefits that comes from the traditional Social Security system will be guaranteed. My bill will continue to guarantee survivor and disability benefits as they currently are.

Social Security provides benefits for more than 6 million spouses and children of breadwinners who have died

prematurely or have become disabled. For these families, their benefits should not be touched.

I know something about this. When I was 16 years old, my father died. The Social Security benefits my mother received were critical in helping her raise four young boys in Nebraska. I well remember my mother's relief when that Social Security check arrived each month.

We must remember that the first obligation of Social Security is to the most needy Americans. My bill does not raise taxes. I believe we can fix Social Security without raising taxes. We need to begin reforming Government programs so they do not become so large and so expensive that future taxpayers will be unable to pay for them. Young wage earners and small businesses are the most vulnerable to tax increases, and they would be the ones most adversely affected by higher taxes to save Social Security.

Additionally, whenever we increase the cost of labor, we hurt our competitive position in the world and make job creation more difficult. This is not abstract economic theory; it is reality that has an impact on every future American.

Those are the principles that form the foundation of the bill I will introduce today. Here is how it would work.

Upon passage of the bill, Americans 44 and younger would be given two voluntary options. One, they can invest 4 percent of their payroll tax into a personal investment account modeled on the same accounts now offered to all Federal Government employees. I participate and my staff participates in this program. The remainder of their payroll tax contribution would continue to go into the traditional Social Security system. Option 2, individuals can continue to invest their entire payroll tax in the traditional Social Security system.

If they choose the personal account option, then individuals will be able to invest in the same five funds that collectively make up the current Federal Thrift Savings Plan—again, the program that I am in, Members of Congress are in, and Federal Government employees are in.

The first is the common stock index fund. Over the last 10 years, this fund has earned an average annual rate of return of 11.99 percent.

The second fund is the fixed income index investment fund. Over the last 10 years, this fund has earned an average annual rate of return of 7.72 percent.

The third is the Government securities investment fund, and over the last 10 years, it has earned an average annual rate of return of 5.75 percent.

The fourth is the small capitalization index. Over the last 10 years, it has earned an average annual rate of return of 11.84 percent.

Fifth is the international stock index fund. Over the last 10 years, it has earned an average annual rate of return of 5.45 percent.

These five funds provide a range of excellent investment options.

My bill would also provide a default account for those Americans who, for whatever reason, do not want to deal with choosing a fund or funds for their accounts. This fund would invest differently in an individual's early working years than in their later working years.

The Thrift Savings Plan has been a success for Government employees. Last year, returns on the different accounts ranged from just over 4 percent to 20 percent, and in the last 10 years, the returns have been between 5.5 and 12 percent. Compare this with the 3-percent return provided by Treasury bonds that Social Security now invests in today.

These private accounts are in addition to the guaranteed Social Security benefits and personal savings pensions and retirement account programs individuals build up during their working years.

Under my bill, personal accounts would be administered by a board within the Social Security Administration called the Social Security investment board. The board would be composed of the Secretary of the Treasury, the Chairman of the Federal Reserve Board, the Chairman of the Securities and Exchange Commission, and two Senate-confirmed appointments nominated by the President. One of the President's appointments would serve as chairman of the board.

Upon retirement, those who choose to enroll in a personal account will have two accounts: their personal account and their traditional Social Security benefits account. They will be required to convert a portion of their personal account to an annuity which, when added to their guaranteed Social Security, would be at least 135 percent of poverty. There is no such guarantee in our Social Security system today. The remainder of the personal account will be theirs to spend as they wish. It could be used to help with health care costs and retirement living costs, or it could even help an account holder's children or grandchildren put a down-payment on a home or pay college tuition.

There are those who say that allowing individuals to invest through personal accounts is too risky. Their concerns are serious, and they deserve a serious response. Under my plan, no person is required to have a personal account. An individual who does not want to invest can keep all of their money in the traditional Social Security system.

I believe the policies which enhance personal freedom and responsibility encourage the ethic of saving and limit the role of Government in their lives. These are the policies which will be more flexible and successful for America's future.

It is true that there is no guarantee with market-based investments; however, the historic success of markets is not a theory, it is a fact. Columnist George Will pointed out in a recent Washington Post column that in no 15-year period over the past eight decades has the growth of stocks ever been negative. In no 20-year period has the average growth been less than 3 percent, which exceeds the rate of return on Social Security assets today. This includes down times, significant down periods in the stock market.

We are blessed in America. We are blessed in America because the vast majority of Americans live healthier, longer lives than they did a few decades ago. Continued advances in medicine, education, and personal health will continue to increase not only the length of our lives, but also the quality of our lives, providing opportunities for older Americans to remain healthy, vital, and productive members of the workforce.

When Social Security was created in 1935, there were too many workers and not enough jobs. According to the Social Security Administration, in 1950, there were 16.5 workers per retiree. Incentives were created to move people out of the workforce. This dynamic is changing. Today there are 3.3 workers for every retiree. In 25 years, there will be about 2 workers for each retiree.

Why is this important? This is important because Social Security is a transfer program. The money comes in and the payroll taxes from the workers go out at the end of the month to the retirees.

So when there are less workers, there is less money coming into the system. My bill makes three adjustments to Social Security that will make it solvent for future generations. First, my bill would raise the current full benefit retirement age by 1 year from 67 to 68. Second, my bill would maintain the current earlier retirement age at 62 but would adjust benefits for those who choose to retire early.

Currently, workers who retire early today receive 70 percent of their full retirement benefits. My bill will provide these early retirees with 63 percent of the traditional benefits.

Third, currently an individual's base Social Security benefit is determined by two factors: their average income over 35 years and the wage index. My bill adds a third component, life expectancy. We are living longer. That means as we live longer, we will draw more from the Social Security fund.

Over the life of the program Social Security benefit calculations have never been adjusted to reflect increased life expectancy. By factoring increased life expectancy into the base benefit calculation, the rate of increase in benefit payments will be slow. No other changes will be made to the annual consumer price indexing of benefit increases.

In addition to making Social Security solvent, these adjustments can help confront the challenges of increasing Medicare costs and shortages in the workforce. It is important to protect

the option of early retirement, but our laws need to encourage individuals to stay in the workforce, not leave it.

Medicare costs, Medicaid costs, and labor shortages can be significantly reduced by keeping people healthy, vital, happy, and productive in the workforce. My bill pays for these changes in Social Security by using the existing $3.7 trillion unfunded liability to ensure the long-term health of the Social Security system. Doing nothing will mean at the end of 75 years, Social Security will have chewed up $3.7 trillion in taxpayer money to help keep Social Security solvent, but it will not, and we will still have an insolvent program with trillions of dollars more of unfunded liabilities staring us in the face.

In recent testimony before the Senate, Alan Greenspan said Social Security's total unfunded liability could be as high as $10 trillion over the life of the program. I have introduced this bill because I believe that leaders have a responsibility to deal with the great challenges of their time, not defer them, not make excuses for them, but to try to fix them and come up with solutions.

I do not hold my bill up as the only way to address the solvency of Social Security. It is one way. There may be better ways. No comprehensive bill will be immune from critical evaluation, nor should it be. However, I think my bill is a commonsense, responsible, and fiscally accountable place to start.

All Americans need to ask tough questions about the future of Social Security. We need to begin the process of refining ideas to forge the best, most responsible policy for the future of Social Security.

President Bush deserves great credit for making the modernization of Social Security a central part of his second-term agenda. There is no possibility for success in modernizing Social Security without strong Presidential leadership.

As I said at the beginning of my speech, Social Security is one of the most important and successful Government programs in American history. Since 1935, it has provided a safety net for our society's most vulnerable. We have a high moral obligation to ensure that future generations continue to benefit from this safety net and social contract we have with our citizens. But in order to do this, we must fix the system.

This is a personal issue for me. Forty years from now a young mother in Columbus, NE, may be left to raise four children on her own. I want her family to have the same access to the same safety net that my family had, and the promise that no matter where one starts in life, with a little help they can finish where they want.

I am 58 years old. I am at the front of the baby boom generation. My daughter is 14 years old. My son is 12 years old. I do not want to fail their generation. That means addressing these entitlement program issues now, while we have time to do it in a wise, careful, and responsible way. This is a defining debate for today's leaders. Doing nothing is irresponsible and cowardly. It is in America's interest to deal with our challenge today. We have it in us to do what needs to be done. We can preserve, protect, and improve Social Security for all future generations of Americans.

I send my bill to the desk and ask that it be assigned to the appropriate committee.

I yield the floor.

The PRESIDING OFFICER. The bill will be received and appropriately dealt with.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 540

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Saving Social Security Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—INVESTMENT-BASED SOCIAL SECURITY

SEC. 101. ESTABLISHMENT OF AN INVESTMENT-BASED OPTION FOR SOCIAL SECURITY BENEFITS.

(a) IN GENERAL.—Title II of the Social Security Act (42 U.S.C. 401 et seq.) is amended—

(1) by inserting before section 201 the following:

''PART A—DEBT-BASED SOCIAL SECURITY'';

and

(2) by adding at the end the following:

''PART B—INVESTMENT-BASED SOCIAL SECURITY

''SEC. 250. DEFINITIONS.

''For purposes of this part—

''(1) INVESTING WORKER.—The term 'investing worker' means any individual—

''(A) who after the date of enactment of this part—

''(i) receives wages on which there is imposed a tax under section 3101(a) of the Internal Revenue Code of 1986; or

''(ii) derives self-employment income on which there is imposed a tax under section 1401(a) of the Internal Revenue Code of 1986; and

''(B) who was born on or after January 1, 1961, and does not make an election to waive investment-based social security under this part as provided under section 251(a).

''(2) SOCIAL SECURITY SAVINGS ACCOUNTS FOR EMPLOYEES (SAFE ACCOUNT).—The term 'social security savings accounts for employees' or 'SAFE Account' means an account established for an investing worker within the SAFE Investment Fund under section 252.

''(3) SAFE INVESTMENT FUND.—The term 'SAFE Investment Fund' or 'Fund' means the fund established under section 253.

''(4) SOCIAL SECURITY INVESTMENT BOARD.—The term 'Social Security Investment Board' or 'Board' means the board established under section 254.

''(5) COMMISSIONER.—The term 'Commissioner' means the Commissioner of Social Security.

''SEC. 251. ELECTION TO WAIVE ELIGIBILITY.

''(a) ELECTION TO WAIVE ELIGIBILITY FOR SAFE ACCOUNTS.—

''(1) IN GENERAL.—Any individual may elect to waive eligibility under this part in such form and manner as prescribed by the Board at any time after such individual attains the age of 18 and before such individual attains the age of 25. Such election shall be irrevocable.

''(2) INDIVIDUAL BORN BEFORE JANUARY 1, 1981.—Notwithstanding paragraph (1), in the case of any individual born after December 31, 1960, and before January 1, 1981, such individual may elect to waive eligibility under this part in such form and manner as prescribed by the Board at any time before January 1, 2007. Such election shall be irrevocable.

''(b) DISPOSITION OF SAFE ACCOUNT.—In the case of any individual who makes an election under paragraph (1), any assets in such individual's SAFE Account shall be paid to the Federal Old-Age and Survivors Insurance Trust Fund, and such individual's eligibility for benefits under part A shall be determined as if such Account had never been established.

''SEC. 252. SOCIAL SECURITY SAVINGS ACCOUNTS FOR EMPLOYEES (SAFE ACCOUNTS).

''(a) ESTABLISHMENT OF SAFE ACCOUNTS.—Not later than 30 days after the date on which an individual first becomes an investing worker, the Social Security Investment Board shall establish a SAFE Account for such individual in the SAFE Investment Fund.

''(b) CONTRIBUTIONS.—

''(1) IN GENERAL.—The Secretary of the Treasury shall transfer from the Federal Old-Age and Survivors Insurance Trust Fund to the SAFE Investment Fund, for crediting by the Social Security Investment Board to the SAFE Account of an investing worker, an amount equal to the SAFE Account contribution amount with respect to each investing worker.

''(2) SAFE ACCOUNT CONTRIBUTION AMOUNT.—For purposes of paragraph (1), the term 'SAFE Account contribution amount' means, with respect to an investing worker for a calendar year, the product derived by multiplying—

''(A) the sum of the total wages paid to, and self-employment income derived by, such individual during such calendar year; by

''(B) 4 percent.

''(c) DESIGNATION OF INVESTMENTS.—

''(1) INITIAL DESIGNATION.—

''(A) IN GENERAL.—Not later than 10 days after an account is established for an investing worker under subsection (a), the investing worker shall designate to which investment funds within the SAFE Investment Fund contributions to such account under subsection (b) shall be allocated.

''(B) DEFAULT ALLOCATION.—

''(i) IN GENERAL.—If no designation is made pursuant to paragraph (1), the Board shall allocate such contributions in accordance with the life-span investment option.

''(ii) LIFE-SPAN INVESTMENT OPTION.—For purposes of this section, the life-span investment option shall provide for the management and investment of funds within an investing worker's SAFE account on the basis of the age of the investing worker in accordance with regulations established by the Board. In establishing regulations with respect to the life-span investment option under this subparagraph, the Board shall consider—

''(I) with respect to the youngest investing workers, investing 80 percent of such funds in stocks and 20 percent of such funds in bonds; and

''(II) with respect to the oldest investing workers, investing 35 percent of such funds in stocks and 65 percent of such funds in bonds.

''(2) SUBSEQUENT DESIGNATIONS.—At least twice each year, an investing worker may redesignate the allocation of investments funds within the SAFE Investment Fund to which contributions with respect to such investing worker are allocated.

''(d) TIME DESIGNATION TAKES EFFECT.—A designation under subsection (c) shall take effect with respect to contributions made beginning more than 14 days after the date of the designation.

''(e) INVESTING WORKER'S PROPERTY RIGHT IN THE SAFE ACCOUNT.—Each SAFE Account designated by an investing worker is the sole property of the worker.

''(f) FORM OF DESIGNATIONS.—Designations under this section shall be made—

''(1) on W–4 forms (or any successor forms); or

''(2) in such other manner as the Social Security Investment Board may prescribe in order to ensure ease of administration.

''SEC. 253. SAFE INVESTMENT FUND.

''(a) IN GENERAL.—There shall be established and maintained in the Treasury of the United States a SAFE Investment Fund in the same manner as the Thrift Savings Fund under sections 8437 (excluding paragraphs (4) and (5) of subsection (c) thereof), 8438, and 8439 of title 5, United States Code, insofar as such sections are not inconsistent with the provisions of this part.

''(b) INVESTMENT EARNINGS REPORT.—

''(1) IN GENERAL.—At least annually, the SAFE Investment Fund shall provide to each investing worker a SAFE Investment Status Report. Such report may be transmitted electronically upon the agreement of the investing worker under the terms and conditions established by the Social Security Investment Board.

''(2) CONTENTS OF REPORT.—The SAFE Investment Status Report, with respect to a SAFE Account, shall provide the following information:

''(A) The total SAFE Account contributions made in the last quarter, the last year, and since the Account was established.

''(B) The amount and rate of return earned for each period described in subparagraph (A).

''(C) A projection of how much the investing worker will have available on the date the worker attains normal retirement age if such contributions and earnings continue at the same rate during the remaining period ending with such date.

''(c) MAXIMUM ADMINISTRATIVE FEE.—The SAFE Investment Fund shall charge each investing worker in the Fund a single, uniform annual administrative fee not to exceed 0.57 percent of the value of the assets invested in the worker's SAFE Account.

''SEC. 254. DISTRIBUTIONS.

''(a) DATE OF INITIAL DISTRIBUTION.—Except as provided in subsection (b)(4), distributions may only be made from a SAFE Account of an investing worker on and after the earliest of—

''(1) the date the investing worker attains normal retirement age, as determined under section 216; or

''(2) the date on which funds in the investing worker's SAFE Account are sufficient to transfer to the Federal Old-Age and Survivors Insurance Trust Fund—

''(A) an amount equal to the old-age insurance amount (as calculated under subsection (b)(1)(B)); and

''(B) an amount equal to the survivor's insurance amount (as calculated under subsection (b)(2)(B)).

''(b) FORM OF DISTRIBUTION.—

''(1) FEDERAL ANNUITY PAYMENT.—

''(A) IN GENERAL.—On the date determined under subsection (a), so much of the balance in an investing worker's SAFE Account as does not exceed the old-age insurance amount shall be transferred to the Federal Old-Age and Survivors Insurance Trust Fund and the investing worker shall be entitled to a Federal annuity payment.

''(B) OLD-AGE INSURANCE AMOUNT.—For purposes of this section, the old-age insurance amount is an amount which is sufficient to provide a Federal annuity payment which, when added to the investing worker's monthly benefit under part A, is equal to one-twelfth of 135 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))).

''(C) FEDERAL ANNUITY PAYMENT.—For purposes of this section, the term 'Federal annuity payment' means a monthly payment from the Federal Old-Age and Survivors Insurance Trust Fund in an amount determined by the Social Security Investment Board based on the amount transferred to the Federal Old-Age and Survivors Insurance Trust Fund under subparagraph (A) and the life expectancy of the investing worker (determined under reasonable actuarial assumptions).

''(2) FAMILY OR SURVIVOR BENEFITS FOR RELATED INDIVIDUALS.—

''(A) IN GENERAL.—On the date determined under subsection (a), in the case of an investing worker whose SAFE Account has funds in excess of the amount required to be transferred under paragraph (1)(A), so much of such excess funds as does not exceed the survivor's insurance amount shall be transferred to the Federal Old-Age and Survivors Insurance Trust Fund and any related individual shall be entitled to a survivor's payment at the time such related individual meets the applicable requirements for a monthly payment under section 202.

''(B) SURVIVOR'S INSURANCE AMOUNT.—For purposes of this section, the survivor's insurance amount is an amount, determined by the Social Security Investment Board under rules established by such Board, which is sufficient to provide survivor's payments to all related individuals.

''(C) SURVIVOR'S PAYMENT.—For purposes of this section, the term 'survivor's payment' means a monthly payment from the Federal Old-Age and Survivors Insurance Trust Fund in an amount which, when added to such related individual's monthly benefit (or projected monthly benefit) under this title, is equal to the benefit such related individual would be entitled to under section 202 if the investing worker had waived the application of this part.

''(D) RELATED INDIVIDUAL.—For purposes of this section, the term 'related individual' means, with respect to an investing worker, any individual entitled to benefits under section 202 based on the wages or self-employment income of such worker.

''(3) PAYMENT OF EXCESS SAFE ACCOUNT FUNDS.—To the extent funds remain in an investing worker's SAFE Account after the transfer required under paragraphs (1) and (2), such excess assets shall be payable to the worker in such manner and in such amounts as determined by the worker.

''(4) DISTRIBUTION IN THE EVENT OF DEATH.—If the investing worker dies before the date determined under subsection (a), the balance in the worker's SAFE Account shall be distributed in the following manner:

''(A) Not more than an amount equal to the survivor's insurance amount shall be transferred to the Federal Old-Age and Survivors Insurance Trust Fund.

''(B) The remainder (if any) shall be distributed in a lump sum, under rules established by the Social Security Investment Board, to the investing worker's estate, subject to applicable State laws.

''SEC. 255. SOCIAL SECURITY INVESTMENT BOARD.

''(a) ESTABLISHMENT.—There is established within the Social Security Administration a Social Security Investment Board (in this Act referred to as the 'Board').

''(b) COMPOSITION.—The Board shall be composed of—

''(1) 2 members from the private sector appointed by the President, of whom 1 shall be designated by the President as Chairman;

''(2) the Secretary of the Treasury;

''(3) the Chairman of the Federal Reserve Board; and

''(4) the Chairman of the Securities and Exchange Commission.

''(c) ADVICE AND CONSENT.—Appointments under subsection (b)(1) shall be made by and with the advice and consent of the Senate.

''(d) MEMBERSHIP REQUIREMENTS.—Members of the Board appointed under subsection (b)(1) shall have substantial experience, training, and expertise in finance, investments, or insurance.

''(e) LENGTH OF APPOINTMENTS.—

''(1) TERMS.—A member of the Board appointed under subsection (b)(1) shall be appointed for a term of 6 years, except that of the members first appointed under subsection (b)(1)—

''(A) the Chairman shall be appointed for a term of 6 years; and

''(B) the remaining member shall be appointed for a term of 3 years.

''(2) VACANCIES.—

''(A) IN GENERAL.—A vacancy on the Board shall be filled in the manner in which the original appointment was made and shall be subject to any conditions that applied with respect to the original appointment.

''(B) COMPLETION OF TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

''(3) EXPIRATION.—The term of any member shall not expire before the earlier of—

''(A) the date on which the member's successor takes office; or

''(B) 1 year after the member's term is scheduled to expire.

''(f) DUTIES.—The Board shall—

''(1) maintain SAFE Accounts and the SAFE Investment Fund in the same manner as the Thrift Savings Accounts and the Thrift Savings Fund are maintained by the Thrift Savings Board;

''(2) review and approve the budget of the Board;

''(3) establish policies for the administration of this part; and

''(4) carry out any other duties specified under this part.

''(g) ADMINISTRATIVE PROVISIONS.—

''(1) IN GENERAL.—The Board may—

''(A) adopt, alter, and use a seal;

''(B) direct the Executive Director to take such action as the Board considers appropriate to carry out the provisions of this part and the policies of the Board;

''(C) upon the concurring votes of 4 members, remove the Executive Director from office for good cause shown; and

''(D) take such other actions as may be necessary to carry out the functions of the Board.

''(2) MEETINGS.—The Board shall meet—

''(A) not less than once each month; and

''(B) at additional times at the call of the Chairman.

''(3) EXERCISE OF POWERS.—

''(A) IN GENERAL.—Except as provided in paragraph (1)(C), the Board shall perform the functions and exercise the powers of the Board on a majority vote of a quorum of the Board. Three members of the Board shall constitute a quorum for the transaction of business.

''(B) VACANCIES.—A vacancy on the Board shall not impair the authority of a quorum of the Board to perform the functions and exercise the powers of the Board.

''(h) COMPENSATION.—

''(1) IN GENERAL.—Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at the daily rate of basic pay for level IV of the Executive Schedule for each day during which such member is engaged in performing a function of the Board.

''(2) EXPENSES.—A member of the Board shall be paid travel, per diem, and other necessary expenses under subchapter I of chapter 57 of title 5, United States Code, while traveling away from such member's home or regular place of business in the performance of the duties of the Board.

''(i) APPOINTMENT OF EXECUTIVE DIRECTOR.—

''(1) IN GENERAL.—The Board shall appoint, without regard to the provisions of law governing appointments in the competitive service, an Executive Director by action agreed to by a majority of the members of the Board.

''(2) REQUIREMENTS.—The Executive Director shall have substantial experience, training, and expertise in finance, investments, and insurance.

''(3) DUTIES.—The Executive Director shall—

''(A) carry out the policies established by the Board;

''(B) invest and manage the SAFE Investment Fund in accordance with the investment policies established by the Board;

''(C) administer the provisions this part; and

''(D) prescribe such regulations (other than regulations relating to fiduciary responsibilities) as may be necessary for the administration of this part.

''(4) ADMINISTRATIVE AUTHORITY.—The Executive Director may—

''(A) appoint such personnel as may be necessary to carry out the provisions of this part;

''(B) subject to approval by the Board, procure the services of experts and consultants under section 3109 of title 5, United States Code;

''(C) secure directly from an executive agency, the United States Postal Service, or the Postal Rate Commission any information necessary to carry out the provisions of such part and the policies of the Board;

''(D) make such payments out of sums described in subsection (l) as the Executive Director determines are necessary to carry out the provisions of such part and the policies of the Board;

''(E) accept and use the services of individuals employed intermittently in the Government service and reimburse such individuals for travel expenses, as authorized by section 5703 of title 5, United States Code, including per diem as authorized by section 5702 of such title;

''(F) except as otherwise expressly prohibited by law or the policies of the Board, delegate any of the Executive Director's functions to such employees under the Board as the Executive Director may designate and authorize such successive redelegations of such functions to such employees under the Board as the Executive Director may consider to be necessary or appropriate; and

''(G) take such other actions as are appropriate to carry out the functions of the Executive Director.

''(j) DISCHARGE OF RESPONSIBILITIES.—The members of the Board shall discharge their responsibilities solely in the interest of SAFE Account holders and beneficiaries under this part.

''(k) ANNUAL INDEPENDENT AUDIT.—The Board shall annually engage an independent qualified public accountant to audit the activities of the Board.

