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Senate

The Senate met at 9:33 a.m. and was called to order by the Honorable HARRY REID, a Senator from the State of Nevada.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, we hear Your voice sounding in our souls, ''Take courage, it is I, the Lord; I am with you!'' You have shown us repeatedly that courage is ours because You have taken hold of us. We can take the challenges of life because You have a tight grip on us. We say with Horatius Bonar, ''Let me no more my comfort draw from my frail hold on Thee. Rather in this rejoice with awe—Thy mighty grasp on me!''

Suddenly we realize it is true: Courage is fear that has said its prayers. So often we are driven to our knees to seek Your will. Then You lead us to attempt what we could not pull off on our own strength. We discover that courage is Your gift for answered prayer. At the very moment we cry out for help, You open the floodgates of courage and give us that inner resolve that makes us bold and resolute. Thank You, dear God, for the fresh supply of courage to be dynamic leaders today. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable HARRY REID 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.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. THURMOND].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 13, 2001.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HARRY REID, a Senator from the State of Nevada, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

Mr. REID thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10 a.m., with Senators permitted to speak for up to 5 minutes each.

Under the previous order, the time until 9:45 shall be under the control of the Senator from Illinois, Mr. DURBIN, or his designee.

The Senator from North Dakota.

Mr. CONRAD. Mr. President, I ask unanimous consent the time be extended so both sides have their full morning business time.

The ACTING PRESIDENT pro tempore. The Senator's request is he be given 15 minutes, and the following 15 minutes for the Republicans. The time of Senator HOLLINGS was to start at 10 a.m. and will start at approximately 10 after the hour.

Mr. CONRAD. I will be happy to yield with the understanding I be recognized after the Senator from Pennsylvania takes care of the business he has brought to the floor.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from North Dakota? Hearing none, that will be the order.

The Senator from Pennsylvania.

SCHEDULE

Mr. SANTORUM. Mr. President, today the Senate will be in a period of morning business until 10 a.m. Following morning business, the Senate will resume consideration of the Bankruptcy Reform Act with Senator HOLLINGS to be recognized for up to 20 minutes. Two back-to-back votes will occur at 11 a.m. on the Feinstein amendment, No. 27, and the Kennedy amendment, No. 39.

The Senate will recess for the weekly party conferences from 12:30 to 2:15 p.m. Upon reconvening, there will be 30 minutes of debate on the Conrad and Sessions amendments, with stacked votes scheduled for 2:45 p.m. There are several amendments still pending and others expected to be offered during today's session. Therefore, additional votes could occur. Senators should be aware that all first-degree amendments on the list must be filed by 1 p.m. today.

I thank my colleagues for their attention and yield the floor.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from North Dakota.

SOCIAL SECURITY AND MEDICARE TRUST FUNDS

Mr. CONRAD. Mr. President, I rise this morning to discuss once again the amendment that will be voted on after the party caucuses at 2:45. The amendment I am offering is to wall off and protect the Social Security and Medicare trust funds from being raided, from being used for other purposes.

I think every Member of this body remembers very well the time in which, for years, Social Security trust funds were regularly raided for other purposes. We only stopped that practice 3 or 4 years ago, and I think all of us do not want to go back to those days.

The best way to assure that we do not go back to those days is to agree to the amendment I have offered today, the amendment that is virtually identical to the amendment I offered last year that got 60 votes in the Senate.

We call it the Social Security and Medicare lockbox amendment because it protects both the Social Security surplus and the Medicare surplus.

In fact, if we go to the detail of what we are discussing, this amendment protects the Social Security surpluses in each and every year, takes the Medicare Part A trust fund off budget in the same way we have taken the Social Security trust fund off budget, and gives Medicare the same protections as Social Security.

This legislation contains strong enforcement language—budget points of order—to assure these funds are not used for some other purpose.

One of the things that leaves out, for anyone studying the President's budget proposal, is unless he uses Medicare trust fund money in 2005, he runs an $11 billion deficit in that year.

That is part of the problem with this budget. It threatens to put us back into deficits because the tax cut is so large. Some of us believe it is critically important that we protect both the Social Security trust fund and the Medicare trust fund so they are not used for other spending in the Federal budget.

Some have argued, well, there really is no surplus in Medicare; that there are two trust funds, and there is a surplus in one—that is, Part A of Medicare, the hospital coverage part of Medicare, and Part B that covers largely doctors' services, which is in deficit.

I have heard this argument made over and over, but it is just wrong. It is not what the law says. It is not what the actuaries say. It is not what the detailed financial reports that have been made to the Senate say.

This is the page right out of the budget book from the Congressional Budget Office. It says on the table on page 19 ''trust fund surpluses.'' The first one is Social Security. It shows year by year the surpluses we will have in Social Security. Then it talks about Medicare. The first trust fund it discusses is Part A. You can see year by year the surpluses that are projected for Medicare Part A.

Under the Congressional Budget Office scoring, this adds up to over $400 billion. In the President's analysis, it is over $500 billion of surplus in Part A.

Then it goes to Part B. While some have argued that Part B is somehow in deficit and therefore there are no surpluses in Medicare, that isn't what the report shows. The report shows that over the 10-year period there is a rough balance in Part B—not a deficit. It is not any big surplus.

Those who have argued that there is no Medicare surplus—I don't know what it is based on. But it is not based on the facts, and it is not based on the law. Some have tried to argue, well, because Part B is funded 25 percent by premiums and 75 percent by general fund revenue, therefore Part B is in deficit. Again, that isn't what the law says. That isn't what the actuaries say. That isn't what Congress has said. Congress made the determination that Part B would be funded 25 percent by premiums, and 75 percent by general fund revenue. We made that determination. It is not in deficit.

If one follows the logic, and one says, well, if Part A is in surplus, Part B is in balance, therefore it just doesn't matter somehow because they are claiming Part B is in deficit because 75 percent of its funding is from the general fund, we can just forget about the Part A surplus, and we can move it, as the President does to this so-called ''contingency fund,'' what does that do? That moves up the date of insolvency of Medicare by 15 or 16 years. And Medicare will go broke in the year 2009 and 2010 instead of the year 2025.

What kind of a policy is that? What earthly sense does it make to raid the Medicare trust fund and use it for other purposes?

I suggest to my colleagues that it makes no sense. It is precisely what we should not do.

In answer to my amendment, my colleagues on the other side of the aisle are offering an amendment. This amendment claims to be a lockbox, but the door is wide open. This is what I call the ''leaky lockbox'' because there is no lock. There is no box. And it is wide open to abuse and to raid.

There is not a penny that is reserved for Medicare under the President's budget. That happens to be the reality. He takes the whole $500 billion under his calculation of what is in the surplus and moves it to the so-called ''contingency fund'' and goes around the country on Air Force One, as he did in my State, and tells people who are concerned about his cutting the agriculture budget to not worry about that; the money is in the contingency fund.

Go to the contingency fund. Boy, are people going to be surprised when they go to the contingency fund and they find that there is nothing there because it is virtually all Medicare trust fund money. There is supposed to be some money there. I don't know what the source of it is other than maybe he is