''(l) SOURCE OF FUNDS.—Payments authorized under this section shall be paid from administrative fees charged in accordance with section 253(c).

''(m) SUBMISSION OF BUDGET TO CONGRESS.—The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall be included as a separate item in the budget required to be transmitted to Congress under section 1105 of title 31, United States Code.

''(n) SUBMISSION OF LEGISLATIVE RECOMMENDATIONS.—The Board may submit to the President, and, at the same time, shall submit to each House of Congress, any legislative recommendations of the Board relating to any of its functions under this part or any other provision of law.''.

(b) EFFECTIVE DATE AND NOTICE REQUIREMENTS.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to designations of accounts made with respect to payroll periods beginning on or after January 1, 2007.

(2) NOTICE REQUIREMENTS.—

(A) IN GENERAL.—Not later than January 1, 2007, the Commissioner of Social Security shall—

(i) send to the last known address of each eligible individual a description of the program established by the amendments made by this section, that shall be written in the form of a pamphlet in language that may be readily understood by the average worker;

(ii) provide for toll-free access by telephone from all localities in the United States and access by the Internet to the Social Security Administration through which individuals may obtain information and answers to questions regarding such program; and

(iii) provide information to the media in all localities of the United States about such program and such toll-free access by telephone and access by Internet.

(B) ELIGIBLE INDIVIDUAL.—For purposes of this paragraph, the term ''eligible individual'' means an individual who, as of the date of the pamphlet sent pursuant to subparagraph (A), is indicated within the records of the Social Security Administration as being credited with 1 or more quarters of coverage under section 213 of the Social Security Act (42 U.S.C. 413).

(C) MATTERS TO BE INCLUDED.—The Commissioner of Social Security shall include with the pamphlet sent to each eligible individual pursuant to subparagraph (A)—

(i) a statement of the number of quarters of coverage indicated in the records of the Social Security Administration as of the date of the description as credited to such individual under section 213 of such Act and the date as of which such records may be considered accurate; and

(ii) the number for toll-free access by telephone established by the Commissioner pursuant to subparagraph (A)(ii).

SEC. 102. ADJUSTMENTS TO PRIMARY INSURANCE AMOUNTS UNDER PART A OF TITLE II OF THE SOCIAL SECURITY ACT FOR INVESTING WORKERS WITH SAFE ACCOUNTS.

(a) IN GENERAL.—Section 215 of the Social Security Act (42 U.S.C. 415) is amended by adding at the end the following:

''Adjustment of Primary Insurance Amount in Relation to Deposits Made to SAFE Accounts

''(j)(1) Except as provided in paragraph (2), an individual's primary insurance amount as determined in accordance with this section (before adjustments made under subsection (i)) shall be equal to—

''(A) the amount which would be so determined without the application of this subsection, multiplied by

''(B) 1 minus the ratio of—

''(i) the sum of—

''(I) the total of all amounts which have been credited pursuant to section 252(b) to the SAFE Account held by such individual; plus

''(II) accrued interest on such amounts compounded annually up to the date of initial benefit entitlement based on the earning of the individual's SAFE Account, assuming an interest rate equal to the projected interest rate of the Federal Old-Age and Survivors Trust Fund; to

''(ii) the expected present value of all future benefits paid based on the individual's earnings, as of the date of initial benefit entitlement based on such earnings, assuming future mortality and interest rates for the Federal Old-Age and Survivors Trust Fund used in the intermediate projections of the most recent Board of Trustees report under section 201.

''(2) In the case of an individual who becomes entitled to disability insurance benefits under section 223, such individual's primary insurance amount shall be determined without regard to paragraph (1).''.

(b) CONFORMING AMENDMENT TO RAILROAD RETIREMENT ACT OF 1974.—Section 1 of the Railroad Retirement Act of 1974 (45 U.S.C. 231) is amended by adding at the end the following:

''(s) In applying applicable provisions of the Social Security Act for purposes of determining the amount of the annuity to which an individual is entitled under this Act, section 215(j) of the Social Security Act and part B of title II of such Act shall be disregarded.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to computations and recomputations of primary insurance amounts occurring after December 31, 2006.

SEC. 103. TAX TREATMENT OF INVESTMENT-BASED SOCIAL SECURITY.

(a) IN GENERAL.—

(1) IN GENERAL.—Subchapter F of chapter 1 of the Internal Revenue Code of 1986 (relating to exempt organizations) is amended by adding at the end the following new part:

"PART IX—INVESTMENT-BASED SOCIAL SECURITY

''Sec. 530A. Investment-based social security.

"SEC. 530A. INVESTMENT-BASED SOCIAL SECURITY.

''(a) GENERAL RULE.—The SAFE Investment Fund and each SAFE Account are exempt from taxation under this subtitle. Notwithstanding the preceding sentence, a personal social security savings account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

''(b) DISTRIBUTIONS.—

''(1) FEDERAL ANNUITY PAYMENT.—Any Federal annuity payment (as defined under section 254(b)(1) of the Social Security Act) shall be treated as a social security benefit for purposes of section 86.

''(2) DISTRIBUTION OF EXCESS ASSETS.—Any distribution from a SAFE Account under section 254(b)(3) of the Social Security Act shall be includible in gross income under rules under section 72.

''(c) DEFINITIONS.—For purposes of this section—

''(1) SAFE ACCOUNT.—The term 'SAFE Account' means an account established under section 252(a) of the Social Security Act.

''(2) SAFE INVESTMENT FUND.—The term 'SAFE Investment Fund' means the fund established under section 253 of the Social Security Act.''.

(2) CLERICAL AMENDMENT.—The table of parts for subchapter F of chapter 1 of such Code is amended by adding after the item relating to part VIII the following new item:

''PART IX. INVESTMENT-BASED SOCIAL SECURITY.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006

SEC. 104. STUDY ON USE OF PRIVATE ANNUITIES FOR SAFE ACCOUNT DISTRIBUTIONS.

(a) IN GENERAL.—The Social Security Investment Board shall conduct a study on the use of annuities provided by private-sector financial institutions for the distribution of SAFE account funds under section 254 of the Social Security Act.

(b) REPORT.—Not later than 3 years after the date of the enactment of this Act, the Social Security Investment Board shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report describing the results of the study under subsection (a).

SEC. 105. STUDY REGARDING FINANCIAL LITERACY.

(a) STUDY.—

(1) IN GENERAL.—The Social Security Investment Board shall conduct a thorough study of all matters relating to programs to increase the financial literacy of Americans.

(2) MATTERS STUDIED.—The matters studied by the Social Security Investment Board shall include—

(A) existing Federal and non-Federal financial literacy programs, including a review and performance evaluation of such programs;

(B) the coordination of existing Federal and non-Federal financial education efforts; and

(C) ideas for new public initiatives to increase the financial literacy of all Americans.

(b) RECOMMENDATIONS.—The Social Security Investment Board shall develop recommendations on—

(1) streamlining existing financial literacy programs;

(2) increasing financial literacy for all Americans; and

(3) new avenues for public-private partnerships in financial literacy.

(c) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Social Security Investment Board shall submit a report to the President and to Congress which shall contain a detailed statement of the findings and conclusions of the Social Security Investment Board, together with its recommendations for such legislation and administrative actions as it considers appropriate.

TITLE II—DEBT-BASED SOCIAL SECURITY

Subtitle A—Adjustments

SEC. 201. MODIFICATION TO RETIREMENT AGE.

Section 215(l)(1) of the Social Security Act (42 U.S.C. 416(l)(1)) is amended—

(1) by striking ''and'' at the end of subparagraph (D);

(2) by inserting ''and before January 1, 2023,'' after ''December 31, 2021,'' in subparagraph (E);

(3) by striking the period at the end of subparagraph (E) and by inserting ''; and''; and

(4) by adding at the end the following:

''(F) with respect to an individual who attains early retirement age after December 31, 2022, 68 years of age.''.

SEC. 202. MODIFICATION OF PIA FACTORS TO REFLECT CHANGES IN LIFE EXPECTANCY.

Section 215(a)(1) of the Social Security Act (42 U.S.C. 415(a)(1)(B)) is amended by redesignating subparagraph (D) as subparagraph (F) and by inserting after subparagraph (C) the following:

''(D)(i) For individuals who initially become eligible for old-age insurance benefits in any calendar year after 2023, each of the percentages under clauses (i), (ii), and (iii) of subparagraph (A) shall be multiplied by the applicable factor for such year with respect to each year after 2023 and before the year following the year of initial eligibility.

''(ii) For purposes of clause (i), the term 'applicable factor' means the actuarial number, expressed as a percentage and determined by the Commissioner of Social Security after taking into account the actuarial reduction under section 202(q) (without regard to the amendments made by section 203 of the Saving Social Security Act of 2005), representing the historical increase in longevity of life for the most recent year .

''(E) For any individual who initially becomes eligible for disability insurance benefits in any calendar year after 2023, the primary insurance amount for such individual shall be equal to the greater of—

''(i) such amount as determined under this paragraph, or

''(ii) such amount as determined under this paragraph without regard to subparagraph (D) thereof.''.

SEC. 203. ACTUARIAL ADJUSTMENT FOR RETIREMENTS.

(a) IN GENERAL.—Section 202(q) of the Social Security Act (42 U.S.C. 402(q)) is amended—

(1) in paragraph (1)(A), by striking ''5/9'' and inserting ''the applicable old-age benefit fraction (determined under paragraph (12)(A))'', and by striking ''25/36'' and inserting ''the applicable spousal benefit fraction (determined under paragraph (12)(B))''; and

(2) by adding at the end the following:

''(12) For purposes of paragraph (1)(A)—

''(A) the 'applicable old-age benefit fraction' for an individual who attains the age of 62 in—

''(i) any year before 2024, is 5/9;

''(ii) 2024, is 7/12;

''(iii) 2025, is 11/18;

''(iv) 2026, is 23/36;

''(v) 2027, is 2/3; and

''(vi) 2028 or any succeeding year, is 25/36; and

''(B) the 'applicable spousal benefit fraction' for an individual who becomes eligible for wife's or husband's insurance benefits in—

''(i) any year before 2024, is 25/36;

''(ii) 2024, is 13/18;

''(iii) 2025, is 27/36;

''(iv) 2026, is 7/9;

''(v) 2027, is 29/36; and

''(vi) 2028 or any succeeding year, is 5/6.''.

(b) MONTHS BEYOND FIRST 36 MONTHS.—Section 202(q) of such Act (42 U.S.C. 402(q)) (as amended by subsection (a)) is amended—

(1) in paragraph (9)(A), by striking ''five-twelfths'' and inserting ''the applicable fraction (determined under paragraph (13))''; and

(2) by adding at the end the following:

''(13) For purposes of paragraph (9)(A), the 'applicable fraction' for an individual who becomes eligible for old-age, wife's, or husband's insurance benefits in—

''(A) any year before 2024, is 5/12;

''(B) 2024, is 16/36;

''(C) 2025, is 16/36;

''(D) 2026, is 17/36;

''(E) 2027, is 17/36; and

''(F) 2028 or any succeeding year, is 1/2.''.

(c) ELIGIBILITY.—Section 202(q) of such Act (as amended by the preceding provisions of this section) is amended further by adding at the end the following new paragraph:

''(14) For purposes of this subsection, an individual shall be deemed eligible for a benefit for a month if, upon filing application therefor in such month, such individual would be entitled to such benefit for such month.''.

(d) EFFECTIVE DATE.—The amendments made by this subsection shall apply to individuals who, in connection with old-age, wife's, and husband's insurance benefits under title II of the Social Security Act, become eligible for such benefits (within the meaning of section 202(q)(14) of such Act (as amended by this subsection)) in years after 2023.

Subtitle B—Maintenance of Social Security Trust Funds

SEC. 211. MAINTENANCE OF ADEQUATE BALANCES IN THE SOCIAL SECURITY TRUST FUNDS.

(a) IN GENERAL.—Section 201 of the Social Security Act (42 U.S.C. 401) is amended by adding at the end the following new subsection:

''(o) In addition to amounts otherwise appropriated under the preceding provisions of this section to the Trust Funds established under this section, there is hereby appropriated for each fiscal year to each of such Trust Funds, from amounts in the general fund of the Treasury not otherwise appropriated, such sums as may be necessary from time to time to maintain the balance ratio (as defined in section 709(b)) of such Trust Fund, for the calendar year commencing during such fiscal year, at not less than 100 percent. The sums to be appropriated under the preceding sentence shall be determined by the Commissioner of Social Security and certified by the Commissioner to each House of the Congress not later than October 1 of such fiscal year. In making such determination and certification, the Commissioner shall use the intermediate actuarial assumptions used by the Board of Trustees of the

Trust Funds in its most recent annual report to the Congress prepared pursuant to subsection (c)(2). The Commissioner shall also transmit a copy of any such certification to the Secretary of the Treasury, and upon receipt thereof, such Secretary shall promptly take appropriate actions in accordance with the certification.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to fiscal years beginning after the date of the enactment of this Act.

By Mr. DORGAN (for himself, Mr. SMITH, Mrs. MURRAY, Ms. CANTWELL, Mr. JOHNSON, and Mr. HARKIN):

S. 542. A bill to amend the Internal Revenue code of 1986 to extend for 5 years the credit for electricity produced from certain renewable resources, and for other purposes; to the Committee on Finance.

Mr. DORGAN. Mr. President, today I am joined by Senator SMITH of Oregon and several of our colleagues in introducing legislation to extend the soon-to-expire tax credits in Federal law that incentivize the development and use of renewable energy.

Mr. President, as you know, Federal policymakers have been working over the past couple of years to pass comprehensive energy reforms that will encourage greater domestic energy production, increase energy efficiency and improve the nation's overall energy security by reducing our dependence on imported sources of energy.

This country imports more than 60 percent of its oil from abroad, and Americans have watched as oil and gas prices—and their energy bills—have skyrocketed, in large part due to the threat of disruptions to energy supplies in volatile regions of the Middle East. The evidence also suggests that the United States is ramping up its demand for imported natural gas. At a recent Senate Energy Subcommittee hearing, for example, we heard about plans to build thirty-one new liquefied natural gas terminals in this country. The reason for this activity is that the United States is projected to import about 28 percent of our natural gas supply by the year 2025. Clearly, something must be done to reduce our reliance on energy imports. I hope that we will complete work on a comprehensive energy bill in this Congress that will help us do so.

However, there are some fiscal policies already in place that will help us move toward greater energy independence and diversity. Current law's Federal income tax credit for facilities producing electricity from wind and other renewable energy sources is among the most important of these polices. In fact, we are told by energy developers year after year that the renewable energy production tax credit, PTC, is absolutely essential for bringing renewable energy-generated electricity to the marketplace at a competitive rate. Today, for example, our country has over 6,700 megawatts of wind energy capacity, or enough electric capacity to serve about 1.6 million homes. And all that electricity is generated on U.S. soil, producing U.S. jobs.

Last year, Congress extended the availability of the PTC and expanded it to cover other forms of renewable energy—including geothermal and solar. I supported this effort. However, I am frustrated that Congress continues to undermine its own effort to develop domestic renewable energy resources by failing to ensure that the PTC is available for a longer term.

In North Dakota, we have abundant renewable energy resources including wind. In fact, North Dakota's wind development potential is so great that many energy experts call North Dakota the ''Saudi Arabia'' of wind energy. And the PTC is critical for the continued growth of this industry in North Dakota, Oregon, and elsewhere. But the PTC, which is found in Section 45 of the Tax Code, is also scheduled to expire at the end of this year.

That is why Senator SMITH and I are introducing a bipartisan bill today to extend the Section 45 tax credits for producers who place new renewable energy facilities in service before January 1, 2011. Our five-year extension bill also continues the indexing of the credits for inflation and extends alternative minimum tax relief as provided under current law. Finally, the bill includes provisions to ensure that tax-exempt cooperatives, municipal utilities and Indian tribes can receive the benefit of the tax credits for their investments in renewable energy.

Billions of dollars of expected investments by the renewable energy industry will, once again, be put on hold if we fail to extend the credit. Inexplicably, Congress has allowed the PTC to expire three times since its inception in 1992. When this happens, the industry suffers a huge drop in investment and many good-paying jobs are lost. Failing to promptly extend the credit this year will prevent new renewable energy facilities from coming on line and lead to layoffs by the businesses that support this industry, including wind tower and turbine blade manufacturers.

The bottom line is that short-term extensions of the renewable energy tax credit creates a boom and bust cycle of short-term planning, painful layoffs and higher than necessary project costs. Financial lenders stop providing the capital needed for wind energy projects about 4 to 6 months before the credit is scheduled to expire because of the uncertainty surrounding the future availability of the credit. This uncertainty inevitably leads to a rush to complete projects at higher costs, and those costs are passed along to consumers.

In conclusion, I will be working hard with Senator SMITH and others to get this legislation passed by the Senate as soon as possible. Unless we act quickly, renewable energy developers will, once again, be forced to suspend or cancel new projects that move us toward energy independence and create significant economic opportunities for a rural state like North Dakota.

Mr. President, I am pleased that this legislation has already been endorsed by the American Wind Energy Association, the American Corn Growers Association and others interested in renewable energy development. I urge my colleagues to work with us to get this measure enacted into law early in this session of the 109th Congress.

By Ms. SNOWE:

S. 543. A bill to amend the Internal Revenue Code of 1986 to expand the availability of the cash method of accounting for small businesses, and for other purposes; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to re-introduce a bill that I offered last year that I hope will be the first in a series of proposals to simplify the Tax Code for small business owners. Once enacted, these provisions will reduce not only the amount of taxes that small businesses pay, but I believe they also will reduce the administrative burden that saddles small companies in trying to satisfy their tax obligation.

Let me begin by saying how pleased I am that the President has made simplifying the Tax Code one of his top priorities for his second term. Clearly, a world-class economy such as that of the United States requires a world-class revenue collection system, meaning we need a Tax Code that is simple, consistent, and fair. For that reason, I look forward to seeing the recommendations that the President's tax reform panel will offer on how best we can reform the current Tax Code to improve its efficiency and strengthen our overall economy.

In the interim, the proposal that I am re-introducing today will simplify the code by permitting small business owners to use the cash method of accounting for reporting their income if they generally earn fewer than $10 million during the tax year. Currently, only those taxpayers that earn less than $5 million per year are able to use the cash method. By increasing this threshold to $10 million, more small businesses will be relieved of the burdensome record-keeping requirements that they must deal with currently in paying their income taxes.

Before I talk about the specifics of this particular provision, let me first explain why it is so critical that we simplify the Tax Code. As you know, Mr. President, small businesses are the backbone of our nation's economy. According to the Small Business Administration, small businesses represent 99 percent of all employers, employ 51 percent of the private-sector workforce, and contribute 51 percent of the private-sector output.

Yet, the despite the fact that small businesses are the engine that drives our improving economy, the current tax system imposes entirely unreasonable burdens on them when they try to

satisfy their tax obligations. As you know, the current tax code imposes a large, and expensive, burden on all taxpayers in terms of satisfying their reporting and recordkeeping obligations. The problem, though, is that small companies are disadvantaged most in terms of the money and time spent in satisfying their tax obligation vis-a-vis larger firms.

For example, according to the Small Business Administration's Office of Advocacy, small businesses spend more than 8 billion hours each year filling-out government reports, and they spend more than 80 percent of this time on completing tax forms. What's even more troubling is that companies that employ fewer than 20 employees spend nearly $6,975 per employee in tax compliance costs, and this amount is nearly 60 percent more than companies spend with more than 500 employees.

These statistics are disconcerting for several reasons. First, the fact that small businesses are being required to spend so much money on compliance costs means they have fewer earnings to reinvest into their business. This, in turn, means that they have less money to spend on new equipment or on worker training, which unfortunately has an adverse effect on their overall production and the economy as a whole.

Second, the fact that small business owners are required to make such a sizeable investment of their time into completing paperwork means they have less time to spend on doing what they do best—namely running their business and creating jobs.

Let me be clear, however, that I am in no way suggesting that small business owners are unique in having to pay income taxes, and I am certainly not expecting them to receive a free pass. In order to benefit from the freedoms and protections that our great country provides, individuals and businesses alike are required to pay taxes, and this duty inevitably imposes some minimum administrative and opportunity cost. What I am asking for, though, is a fairer, simpler Tax Code that allows small companies to satisfy this obligation without having to expend the amount of resources that they do currently.

For that reason, the package of proposals that I hope to introduce will provide not only targeted, affordable tax relief to small business owners, but they also will simplify the rules that exist currently. By simplifying the Tax Code, small business owners will be able to satisfy their tax obligation in a cheaper, more efficient manner, and they consequently will be able to invest more time and resources into their business.

As I mentioned earlier, the provision that I am introducing today will permit more taxpayers to use the cash method of accounting rather than the accrual method. Generally, current law permits only those taxpayers that earn fewer than $5 million in gross receipts during the tax year to use the cash method in reporting their income. In addition, current law precludes taxpayers that have inventory from using the cash method. This means that thousands of small businesses that should be entitled to report their income and expenses under the cash method of accounting are required to follow the accrual method, which tends to impose additional financial and administrative costs that should be eliminated.

My bill changes these existing rules so that more small businesses will be able to use the cash method. In short, my bill increases the gross receipts test under current law to $10 million and indexes this higher threshold to account for inflation. As the current $5 million threshold is clearly outdated, it makes little sense to have such an obsolete standard for this most important provision.

My bill also changes current law to permit those taxpayers with inventory to qualify for the cash method of accounting. Notably, however, my bill will not give these taxpayers an opportunity to simply recover costs associated with these otherwise inventoriable assets in the year of purchase. Rather, my bill will require these taxpayers to account for such costs as if they are a material or supply that is not incidental. This standard already exists under current law, and it is one with which many small businesses are already familiar. As such, this less-burdensome standard should ease the existing compliance burden for eligible taxpayers and allow them to devote more time and resources to their business.

Importantly, these changes will not reduce the amount of taxes a small business pays by even one dollar. Indeed, the overall amount of taxes a qualifying small business pays will remain the same. Rather, this bill simply permits more taxpayers to report income and account for costs in the year of the receipt or expenditure. Clearly, this method is much easier and simpler for small taxpayers, and it will reduce both their time and monetary expenditures spent on complying with the Tax Code.

AMENDMENTS SUBMITTED & PROPOSED

SA 58. Mr. STEVENS submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table.

SA 59. Mr. STEVENS submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 60. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 61. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 256, supra; which was ordered to lie on the table.

SA 62. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 256, supra; which was ordered to lie on the table.

SA 63. Mr. LEVIN (for himself and Mr. PRYOR) submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 64. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 256, supra; which was ordered to lie on the table.

SA 65. Mr. ROCKEFELLER (for himself and Mr. OBAMA) submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 66. Mr. HARKIN (for himself, Mr. ROCKEFELLER, Mr. LEAHY, Mr. DAYTON, and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 67. Mr. DODD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 68. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 69. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 70. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 71. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 72. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 73. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 74. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 75. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 76. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 77. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 78. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 79. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 80. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 81. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 82. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 83. Mr. KENNEDY (for Mr. LEAHY (for himself and Mr. SARBANES)) proposed an amendment to the bill S. 256, supra.

SA 84. Mr. KERRY submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 85. Ms. CANTWELL (for herself, Mr. ENSIGN, and Mrs. MURRAY) submitted an amendment intended to be proposed by her

to the bill S. 256, supra; which was ordered to lie on the table.

SA 86. Ms. CANTWELL (for herself, Mr. ENSIGN, and Mrs. MURRAY) submitted an amendment intended to be proposed by her to the bill S. 256, supra; which was ordered to lie on the table.

SA 87. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 88. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 89. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 90. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 91. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 92. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 93. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 94. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 95. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 96. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 97. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 98. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 99. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 100. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 101. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 102. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 103. Mr. LEAHY (for himself and Mr. SARBANES) submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 104. Mr. GRAHAM (for himself, Mr. DURBIN, and Mr. LEAHY) submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 105. Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 106. Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 107. Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 108. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 109. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 110. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 111. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 112. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 113. Mr. REID submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 114. Mr. REID submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 115. Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 116. Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 117. Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 118. Mr. KYL (for himself, Mr. FEINGOLD, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 119. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 120. Mr. LEVIN (for himself and Mr. PRYOR) submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 121. Mr. TALENT submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 122. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 123. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 124. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 125. Mr. LAUTENBERG (for himself and Mr. DAYTON) submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 126. Mr. DODD submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 127. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 128. Mr. SANTORUM proposed an amendment to the bill S. 256, supra.

SA 129. Mr. SCHUMER proposed an amendment to amendment SA 121 submitted by Mr. TALENT to the bill S. 256, supra.

TEXT OF AMENDMENTS

SA 58. Mr. STEVENS submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ——. CERTAIN OBLIGATIONS UNDER THE COMMUNICATIONS ACT OF 1934.

Section 4 of the Communications Act of 1934 (47 U.S.C. 154) is amended by adding at the end the following:

''(p) APPLICATION OF BANKRUPTCY LAWS.—

''(1) IN GENERAL.—The bankruptcy laws may not be applied—

''(A) to avoid, to discharge, to stay, or to set-off any pre-petition or post-petition debt obligation to the United States arising from an auction under section 309(j) of this Act;

''(B) to stay the payment obligations of the debtor to the United States if those obligations were a condition of the grant or retention of a license under this Act;

''(C) to prevent the automatic cancellation of a license under this Act pursuant to Commission rules for failure to comply with any monetary or nonmonetary condition for holding a license issued by the Commission, including the automatic cancellation of a license for failure to pay a monetary obligation of the debtor to the United States, whether or not dischargeable in a bankruptcy case, when due under an installment plan arising from an auction under section 309(j) of this Act, except that, upon cancellation of such license, the United States shall have an allowed unsecured claim for any outstanding debt to the United States with respect to such canceled license, and that such unsecured debt may be recovered by the United States under its rights as a creditor under this title or other applicable law;

''(D) to avoid, to discharge, or to set-off the pre-petition or post-petition payment obligation of a telecommunications carrier to contribute to the universal service fund, North American Numbering Plan, or other similar telecommunications funding mechanism established by Federal law; or

''(E) to avoid, to discharge, or to set-off the payment obligation of an entity subject to a pre-petition forfeiture or post-petition order or notice of apparent liability entered by the Commission pursuant to regulations of the Commission.

''(2) DEBTOR TO HAVE NO INTEREST IN PROCEEDS OF AUCTION.—A debtor in a proceeding under the bankruptcy laws shall have no right or interest in any portion of the proceeds from a subsequent auction of any license reclaimed by the Commission for failure to pay a monetary obligation of the debtor to the United States in connection with the grant or retention of a license under this Act.

''(3) SECURITY INTERESTS.—Notwithstanding any other provision of law, including State Uniform Commercial Codes, the Commission may—

''(A) establish rules and procedures governing security interests in licenses issued by the Commission, or the proceeds of the sale of such licenses; and

''(B) establish an office within the Commission for the recording and perfection of such security interests without regard to otherwise applicable State law.

''(4) BANKRUPTCY LAWS DEFINED.—In this subsection, the term 'bankruptcy laws' means title 11, United States Code, and any otherwise applicable Federal or State law regarding insolvencies or receiverships, including any Federal law enacted or amended after the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 not expressly in derogation of this section.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bankruptcy cases filed after the date of enactment of this Act.

SA 59. Mr. STEVENS submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ———. CERTAIN OBLIGATIONS UNDER THE COMMUNICATIONS ACT OF 1934.

(a) IN GENERAL.—Subchapter III of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

''§ 561. Application with Communications Act of 1934

''(a) IN GENERAL.—The bankruptcy laws may not be applied—

''(1) to avoid, to discharge, to stay, or to set-off any pre-petition or post-petition debt obligation to the United States arising from an auction under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j));

''(2) to stay the payment obligations of the debtor to the United States if those obligations were a condition of the grant or retention of a license under that Act;

''(3) to prevent the automatic cancellation of a license under that Act pursuant to Commission rules for failure to comply with any monetary or nonmonetary condition for holding a license issued by the Commission, including the automatic cancellation of a license for failure to pay a monetary obligation of the debtor to the United States, whether or not dischargeable in a bankruptcy case, when due under an installment plan arising from an auction under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), except that, upon cancellation of such license, the United States shall have an allowed unsecured claim for any outstanding debt to the United States with respect to such canceled license, and that such unsecured debt may be recovered by the United States under its rights as a creditor under this title or other applicable law;

''(4) to avoid, to discharge, or to set-off the pre-petition or post-petition payment obligation of a telecommunications carrier to contribute to the universal service fund, North American Numbering Plan, or other similar telecommunications funding mechanism established by Federal law; or

''(5) to avoid, to discharge, or to set-off the payment obligation of an entity subject to a pre-petition forfeiture or post-petition order or notice of apparent liability entered by the Commission pursuant to regulations of the Commission.

''(b) DEBTOR TO HAVE NO INTEREST IN PROCEEDS OF AUCTION.—A debtor in a proceeding under the bankruptcy laws shall have no right or interest in any portion of the proceeds from a subsequent auction of any license reclaimed by the Commission for failure to pay a monetary obligation of the debtor to the United States in connection with the grant or retention of a license under the Communications Act of 1934 (47 U.S.C. 151 et seq.).

''(c) SECURITY INTERESTS.—Notwithstanding any other provision of law, including State Uniform Commercial Codes, the Commission may—

''(1) establish rules and procedures governing security interests in licenses issued by the Commission, or the proceeds of the sale of such licenses; and

''(2) establish an office within the Commission for the recording and perfection of such security interests without regard to otherwise applicable State law.

''(d) DEFINITIONS.—In this section:

''(1) BANKRUPTCY LAWS.—The term 'bankruptcy laws' means this title and any otherwise applicable Federal or State law regarding insolvencies or receiverships, including any Federal law enacted or amended after the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 not expressly in derogation of this section.

''(2) COMMISSION.—The term 'Commission' means the Federal Communications Commission.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 560 the following:

''561. Application with Communications Act of 1934''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bankruptcy cases filed after the date of enactment of this Act.

SA 60. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 47, strike lines 12 through 14, and insert the following:

SEC. 202. EFFECT OF DISCHARGE.

(a) INJUNCTION AFTER CONFIRMATION OF BANKRUPTCY PLAN OF REORGANIZATION.—

(1) IN GENERAL.—Section 524(g)(2)(B)(ii)(IV)(bb) of title 11, United States Code, is amended by inserting before the semicolon at the end the following: '', or, if such a vote is not obtained with respect to any such class of claimants so established, the plan satisfies the requirements for confirmation of a plan under section 1129(b) that would apply to such class if the class did not accept the plan for purposes of section 1129(a)(8) (whether or not the class has accepted the plan)''.

(2) EFFECTIVE DATE; APPLICATION.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act and shall apply with respect to cases under title 11 of the United States Code, which were commenced before, on, or after such date.

(b) VIOLATION OF INJUNCTION; EXCEPTION.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

SA 61. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 132, between lines 5 and 6, insert the following:

SEC. 234. DISALLOWANCE OF CLAIM IF BASED ON EXTENSION OF CREDIT TO CERTAIN INDIVIDUALS UNDER 21 YEARS OF AGE.

Title 11, United States Code, as amended by this Act, is further amended by inserting after section 112 the following:

''§ 113. Disallowance of claim if based on extension of credit to certain individuals under 21 years of age

''(a) IN GENERAL.—In making a determination of whether to disallow a claim under this title, the court shall consider if the claim is based upon an extension to an individual of unsecured credit and the factors listed in subsection (b) are present. The factors listed in subsection (b) may be the basis for a disallowance of a claim under this title.

''(b) FACTORS.—The factors under this subsection are the following: if the individual, at the time unsecured credit was extended—

''(1) was under 21 years of age;

''(2) did not have a co-obligor on such unsecured credit who was a parent or spouse of the individual;

''(3) had an income level that was below or at the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))); and

''(4) already had 5 or more unsecured credit cards.''.

SA 62. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 132, between lines 5 and 6, insert the following:

SEC. 234. DISALLOWANCE OF CLAIM IF BASED ON EXTENSION OF CREDIT TO CERTAIN INDIVIDUALS UNDER 21 YEARS OF AGE.

Title 11, United States Code, as amended by this Act, is further amended by inserting after section 112 the following:

''§ 113. Disallowance of claim if based on extension of credit to certain individuals under 21 years of age

''(a) IN GENERAL.—In making a determination of whether to disallow a claim under this title, the court shall consider if the claim is based upon an extension to an individual of unsecured credit and the factors listed in subsection (b) are present. The factors listed in subsection (b) may be the basis for a disallowance of a claim under this title.

''(b) FACTORS.—The factors under this subsection are the following: if the individual, at the time unsecured credit was extended—

''(1) was under 21 years of age;

''(2) did not have a co-obligor on such unsecured credit who was a parent or spouse of the individual;

''(3) had an income level that was below or at the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))); and

''(4) already had 6 or more unsecured credit cards.''.

SA 63. Mr. LEVIN (for himself and Mr. PRYOR) submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. CALCULATION OF FINANCE CHARGE DURING GRACE PERIOD.

Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

''(h) CALCULATION OF FINANCE CHARGE DURING GRACE PERIOD.—A creditor may not impose a finance charge with respect to any amount paid on time.''.

SA 64. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the end add the following:

TITLE XVI—TREATMENT OF CERTAIN DISASTER MITIGATION PAYMENTS

SEC. 1601. PROPER TAX TREATMENT OF CERTAIN DISASTER MITIGATION PAYMENTS.

(a) QUALIFIED DISASTER MITIGATION PAYMENTS EXCLUDED FROM GROSS INCOME.—

(1) IN GENERAL.—Section 139 of the Internal Revenue Code of 1986 (relating to disaster relief payments) is amended by adding at the end the following new subsections:

''(g) QUALIFIED DISASTER MITIGATION PAYMENTS.—

''(1) IN GENERAL.—Gross income shall not include any amount received as a qualified disaster mitigation payment.

''(2) QUALIFIED DISASTER MITIGATION PAYMENT DEFINED.—For purposes of this section, the term 'qualified disaster mitigation payment' means any amount which is paid pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date) to or for the benefit of the owner of any property for hazard mitigation with respect to such property. Such term shall not include any amount received for the sale or disposition of any property.

''(3) NO INCREASE IN BASIS.—Notwithstanding any other provision of this subtitle, no increase in the basis or adjusted basis of any property shall result from any amount excluded under this subsection with respect to such property.

''(h) DENIAL OF DOUBLE BENEFIT.—Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed (to the person for whose benefit a qualified disaster relief payment or qualified disaster mitigation payment is made) for, or by reason of, any expenditure to the extent of the amount excluded under this section with respect to such expenditure.''.

(2) CONFORMING AMENDMENTS.—

(A) Subsection (d) of section 139 of such Code is amended by striking ''a qualified disaster relief payment'' and inserting ''qualified disaster relief payments and qualified disaster mitigation payments''.

(B) Subsection (e) of section 139 of such Code is amended by striking ''and (f)'' and inserting '', (f), and (g)''.

(b) CERTAIN DISPOSITIONS OF PROPERTY UNDER HAZARD MITIGATION PROGRAMS TREATED AS INVOLUNTARY CONVERSIONS.—Section 1033 of such Code (relating to involuntary conversions) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

''(k) SALES OR EXCHANGES UNDER CERTAIN HAZARD MITIGATION PROGRAMS.—For purposes of this subtitle, if property is sold or otherwise transferred to the Federal Government, a State or local government, or an Indian tribal government to implement hazard mitigation under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date), such sale or transfer shall be treated as an involuntary conversion to which this section applies.''.

(c) EFFECTIVE DATE.—

(1) QUALIFIED DISASTER MITIGATION PAYMENTS.—The amendments made by subsection (a) shall apply to amounts received in taxable years ending after December 31, 2003.

(2) DISPOSITIONS OF PROPERTY UNDER HAZARD MITIGATION PROGRAMS.—The amendments made by subsection (b) shall apply to sales or other dispositions in taxable years ending after December 31, 2003.

SA 65. Mr. ROCKEFELLER (for himself and Mr. OBAMA) submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 500, strike lines 7 through 11, and insert the following:

(1) by redesignating subsection (*l*) as subsection (n); and

(2) by inserting after subsection (k) the following:

''(*l*) Notwithstanding any other provision of this section, the benefits required to be provided by a last signatory operator under chapter 99 of the Internal Revenue Code of 1986, may not be terminated or modified by any court in a proceeding under this title.

''(m) If the debtor, during the 180-day period ending

SA 66. Mr. HARKIN (for himself, Mr. ROCKEFELLER, Mr. LEAHY, Mr. DAYTON, and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 498, strike lines 23 and 24, and insert the following:

(1) in paragraph (4), by striking ''within 90 days'';

SA 67. Mr. DODD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

At the end of the bill, add the following:

TITLE XVI—MODIFICATIONS FOR THE PROTECTION OF FAMILIES

SEC. 1601. MODIFICATIONS FOR THE PROTECTION OF FAMILIES.

(a) DISMISSAL OR CONVERSION.—Section 707(b)(2)(A)(ii) of title 11, United States Code, as amended by this Act, is further amended—

(1) in subclause (IV), by striking ''$1,500'' and inserting ''$5,000''; and

(2) by adding at the end the following:

''(VI) In addition, the debtor's monthly expenses shall include—

''(aa) taxes and mandatory withholdings from wages;

''(bb) alimony, child, and spousal support payments;

''(cc) legal fees necessary for the debtor's case;

''(dd) pension payments;

''(ee) religious and charitable contributions;

''(ff) union dues;

''(gg) other expenses necessary for the operation of a business of the debtor or for the debtor's employment;

''(hh) ownership costs for 1 motor vehicle (or 2 in the case of a joint filing), determined in accordance with Internal Revenue Service transportation standards, reduced by any payments on debts secured by the motor vehicle or vehicle lease payments made by the debtor;

''(ii) expenses for children's toys and recreation for children of the debtor, tax credits for earned income determined under section 32 of the Internal Revenue Code of 1986; and

''(jj) miscellaneous and emergency expenses.''.

(b) DEFINITION OF CURRENT MONTHLY INCOME.—Section 101(10A)(B) of title 11, United States Code, as amended by this Act, is further amended by inserting ''payments received as domestic spousal obligations,'' after ''Social Security Act,''.

(c) PROPERTY OF THE ESTATE.—Section 541 of title 11, United States Code, as amended by this Act, is further amended—

(1) in subsection (a)(5)(B) by inserting ''except as provided under subsection (b)(11),'' before ''as a result''; and

(2) in subsection (b)—

(A) in paragraph (8), by striking ''or'' after the semicolon;

(B) in paragraph (9), by striking the period at the end and inserting a semicolon; and

(C) by inserting after paragraph (9) the following:

''(10) any—

''(A) refund of tax due to the debtor under subtitle A of the Internal Revenue Code of 1986 for any taxable year to the extent that the refund does not exceed the amount of an applicable earned income tax credit allowed under section 32 of such Code for such year and the amount of an applicable child tax credit allowed under section 24 of such Code for such year; and

''(B) advance payment for an earned income tax credit described in subparagraph (A); or

''(11) the right of the debtor to receive domestic spousal obligations for the debtor or dependent of the debtor.''.

(d) PROTECTION OF EARNED INCOME TAX CREDIT AND SUPPORT PAYMENTS UNDER BANKRUPTCY REPAYMENT PLANS IN CHAPTER 12.—Section 1225(b) of title 11, United States Code, as amended by this Act, is further amended by adding at the end the following:

''(3) In determining disposable income, the court shall not consider amounts the debtor receives or is entitled to receive from—

''(A) any refund of tax due to the debtor under subtitle A of the Internal Revenue Code of 1986 for any taxable year to the extent that the refund does not exceed the amount of an applicable earned income tax credit allowed under section 32 of the Internal Revenue Code of 1986 for such year and the amount of an applicable child tax credit allowed under section 24 of such Code for such year;

''(B) any advance payment for an earned income tax credit described in subparagraph (A); or

''(C) child support, foster care, or disability payment for the care of a dependent child in accordance with applicable nonbankruptcy law.''.

(e) PROTECTION OF EARNED INCOME TAX CREDIT AND SUPPORT PAYMENTS UNDER BANKRUPTCY REPAYMENT PLANS IN CHAPTER 13.—Section 1325(b) of title 11, United States Code, as amended by this Act, is further amended by adding at the end the following:

''(5) In determining disposable income, the court shall not consider amounts the debtor receives or is entitled to receive from—

''(A) any refund of tax due to the debtor under subtitle A of the Internal Revenue Code of 1986 for any taxable year to the extent that the refund does not exceed the amount of an applicable earned income tax credit allowed by section 32 of the Internal Revenue Code of 1986 for such year and the amount of an applicable child tax credit allowed under section 24 of such Code for such year;

''(B) any advance payment for an earned income tax credit described in subparagraph (A); or

''(C) child support, foster care, or disability payment for the care of a dependent child in accordance with applicable nonbankruptcy law.''.

(f) EXEMPTIONS.—Section 522(d)(10) of title 11, United States Code, as amended by this Act, is further amended—

(1) in subparagraph (C), by inserting ''or'' after the semicolon;

(2) by striking subparagraph (D); and

(3) by striking ''(E)'' and inserting ''(D)''.

(g) PERSONAL PROPERTY.—

(1) SECTION 521.—Section 521(a)(6) of title 11, United States Code, as amended by this Act, is further amended by striking ''of personal property'' and inserting ''of an item of personal property purchased for more than $3,000''.

(2) SECTION 362.—Section 362(h)(1) of title 11, United States Code, as amended by this Act, is further amended by striking ''to personal property'' and inserting ''to an item of personal property purchased for more than $3,000''.

(h) RESTORING THE FOUNDATION FOR SECURED CREDIT.—Section 1325(a) of title 11, United States Code, as amended by this Act, is further amended in the flush matter at the end by striking ''if the debt was incurred'' and inserting ''to the extent that the debt was incurred to purchase that thing of value''.

(i) HOUSEHOLD GOODS.—

(1) DEFINITION.—Section 101 of title 11, United States Code, as amended by this Act, is further amended—

(A) by redesignating paragraph (27A) as paragraph (27B); and

(B) by inserting before paragraph (27B) the following:

''(27A) 'household goods '—

''(A) includes tangible personal property normally found in or around a residence; and

''(B) does not include motor vehicles used for transportation purposes;''.

(2) FOR PURPOSES OF SECTION 522.—Section 522(f) of title 11, United States Code, as amended by this Act, is further amended by striking paragraph (4).

(j) LIMITATION ON LUXURY GOODS.—Section 523(a)(2)(C)(i) of title 11, United States Code, as amended by this Act, is further amended—

(1) in subclause (I)—

(A) by striking ''$500'' and inserting ''$1,000'';

(B) by striking ''90'' and inserting ''70''; and

(C) by inserting ''if the creditor proves by a preponderance of the evidence at a hearing that the goods or services were not reasonably necessary for the maintenance or support of the debtor or the dependents of the debtor'' after ''nondischargeable''; and

(2) in subclause (II)—

(A) by striking ''$750'' and inserting ''$1,225''; and

(B) by striking ''70'' and inserting ''60''.

(k) EXCEPTIONS TO DISCHARGE.—Section 523 of title 11, United States Code, as amended by this Act, is further amended—

(1) in subsection (c), by inserting ''or (14)(A),'' after ''or (6)'' each place it appears; and

(2) in subsection (d), by striking ''(a)(2)'' and inserting ''(a)(2) or (14A)''.

SA 68. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 191, between lines 11 and 12, insert the following:

(c) FURTHER LIMITATION ON HOMESTEAD EXEMPTION.—Section 522(b) of title 11, United States Code, is amended by adding at the end the following:

''(5) Notwithstanding any other provision of this section, the maximum amount of a homestead exemption that may be provided under State law shall be $300,000.''.

SA 69. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 20, line 16, strike ''Act,'' and insert ''Act, income from any job in which the debtor is no longer employed, income from any activity which the debtor can no longer engage in due to disability,''.

SA 70. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 19, between lines 13 and 14, insert the following:

''(8)(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the debtor, in any consecutive 12-month period during the 2 years before the date of the filing of the petition, failed to receive alimony or child support income, or both, that such debtor was entitled to receive pursuant to a valid court order, totaling an amount in excess of 35 percent of the debtor's household income for such 12-month period.''.

SA 71. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

Beginning on page 155, strike line 3 and all that follows through page 156, line 5.

SA 72. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 28, between lines 21 and 22, insert the following:

SEC. 102A. PROTECTION OF FAMILIES BELOW MEDIAN INCOME.

Section 707(b) of title 11, United States Code, as amended by section 102, is further amended—

(1) in paragraph (2)(C), by striking ''calculated'' and inserting ''calculated, except that a debtor described in paragraph (7) need only provide the calculations or other information showing that the debtor meets the standards of such paragraph''; and

(2) in paragraph (7)(A), by striking ''No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2)'' and inserting ''Paragraph (2) does not apply, and the court may not dismiss a case based on any form of means testing,''.

SA 73. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 19, between lines 13 and 14, insert the following:

''(8)(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the debtor is a victim of offshoring.

''(B) In this paragraph—

''(i) the term 'victim of offshoring' means a debtor who, during the 2 year period before the date of the filing of the petition, lost a job in connection with offshoring; and

''(ii) the term 'offshoring' means any action taken by an employer the effect of which is to create, shift, or transfer employment positions or facilities outside the United States and which results in an employment loss.''.

SA 74. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 499, strike line 3 and all that follows through page 500, line 2, and insert the following:

SEC. 1402. FRAUDULENT TRANSFERS AND OBLIGATIONS.

Section 548 of title 11, United States Code, as amended by section 907, is further amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ''one year'' and inserting ''4 years'';

(ii) by inserting ''(including any transfer to or for the benefit of an insider under an employment contract)'' after ''any transfer'';

(iii) by inserting ''(including any obligation to or for the benefit of an insider under an employment contract)'' after ''any obligation'';

(iv) in subparagraph (A), by striking ''or'' at the end;

(v) in subparagraph (B)—

(I) in clause (ii)—

(aa) in subclause (II), by striking ''or'' at the end;

(bb) in subclause (III), by striking the period at the end and inserting ''; or''; and

(cc) by adding at the end the following:

''(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.''; and

(II) by striking the period at the end and inserting ''; or''; and

(vi) by adding at the end the following:

''(C) made an excess benefit transfer or incurred an excess benefit obligation to an insider, general partner, or other affiliated person of the debtor, if the debtor—

''(i) was insolvent on the date on which the transfer was made or the obligation was incurred; or

''(ii) became insolvent in part as a result of the transfer or obligation.'';

(2) in subsection (b), by striking ''one year'' and inserting ''2 years''; and

(3) in subsection (d)(2)—

(A) in subparagraph (D), by striking ''and'' at the end;

(B) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(F) the terms 'excess benefit transfer' and 'excess benefit obligation' mean—

''(i) a transfer or obligation, as applicable, to an insider, general partner, or other affiliated person of the debtor in an amount that is not less than 10 times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees during the calendar year in which the transfer is made or the obligation is incurred; or

''(ii) if no such similar transfers were made to, or obligations incurred for the benefit of, such nonmanagement employees during such calendar year, a transfer or obligation that is in an amount that is not less than 25 percent more than the amount of any similar transfer or obligation made to or incurred for the benefit of such insider, partner, or other affiliated person of the debtor during the calendar year before the year in which such transfer is made or obligation is incurred.''.

SA 75. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 502, between lines 17 and 18, insert the following:

SEC. 1407. VENUE OF CASES UNDER TITLE 11.

Section 1408 of title 28, United States Code, is amended to read as follows:

''§ 1408. Venue of cases under title 11

''(a) Except as provided in section 1410, a case under title 11 may be commenced—

''(1) if the debtor is not a corporation, in the district court for the district—

''(A) in which the debtor's domicile, residence, principal place of business in the United States, or principal assets in the United States have been located—

''(i) during the 180-day period immediately preceding the date of the commencement of the case; or

''(ii) for a longer portion of such 180-day period than the debtor's domicile, residence, principal place of business in the United States, or principal assets in the United States were located in any other district; or

''(B) in which there is pending a case under title 11 concerning the debtor's affiliate, a general partner of the debtor, or a partnership in which the debtor is a general partner;

''(2) if the debtor is a corporation, in the district court for the district—

''(A) in which the debtor's principal place of business in the United States or principal assets in the United States have been located—

''(i) during the 180-day period immediately preceding the date of the commencement of the case; or

''(ii) for a longer portion of such 180-day period than the debtor's principal place of business in the United States or principal assets in the United States were located in any other district; or

''(B) in which there is pending a case under title 11 concerning another corporation that directly or indirectly owns, controls, or holds with power to vote 50 percent or more of the outstanding voting securities of the debtor, if—

''(i) not later than 2 years before the date of the filing of the petition in the debtor's case, the debtor's financial statements were consolidated with those of the other corporation in 1 or more reports filed under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78(m) and 78*o*(d); or

''(ii) the debtor has been controlled by the other corporation for not less than 1 year before the date of the filing of the petition in the debtor's case.

''(b) In this section, the definitions in section 101 of title 11 shall apply.''.

SA 76. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 502, between lines 17 and 18, insert the following:

SEC. 1407. FAIRNESS IN BANKRUPTCY LITIGATION.

(a) SHORT TITLE.—This section may be cited as the ''Fairness in Bankruptcy Litigation Act of 2005''.

(b) VENUE IN BANKRUPTCY CASES.—Section 1408 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Except'';

(2) in paragraph (1), by striking ''or'' at the end; and

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

''(2) in which a case under title 11 concerning the controlling corporation is pending, if—

''(A) the debtor is controlled by another corporation;

''(B) within the 730 days before the date of the debtor's filing under title 11, the financial statements of the debtor have been consolidated with those of the controlling corporation in 1 or more reports filed under section 13 or 15(d) of the Securities Exchange Act of 1934; and

''(C) the controlling corporation is a debtor in a proceeding under title 11; or

''(3) in which a case under title 11 concerning the controlling corporation is pending, if—

''(A) the debtor is a corporation other than a corporation described in paragraph (2);

''(B) the debtor has been controlled by another corporation for not less than 365 days before the date of the filing of the debtor's petition under title 11; and

''(C) the controlling corporation is a debtor in a proceeding under title 11.

''(b) For purposes of subsection (a)—

''(1) if the debtor is a corporation, the domicile and residence of the debtor are located where the debtor's principal place of business is located; and

''(2) the term 'control' has the meaning given that term in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).''.

(c) CURE OR WAIVER OF DEFECTS.—Section 1406(c) of title 28, United States Code, is amended to read as follows:

''(c) As used in this section—

''(1) the term 'district court'—

''(A) includes the District Court of Guam, the District Court of the Northern Mariana Islands, and the District Court of the Virgin Islands; and

''(B) with regard to cases pending before a bankruptcy court, includes a bankruptcy court; and

''(2) the term 'district' includes the territorial jurisdiction of each district court.''.

SA 77. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 213, strike lines 1 through 7, and insert the following:

SEC. 410. VENUE OF CERTAIN PROCEEDINGS.

(a) TITLE 11 CASES.—Section 1408 of title 28, United States Code, is amended to read as follows:

''§ 1408. Venue of cases under title 11

''(a) Except as provided in section 1410, a case under title 11 may be commenced—

''(1) if the debtor is not a corporation, in the district court for the district—

''(A) in which the debtor's domicile, residence, principal place of business in the United States, or principal assets in the United States have been located—

''(i) during the 180-day period immediately preceding the date of the commencement of the case; or

''(ii) for a longer portion of such 180-day period than the debtor's domicile, residence, principal place of business in the United States, or principal assets in the United States were located in any other district; or

''(B) in which there is pending a case under title 11 concerning the debtor's affiliate, a general partner of the debtor, or a partnership in which the debtor is a general partner;

''(2) if the debtor is a corporation, in the district court for the district—

''(A) in which the debtor's principal place of business in the United States or principal assets in the United States have been located—

''(i) during the 180-day period immediately preceding the date of the commencement of the case; or

''(ii) for a longer portion of such 180-day period than the debtor's principal place of business in the United States or principal assets in the United States were located in any other district; or

''(B) in which there is pending a case under title 11 concerning another corporation that directly or indirectly owns, controls, or holds with power to vote 50 percent or more of the outstanding voting securities of the debtor, if—

''(i) not later than 2 years before the date of the filing of the petition in the debtor's case, the debtor's financial statements were consolidated with those of the other corporation in 1 or more reports filed under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78(m) and 78*o*(d); or

''(ii) the debtor has been controlled by the other corporation for not less than 1 year before the date of the filing of the petition in the debtor's case.

''(b) In this section, the definitions in section 101 of title 11 shall apply.''.

(b) RELATED CASES.—Section 1409(b) of title 28, United States Code, is amended by striking ''or a consumer debt of less than $5,000'' and inserting '', a consumer debt of less than $15,000, or a debt (excluding a consumer debt) against a noninsider of less than $10,000,''.

SA 78. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (8), by striking ''or'' after the semicolon;

(2) in paragraph (9), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(10) if such claim is for a credit transaction involving a consumer as defined in section 103(h) of the Truth in Lending Act (15 U.S.C. §1602(g)), interest included as part of such claim exceeds the amount allowed by the laws of the State, Territory or District where the debtor resides.

SA 79. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 132, between lines 5 and 6, insert the following:

SEC. 234. CUSTOMER RIGHT TO PARTICIPATE IN BANKRUPTCY PROCEEDINGS.

Section 1109(b) of title 11, United States Code, is amended by inserting ''a customer of the debtor or a bona fide nonprofit representative of customers of the debtor,'' after ''a creditor,''.

SA 80. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 179, strike line 1 and all that follows through page 182, line 3, and insert the following:

SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.

Section 1322(d) of title 11, United States Code, is amended to read as follows:

''(d)(1) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median

family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 3 years.

''(2) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 3 years.''.

SA 81. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 155, strike line 8 and all that follows through line 20, and insert the following:

''(I) consumer debts owed to a single creditor for a purchase of a single item for more than $500 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

''(II) cash advances aggregating more than $1500 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

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SA 82. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 196, strike line 7 and all that follows through line 21.

SA 83. Mr. KENNEDY (for Mr. LEAHY (for himself and Mr. SARBANES)) proposed an amendment to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 215, strike lines 3 through 18, and insert the following:

SEC. 414. DEFINITION OF DISINTERESTED PERSON.

Section 101(14)(B) of title 11, United States Code, is amended by inserting '', within five years before the date of the filing of the petition,'' after ''was not''.

SA 84. Mr. KERRY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 480, strike line 20, and insert the following:

in by the creditor).

''(11a)(A) Repayment information that would apply to any annual percentage rate applicable to the consumer's account under the credit plan, including information regarding any change in any annual percentage rate charged to the consumer under the plan, appearing in conspicuous type on the front of the first page of the first billing statement prepared following the change, and accompanied by an appropriate explanation, containing—

''(i) the words 'THERE HAS BEEN A CHANGE IN THE ANNUAL PERCENTAGE RATE FOR YOUR ACCOUNT.';

''(ii) the words 'THE PREVIOUS INTEREST RATE:' followed by the previous annual percentage rate charged to the consumer under the plan; and

''(iii) the words 'THE CURRENT INTEREST RATE' followed by the current annual percentage rate charged to the consumer under the plan.

''(B) Any creditor who fails to comply with subparagraph (A), shall not be entitled to use the benefits and presumptions provided to creditors under section 707(b)(2) of title 11, United States Code.''.

SA 85. Ms. CANTWELL (for herself, Mr. ENSIGN, and Mrs. MURRAY) submitted an amendment intended to be proposed by her to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 407, line 5, strike the period and insert the following: ; and

(3) by adding at the end the following: ''Notwithstanding any other provision of this title, contractual rights do not permit a trustee to collect any termination payment, fee, or charge under a terminated contract for the sale of electricity if a governmental agency having jurisdiction over the debtor's wholesale sales of electricity in the interstate market has made a finding that the debtor engaged in manipulation of the electricity market and revoked the debtor's authority to make any market based sales of electricity. The preceding sentence shall take effect on the date of enactment of that sentence and shall be applicable to any termination payment, fee, or charge that has not yet been determined pursuant to a final, non-appealable order to be owed to the debtor.''.

SA 86. Ms. CANTWELL (for herself, Mr. ENSIGN, and Mrs. MURRAY) submitted an amendment intended to be proposed by her to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. MANIPULATIVE CONDUCT BARRING RIGHT TO TERMINATION PAYMENTS.

(a) IN GENERAL.—Title 11 of the United States Code is amended by adding after section 562, as added by this Act, the following:

''SEC. 563. MANIPULATIVE CONDUCT BARRING RIGHT TO TERMINATION PAYMENTS.

'' Notwithstanding any other provision of this title, a trustee may not collect any termination payment, fee, or charge under a terminated contract for the sale of electricity if a governmental agency having jurisdiction over the debtor's wholesale sales of electricity in the interstate market has—

''(1) made a finding that the debtor engaged in manipulation of the electricity market; and

''(2) revoked the debtor's authority to make any market based sales of electricity.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of enactment of this Act and shall be applicable to any termination payment, fee, or charge that has not yet been determined pursuant to a final, non-appealable order to be owed to the debtor.

SA 87. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 445, strike lines 10 through 13, and insert the following:

SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104(b) of title 11, United States Code, as amended by this Act, is further amended—

(1) by inserting ''101(19A),'' after ''101(18),'' each place it appears;

(2) by inserting ''522(f)(3),'' after ''522(d),'' each place it appears;

(3) by inserting ''541(b), 547(c)(9),'' after ''523(a)(2)(C),'' each place it appears;

(4) in pagagraph (1), by striking ''and 1325(b)(3)'' and inserting ''1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28''; and

(5) in paragraph (2), by striking ''and 1325(b)(3) of this title'' and inserting ''1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28''.

SA 88. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

Beginning on page 230, strike line 7 and all that follows through page 231, line 6, and insert the following:

''(e) In a small business case—

''(1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—

''(A) extended as provided by this subsection, after notice and a hearing; or

''(B) the court, for cause, orders otherwise;

''(2) the plan and a disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief, unless that period is—

''(A) extended as provided by this subsection, after notice and a hearing; or

''(B) the court, for cause, orders otherwise; and

''(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) within which the plan shall be confirmed, may be extended only if—

''(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;

''(B) a new deadline is imposed at the time the extension is granted; and

''(C) the order extending time is signed before the existing deadline has expired.''.

SA 89. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

Beginning on page 221, strike line 1 and all that follows through page 240, line 4, and insert the following:

Subtitle B—Small Business Bankruptcy Provisions

SEC. 431. SCHEDULING CONFERENCES.

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking '', may''; and

(2) by striking paragraph (1) and inserting the following:

''(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and''.

SEC. 432. SERIAL FILER PROVISIONS.

Section 362 of title 11, United States Code, as amended by sections 106, 305, and 311, is amended—

(1) in subsection (k), as so redesignated by section 305—

(A) by striking ''An'' and inserting ''(1) Except as provided in paragraph (2), an''; and

(B) by adding at the end the following:

''(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.''; and

(2) by adding at the end the following:

''(n)(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor—

''(A) is a debtor in a small business case pending at the time the petition is filed;

''(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

''(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

''(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

''(2) Paragraph (1) does not apply—

''(A) to an involuntary case involving no collusion by the debtor with creditors; or

''(B) to the filing of a petition if—

''(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

''(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.''.

SA 90. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

Beginning on page 167, strike line 3 and all that follows through page 169, line 25, and insert the following:

(a) NOTICE.—Section 342 of title 11, United States Code, is amended—

(1) in subsection (c), by adding before the period at the end the following: ''unless the creditor cannot with reasonable effort identify the account to which the notice applies without the information required by this subsection''; and

(2) by adding at the end the following:

''(e) At any time in a case under chapter 7 or 13 concerning an individual debtor, a creditor may file with the court and serve on the debtor a notice of the address to be used for service of notice on the creditor in that case. Beginning 10 days after the creditor files and serves the notice, any notice that the court or the debtor is required to give shall be given at the address contained in the creditor's notice of address.

''(f)(1) An entity may file with any bankruptcy court a notice of address to be used by all the bankruptcy courts or by particular bankruptcy courts, as so specified by such entity at the time such notice is filed, to provide notice to such entity in all cases under chapters 7 and 13 pending in the courts with respect to which such notice is filed, in which such entity is a creditor.

''(2) In any case filed under chapter 7 or 13, any notice required to be provided by a court with respect to which a notice is filed under paragraph (1), to such entity later than 30 days after the filing of such notice under paragraph (1) shall be provided to such address unless with respect to a particular case a different address is specified in a notice filed and served in accordance with subsection (e).

''(3) In any case filed under chapter 7 or 13, any notice required to be provided by any party in interest with respect to which a notice is filed under paragraph (1), to such entity later than 120 days after the filing of such notice under paragraph (1) shall be provided to such address unless with respect to a particular case a different address is specified in a notice filed and served in accordance with subsection (e).

''(4) A notice filed under paragraph (1) may be withdrawn by such entity.

''(g)(1) Notice given to a creditor other than as provided in this section is not effective until that notice has been brought to the attention of the creditor. If the creditor designates a person or department to be responsible for receiving notices concerning bankruptcy cases by a filing in accordance with subsection (d) or (e) and establishes reasonable procedures so that bankruptcy notices received by the creditor are actually delivered to the person or department, notice is not considered to have been brought to the attention of the creditor until that person or department receives the notice.

''(2) The court may not impose either a sanction under section 362(h) or a sanction that a court may otherwise impose on account of a violation of the stay under section 362(a) or a failure to comply with section 542 or 543 on account of any action of the creditor unless the action occurs after the creditor has received either notice of the commencement of the case effective under this section or other actual notice reasonably calculated to come to the attention of the creditor, the creditor's attorney, the creditor's agent taking the action, or other appropriate person.''.

SA 91. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 205, between lines 16 and 17, insert the following:

SEC. 332. FRAUDULENT INVOLUNTARY BANKRUPTCY.

(a) SHORT TITLE.—This section may be cited as the ''Involuntary Bankruptcy Improvement Act of 2005''.

(b) INVOLUNTARY CASES.—Section 303 of title 11, United States Code, is amended by adding at the end the following:

''(*l*)(1) If—

''(A) the petition under this section is false or contains any materially false, fictitious, or fraudulent statement;

''(B) the debtor is an individual; and

''(C) the court dismisses such petition,

the court, upon the motion of the debtor, shall seal all the records of the court relating to such petition, and all references to such petition.

''(2) If the debtor is an individual and the court dismisses a petition under this section, the court may enter an order prohibiting all consumer reporting agencies (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) from making any consumer report (as defined in section 603(d) of that Act) that contains any information relating to such petition or to the case commenced by the filing of such petition.

''(3) Upon the expiration of the statute of limitations described in section 3282 of title 18, for a violation of section 152 or 157 of such title, the court, upon the motion of the debtor and for good cause, may expunge any records relating to a petition filed under this section.''.

(c) BANKRUPTCY FRAUD.—Section 157 of title 18, United States Code, is amended by inserting '', including a fraudulent involuntary bankruptcy petition under section 303 of such title'' after ''title 11''.

SA 92. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

Beginning on page 33, strike line 1 and all that follows through page 45, line 6, and insert the following:

SEC. 106. CREDIT COUNSELING.

(a) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code, is amended by adding at the end the following:

''(h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

''(2)(A) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved nonprofit budget and credit counseling agencies for such district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from such agencies by reason of the requirements of paragraph (1).

''(B) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in subparagraph (A) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter. Notwithstanding the preceding sentence, a nonprofit budget and credit counseling agency may be disapproved by the United States trustee (or the bankruptcy administrator, if any) at any time.

''(3) The court may waive the requirements of paragraph (1), based on the sworn statement filed by the debtor under section 521(b)(3). The court may condition the waiver on the debtor's meeting the requirements of paragraph (1) within a specified period of time after the court's waiver.''.

(b) CHAPTER 7 DISCHARGE.—Section 727(a) of title 11, United States Code, is amended—

(1) in paragraph (9), by striking ''or'' at the end;

(2) in paragraph (10), by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this

paragraph shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section, or if the court finds that exigent circumstances merit a waiver of the requirements of this paragraph (The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in this paragraph shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.).''.

(c) CHAPTER 13 DISCHARGE.—Section 1328 of title 11, United States Code, is amended by adding at the end the following:

''(g)(1) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

''(2) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1), or if the court finds that exigent circumstances merit a waiver of the requirements of this paragraph.

''(3) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.''.

(d) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''The debtor shall—''; and

(2) by adding at the end the following:

''(b) In addition to the requirements of subsection (a), an individual debtor, other than a debtor who is excused by section 109(h)(2) from meeting the requirements of section 109(h)(1), shall file with the court—

''(1) a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor;

''(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the approved nonprofit budget and credit counseling agency referred to in paragraph (1); or

''(3) a sworn statement that sets forth exigent circumstances that preclude the filing of a certificate including—

''(A) the debtor is facing foreclosure, garnishment, attachment, eviction, levy of execution, utility shutoff, or similar claim enforcement procedure that would deprive the debtor of property or necessary services before the debtor could obtain counseling;

''(B) the debtor is unable to obtain counseling services due to lack of transportation, incapacity, or disability;

''(C) the debtor attempted to obtain counseling within the five-day period immediately before filing bankruptcy but was unsuccessful in obtaining counseling for circumstances beyond the debtor's control;

''(D) the debtor cannot afford costs associated with the counseling program; or

''(E) the debtor met the requirements of section 109(h)(1) and a certificate was unavailable, lost, or unreasonably denied.''.

(e) GENERAL PROVISIONS.—

(1) IN GENERAL.—Chapter 1 of title 11, United States Code, is amended by adding at the end the following:

''§ 111. Nonprofit budget and credit counseling agencies; financial management instructional courses

''(a) The clerk shall maintain a publicly available list of—

''(1) nonprofit budget and credit counseling agencies that provide 1 or more services described in section 109(h) currently approved by the United States trustee (or the bankruptcy administrator, if any); and

''(2) instructional courses concerning personal financial management currently approved by the United States trustee (or the bankruptcy administrator, if any), as applicable.

''(b) The United States trustee (or bankruptcy administrator, if any) shall only approve a nonprofit budget and credit counseling agency or an instructional course concerning personal financial management as follows:

''(1) The United States trustee (or bankruptcy administrator, if any) shall have thoroughly reviewed the qualifications of the nonprofit budget and credit counseling agency or of the provider of the instructional course under the standards set forth in this section, and the services or instructional courses that will be offered by such agency or such provider, and may require such agency or such provider that has sought approval to provide information with respect to such review.

''(2) The United States trustee (or bankruptcy administrator, if any) shall have determined that such agency or such instructional course fully satisfies the applicable standards set forth in this section.

''(3) If a nonprofit budget and credit counseling agency or instructional course did not appear on the approved list for the district under subsection (a) immediately before approval under this section, approval under this subsection of such agency or such instructional course shall be for a probationary period not to exceed 6 months.

''(4) At the conclusion of the applicable probationary period under paragraph (3), the United States trustee (or bankruptcy administrator, if any) may only approve for an additional 1-year period, and for successive 1-year periods thereafter, an agency or instructional course that has demonstrated during the probationary or applicable subsequent period of approval that such agency or instructional course—

''(A) has met the standards set forth under this section during such period; and

''(B) can satisfy such standards in the future.

''(5) Not later than 30 days after any final decision under paragraph (4), an interested person may seek judicial review of such decision in the appropriate district court of the United States.

''(c)(1) The United States trustee (or the bankruptcy administrator, if any) shall only approve a nonprofit budget and credit counseling agency that demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides.

''(2) To be approved by the United States trustee (or the bankruptcy administrator, if any), a nonprofit budget and credit counseling agency shall, at a minimum—

''(A) have a board of directors the majority of which—

''(i) are not employed by such agency; and

''(ii) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency;

''(B) if a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee;

''(C) provide for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

''(D) provide full disclosures to a client, including funding sources, counselor qualifications, possible impact on credit reports, and any costs of such program that will be paid by such client and how such costs will be paid;

''(E) provide adequate counseling with respect to a client's credit problems that includes an analysis of such client's current financial condition, factors that caused such financial condition, and how such client can develop a plan to respond to the problems without incurring negative amortization of debt;

''(F) provide trained counselors who receive no commissions or bonuses based on the outcome of the counseling services provided by such agency, and who have adequate experience, and have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (E);

''(G) demonstrate adequate experience and background in providing credit counseling; and

''(H) have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan.

''(d) The United States trustee (or the bankruptcy administrator, if any) shall only approve an instructional course concerning personal financial management—

''(1) for an initial probationary period under subsection (b)(3) if the course will provide at a minimum—

''(A) trained personnel with adequate experience and training in providing effective instruction and services;

''(B) learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such instructional course;

''(C) adequate facilities situated in reasonably convenient locations at which such instructional course is offered, except that such facilities may include the provision of such instructional course by telephone or through the Internet, if such instructional course is effective; and

''(D) the preparation and retention of reasonable records (which shall include the debtor's bankruptcy case number) to permit evaluation of the effectiveness of such instructional course, including any evaluation of satisfaction of instructional course requirements for each debtor attending such instructional course, which shall be available for inspection and evaluation by the Executive Office for United States Trustees, the United States trustee (or the bankruptcy administrator, if any), or the chief bankruptcy judge for the district in which such instructional course is offered; and

''(2) for any 1-year period if the provider thereof has demonstrated that the course meets the standards of paragraph (1) and, in addition—

''(A) has been effective in assisting a substantial number of debtors to understand personal financial management;

''(B) is otherwise likely to increase substantially the debtor's understanding of personal financial management; and

''(C) if a fee is charged for such course, is offered for a reasonable fee and offered to all persons without regard to ability to pay the fee.

''(e) The district court may, at any time, investigate the qualifications of a nonprofit budget and credit counseling agency referred to in subsection (a), and request production of documents to ensure the integrity and effectiveness of such agency. The district court may, at any time, remove from the approved list under subsection (a) a nonprofit budget and credit counseling agency upon finding such agency does not meet the qualifications of subsection (b).

''(f) The United States trustee (or the bankruptcy administrator, if any) shall notify the clerk that a nonprofit budget and credit counseling agency or an instructional course is no longer approved, in which case the clerk shall remove it from the list maintained under subsection (a).

''(g)(1) No nonprofit budget and credit counseling agency may provide to a credit reporting agency information concerning whether a debtor has received or sought instruction concerning personal financial management from such agency.

''(2) A nonprofit budget and credit counseling agency that willfully or negligently fails to comply with any requirement under this title with respect to a debtor shall be liable for damages in an amount equal to the sum of—

''(A) any actual damages sustained by the debtor as a result of the violation; and

''(B) any court costs or reasonable attorneys' fees (as determined by the court) incurred in an action to recover those damages.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title 11, United States Code, is amended by adding at the end the following:

''111. Nonprofit budget and credit counseling agencies; financial management instructional courses.''.

(f) LIMITATION.—Section 362 of title 11, United States Code, is amended by adding at the end the following:

''(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

''(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.''.

SA 93. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 112, strike line 17 and all that follows through page 120, line 24, and insert the following:

''(12A) 'debt relief agency' means any person, other than an attorney or an employee of an attorney, who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

''(A) any person who is an officer, director, employee, or agent of a person who provides such assistance or of the bankruptcy petition preparer;

''(B) a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

''(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted person to the creditor;

''(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such depository institution or credit union; or

''(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.''.

(b) CONFORMING AMENDMENT.—Section 104(b) of title 11, United States Code, is amended by inserting ''101(3),'' after ''sections'' each place it appears.

SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

''§ 526. Restrictions on debt relief agencies

''(a) A debt relief agency shall not—

''(1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;

''(2) make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue and misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading;

''(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, with respect to—

''(A) the services that such agency will provide to such person; or

''(B) the benefits and risks that may result if such person becomes a debtor in a case under this title; or

''(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.

''(b) Any waiver by any assisted person of any protection or right provided under this section shall not be enforceable against the debtor by any Federal or State court or any other person, but may be enforced against a debt relief agency.

''(c)(1) Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements of this section, section 527, or section 528 shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

''(2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and a hearing, to have—

''(A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person;

''(B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title that is dismissed or converted to a case under another chapter of this title because of such agency's intentional or negligent failure to file any required document including those specified in section 521; or

''(C) intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

''(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this section, the State—

''(A) may bring an action to enjoin such violation;

''(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and

''(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorneys' fees as determined by the court.

''(4) The district courts of the United States for districts located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).

''(5) Notwithstanding any other provision of Federal law and in addition to any other remedy provided under Federal or State law, if the court, on its own motion or on the motion of the United States trustee or the debtor, finds that a person intentionally violated this section, or engaged in a clear and consistent pattern or practice of violating this section, the court may—

''(A) enjoin the violation of such section; or

''(B) impose an appropriate civil penalty against such person.

''(d) No provision of this section, section 527, or section 528 shall—

''(1) annul, alter, affect, or exempt any person subject to such sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency; or

''(2) be deemed to limit or curtail the authority or ability—

''(A) of a State or subdivision or instrumentality thereof, to determine and enforce qualifications for the practice of law under the laws of that State; or

''(B) of a Federal court to determine and enforce the qualifications for the practice of law before that court.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 525, the following:

''526. Restrictions on debt relief agencies.''.

SEC. 228. DISCLOSURES.

(a) DISCLOSURES.—Subchapter II of chapter 5 of title 11, United States Code, as amended by section 227, is amended by adding at the end the following:

''§ 527. Disclosures

''(a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide—

''(1) the written notice required under section 342(b)(1); and

''(2) to the extent not covered in the written notice described in paragraph (1), and not later than 3 business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons that—

''(A) all information that the assisted person is required to provide with a petition and thereafter during a case under this title is required to be complete, accurate, and truthful;

''(B) all assets and all liabilities are required to be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 must be stated in those documents where requested after reasonable inquiry to establish such value;

''(C) current monthly income, the amounts specified in section 707(b)(2), and, in a case under chapter 13 of this title, disposable income (determined in accordance with section 707(b)(2)), are required to be stated after reasonable inquiry; and

''(D) information that an assisted person provides during their case may be audited pursuant to this title, and that failure to provide such information may result in dismissal of the case under this title or other sanction, including a criminal sanction.

''(b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:

'' 'IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM A BANKRUPTCY PETITION PREPARER.

'' 'If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES A BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.' ''

SA 94. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

Beginning on page 24, strike line 9 and all that follows through page 26, line 7, and insert the following:

(h) APPLICABILITY OF MEANS TEST TO CHAPTER 13.—Section 1325(b) of title 11, United States Code, is amended by striking paragraph (2) and inserting the following:

''(2) For purposes of this subsection, the term 'disposable income' means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

''(A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

''(ii) for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

''(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

''(3) Amounts reasonably necessary to be expended under paragraph (2)(A)(i), shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.''.

SA 95. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 265, between lines 18 and 19, insert the following:

SEC. 707A. DISCHARGE UNDER CHAPTER 13.

Section 1328(a) of title 11, United States Code, as amended by this Act, is further amended—

(1) in paragraph (2), by striking ''(1)(B), (1)(C),'';

(2) in paragraph (3), by striking ''or'' after the semicolon;

(3) in paragraph (4), by striking the period at the end and inserting ''; or''; and

(4) by adding at the end the following:

''(5) for taxes with respect to which the debtor filed a fraudulent return.''.

SA 96. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

Beginning on page 24, strike line 16 and all that follows through page 26, line 7, and insert the following:

''(2)(A) For purposes of this subsection, the term 'disposable income' means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

''(i)(I) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

''(II) for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

''(ii) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

''(B) However, the debtor's disposable income may be adjusted if the debtor demonstrates special circumstances that justify adjustments of current monthly income for which there is no reasonable alternative, as described in section 707(b)(2)(B) of this title.

''(3)(A) Amounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

''(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(ii) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(iii) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

''(B) However, this paragraph shall not apply if the debtor demonstrates special circumstances that justify adjustments of current monthly income for which there is no reasonable alternative, as described in section 707(b)(2)(B) of this title, and which bring the debtor's income below the applicable amount set forth in this paragraph.''.

(i) REDUCTION OF THE TERM OF THE PLAN FOR CERTAIN DEBTORS.—Section 1329 of title 11, United States Code, is amended by adding at the end the following:

''(d) Notwithstanding paragraphs (1)(B) and (4) of section 1325(b), if the actual income of the debtor, or in a joint case the debtor and the debtor's spouse, has dropped below the applicable amount stated in section 1325(b)(3), either before or after the petition, and is unlikely to increase above such amounts within 1 year, the debtor's plan may be modified to reduce the term of the plan to a time period equal to or greater than the applicable commitment period in section 1325(b)(4)(A)(i) and the debtor shall not be subject to section 1325(b)(3).''.

SA 97. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 182, between lines 3 and 4, insert the following:

SEC. 318A. APPLICABILITY OF MEANS TEST AND PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.

(a) APPLICABILITY OF MEANS TEST TO CHAPTER 13.—Section 1325(b) of title 11, United States Code, as amended by this Act, is further amended—

(1) in paragraph (2), by inserting ''or, if lower and not likely to increase substantially in the 2 months after the order for relief, the debtor's monthly income on the date of the order for relief under this chapter'' after ''received by the debtor'';

(2) in paragraph (3), by inserting ''(or, if lower and not likely to increase substantially in the 2 months after the order for relief, the debtor's monthly income on the date of the order for relief under this chapter)'' after ''if the debtor has current monthly income''; and

(3) in paragraph (4)—

(A) in subparagraph (A)(ii), by striking ''debtor and the debtor's spouse combined'' and inserting ''debtor, and in a joint case the debtor and the debtor's spouse, or, if lower and not likely to increase substantially in the 2 months after the order for relief, the monthly income on the date of the order for relief under this chapter'';

(B) in subparagraph (A)(ii)(III), by striking ''and'' after the semicolon;

(C) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following:

''(C) provided that if the debtor's income decreases during the case to less than the amount set forth in subparagraph (A)(ii), and is not likely again to exceed that amount within 1 month, may be reduced to 3 years.''.

(b) CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.—Section 1322(d)

of title 11, United States Code, as amended by this Act, is further amended—

(1) in paragraph (1), by striking ''debtor and the debtor's spouse combined'' and inserting ''debtor, and in a joint case the debtor and the debtor's spouse, or, if lower and not likely to increase substantially in the 2 months after the order for relief, the monthly income on the date of the order for relief under this chapter''; and

(2) in paragraph (2), by striking ''debtor and the debtor's spouse combined'' and inserting ''debtor, and in a joint case the debtor and the debtor's spouse, or, if lower and not likely to increase substantially in the 2 months after the order for relief, the monthly income on the date of the order for relief under this chapter''.

SA 98. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 112, line 17, insert '', other than an attorney or an employee of an attorney'' after ''any person''.

On page 120, lines 12 and 13, strike ''AN ATTORNEY OR'' and insert ''A''.

On page 120, line 19, strike ''AN ATTORNEY OR'' and insert ''A''.

On page 120, lines 21 and 22, strike ''ATTORNEY OR''.

SA 99. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 205, between lines 16 and 17, insert the following:

SEC. 332. NO BANKRUPTCY FOR INSOLVENT POLITICAL COMMITTEES.

Section 109 of title 11, United States Code, is amended by adding at the end the following:

''(i) A political committee subject to the jurisdiction of the Federal Election Commission under Federal election laws may not be a debtor under this title.''.

SA 100. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 63, between lines 3 and 4, insert the following:

''(4) Nothing in this section shall preclude a court from ordering disgorgement of payments accepted, or other remedies under this title or other applicable law, when a creditor has accepted payments under such agreement or in anticipation of such agreement and the agreement is not enforceable.

SA 101. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

Beginning on page 222, strike line 23 and all that follows through page 223, line 21, and insert the following:

''(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition or the date of the order for relief in an amount not more than $1,250,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

''(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $1,250,000 (excluding debt owed to 1 or more affiliates or insiders);''.

SA 102. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 14, strike line 1 and all that follows through page 16, line 13, and insert the following:

''(4) The court, on its own initiative or on the motion of a party in interest may order the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion filed under section 707(b), including reasonable attorneys' fees, if—

''(A) a trustee files a motion for dismissal or conversion under this subsection; and

''(B) the court grants such motion.

''(5)(A) Except as provided in subparagraph (B) and subject to paragraph (6), the court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion filed by a party in interest (other than a trustee or United States trustee (or bankruptcy administrator, if any)) under this subsection if—

''(i) the court does not grant the motion; and

''(ii) the court finds that—

''(I) the position of the party that filed the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

''(II) the motion was made solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

SA 103. Mr. LEAHY (for himself and Mr. SARBANES) submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 215, strike lines 3 through 18.

SA 104. Mr. GRAHAM (for himself, Mr. DURBIN, and Mr. LEAHY) submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 473, after line 9, by inserting the following:

''SEC. 1236. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED STATES CODE.

Section 507(a) of title 11, United States Code, as amended by sections 212 and 253, is amended by adding at the end the following:

''(11) Eleventh, allowed unsecured claims of customs brokers (as defined in section 641 of the Tariff Act of 1930 (19 U.S.C. 1641)) and sureties (as provided in section 623 of the Tariff Act of 1930 (19 U.S.C. 1623)) for duties, taxes, or other charges paid to the United States Customs Service on behalf of the debtor arising out of the importation of merchandise entered for consumption within one year before the date of the filing of the petition.''.

SA 105. Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 45, strike lines 22 through 24, and insert the following:

(a) REDUCTION OF CLAIM.—Section 502 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (8), by striking ''or'' at the end;

(B) in paragraph (9), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(10) such consumer debt is an unsecured claim arising from a debt to a creditor that does not have, as of the date of the order for relief, a policy of waiving additional interest for all debtors who participate in a debt management plan administered by a nonprofit budget and credit counseling agency described in section 111(a).''; and

(2) by adding at the end the following:

SA 106. Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 45, strike lines 22 through 24, and insert the following:

(a) REDUCTION OF CLAIM.—Section 502 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (8), by striking ''or'' at the end;

(B) in paragraph (9), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(10) such claim is based on a debt that is secured by, or conditioned upon—

''(A) a personal check held for future deposit; or

''(B) electronic access to a bank account.''; and

(2) by adding at the end the following:

SA 107. Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 100, strike line 14 and all that follows through line 17 and insert the following:

SEC. 222. SENSE OF CONGRESS.

It is the sense of Congress that the Financial Literacy and Education Commission, in consultation with State and local governments and non-profit and private sector entities, should work, as part of the Commission's national strategy to improve the financial literacy and education of all Americans (including for those in elementary school or secondary school or enrolled in other institutions of learning), to improve financial education and literacy campaigns, including those that are curricula based, that have the goal of reducing the number of individuals who file for bankruptcy.

SA 108. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for

other purposes; which was ordered to lie on the table; as follows:

On page 132, between lines 5 and 6, insert the following:

SEC. 234. LIMITING CLAIMS ARISING FROM VIOLATIONS OF STATE LAW.

Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (8), by striking ''or'' at the end;

(2) in paragraph (9), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(10) such claim is for a secured debt that would otherwise be enforceable against the debtor, and, in connection with such secured debt, a party other than the debtor violated any applicable State law that related to—

''(A) interest, fees, or other charges imposed in connection with such agreement, including—

''(i) fees paid to third parties, such as yield spread premiums and other payments made to mortgage brokers, whether by the debtor, the debtor, or a third party; and

''(ii) charges for premiums for insurance, debt cancellation, and debt suspension products, whether such product was voluntary or involuntary and whether the beneficiary of such product is the debtor, the creditor, or a third party;

''(B) consideration of the ability of the debtor to repay such secured debt;

''(C) fees imposed if the debtor repays all or part of such secured debt before it is due;

''(D) amortization of such secured debt, including without limitation negative amortization and balloon payments;

''(E) refinancing of debt;

''(F) counseling of the borrower prior to consummation of the transaction from which the secured debt arose; or

''(G) any other matter that the court determines to be relevant to the fair disposition of the claim, with due consideration of the intent of the applicable State law.''.

SA 109. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 473, between lines 9 and 10, insert the following:

SEC. 1236. MANAGEMENT OF BUSINESS DEBTORS.

(a) IN GENERAL.—Chapter 3 of title 11, United States Code, is amended—

(1) in section 321(a), by striking ''7, 12,'' each place it appears and inserting ''12'';

(2) in section 326—

(A) in subsection (a), by striking ''disbursed or turned over'' and inserting ''disbursed, turned over, or, solely for the purposes of section 331, held for disbursement or turnover''; and

(B) in subsection (c), by striking ''(c)'' and all that follows through ''in the case,'', and inserting the following:

''(c) If more than 1 person serves as trustee in the case—

''(1) the compensation of each such person shall be determined without regard to subsection (a) or (b); and

''(2)'';

(3) in section 327(d), by striking ''as attorney or accountant'' and inserting ''in any professional capacity'';

(4) in section 328—

(A) in subsection (a)—

(i) by striking ''or on a contingent fee basis'' and inserting '', on a fixed or percentage fee basis, or on a contingent fee basis and with indemnification and exculpation''; and

(ii) by striking ''different from the compensation'' and inserting '', indemnification, or exculpation different from the compensation, indemnification, or exculpation''; and

(B) in subsection (b), by striking ''as attorney or accountant'' and inserting ''in any professional capacity'';

(5) in section 347(a)—

(A) by striking ''726, 1226, or 1326 of this title'' and inserting ''726, 1101, 1226, or 1326'';

(B) by striking ''7, 12, or 13 of this title'' and inserting ''7, 11, 12, or 13''; and

(C) by striking ''into the court and disposed of under chapter 129 of title 28'' and inserting ''to the United States Trustee System Fund, established under section 589a of title 28''; and

(6) in section 362(h), by striking ''individual'' and inserting ''entity''.

(b) CHAPTER 11.—Chapter 11 of title 11, United States Code, is amended—

(1) in section 1107, by adding at the end the following:

''(c) The court, on request of a party in interest, and after notice and a hearing, may appoint an individual as the responsible person for the debtor in possession—

''(1) who shall manage and operate the affairs of the debtor (as defined by rule 9001(5) of the Federal Rules of Bankruptcy Procedure);

''(2) who shall not be required to be an officer or employee of the debtor;

''(3) who shall not be considered an insider of the debtor; and

''(4) whose designation shall not vitiate the liability of any other person chargeable under the law with the duties imposed upon the debtor under this title or by any other provision of law.''; and

(2) in section 1114(d), by striking ''shall appoint'' and inserting ''shall direct the United States trustee to appoint''.

SA 110. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 18, strike line 1 and all that follows through ''(2)'' on line 3, and insert the following:

(7)(A) Notwithstanding paragraph (2), a debtor described in this paragraph need only provide the calculations or other information showing that the debtor meets the standards of this paragraph. Paragraph (2) shall not apply, and the court may not dismiss a case based on any form of means testing,

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SA 111. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 13, between lines 13 and 14, insert the following:

''(D) Subparagraphs (A) through (C) shall not apply, and the court may not dismiss or convert a case based on any form of means testing, if—

''(i) the debtor or the debtor's spouse is a member of the armed forces—

''(I) on active duty (as defined in section 101(d)(1) of title 10); or

''(II) performing a homeland defense activity (as defined in section 901(1) of title 32);

''(ii) the debtor or the debtor's spouse is a veteran (as defined in section 101(2) of title 38), and the indebtedness occurred primarily during a period of not less than 180 days, during which he or she was—

''(I) on active duty (as defined in section 101(d)(1) of title 10); or

''(II) performing a homeland defense activity (as defined in section 901(1) of title 32);

''(iii) the debtor or the debtor's spouse is a reserve of the armed forces, and the indebtedness occurred primarily during a period of not less than 180 days, during which he or she was—

''(I) on active duty (as defined in section 101(d)(1) of title 10); or

''(II) performing a homeland defense activity (as defined in section 901(1) of title 32); or

''(iv) the debtor's spouse died while serving as a member of the armed forces—

''(I) on active duty (as defined in section 101(d)(1) of title 10); or

''(II) performing a homeland defense activity (as defined in section 901(1) of title 32).

SA 112. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 13, between lines 13 and 14, insert the following:

''(D) Subparagraphs (A) through (C) shall not apply, and the court may not dismiss or convert a case based on any form of means testing, if the debtor is a disabled veteran (as defined in section 3741(1) of title 38), and the indebtedness occurred primarily during a period during which he or she was—

''(i) on active duty (as defined in section 101(d)(1) of title 10); or

''(ii) performing a homeland defense activity (as defined in section 901(1) of title 32).

SA 113. Mr. REID submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 452, strike line 15 and all that follows through page 458, line 16, and insert the following:

SEC. 1223. BANKRUPTCY JUDGESHIPS.

(a) SHORT TITLE.—This section may be cited as the ''Bankruptcy Judgeship Act of 2005''.

(b) AUTHORIZATION FOR ADDITIONAL TEMPORARY BANKRUPTCY JUDGESHIPS.—The following temporary judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(1) One additional bankruptcy judgeship for the eastern and western districts of Arkansas.

(2) Four additional bankruptcy judgeships for the district of Delaware.

(3) Four additional bankruptcy judgeships for the middle district of Florida.

(4) One additional bankruptcy judgeship for the northern district of Florida.

(5) Two additional bankruptcy judgeships for the southern district of Florida.

(6) Two additional bankruptcy judgeships for the northern district of Georgia.

(7) Two additional bankruptcy judgeships for the southern district of Georgia.

(8) One additional bankruptcy judgeship for the northern district of Indiana.

(9) One additional bankruptcy judgeship for the eastern district of Kentucky.

(10) Four additional bankruptcy judgeships for the district of Maryland.

(11) Four additional bankruptcy judgeships for the eastern district of Michigan.

(12) One additional bankruptcy judgeship for the northern district of Mississippi.

(13) One additional bankruptcy judgeship for the southern district of Mississippi.

(14) Two additional bankruptcy judgeships for the district of Nevada.

(15) One additional bankruptcy judgeship for the district of New Jersey.

(16) One additional bankruptcy judgeship for the northern district of New York.

(17) Two additional bankruptcy judgeships for the southern district of New York.
(18) One additional bankruptcy judgeship for the eastern district of North Carolina.
(19) One additional bankruptcy judgeship for the western district of North Carolina.
(20) One additional bankruptcy judgeship for the southern district of Ohio.
(21) One additional bankruptcy judgeship for the eastern district of Pennsylvania.
(22) One additional bankruptcy judgeship for the middle district of Pennsylvania.
(23) One additional bankruptcy judgeship for the western district of Pennsylvania.
(24) One additional bankruptcy judgeship for the district of Puerto Rico.
(25) One additional bankruptcy judgeship for the district of South Carolina.
(26) Two additional bankruptcy judgeships for the western district of Tennessee.
(27) One additional bankruptcy judgeship for the eastern district of Texas.
(28) One additional bankruptcy judgeship for the district of Utah.
(29) One additional bankruptcy judgeship for the eastern district of Virginia.

(c) EXTENSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIP.—

(1) IN GENERAL.—The temporary bankruptcy judgeship authorized for the northern district of Alabama under section 3(a)(1) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) is extended until the first vacancy occurring in the office of a bankruptcy judge in such district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring not less than 5 years after the date of enactment of this Act.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary bankruptcy judgeship referred to in paragraph (1).

(d) TRANSFER OF BANKRUPTCY JUDGESHIP SHARED BY THE MIDDLE DISTRICT OF GEORGIA AND THE SOUTHERN DISTRICT OF GEORGIA.—The bankruptcy judgeship shared by the southern district of Georgia and the middle district of Georgia shall be converted to a bankruptcy judgeship for the middle district of Georgia.

(e) CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.—

(1) DISTRICT OF DELAWARE.—The temporary bankruptcy judgeship authorized for the district of Delaware under section 3(a)(3) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(2) SOUTHERN DISTRICT OF ILLINOIS.—The temporary bankruptcy judgeship authorized for the southern district of Illinois under section 3(a)(4) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(3) DISTRICT OF PUERTO RICO.—The temporary bankruptcy judgeship authorized for the district of Puerto Rico under section 3(a)(7) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(f) TECHNICAL AMENDMENTS.—Section 152(a)(2) of title 28, United States Code, is amended—

(1) in the item relating to the eastern and western districts of Arkansas, by striking ''3'' and inserting ''4'';

(2) in the item relating to the district of Delaware, by striking ''1'' and inserting ''6'';

(3) in the item relating to the middle district of Florida, by striking ''8'' and inserting ''12'';

(4) in the item relating to the northern district of Florida, by striking ''1'' and inserting ''2'';

(5) in the item relating to the southern district of Florida, by striking ''5'' and inserting ''7'';

(6) in the item relating to the northern district of Georgia, by striking ''8'' and inserting ''10'';

(7) in the item relating to the middle district of Georgia, by striking ''2'' and inserting ''3'';

(8) in the item relating to the southern district of Georgia, by striking ''2'' and inserting ''4'';

(9) in the item relating to the middle and southern districts of Georgia, by striking ''Middle and Southern . . . . . 1'';

(10) in the item relating to the southern district of Illinois, by striking ''1'' and inserting ''2'';

(11) in the item relating to the northern district of Indiana, by striking ''3'' and inserting ''4'';

(12) in the item relating to the eastern district of Kentucky, by striking ''2'' and inserting ''3'';

(13) in the item relating to the district of Maryland, by striking ''4'' and inserting ''8'';

(14) in the item relating to the eastern district of Michigan, by striking ''4'' and inserting ''8'';

(15) in the item relating to the northern district of Mississippi, by striking ''1'' and inserting ''2'';

(16) in the item relating to the southern district of Mississippi, by striking ''2'' and inserting ''3'';

(17) in the item relating to the district of Nevada, by striking ''3'' and inserting 5'';

(18) in the item relating to the district of New Jersey, by striking ''8'' and inserting ''9'';

(19) in the item relating to the northern district of New York, by striking ''2'' and inserting ''3'';

(20) in the item relating to the southern district of New York, by striking ''9'' and inserting ''11'';

(21) in the item relating to the eastern district of North Carolina, by striking ''2'' and inserting ''3'';

(22) in the item relating to the western district of North Carolina, by striking ''2'' and inserting ''3'';

(23) in the item relating to the southern district of Ohio, by striking ''7'' and inserting ''8'';

(24) in the item relating to the eastern district of Pennsylvania, by striking ''5'' and inserting ''6'';

(25) in the item relating to the middle district of Pennsylvania, by striking ''2'' and inserting ''3'';

(26) in the item relating to the western district of Pennsylvania, by striking ''4'' and inserting ''5'';

(27) in the item relating to the district of Puerto Rico, by striking ''2 and inserting ''4'';

(28) in the item relating to the district of South Carolina, by striking ''2'' and inserting ''3'';

(29) in the item relating to the western district of Tennessee, by striking ''4'' and inserting ''6'';

(30) in the item relating to the eastern district of Texas, by striking ''2'' and inserting ''3'';

(31) in the item relating to the district of Utah, by striking ''3'' and inserting ''4''; and

(32) in the item relating to the eastern district of Virginia, by striking ''5'' and inserting ''6''.

SA 114. Mr. REID submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 454, strike line 15 and all that follows through page 457, line 22, and insert the following:

(2) TECHNICAL AND CONFORMING AMENDMENTS.—Section 152(a)(2) of title 28, United States Code, is amended—

(A) in the item relating to the eastern district of California, by striking ''6'' and inserting ''7'';

(B) in the item relating to the central district of California, by striking ''21'' and inserting ''24'';

(C) in the item relating to the district of Delaware, by striking ''1'' and inserting ''6'';

(D) in the item relating to the southern district of Florida, by striking ''5'' and inserting ''7'';

(E) in the item relating to the southern district of Georgia, by striking ''2'' and inserting ''3'';

(F) in the item relating to the district of Maryland, by striking ''4'' and inserting ''7'';

(G) in the item relating to the eastern district of Michigan, by striking ''4'' and inserting ''5'';

(H) in the item relating to the southern district of Mississippi, by striking ''2'' and inserting ''3'';

(I) in the item relating to the district of New Jersey, by striking ''8'' and inserting ''9'';

(J) in the item relating to the eastern district of New York, by striking ''6'' and inserting ''7'';

(K) in the item relating to the northern district of New York, by striking ''2'' and inserting ''3'';

(L) in the item relating to the southern district of New York, by striking ''9'' and inserting ''10'';

(M) in the item relating to the eastern district of North Carolina, by striking ''2'' and inserting ''3'';

(N) in the item relating to the eastern district of Pennsylvania, by striking ''5'' and inserting ''6'';

(O) in the item relating to the middle district of Pennsylvania, by striking ''2'' and inserting ''3'';

(P) in the item relating to the district of Puerto Rico, by striking ''2 and inserting ''4'';

(Q) in the item relating to the western district of Tennessee, by striking ''4'' and inserting ''5'';

(R) in the item relating to the eastern district of Virginia, by striking ''5'' and inserting ''6'';

(S) in the item relating to the district of South Carolina, by striking ''2'' and inserting ''3'';

(T) in the item relating to the district of Nevada, by striking ''3'' and inserting ''4'';

(U) in the item relating to the northern district of Alabama, by striking ''5'' and inserting ''6''; and

(V) in the item relating to the eastern district of Tennessee, by striking ''3'' and inserting ''4''.

(c) CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.—The temporary bankruptcy judgeships authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, and the eastern district of Tennessee under paragraphs (1), (3), (7), and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to permanent bankruptcy judgeships.

(d) AUTHORIZATION FOR ADDITIONAL BANKRUPTCY JUDGESHIPS.—The following judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(1) One additional bankruptcy judgeship for the eastern and western districts of Arkansas.
(3) Four additional bankruptcy judgeships for the middle district of Florida.
(4) One additional bankruptcy judgeship for the northern district of Florida.
(6) Two additional bankruptcy judgeships for the northern district of Georgia.
(7) One additional bankruptcy judgeship for the southern district of Georgia.
(8) One additional bankruptcy judgeship for the northern district of Indiana.
(9) One additional bankruptcy judgeship for the eastern district of Kentucky.
(10) One additional bankruptcy judgeship for the district of Maryland.
(11) Three additional bankruptcy judgeships for the eastern district of Michigan.
(12) One additional bankruptcy judgeship for the northern district of Mississippi.
(14) Two additional bankruptcy judgeships for the district of Nevada.
(17) One additional bankruptcy judgeships for the southern district of New York.
(19) One additional bankruptcy judgeship for the western district of North Carolina.
(20) One additional bankruptcy judgeship for the southern district of Ohio.
(23) One additional bankruptcy judgeship for the western district of Pennsylvania.
(26) One additional bankruptcy judgeships for the western district of Tennessee.
(27) One additional bankruptcy judgeship for the eastern district of Texas.
(28) One additional bankruptcy judgeship for the district of Utah.

(e) EXTENSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIP.—

(1) IN GENERAL.—The temporary bankruptcy judgeship authorized for the northern district of Alabama under section 3(a)(1) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) is extended until the first vacancy occurring in the office of a bankruptcy judge in such district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring not less than 5 years after the date of enactment of this Act.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary bankruptcy judgeship referred to in paragraph (1).

(f) TRANSFER OF BANKRUPTCY JUDGESHIP SHARED BY THE MIDDLE DISTRICT OF GEORGIA AND THE SOUTHERN DISTRICT OF GEORGIA.—The bankruptcy judgeship shared by the southern district of Georgia and the middle district of Georgia shall be converted to a bankruptcy judgeship for the middle district of Georgia.

(g) CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.—

(1) DISTRICT OF DELAWARE.—The temporary bankruptcy judgeship authorized for the district of Delaware under section 3(a)(3) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(2) SOUTHERN DISTRICT OF ILLINOIS.—The temporary bankruptcy judgeship authorized for the southern district of Illinois under section 3(a)(4) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(3) DISTRICT OF PUERTO RICO.—The temporary bankruptcy judgeship authorized for the district of Puerto Rico under section 3(a)(7) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(h) TECHNICAL AMENDMENTS.—Section 152(a)(2) of title 28, United States Code, is amended—

(1) in the item relating to the eastern and western districts of Arkansas, by striking ''3'' and inserting ''4'';
(2) in the item relating to the district of Delaware, by striking ''1'' and inserting ''6'';
(3) in the item relating to the middle district of Florida, by striking ''8'' and inserting ''12'';
(4) in the item relating to the northern district of Florida, by striking ''1'' and inserting ''2'';
(5) in the item relating to the southern district of Florida, by striking ''5'' and inserting ''7'';
(6) in the item relating to the northern district of Georgia, by striking ''8'' and inserting ''10'';
(7) in the item relating to the middle district of Georgia, by striking ''2'' and inserting ''3'';
(8) in the item relating to the southern district of Georgia, by striking ''2'' and inserting ''4'';
(9) in the item relating to the middle and southern districts of Georgia, by striking ''Middle and Southern . . . . . 1'';
(10) in the item relating to the southern district of Illinois, by striking ''1'' and inserting ''2'';
(11) in the item relating to the northern district of Indiana, by striking ''3'' and inserting ''4'';
(12) in the item relating to the eastern district of Kentucky, by striking ''2'' and inserting ''3'';
(13) in the item relating to the district of Maryland, by striking ''4'' and inserting ''8'';
(14) in the item relating to the eastern district of Michigan, by striking ''4'' and inserting ''8'';
(15) in the item relating to the northern district of Mississippi, by striking ''1'' and inserting ''2'';
(16) in the item relating to the southern district of Mississippi, by striking ''2'' and inserting ''3'';
(17) in the item relating to the district of Nevada, by striking ''3'' and inserting 5'';
(18) in the item relating to the district of New Jersey, by striking ''8'' and inserting ''9'';
(19) in the item relating to the northern district of New York, by striking ''2'' and inserting ''3'';
(20) in the item relating to the southern district of New York, by striking ''9'' and inserting ''11'';
(21) in the item relating to the eastern district of North Carolina, by striking ''2'' and inserting ''3'';
(22) in the item relating to the western district of North Carolina, by striking ''2'' and inserting ''3'';
(23) in the item relating to the southern district of Ohio, by striking ''7'' and inserting ''8'';
(24) in the item relating to the eastern district of Pennsylvania, by striking ''5'' and inserting ''6'';
(25) in the item relating to the middle district of Pennsylvania, by striking ''2'' and inserting ''3'';
(26) in the item relating to the western district of Pennsylvania, by striking ''4'' and inserting ''5'';
(27) in the item relating to the district of Puerto Rico, by striking ''2 and inserting ''4'';
(28) in the item relating to the district of South Carolina, by striking ''2'' and inserting ''3'';
(29) in the item relating to the western district of Tennessee, by striking ''4'' and inserting ''6'';
(30) in the item relating to the eastern district of Texas, by striking ''2'' and inserting ''3'';
(31) in the item relating to the district of Utah, by striking ''3'' and inserting ''4''; and
(32) in the item relating to the eastern district of Virginia, by striking ''5'' and inserting ''6''.

SA 115. Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 452, strike line 15 and all that follows through page 458, line 16, and insert the following:

SEC. 1223. BANKRUPTCY JUDGESHIPS.

(a) SHORT TITLE.—This section may be cited as the ''Bankruptcy Judgeship Act of 2005''.

(b) AUTHORIZATION FOR ADDITIONAL BANKRUPTCY JUDGESHIPS.—The following judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(1) One additional bankruptcy judgeship for the eastern and western districts of Arkansas.
(2) Four additional bankruptcy judgeships for the district of Delaware.
(3) Two additional bankruptcy judgeships for the middle district of Florida.
(4) Two additional bankruptcy judgeships for the southern district of Florida.
(5) Two additional bankruptcy judgeships for the northern district of Georgia.
(6) One additional bankruptcy judgeship for the southern district of Georgia.
(7) Three additional bankruptcy judgeships for the district of Maryland.
(8) Two additional bankruptcy judgeships for the eastern district of Michigan.
(9) Two additional bankruptcy judgeships for the district of Nevada.
(10) One additional bankruptcy judgeship for the district of New Jersey.
(11) Two additional bankruptcy judgeships for the southern district of New York.
(12) One additional bankruptcy judgeship for the eastern district of North Carolina.
(13) One additional bankruptcy judgeship for the eastern district of Pennsylvania.
(14) One additional bankruptcy judgeship for the district of South Carolina.
(15) Two additional bankruptcy judgeships for the western district of Tennessee.
(16) One additional bankruptcy judgeship for the district of Utah.
(17) One additional bankruptcy judgeship for the eastern district of Virginia.

(c) TEMPORARY BANKRUPTCY JUDGESHIPS.—

(1) AUTHORIZATION FOR ADDITIONAL TEMPORARY BANKRUPTCY JUDGESHIPS.—The following judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(A) One additional bankruptcy judgeship for the district of Puerto Rico.
(B) One additional bankruptcy judgeship for the northern district of New York.
(C) One additional bankruptcy judgeship for the middle district of Pennsylvania.
(D) One additional bankruptcy judgeship for the district of Maryland.
(E) One additional bankruptcy judgeship for the northern district of Mississippi.
(F) One additional bankruptcy judgeship for the southern district of Mississippi.
(G) One additional bankruptcy judgeship for the southern district of Georgia.

(2) VACANCIES.—

(A) IN GENERAL.—The first vacancy in the office of bankruptcy judge in each of the judicial districts set forth in paragraph (1)—

(i) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under paragraph (1) to such office; and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge,

shall not be filled.

(B) TERM EXPIRATION.—In the case of a vacancy resulting from the expiration of the term of a bankruptcy judge not described in subparagraph (A), that judge shall be eligible for reappointment as a bankruptcy judge in that district.

(3) EXTENSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.—

(A) IN GENERAL.—The temporary bankruptcy judgeships authorized for the northern district of Alabama and the eastern district of Tennessee under paragraphs (1) and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) are extended until the first vacancy occurring in the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring 5 years or more after the date of enactment of this Act.

(B) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary bankruptcy judgeships referred to in this paragraph.

(d) TRANSFER OF BANKRUPTCY JUDGESHIP SHARED BY THE MIDDLE DISTRICT OF GEORGIA AND THE SOUTHERN DISTRICT OF GEORGIA.—The bankruptcy judgeship shared by the southern district of Georgia and the middle district of Georgia shall be converted to a bankruptcy judgeship for the middle district of Georgia.

(e) CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.—

(1) DISTRICT OF DELAWARE.—The temporary bankruptcy judgeship authorized for the district of Delaware under section 3(a)(3) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(2) DISTRICT OF PUERTO RICO.—The temporary bankruptcy judgeship authorized for the district of Puerto Rico under section 3(a)(7) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(f) TECHNICAL AMENDMENTS.—Section 152(a)(2) of title 28, United States Code, is amended—

(1) in the item relating to the eastern and western districts of Arkansas, by striking ''3'' and inserting ''4'';

(2) in the item relating to the district of Delaware, by striking ''1'' and inserting ''6'';

(3) in the item relating to the middle district of Florida, by striking ''8'' and inserting ''10'';

(4) in the item relating to the southern district of Florida, by striking ''5'' and inserting ''7'';

(5) in the item relating to the northern district of Georgia, by striking ''8'' and inserting ''10'';

(6) in the item relating to the middle district of Georgia, by striking ''2'' and inserting ''3'';

(7) in the item relating to the southern district of Georgia, by striking ''2'' and inserting ''3'';

(8) in the item relating to the middle and southern districts of Georgia, by striking ''Middle and Southern . . . . . 1'';

(9) in the item relating to the district of Maryland, by striking ''4'' and inserting ''7'';

(10) in the item relating to the eastern district of Michigan, by striking ''4'' and inserting ''6'';

(11) in the item relating to the district of Nevada, by striking ''3'' and inserting 5'';

(12) in the item relating to the district of New Jersey, by striking ''8'' and inserting ''9'';

(13) in the item relating to the southern district of New York, by striking ''9'' and inserting ''11'';

(14) in the item relating to the eastern district of North Carolina, by striking ''2'' and inserting ''3'';

(15) in the item relating to the eastern district of Pennsylvania, by striking ''5'' and inserting ''6'';

(16) in the item relating to the district of Puerto Rico, by striking ''2 and inserting ''3'';

(17) in the item relating to the district of South Carolina, by striking ''2'' and inserting ''3'';

(18) in the item relating to the western district of Tennessee, by striking ''4'' and inserting ''6'';

(19) in the item relating to the district of Utah, by striking ''3'' and inserting ''4''; and

(20) in the item relating to the eastern district of Virginia, by striking ''5'' and inserting ''6''.

SA 116. Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 452, strike line 15 and all that follows through page 458, line 16, and insert the following:

SEC. 1223. BANKRUPTCY JUDGESHIPS.

(a) SHORT TITLE.—This section may be cited as the ''Bankruptcy Judgeship Act of 2005''.

(b) AUTHORIZATION FOR ADDITIONAL BANKRUPTCY JUDGESHIPS.—The following judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(1) One additional bankruptcy judgeship for the eastern and western districts of Arkansas.

(2) Four additional bankruptcy judgeships for the district of Delaware.

(3) Four additional bankruptcy judgeships for the middle district of Florida.

(4) One additional bankruptcy judgeship for the northern district of Florida.

(5) Two additional bankruptcy judgeships for the southern district of Florida.

(6) Two additional bankruptcy judgeships for the northern district of Georgia.

(7) Two additional bankruptcy judgeships for the southern district of Georgia.

(8) One additional bankruptcy judgeship for the northern district of Indiana.

(9) One additional bankruptcy judgeship for the eastern district of Kentucky.

(10) Four additional bankruptcy judgeships for the district of Maryland.

(11) Four additional bankruptcy judgeships for the eastern district of Michigan.

(12) One additional bankruptcy judgeship for the northern district of Mississippi.

(13) One additional bankruptcy judgeship for the southern district of Mississippi.

(14) Two additional bankruptcy judgeships for the district of Nevada.

(15) One additional bankruptcy judgeship for the district of New Jersey.

(16) One additional bankruptcy judgeship for the northern district of New York.

(17) Two additional bankruptcy judgeships for the southern district of New York.

(18) One additional bankruptcy judgeship for the eastern district of North Carolina.

(19) One additional bankruptcy judgeship for the western district of North Carolina.

(20) One additional bankruptcy judgeship for the southern district of Ohio.

(21) One additional bankruptcy judgeship for the eastern district of Pennsylvania.

(22) One additional bankruptcy judgeship for the middle district of Pennsylvania.

(23) One additional bankruptcy judgeship for the western district of Pennsylvania.

(24) One additional bankruptcy judgeship for the district of Puerto Rico.

(25) One additional bankruptcy judgeship for the district of South Carolina.

(26) Two additional bankruptcy judgeships for the western district of Tennessee.

(27) One additional bankruptcy judgeship for the eastern district of Texas.

(28) One additional bankruptcy judgeship for the district of Utah.

(29) One additional bankruptcy judgeship for the eastern district of Virginia.

(c) EXTENSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIP.—

(1) IN GENERAL.—The temporary bankruptcy judgeship authorized for the northern district of Alabama under section 3(a)(1) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) is extended until the first vacancy occurring in the office of a bankruptcy judge in such district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring not less than 5 years after the date of enactment of this Act.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary bankruptcy judgeship referred to in paragraph (1).

(d) TRANSFER OF BANKRUPTCY JUDGESHIP SHARED BY THE MIDDLE DISTRICT OF GEORGIA AND THE SOUTHERN DISTRICT OF GEORGIA.—The bankruptcy judgeship shared by the southern district of Georgia and the middle district of Georgia shall be converted to a bankruptcy judgeship for the middle district of Georgia.

(e) CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.—

(1) DISTRICT OF DELAWARE.—The temporary bankruptcy judgeship authorized for the district of Delaware under section 3(a)(3) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(2) SOUTHERN DISTRICT OF ILLINOIS.—The temporary bankruptcy judgeship authorized for the southern district of Illinois under section 3(a)(4) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(3) DISTRICT OF PUERTO RICO.—The temporary bankruptcy judgeship authorized for the district of Puerto Rico under section 3(a)(7) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(f) TECHNICAL AMENDMENTS.—Section 152(a)(2) of title 28, United States Code, is amended—

(1) in the item relating to the eastern and western districts of Arkansas, by striking ''3'' and inserting ''4'';

(2) in the item relating to the district of Delaware, by striking ''1'' and inserting ''6'';

(3) in the item relating to the middle district of Florida, by striking ''8'' and inserting ''12'';

(4) in the item relating to the northern district of Florida, by striking ''1'' and inserting ''2'';

(5) in the item relating to the southern district of Florida, by striking ''5'' and inserting ''7'';

(6) in the item relating to the northern district of Georgia, by striking ''8'' and inserting ''10'';

(7) in the item relating to the middle district of Georgia, by striking ''2'' and inserting ''3'';

(8) in the item relating to the southern district of Georgia, by striking ''2'' and inserting ''4'';

(9) in the item relating to the middle and southern districts of Georgia, by striking ''Middle and Southern . . . . . 1'';

(10) in the item relating to the southern district of Illinois, by striking ''1'' and inserting ''2'';

(11) in the item relating to the northern district of Indiana, by striking ''3'' and inserting ''4'';

(12) in the item relating to the eastern district of Kentucky, by striking ''2'' and inserting ''3'';

(13) in the item relating to the district of Maryland, by striking ''4'' and inserting ''8'';

(14) in the item relating to the eastern district of Michigan, by striking ''4'' and inserting ''8'';

(15) in the item relating to the northern district of Mississippi, by striking ''1'' and inserting ''2'';

(16) in the item relating to the southern district of Mississippi, by striking ''2'' and inserting ''3'';

(17) in the item relating to the district of Nevada, by striking ''3'' and inserting 5'';

(18) in the item relating to the district of New Jersey, by striking ''8'' and inserting ''9'';

(19) in the item relating to the northern district of New York, by striking ''2'' and inserting ''3'';

(20) in the item relating to the southern district of New York, by striking ''9'' and inserting ''11'';

(21) in the item relating to the eastern district of North Carolina, by striking ''2'' and inserting ''3'';

(22) in the item relating to the western district of North Carolina, by striking ''2'' and inserting ''3'';

(23) in the item relating to the southern district of Ohio, by striking ''7'' and inserting ''8'';

(24) in the item relating to the eastern district of Pennsylvania, by striking ''5'' and inserting ''6'';

(25) in the item relating to the middle district of Pennsylvania, by striking ''2'' and inserting ''3'';

(26) in the item relating to the western district of Pennsylvania, by striking ''4'' and inserting ''5'';

(27) in the item relating to the district of Puerto Rico, by striking ''2 and inserting ''4'';

(28) in the item relating to the district of South Carolina, by striking ''2'' and inserting ''3'';

(29) in the item relating to the western district of Tennessee, by striking ''4'' and inserting ''6'';

(30) in the item relating to the eastern district of Texas, by striking ''2'' and inserting ''3'';

(31) in the item relating to the district of Utah, by striking ''3'' and inserting ''4''; and

(32) in the item relating to the eastern district of Virginia, by striking ''5'' and inserting ''6''.

SA 117. Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 454, strike line 15 and all that follows through page 457, line 22, and insert the following:

(2) TECHNICAL AND CONFORMING AMENDMENTS.—Section 152(a)(2) of title 28, United States Code, is amended—

(A) in the item relating to the eastern district of California, by striking ''6'' and inserting ''7'';

(B) in the item relating to the central district of California, by striking ''21'' and inserting ''24'';

(C) in the item relating to the district of Delaware, by striking ''1'' and inserting ''6'';

(D) in the item relating to the southern district of Florida, by striking ''5'' and inserting ''7'';

(E) in the item relating to the southern district of Georgia, by striking ''2'' and inserting ''3'';

(F) in the item relating to the district of Maryland, by striking ''4'' and inserting ''7'';

(G) in the item relating to the eastern district of Michigan, by striking ''4'' and inserting ''5'';

(H) in the item relating to the southern district of Mississippi, by striking ''2'' and inserting ''3'';

(I) in the item relating to the district of New Jersey, by striking ''8'' and inserting ''9'';

(J) in the item relating to the eastern district of New York, by striking ''6'' and inserting ''7'';

(K) in the item relating to the northern district of New York, by striking ''2'' and inserting ''3'';

(L) in the item relating to the southern district of New York, by striking ''9'' and inserting ''10'';

(M) in the item relating to the eastern district of North Carolina, by striking ''2'' and inserting ''3'';

(N) in the item relating to the eastern district of Pennsylvania, by striking ''5'' and inserting ''6'';

(O) in the item relating to the middle district of Pennsylvania, by striking ''2'' and inserting ''3'';

(P) in the item relating to the district of Puerto Rico, by striking ''2 and inserting ''4'';

(Q) in the item relating to the western district of Tennessee, by striking ''4'' and inserting ''5'';

(R) in the item relating to the eastern district of Virginia, by striking ''5'' and inserting ''6'';

(S) in the item relating to the district of South Carolina, by striking ''2'' and inserting ''3'';

(T) in the item relating to the district of Nevada, by striking ''3'' and inserting ''4'';

(U) in the item relating to the northern district of Alabama, by striking ''5'' and inserting ''6''; and

(V) in the item relating to the eastern district of Tennessee, by striking ''3'' and inserting ''4''.

(c) CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.—The temporary bankruptcy judgeships authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, and the eastern district of Tennessee under paragraphs (1), (3), (7), and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to permanent bankruptcy judgeships.

SA 118. Mr. KYL (for himself, Mr. FEINGOLD, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 231, line 13, strike ''45'' and insert ''60''.

SA 119. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 45, strike lines 22 through 24, and insert the following:

(a) REDUCTION OF CLAIM.—Section 502 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (8), by striking ''or'' at the end;

(B) in paragraph (9), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(10) such claim is for a credit transaction involving a consumer (as defined in section 103(h) of the Truth in Lending Act (15 U.S.C. 1602(g))), and the interest included as part of such claim exceeds the maximum amount allowed by the laws of the State, Territory, or District in which the debtor resides.''; and

(2) by adding at the end the following:

SA 120. Mr. LEVIN (for himself and Mr. PRYOR) submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 495, strike line 8, and insert the following:

or more consecutive months.

''(i) CALCULATION OF FINANCE CHARGE DURING GRACE PERIOD.—A creditor may not impose a finance charge with respect to any amount paid on time.''

SA 121. Mr. TALENT submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 500, between lines 2 and 3, insert the following:

(4) by adding at the end the following:

''(e)(1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if—

''(A) such transfer was made to a self-settled trust or similar device;

''(B) such transfer was by the debtor;

''(C) the debtor is a beneficiary of such trust or similar device; and

''(D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.

''(2) For the purposes of this subsection, a transfer includes a transfer made in anticipation of any money judgment, settlement, civil penalty, equitable order, or criminal fine incurred by, or which the debtor believed would be incurred by—

''(A) any violation of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws; or

''(B) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the

purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 781 and 78o(d)) or under section 6 of the Securities Act of 1933 (15 U.S.C. 77f).''.

SA 122. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 65, after line 21, insert the following:

SEC. 203A. AMENDMENT OF ATTORNEY PROVISIONS.

(a) BANKRUPTCY SCHEDULES.—Section 707(b) of title 11, United States Code, as amended by this Act, is further amended by striking paragraph (4).

(b) REAFFIRMATION.—Section 524(k) of title 11, United States Code, as amended by this Act, is further amended by striking paragraph (5).

SA 123. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 15, strike line 18 and all that follows through page 17, line 6, and insert the following:

''(5) Subject to paragraph (6), the court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion filed by a party in interest (other than a trustee or United States trustee (or bankruptcy administrator, if any)) under this subsection if—

''(A) the court does not grant the motion; and

''(B) the court finds that—

''(i) the position of the party that filed the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

''(ii) the attorney (if any) who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

SA 124. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, lines 4 and 5, strike ''This Act may be cited as the Bankruptcy Abuse and Consumer Protection Act of 2005.'' and insert ''This Act may be cited as the Credit Card Company Profitability Act of 2005.''.

SA 125. Mr. LAUTENBERG (for himself and Mr. DAYTON) submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. LIMITATIONS ON PENALTIES DUE TO LATE PAYMENTS.

Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

''(h) LIMITATIONS ON PENALTIES DUE TO LATE PAYMENTS.—

''(1) LIMITATIONS ON INTEREST RATE INCREASES.—

''(A) ADVANCE NOTICE REQUIRED.—In the case of a credit card account under an open end credit plan, the creditor shall provide written or electronic notice to the obligor of its intention to increase the annual rate of interest applicable to the account due to a delinquency, and the effective date of such increase, not later than 15 days before that effective date.

''(B) OPPORTUNITY TO REMEDY DELINQUENCY.—Except as provided in subparagraph (C), no increase in an annual rate of interest applicable to a credit card account under an open end credit plan due to a delinquency may be imposed if the obligor makes the payments required to bring the account up to date or to bring the outstanding balance below the amount of credit authorized to be extended with respect to the account, as applicable, during the 15-day period prescribed by subparagraph (A).

''(C) EXCEPTION FOR REPEATED DELINQUENCY.—Subparagraph (B) shall not apply to an increase in an annual rate of interest in any case in which the obligor has been delinquent with respect to the subject account on 3 separate occasions during the 12-month period immediately preceding the date of the increase.

''(3) RELATION TO STATE LAWS.—No provision of this subsection shall be construed to annul, alter, or affect or exempt any person subject to the provisions of this subsection from complying with, the laws of any State with respect to delinquency fees and penalties, except to the extent that those laws are inconsistent with any provision of this subsection and then only to the extent of the inconsistency. The Board may determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this chapter if the Board determines that such law gives greater protection to the consumer.

''(4) DEFINITIONS.—For purposes of this subsection an obligor is 'delinquent' or a 'delinquency' exists, if the obliger has, with respect to the subject credit card account—

''(A) failed to make payment on or before the due date for such payment; or

''(B) exceeded the amount of credit authorized to be extended with respect to the account of the obligor.''.

SA 126. Mr. DODD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. LIMITS ON FINANCE AND INTEREST CHARGES FOR ON-TIME PAYMENTS.

Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

''(h) PROHIBITION ON PENALTIES FOR ON-TIME PAYMENTS.—

''(1) PROHIBITION ON FINANCE CHARGES FOR ON-TIME PAYMENTS.—In the case of any credit card account under an open end credit plan, where no other balance is owing on the account, no finance or interest charge may be imposed with regard to any amount of a new extension of credit that was paid on or before the date on which it was due.

''(2) PROHIBITION ON CANCELLATION OR ADDITIONAL FEES FOR ON-TIME PAYMENTS OR PAYMENT IN FULL.—In the case of any credit card account under an open end consumer credit plan, no fee or other penalty may be imposed on the consumer in connection with the payment in full of an existing account balance, or payment of more than the minimum required payment of an existing account balance.''.

SA 127. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 205, between lines 16 and 17, insert the following:

SEC. 332. ASSET PROTECTION TRUSTS.

Section 548 of title 11, United States Code, as amended by this Act, is further amended by adding at the end the following:

''(e) The trustee may avoid a transfer of an interest of the debtor in property made by an individual debtor within 10 years before the date of the filing of the petition to an asset protection trust if the amount of the transfer or the aggregate amount of all transfers to the trust within such 10-year period exceeds $1,000,000, to the extent that debtor has a beneficial interest in the trust and the debtor's beneficial interest in the trust does not become property of the estate by reason of section 541(c)(2). For purposes of this subsection, a fund or account of the kind specified in section 522(d)(12) is not an asset protection trust.''.

For purposes of this amendment, an asset protction trust is defined as:

A trust settled by the debtor for the benefit of the debtor directly or indirectly, where the beneficial interests of the trust are otherwise protected by state law from begin alienated, either voluntarily or involuntarily, before they are distributed to the beneficiaries.

SA 128. Mr. SANTORUM proposed an amendment to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

At the appropriate place, insert the following:

___—ASSISTANCE FOR WORKERS AND SMALL BUSINESSES

SEC. ___00. SHORT TITLE.

This title may be cited as the ''Worker and Small Business Assistance Act''.

Subtitle A—Minimum Wage Adjustment

SEC. ___01. MINIMUM WAGE.

(a) IN GENERAL.—Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

''(1) except as otherwise provided in this section, not less than—

''(A) $5.70 an hour, beginning on the date that is 6 months after the date of enactment of the Worker and Small Business Assistance Act; and

''(B) $6.25 an hour, beginning on the date that is 1 year after the date on which the wage takes effect under subparagraph (A);''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that is 6 months after the date of enactment of this Act.

Subtitle B—Workplace Flexibility

SEC. ___11. SHORT TITLE.

This subtitle may be cited as the ''Workplace Flexibility Act''.

SEC. ___12. BIWEEKLY WORK PROGRAMS.

(a) IN GENERAL.—The Fair Labor Standards Act of 1938 is amended by inserting after section 13 (29 U.S.C. 213) the following:

"SEC. 13A. BIWEEKLY WORK PROGRAMS.

''(a) VOLUNTARY PARTICIPATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no employee may be required to participate in a program described in this section. Participation in a program described in this section may not be a condition of employment.

''(2) COLLECTIVE BARGAINING AGREEMENT.—In a case in which a valid collective bargaining agreement exists between an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law, an employee may only be required to participate in such a program in accordance with the agreement.

''(b) BIWEEKLY WORK PROGRAMS.—

''(1) IN GENERAL.—Notwithstanding section 7, an employer may establish biweekly work programs that allow the use of a biweekly work schedule—

''(A) that consists of a basic work requirement of not more than 80 hours, over a 2-week period; and

''(B) in which more than 40 hours of the work requirement may occur in a week of the period, except that no more than 10 hours may be shifted between the 2 weeks involved.

''(2) CONDITIONS.—An employer may carry out a biweekly work program described in paragraph (1) for employees only pursuant to the following:

''(A) AGREEMENT.—The program may be carried out only in accordance with—

''(i) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the employees under applicable law; or

''(ii) in the case of an employee who is not represented by a labor organization described in clause (i), a written agreement arrived at between the employer and employee before the performance of the work involved if the agreement was entered into knowingly and voluntarily by such employee and was not a condition of employment.

''(B) STATEMENT.—The program shall apply to an employee described in subparagraph (A)(ii) if such employee has affirmed, in a written statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to participate in the program.

''(C) MINIMUM SERVICE.—No employee may participate, or agree to participate, in the program unless the employee has been employed for at least 12 months by the employer, and for at least 1,250 hours of service with the employer during the previous 12-month period.

''(3) COMPENSATION FOR HOURS IN SCHEDULE.—Notwithstanding section 7, in the case of an employee participating in such a biweekly work program, the employee shall be compensated for each hour in such a biweekly work schedule at a rate not less than the regular rate at which the employee is employed.

''(4) COMPUTATION OF OVERTIME.—All hours worked by the employee in excess of such a biweekly work schedule or in excess of 80 hours in the 2-week period, that are requested in advance by the employer, shall be overtime hours.

''(5) OVERTIME COMPENSATION PROVISION.—The employee shall be compensated for each such overtime hour at a rate not less than one and one-half times the regular rate at which the employee is employed, in accordance with section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

''(6) DISCONTINUANCE OF PROGRAM OR WITHDRAWAL.—

''(A) DISCONTINUANCE OF PROGRAM.—An employer that has established a biweekly work program under paragraph (1) may discontinue the program for employees described in paragraph (2)(A)(ii) after providing 30 days' written notice to the employees who are subject to an agreement described in paragraph (2)(A)(ii).

''(B) WITHDRAWAL.—An employee may withdraw an agreement described in paragraph (2)(A)(ii) at the end of any 2-week period described in paragraph (1)(A), by submitting a written notice of withdrawal to the employer of the employee.

''(c) PROHIBITION OF COERCION.—

''(1) IN GENERAL.—An employer shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of interfering with the rights of the employee under this section to elect or not to elect to work a biweekly work schedule.

''(2) DEFINITION.—In paragraph (1), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

''(d) DEFINITIONS.—In this section:

''(1) BASIC WORK REQUIREMENT.—The term 'basic work requirement' means the number of hours, excluding overtime hours, that an employee is required to work or is required to account for by leave or otherwise.

''(2) COLLECTIVE BARGAINING.—The term 'collective bargaining' means the performance of the mutual obligation of the representative of an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph shall not compel either party to agree to a proposal or to make a concession.

''(3) COLLECTIVE BARGAINING AGREEMENT.—The term 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining.

''(4) ELECTION.—The term 'at the election of', used with respect to an employee, means at the initiative of, and at the request of, the employee.

''(5) EMPLOYEE.—The term 'employee' means an individual—

''(A) who is an employee (as defined in section 3);

''(B) who is not an employee of a public agency; and

''(C) to whom section 7(a) applies.

''(6) EMPLOYER.—The term 'employer' does not include a public agency.

''(7) OVERTIME HOURS.—The term 'overtime hours' when used with respect to biweekly work programs under subsection (b), means all hours worked in excess of the biweekly work schedule involved or in excess of 80 hours in the 2-week period involved, that are requested in advance by an employer.

''(8) REGULAR RATE.—The term 'regular rate' has the meaning given the term in section 7(e).''.

(b) REMEDIES.—

(1) PROHIBITIONS.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended—

(A) by inserting ''(A)'' after ''(3)'';

(B) by adding ''or'' after the semicolon; and

(C) by adding at the end the following:

''(B) to violate any of the provisions of section 13A;''.

(2) REMEDIES AND SANCTIONS.—Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended—

(A) in subsection (c)—

(i) in the first sentence—

(I) by inserting after ''7 of this Act'' the following: '', or of the appropriate legal or monetary equitable relief owing to any employee or employees under section 13A''; and

(II) by striking ''wages or unpaid overtime compensation and'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, and'';

(ii) in the second sentence, by striking ''wages or overtime compensation and'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, and''; and

(iii) in the third sentence—

(I) by inserting after ''first sentence of such subsection'' the following: '', or the second sentence of such subsection in the event of a violation of section 13A,''; and

(II) by striking ''wages or unpaid overtime compensation under sections 6 and 7 or'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, or''; and

(B) in subsection (e)—

(i) in the second sentence, by striking ''section 6 or 7'' and inserting ''section 6, 7, or 13A''; and

(ii) in the fourth sentence, in paragraph (3), by striking ''15(a)(4) or'' and inserting ''15(a)(4), a violation of section 15(a)(3)(B), or''.

(c) NOTICE TO EMPLOYEES.—Not later than 30 days after the date of enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations contained in section 516.4 of title 29, Code of Federal Regulations, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) to employees so that the notice reflects the amendments made to the Act by this section.

SEC. ____13. CONGRESSIONAL COVERAGE.

Section 203 of the Congressional Accountability Act of 1995 (2 U.S.C. 1313) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''and section 12(c)'' and inserting ''section 12(c), and section 13A''; and

(B) by striking paragraph (3);

(2) in subsection (b)—

(A) by striking ''The remedy'' and inserting the following:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the remedy''; and

(B) by adding at the end the following:

''(2) BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOURS PROGRAMS.—The remedy for a violation of subsection (a) relating to the requirements of section 13A of the Fair Labor Standards Act of 1938 shall be such remedy as would be appropriate if awarded under sections 16 and 17 of such Act (29 U.S.C. 216, 217) for such a violation.''; and

(3) in subsection (c), by striking paragraph (4).

SEC. ____14. TERMINATION.

The authority provided by this subtitle and the amendments made by this subtitle terminates 5 years after the date of enactment of this Act.

Subtitle C—Small Business Fair Labor Standards Act Exemption

SEC. ____21. ENHANCED SMALL BUSINESS EXEMPTION.

(a) IN GENERAL.—Section 3(s)(1)(A)(ii) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(1)(A)(ii)) is amended by striking ''$500,000'' and inserting ''$1,000,000''.

(b) EFFECT OF AMENDMENT.—The amendment made by subsection (a) shall not apply

in any State that does not have in effect, or that does not subsequently enact after the date of enactment of the Worker and Small Business Assistance Act, legislation applying minimum wage and hours of work protections to workers covered by the Fair Labor Standards Act of 1938 as of the day before the date of enactment of the Worker and Small Business Assistance Act.

SEC. ___22. SCOPE OF EMPLOYMENT.

Section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)), in the matter preceding paragraph (1), and section 7(a)(1) of such Act (29 U.S.C. 207(a)(1)), are amended by striking ''who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce,'' and inserting ''who in any workweek is engaged in industrial homework subject to section 11(d) and engaged in commerce or in the production of goods for commerce, or who in any workweek is employed in an enterprise engaged in commerce or in the production of goods for commerce,''.

Subtitle D—Small Business Paperwork Reduction

SEC. ___31. SMALL BUSINESS PAPERWORK REDUCTION.

(a) IN GENERAL.—Section 3506 of title 44, United States Code (commonly referred to as the ''Paperwork Reduction Act''), is amended by adding at the end the following:

''(j)(1) In the case of a first-time violation by a small business concern of a requirement regarding the collection of information by an agency, the head of such agency shall provide that no civil fine shall be imposed on the small business concern unless, based on the particular facts and circumstances regarding the violation—

''(A) the head of the agency determines that the violation has the potential to cause serious harm to the public interest;

''(B) the head of the agency determines that failure to impose a civil fine would impede or interfere with the detection of criminal activity;

''(C) the violation is a violation of an internal revenue law or a law concerning the assessment or collection of any tax, debt, revenue, or receipt;

''(D) the violation is not corrected on or before the date that is 6 months after the date of receipt by the small business concern of notification of the violation in writing from the agency; or

''(E) except as provided in paragraph (2), the head of the agency determines that the violation presents a danger to the public health or safety.

''(2)(A) In any case in which the head of an agency determines under paragraph (1)(E) that a violation presents a danger to the public health or safety, the head of the agency may, notwithstanding paragraph (1)(E), determine that a civil fine should not be imposed on the small business concern if the violation is corrected within 24 hours of receipt of notice in writing by the small business concern of the violation.

''(B) In determining whether to provide a small business concern with 24 hours to correct a violation under subparagraph (A), the head of the agency shall take into account all of the facts and circumstances regarding the violation, including—

''(i) the nature and seriousness of the violation, including whether the violation is technical or inadvertent or involves willful or criminal conduct;

''(ii) whether the small business concern has made a good faith effort to comply with applicable laws, and to remedy the violation within the shortest practicable period of time; and

''(iii) whether the small business concern has obtained a significant economic benefit from the violation.

''(C) In any case in which the head of the agency imposes a civil fine on a small business concern for a violation with respect to which this paragraph applies and does not provide the small business concern with 24 hours to correct the violation, the head of the agency shall notify Congress regarding such determination not later than 60 days after the date that the civil fine is imposed by the agency.

''(3) With respect to any agency, this subsection shall not apply to any violation by a small business concern of a requirement regarding collection of information by such agency if such small business concern previously violated any requirement regarding collection of information by such agency.

''(4) In determining if a violation is a first-time violation for purposes of this subsection, the head of an agency shall not take into account any violation of a requirement regarding collection of information by another agency.

''(5) Notwithstanding any other provision of law, no State may impose a civil penalty on a small business concern, in the case of a first-time violation by the small-business concern of a requirement regarding collection of information under Federal law, in a manner inconsistent with the provisions of this subsection.

''(6) For purposes of this subsection, the term 'small business concern' means a business concern that meets the requirements of section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated pursuant to such section.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any violation occurring on or after October 1, 2004.

Subtitle E—Small Business Regulatory Relief

SEC. ___41. ENHANCED COMPLIANCE ASSISTANCE FOR SMALL BUSINESSES.

(a) IN GENERAL.—Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note) is amended by striking subsection (a) and inserting the following:

''(a) COMPLIANCE GUIDE.—

''(1) IN GENERAL.—For each rule for which an agency head does not make a certification under section 605(b) of title 5, United States Code, the agency shall publish 1 or more guides to assist small entities in complying with the rule, and shall entitle such publications 'small entity compliance guides'.

''(2) PUBLICATION OF GUIDES.—The publication of each guide under this subsection shall include—

''(A) the posting of the guide in an easily identified location on the website of the agency; and

''(B) distribution of the guide to known industry contacts, such as small entities, associations, or industry leaders affected by the rule.

''(3) PUBLICATION DATE.—An agency shall publish each guide (including the posting and distribution of the guide as described under paragraph (2))—

''(A) on the same date as the date of publication of the final rule (or as soon as possible after that date); and

''(B) not later than the date on which the requirements of that rule become effective.

''(4) COMPLIANCE ACTIONS.—

''(A) IN GENERAL.—Each guide shall explain the actions a small entity is required to take to comply with a rule.

''(B) EXPLANATION.—The explanation under subparagraph (A)—

''(i) shall include a description of actions needed to meet requirements to enable a small entity to know when such requirements are met; and

''(ii) if determined appropriate by the agency, may include a description of possible procedures, such as conducting tests, that assist a small entity in meeting such requirements.

''(C) PROCEDURES.—Procedures described under subparagraph (B)(ii)—

''(i) shall be suggestions to assist small entities; and

''(ii) shall not be additional requirements relating to the rule.

''(5) AGENCY PREPARATION OF GUIDES.—The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities, and may cooperate with associations of small entities to develop and distribute such guides. An agency may prepare guides and apply this section with respect to a rule or a group of related rules.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 211(3) of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note) is amended by inserting ''and entitled'' after ''designated''.

Subtitle F—Minimum Wage Tip Credit

SEC. ___51. TIPPED WAGE FAIRNESS.

Section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended—

(1) in paragraph (2), by inserting before the period the following: '': *Provided*, That the tips shall not be included as part of the wage paid to an employee to the extent they are excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee''; and

(2) adding at the end the following: ''Notwithstanding any other provision of this Act, any State or political subdivision of a State which, on and after the date of enactment of the Worker and Small Business Assistance Act, prohibits any portion of a tipped employee's tips from being considered as wages in determining if such tipped employee has been paid the applicable minimum wage rate, may not establish or enforce any such law, ordinance, regulation, or order with respect to tipped employees unless such law, ordinance, regulation, or order permits a tip credit in an amount not less than an amount equal to—

''(A) the cash wage paid such employee which is required under such law, ordinance, regulation, or order on the date of enactment of such Act; and

''(B) an additional amount on account of tips received by such employee which amount is equal to the difference between such cash wage and the minimum wage rate in effect under such law, ordinance, regulation, or order or the minimum wage rate in effect under section 6, whichever is higher.''.

Subtitle G—Small Business Tax Relief

SEC. ___60. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

PART I—PROVISIONS RELATING TO ECONOMIC STIMULUS FOR SMALL BUSINESSES

SEC. ___61. CLARIFICATION OF CASH ACCOUNTING RULES FOR SMALL BUSINESS.

(a) CASH ACCOUNTING PERMITTED.—Section 446 (relating to general rule for methods of accounting) is amended by adding at the end the following new subsection:

''(g) CERTAIN SMALL BUSINESS TAXPAYERS PERMITTED TO USE CASH ACCOUNTING METHOD WITHOUT LIMITATION.—

''(1) IN GENERAL.—An eligible taxpayer shall not be required to use an accrual method of accounting for any taxable year.

''(2) ELIGIBLE TAXPAYER.—For purposes of this subsection—

''(A) IN GENERAL.—A taxpayer is an eligible taxpayer with respect to any taxable year if—

''(i) for all prior taxable years beginning after December 31, 2004, the taxpayer (or any predecessor) met the gross receipts test of subparagraph (B), and

''(ii) the taxpayer is not subject to section 447 (determined without regard to subsection (c)(2) thereof) or 448 (determined without regard to subsection (b)(3) thereof).

''(B) GROSS RECEIPTS TEST.—A taxpayer meets the gross receipts test of this subparagraph for any prior taxable year if the average annual gross receipts of the taxpayer for the 3-taxable-year period ending with such prior taxable year does not exceed $10,000,000. The rules of paragraphs (2) and (3) of section 448(c) shall apply for purposes of the preceding sentence.''.

(b) CLARIFICATION OF INVENTORY RULES FOR SMALL BUSINESS.—Section 471 (relating to general rule for inventories) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) SMALL BUSINESS TAXPAYERS NOT REQUIRED TO USE INVENTORIES.—

''(1) IN GENERAL.—An eligible taxpayer shall not be required to use inventories under this section for a taxable year.

''(2) TREATMENT OF TAXPAYERS NOT USING INVENTORIES.—If an eligible taxpayer does not use inventories with respect to any property for any taxable year beginning after December 31, 2004, such property shall be treated as a material or supply which is not incidental.

''(3) ELIGIBLE TAXPAYER.—For purposes of this subsection, the term 'eligible taxpayer' has the meaning given such term by section 446(g)(2).''.

(c) EFFECTIVE DATE AND SPECIAL RULES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer changing the taxpayer's method of accounting for any taxable year under the amendments made by this section—

(A) such change shall be treated as initiated by the taxpayer;

(B) such change shall be treated as made with the consent of the Secretary of the Treasury; and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period (not greater than 4 taxable years) beginning with such taxable year.

SEC. ___62. MODIFICATION OF TREATMENT OF QUALIFIED RESTAURANT PROPERTY AS 15-YEAR PROPERTY FOR PURPOSES OF DEPRECIATION DEDUCTION.

(a) EXTENSION OF TREATMENT.—Clause (v) of section 168(e)(3)(E) (defining 15-year property) is amended by striking ''2006'' and inserting ''2009''.

(b) TREATMENT TO INCLUDE NEW CONSTRUCTION.—Paragraph (7) of section 168(e) (relating to classification of property) is amended to read as follows:

''(7) QUALIFIED RESTAURANT PROPERTY.—The term 'qualified restaurant property' means any section 1250 property which is a building or an improvement to a building if more than 50 percent of the building's square footage is devoted to preparation of, and seating for on-premises consumption of, prepared meals.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any property placed in service after the date of the enactment of this Act.

SEC. ___63. EXTENSION OF INCREASED EXPENSING FOR SMALL BUSINESSES.

(a) IN GENERAL.—Section 179 (relating to election to expense certain depreciable business assets) is amended by striking ''2008'' each place it appears and inserting ''2009''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

PART II—REVENUES

SEC. ___71. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

''SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

''(1) such person files what purports to be a return of a tax imposed by this title but which—

''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

''(2) the conduct referred to in paragraph (1)—

''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(B) reflects a desire to delay or impede the administration of Federal tax laws.

''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

''(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(ii) reflects a desire to delay or impede the administration of Federal tax laws.

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

''(ii) an application under—

''(I) section 6159 (relating to agreements for payment of tax liability in installments),

''(II) section 7122 (relating to compromises), or

''(III) section 7811 (relating to taxpayer assistance orders).

''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.''.

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

''(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking ''(A)'' and inserting ''(A)(i)'';

(B) by striking ''(B)'' and inserting ''(ii)'';

(C) by striking the period at the end of the first sentence and inserting ''; or''; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

''(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).''.

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing''.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing'', and

(2) in subsection (c), by striking ''and (e)'' and inserting ''(e), and (g)''.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

''(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

''Sec. 6702. Frivolous tax submissions.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. ___72. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking ''Any person who—'' and inserting ''(a) IN GENERAL.—Any person who—'', and

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

''(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.''.

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''5 years'' and inserting ''10 years''.

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking ''misdemeanor'' and inserting ''felony'', and

(ii) by striking ''1 year'' and inserting ''10 years'', and

(B) by striking the third sentence.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''3 years'' and inserting ''5 years''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

SEC. ___73. MODIFICATION OF INTERACTION BETWEEN SUBPART F AND PASSIVE FOREIGN INVESTMENT COMPANY RULES.

(a) LIMITATION ON EXCEPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (2) of section 1297(e) (relating to passive foreign investment company) is amended by adding at the end the following flush sentence:

''Such term shall not include any period if the earning of subpart F income by such corporation during such period would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of controlled foreign corporations beginning after March 2, 2005, and to taxable years of United States shareholders with or within which such taxable years of controlled foreign corporations end.

SEC. ___74. TAX TREATMENT OF INVERTED CORPORATE ENTITIES.

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by striking section 7874 and inserting the following:

''SEC. 7874. RULES RELATING TO INVERTED CORPORATE ENTITIES.

''(a) INVERTED CORPORATIONS TREATED AS DOMESTIC CORPORATIONS.—

''(1) IN GENERAL.—If a foreign incorporated entity is treated as an inverted domestic corporation, then, notwithstanding section 7701(a)(4), such entity shall be treated for purposes of this title as a domestic corporation.

''(2) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

''(A) the entity completes after March 20, 2002, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

''(B) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

''(i) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

''(ii) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

''(C) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

Except as provided in regulations, an acquisition of properties of a domestic corporation shall not be treated as described in subparagraph (A) if none of the corporation's stock was readily tradeable on an established securities market at any time during the 4-year period ending on the date of the acquisition.

''(b) PRESERVATION OF DOMESTIC TAX BASE IN CERTAIN INVERSION TRANSACTIONS TO WHICH SUBSECTION (a) DOES NOT APPLY.—

''(1) IN GENERAL.—If a foreign incorporated entity would be treated as an inverted domestic corporation with respect to an acquired entity if either—

''(A) subsection (a)(2)(A) were applied by substituting 'after December 31, 1996, and on or before March 20, 2002' for 'after March 20, 2002' and subsection (a)(2)(B) were applied by substituting 'more than 50 percent' for 'at least 80 percent', or

''(B) subsection (a)(2)(B) were applied by substituting 'more than 50 percent' for 'at least 80 percent',

then the rules of subsection (c) shall apply to any inversion gain of the acquired entity during the applicable period and the rules of subsection (d) shall apply to any related party transaction of the acquired entity during the applicable period. This subsection shall not apply for any taxable year if subsection (a) applies to such foreign incorporated entity for such taxable year.

''(2) ACQUIRED ENTITY.—For purposes of this section—

''(A) IN GENERAL.—The term 'acquired entity' means the domestic corporation or partnership substantially all of the properties of which are directly or indirectly acquired in an acquisition described in subsection (a)(2)(A) to which this subsection applies.

''(B) AGGREGATION RULES.—Any domestic person bearing a relationship described in section 267(b) or 707(b) to an acquired entity shall be treated as an acquired entity with respect to the acquisition described in subparagraph (A).

''(3) APPLICABLE PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The term 'applicable period' means the period—

''(i) beginning on the first date properties are acquired as part of the acquisition described in subsection (a)(2)(A) to which this subsection applies, and

''(ii) ending on the date which is 10 years after the last date properties are acquired as part of such acquisition.

''(B) SPECIAL RULE FOR INVERSIONS OCCURRING BEFORE MARCH 21, 2002.—In the case of any acquired entity to which paragraph (1)(A) applies, the applicable period shall be the 10-year period beginning on January 1, 2003.

''(c) TAX ON INVERSION GAINS MAY NOT BE OFFSET.—If subsection (b) applies—

''(1) IN GENERAL.—The taxable income of an acquired entity (or any expanded affiliated group which includes such entity) for any taxable year which includes any portion of the applicable period shall in no event be less than the inversion gain of the entity for the taxable year.

''(2) CREDITS NOT ALLOWED AGAINST TAX ON INVERSION GAIN.—Credits shall be allowed against the tax imposed by this chapter on an acquired entity for any taxable year described in paragraph (1) only to the extent such tax exceeds the product of—

''(A) the amount of the inversion gain for the taxable year, and

''(B) the highest rate of tax specified in section 11(b)(1).

For purposes of determining the credit allowed by section 901 inversion gain shall be treated as from sources within the United States.

''(3) SPECIAL RULES FOR PARTNERSHIPS.—In the case of an acquired entity which is a partnership—

''(A) the limitations of this subsection shall apply at the partner rather than the partnership level,

''(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—

''(i) the partner's distributive share of inversion gain of the partnership for such taxable year, plus

''(ii) income or gain required to be recognized for the taxable year by the partner under section 367(a), 741, or 1001, or under any other provision of chapter 1, by reason of the transfer during the applicable period of any partnership interest of the partner in such partnership to the foreign incorporated entity, and

''(C) the highest rate of tax specified in the rate schedule applicable to the partner under chapter 1 shall be substituted for the rate of tax under paragraph (2)(B).

''(4) INVERSION GAIN.—For purposes of this section, the term 'inversion gain' means any income or gain required to be recognized under section 304, 311(b), 367, 1001, or 1248, or under any other provision of chapter 1, by reason of the transfer during the applicable period of stock or other properties by an acquired entity—

''(A) as part of the acquisition described in subsection (a)(2)(A) to which subsection (b) applies, or

''(B) after such acquisition to a foreign related person.

The Secretary may provide that income or gain from the sale of inventories or other transactions in the ordinary course of a trade or business shall not be treated as inversion gain under subparagraph (B) to the extent the Secretary determines such treatment would not be inconsistent with the purposes of this section.

''(5) COORDINATION WITH SECTION 172 AND MINIMUM TAX.—Rules similar to the rules of paragraphs (3) and (4) of section 860E(a) shall apply for purposes of this section.

''(6) STATUTE OF LIMITATIONS.—

''(A) IN GENERAL.—The statutory period for the assessment of any deficiency attributable to the inversion gain of any taxpayer for any pre-inversion year shall not expire before the expiration of 3 years from the date

the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(A) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(B) PRE-INVERSION YEAR.—For purposes of subparagraph (A), the term 'pre-inversion year' means any taxable year if—

''(i) any portion of the applicable period is included in such taxable year, and

''(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(A) is completed.

''(d) SPECIAL RULES APPLICABLE TO ACQUIRED ENTITIES TO WHICH SUBSECTION (b) APPLIES.—

''(1) INCREASES IN ACCURACY-RELATED PENALTIES.—In the case of any underpayment of tax of an acquired entity to which subsection (b) applies—

''(A) section 6662(a) shall be applied with respect to such underpayment by substituting '30 percent' for '20 percent', and

''(B) if such underpayment is attributable to one or more gross valuation understatements, the increase in the rate of penalty under section 6662(h) shall be to 50 percent rather than 40 percent.

''(2) MODIFICATIONS OF LIMITATION ON INTEREST DEDUCTION.—In the case of an acquired entity to which subsection (b) applies, section 163(j) shall be applied—

''(A) without regard to paragraph (2)(A)(ii) thereof, and

''(B) by substituting '25 percent' for '50 percent' each place it appears in paragraph (2)(B) thereof.

''(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) RULES FOR APPLICATION OF SUBSECTION (a)(2).—In applying subsection (a)(2) for purposes of subsections (a) and (b), the following rules shall apply:

''(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (a)(2)(B)—

''(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

''(ii) stock of such entity which is sold in a public offering or private placement related to the acquisition described in subsection (a)(2)(A).

''(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(2)(B) are met with respect to such domestic corporation or partnership, such actions shall be treated as pursuant to a plan.

''(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

''(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (a)(2) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

''(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary—

''(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

''(ii) to treat stock as not stock.

''(2) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group as defined in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

''(3) FOREIGN INCORPORATED ENTITY.—The term 'foreign incorporated entity' means any entity which is, or but for subsection (a)(1) would be, treated as a foreign corporation for purposes of this title.

''(4) FOREIGN RELATED PERSON.—The term 'foreign related person' means, with respect to any acquired entity, a foreign person which—

''(A) bears a relationship to such entity described in section 267(b) or 707(b), or

''(B) is under the same common control (within the meaning of section 482) as such entity.

''(5) SUBSEQUENT ACQUISITIONS BY UNRELATED DOMESTIC CORPORATIONS.—

''(A) IN GENERAL.—Subject to such conditions, limitations, and exceptions as the Secretary may prescribe, if, after an acquisition described in subsection (a)(2)(A) to which subsection (b) applies, a domestic corporation stock of which is traded on an established securities market acquires directly or indirectly any properties of one or more acquired entities in a transaction with respect to which the requirements of subparagraph (B) are met, this section shall cease to apply to any such acquired entity with respect to which such requirements are met.

''(B) REQUIREMENTS.—The requirements of the subparagraph are met with respect to a transaction involving any acquisition described in subparagraph (A) if—

''(i) before such transaction the domestic corporation did not have a relationship described in section 267(b) or 707(b), and was not under common control (within the meaning of section 482), with the acquired entity, or any member of an expanded affiliated group including such entity, and

''(ii) after such transaction, such acquired entity—

''(I) is a member of the same expanded affiliated group which includes the domestic corporation or has such a relationship or is under such common control with any member of such group, and

''(II) is not a member of, and does not have such a relationship and is not under such common control with any member of, the expanded affiliated group which before such acquisition included such entity.

''(f) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

''(1) the use of related persons, pass-thru or other noncorporate entities, or other intermediaries, or

''(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.''.

(b) INFORMATION REPORTING.—The Secretary of the Treasury shall exercise the Secretary's authority under the Internal Revenue Code of 1986 to require entities involved in transactions to which section 7874 of such Code (as added by subsection (a)) applies to report to the Secretary, shareholders, partners, and such other persons as the Secretary may prescribe such information as is necessary to ensure the proper tax treatment of such transactions.

(c) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 is amended by striking the item relating to section 7874 and inserting the following:

''Sec. 7874. Rules relating to inverted corporate entities.''.

(d) TRANSITION RULE FOR CERTAIN REGULATED INVESTMENT COMPANIES AND UNIT INVESTMENT TRUSTS.—Notwithstanding section 7874 of the Internal Revenue Code of 1986 (as added by subsection (a)), a regulated investment company, or other pooled fund or trust specified by the Secretary of the Treasury, may elect to recognize gain by reason of section 367(a) of such Code with respect to a transaction under which a foreign incorporated entity is treated as an inverted domestic corporation under section 7874(a) of such Code by reason of an acquisition completed after March 20, 2002, and before January 1, 2004.

(e) DISCLOSURE OF CORPORATE EXPATRIATION TRANSACTIONS.—

(1) IN GENERAL.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

''(i) PROXY SOLICITATIONS IN CONNECTION WITH CORPORATE EXPATRIATION TRANSACTIONS.—

''(1) DISCLOSURE TO SHAREHOLDERS OF EFFECTS OF CORPORATE EXPATRIATION TRANSACTION.—The Commission shall, by rule, require that each domestic issuer shall prominently disclose, not later than 5 business days before any shareholder vote relating to a corporate expatriation transaction, as a separate and distinct document accompanying each proxy statement relating to the transaction—

''(A) the number of employees of the domestic issuer that would be located in the new foreign jurisdiction of incorporation or organization of that issuer upon completion of the corporate expatriation transaction;

''(B) how the rights of holders of the securities of the domestic issuer would be impacted by a completed corporate expatriation transaction, and any differences in such rights before and after a completed corporate expatriation transaction; and

''(C) that, as a result of a completed corporate expatriation transaction, any taxable holder of the securities of the domestic issuer shall be subject to the taxation of any capital gains realized with respect to such securities, and the amount of any such capital gains tax that would apply as a result of the transaction.

''(2) DEFINITIONS.—In this subsection, the following definitions shall apply:

''(A) CORPORATE EXPATRIATION TRANSACTION.—The term 'corporate expatriation transaction' means any transaction, or series of related transactions, described in subsection (a) or (b) of section 7874 of the Internal Revenue Code of 1986.

''(A) DOMESTIC ISSUER.—The term 'domestic issuer' means an issuer created or organized in the United States or under the law of the United States or of any State.''

(2) EFFECTIVE DATE.—Section 14(i) of the Securities Exchange Act of 1934 (as added by this subsection) shall apply with respect to corporate expatriation transactions (as defined in that section 14(i)) proposed on and after the date of enactment of this Act.

(f) EFFECTIVE DATE.—Except as provided in subsection (e)(2), the amendments made by this section shall take effect as if included in the American Jobs Creation Act of 2004.

SEC. ___75. IMPOSITION OF MARK-TO-MARKET TAX ON INDIVIDUALS WHO EXPATRIATE.

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

"SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

''(a) GENERAL RULES.—For purposes of this subtitle—

''(1) MARK TO MARKET.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

''(2) RECOGNITION OF GAIN OR LOSS.—In the case of any sale under paragraph (1)—

''(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

''(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

''(3) EXCLUSION FOR CERTAIN GAIN.—

''(A) IN GENERAL.—The amount which, but for this paragraph, would be includible in the gross income of any individual by reason of this section shall be reduced (but not below zero) by $600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

''(B) COST-OF-LIVING ADJUSTMENT.—

''(i) IN GENERAL.—In the case of an expatriation date occurring in any calendar year after 2004, the $600,000 amount under subparagraph (A) shall be increased by an amount equal to—

''(I) such dollar amount, multiplied by

''(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2003' for 'calendar year 1992' in subparagraph (B) thereof.

''(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of $1,000, such amount shall be rounded to the next lower multiple of $1,000.

''(4) ELECTION TO CONTINUE TO BE TAXED AS UNITED STATES CITIZEN.—

''(A) IN GENERAL.—If a covered expatriate elects the application of this paragraph—

''(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

''(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

''(B) REQUIREMENTS.—Subparagraph (A) shall not apply to an individual unless the individual—

''(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary may require,

''(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

''(iii) complies with such other requirements as the Secretary may prescribe.

''(C) ELECTION.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

''(b) ELECTION TO DEFER TAX.—

''(1) IN GENERAL.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

''(2) DETERMINATION OF TAX WITH RESPECT TO PROPERTY.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

''(3) TERMINATION OF POSTPONEMENT.—No tax may be postponed under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

''(4) SECURITY.—

''(A) IN GENERAL.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

''(B) ADEQUATE SECURITY.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

''(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

''(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

''(5) WAIVER OF CERTAIN RIGHTS.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

''(6) ELECTIONS.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

''(7) INTEREST.—For purposes of section 6601—

''(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

''(B) section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

''(c) COVERED EXPATRIATE.—For purposes of this section—

''(1) IN GENERAL.—Except as provided in paragraph (2), the term 'covered expatriate' means an expatriate.

''(2) EXCEPTIONS.—An individual shall not be treated as a covered expatriate if—

''(A) the individual—

''(i) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

''(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or

''(B)(i) the individual's relinquishment of United States citizenship occurs before such individual attains age 18½, and

''(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

''(d) EXEMPT PROPERTY; SPECIAL RULES FOR PENSION PLANS.—

''(1) EXEMPT PROPERTY.—This section shall not apply to the following:

''(A) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

''(B) SPECIFIED PROPERTY.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

''(2) SPECIAL RULES FOR CERTAIN RETIREMENT PLANS.—

''(A) IN GENERAL.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

''(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

''(ii) an amount equal to the present value of the expatriate's nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

''(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includible in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

''(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan's behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

''(D) APPLICABLE PLANS.—This paragraph shall apply to—

''(i) any qualified retirement plan (as defined in section 4974(c)),

''(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

''(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

''(e) DEFINITIONS.—For purposes of this section—

''(1) EXPATRIATE.—The term 'expatriate' means—

''(A) any United States citizen who relinquishes citizenship, and

''(B) any long-term resident of the United States who—

''(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

''(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

''(2) EXPATRIATION DATE.—The term 'expatriation date' means—

''(A) the date an individual relinquishes United States citizenship, or

''(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

''(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

''(A) the date the individual renounces such individual's United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

''(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

''(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

''(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

''(4) LONG-TERM RESIDENT.—The term 'long-term resident' has the meaning given to such term by section 877(e)(2).

''(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES' INTERESTS IN TRUST.—

''(1) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

''(A) the individual shall not be treated as having sold such interest,

''(B) such interest shall be treated as a separate share in the trust, and

''(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

''(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

''(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual's share in the trust.

''(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

''(A) IN GENERAL.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

''(i) paragraph (1) and subsection (a) shall not apply, and

''(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

''(B) AMOUNT OF TAX.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

''(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

''(ii) the balance in the deferred tax account immediately before the distribution determined without regard to any increases under subparagraph (C)(ii) after the 30th day preceding the distribution.

''(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(ii)—

''(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

''(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

''(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

''(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

''(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

''(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary's interest in a trust is the amount of gain which would be allocable to such beneficiary's vested and nonvested interests in the trust if the beneficiary held directly all assets allocable to such interests.

''(E) TAX DEDUCTED AND WITHHELD.—

''(i) IN GENERAL.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

''(ii) EXCEPTION WHERE FAILURE TO WAIVE TREATY RIGHTS.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

''(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

''(II) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

''(F) DISPOSITION.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii), there is hereby imposed a tax equal to the lesser of—

''(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

''(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

''(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

''(i) QUALIFIED TRUST.—The term 'qualified trust' means a trust which is described in section 7701(a)(30)(E).

''(ii) VESTED INTEREST.—The term 'vested interest' means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

''(iii) NONVESTED INTEREST.—The term 'nonvested interest' means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

''(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

''(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

''(3) DETERMINATION OF BENEFICIARIES' INTEREST IN TRUST.—

''(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary's interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

''(B) OTHER DETERMINATIONS.—For purposes of this section—

''(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

''(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

''(I) the methodology used to determine that taxpayer's trust interest under this section, and

''(II) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

''(g) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

''(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

''(2) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

''(h) IMPOSITION OF TENTATIVE TAX.—

''(1) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

''(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

''(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

''(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

''(i) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

''(1) IMPOSITION OF LIEN.—

''(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

''(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate's income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

''(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

''(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

''(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

''(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

''(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''.

(b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

''(d) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

''(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

''(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) shall not apply to any property if either—

''(A) the gift, bequest, devise, or inheritance is—

''(i) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

''(ii) included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

''(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States.''.

(c) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new paragraph:

''(48) TERMINATION OF UNITED STATES CITIZENSHIP.—

''(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(e)(3).

''(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.''.

(d) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(1) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

''(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation).''.

(2) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Section 6103(l) (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

''(19) DISCLOSURE TO DENY VISA OR ADMISSION TO CERTAIN EXPATRIATES.—Upon written request of the Attorney General or the Attorney General's delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).''.

(B) SAFEGUARDS.—

(i) TECHNICAL AMENDMENTS.—Paragraph (4) of section 6103(p) of the Internal Revenue Code of 1986, as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961), is amended by striking ''or (17)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''or (18)''.

(ii) CONFORMING AMENDMENTS.—Section 6103(p)(4) (relating to safeguards), as amended by clause (i), is amended by striking ''or (18)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''(18), or (19)''.

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(B) TECHNICAL AMENDMENTS.—The amendments made by paragraph (2)(B)(i) shall take effect as if included in the amendments made by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961).

(e) CONFORMING AMENDMENTS.—

(1) Section 877 is amended by adding at the end the following new subsection:

''(g) APPLICATION.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after April 1, 2005.''.

(2) Section 2107 is amended by adding at the end the following new subsection:

''(f) APPLICATION.—This section shall not apply to any expatriate subject to section 877A.''.

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

''(F) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.''.

(4)(A) Paragraph (1) of section 6039G(d) is amended by inserting ''or 877A'' after ''section 877''.

(B) The second sentence of section 6039G(e) is amended by inserting ''or who relinquishes United States citizenship (within the meaning of section 877A(e)(3))'' after ''877(a))''.

(C) Section 6039G(f) is amended by inserting ''or 877A(e)(2)(B)'' after ''877(e)(1)''.

(f) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

''Sec. 877A. Tax responsibilities of expatriation.''.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after April 1, 2005.

(2) GIFTS AND BEQUESTS.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after April 1, 2005, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

SEC. ___76. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENT.

(a) DETERMINATION OF PENALTY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, in the case of an applicable taxpayer—

(A) the determination as to whether any interest or applicable penalty is to be imposed with respect to any arrangement to which any initiative described in paragraph (2) applied, or to any underpayment of Federal income tax attributable to items arising in connection with any arrangement described in paragraph (2), shall be made without regard to section 6664 of the Internal Revenue Code of 1986, and

(B) if any such interest or applicable penalty is imposed, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(2) APPLICABLE TAXPAYER.—For purposes of this subsection, the term ''applicable taxpayer'' means a taxpayer eligible to participate in—

(A) the Department of the Treasury's Offshore Voluntary Compliance Initiative, or

(B) the Department of the Treasury's voluntary disclosure initiative which applies to the taxpayer by reason of the taxpayer's underreporting of United States income tax liability through financial arrangements which rely on the use of offshore arrangements which were the subject of the initiative described in subparagraph (A).

(b) DEFINITIONS AND RULES.—For purposes of this section—

(1) APPLICABLE PENALTY.—The term ''applicable penalty'' means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) VOLUNTARY OFFSHORE COMPLIANCE INITIATIVE.—The term ''Voluntary Offshore Compliance Initiative'' means the program established by the Department of the Treasury in January of 2003 under which any taxpayer was eligible to voluntarily disclose previously undisclosed income on assets placed in offshore accounts and accessed through credit card and other financial arrangements.

(3) PARTICIPATION.—A taxpayer shall be treated as having participated in the Voluntary Offshore Compliance Initiative if the

taxpayer submitted the request in a timely manner and all information requested by the Secretary of the Treasury or his delegate within a reasonable period of time following the request.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

SEC. ___77. TREASURY REGULATIONS ON FOREIGN TAX CREDIT.

Section 901 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) REGULATIONS.—The Secretary may prescribe regulations disallowing a credit under subsection (a) for all or a portion of any foreign tax, or allocating a foreign tax among 2 or more persons, in cases where the foreign tax is imposed on any person in respect of income of another person or in other cases involving the inappropriate separation of the foreign tax from the related foreign income.''.

SEC. ___78. TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT INSTRUMENTS.

(a) IN GENERAL.—Section 1275(d) (relating to regulation authority) is amended—

(1) by striking ''The Secretary'' and inserting the following:

''(1) IN GENERAL.—The Secretary'', and

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

''(2) TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT.—

''(A) IN GENERAL.—In the case of a debt instrument which—

''(i) is convertible into stock of the issuing corporation, into stock or debt of a related party (within the meaning of section 267(b) or 707(b)(1)), or into cash or other property in an amount equal to the approximate value of such stock or debt, and

''(ii) provides for contingent payments,

any regulations which require original issue discount to be determined by reference to the comparable yield of a noncontingent fixed rate debt instrument shall be applied as requiring that such comparable yield be determined by reference to a noncontingent fixed rate debt instrument which is convertible into stock.

''(B) SPECIAL RULE.—For purposes of subparagraph (A), the comparable yield shall be determined without taking into account the yield resulting from the conversion of a debt instrument into stock.''.

(b) CROSS REFERENCE.—Section 163(e)(6) (relating to cross references) is amended by adding at the end the following:

''For the treatment of contingent payment convertible debt, see section 1275(d)(2).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued on or after the date of the enactment of this Act.

SA 129. Mr. SCHUMER proposed an amendment to amendment SA 121 submitted by Mr. TALENT to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

Beginning on page 1 of the amendment, strike all after (4) and insert the following:

''(e)(1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if—

''(A) such transfer was made to a self-settled trust or similar device;

''(B) such transfer was by the debtor; and

''(C) the debtor is a beneficiary of such trust or similar device.

''(2) Paragraph (1) shall not apply to the trusts specified in section 522(d)(12).''.

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON NATIONAL PARKS

Mr. THOMAS. Mr. President, I would like to announce for the information of the Senate and the public that the following hearing has been scheduled before the Subcommittee on National Parks of the Committee on Energy and Natural Resources.

The hearing will be held on Tuesday, March 15, at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following bills: S. 175, a bill to establish the Bleeding Kansas and Enduring Struggle for Freedom National Heritage Area, and for other purposes; S. 322, a bill to establish the Champlain Valley National Heritage Partnership in the States of Vermont and New York, and for other purposes; S. 323, a bill to authorize the Secretary of the Interior to study the suitability and feasibility of designating the French Colonial Heritage Area in the State of Missouri as a unit of the National Park System, and for other purposes, and S. 429, a bill to establish the Upper Housatonic Valley National Heritage Area in the State of Connecticut and the Commonwealth of Massachusetts, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Tom Lillie at (202) 224–5161 or Brian Carlstrom at (202) 224–6293.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. ENZI. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Monday, March 7, 2005, at 2 p.m. to consider the nomination of Michael Jackson to be Deputy Secretary of Homeland Security.

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

PRIVILEGES OF THE FLOOR

Mr. HARKIN. Mr. President, I ask unanimous consent that John Anderson of my staff be granted floor privileges for the duration of today's session.

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

Mr. DURBIN. Mr. President, I ask unanimous consent that Robert Preiss, congressional fellow on my staff, be granted the privilege of the floor for the duration of the session.

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

ORDER FOR STAR PRINT—S. 6

Mr. SESSIONS. Mr. President, I ask unanimous consent that S. 6 be star printed with the changes that are at the desk.

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

MEASURE READ THE FIRST TIME—S. 539

Mr. SESSIONS. Mr. President, I understand there is a bill at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 539) to amend title 28, United States Code, to provide the protection of habeas corpus for certain incapacitated individuals whose life is in jeopardy, and for other purposes.

Mr. SESSIONS. Mr. President, I now ask for a second reading, and in order to place the bill on the calendar under the provisions of rule 14, I object to my own request.

The PRESIDING OFFICER. Objection having been heard, the bill will receive its second reading on the next legislative day.

ORDERS FOR TUESDAY, MARCH 8, 2005

Mr. SESSIONS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:45 a.m. on Tuesday, March 8. I further ask unanimous consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then resume consideration of S. 256, the Bankruptcy Reform Act; provided that at 10:15 the Senate resume consideration of the Schumer amendment as provided under the previous order. I further ask unanimous consent that the Senate recess following the conclusion of the vote on the Schumer amendment until 2:15 p.m.

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

PROGRAM

Mr. SESSIONS. Mr. President, tomorrow the Senate will continue its consideration of the bankruptcy bill. Under a previous order, at 10:15, we will resume consideration of the Schumer amendment. There will be 2 hours of debate prior to the 12:15 p.m. vote in

relation to the Schumer amendment. That will be the first vote of the day.

Immediately following the party luncheons, the Senate will proceed to a vote on the motion to invoke cloture on the bankruptcy reform bill. It is my hope and expectation that cloture will be invoked. Following the vote, we will continue the amending process. There are over 35 amendments still pending, and we will begin working through those amendments tomorrow afternoon. Therefore, additional votes should be expected throughout the afternoon tomorrow.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Mr. SESSIONS. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:32 p.m., adjourned until Tuesday, March 8, 2005, at 9:45 a.m..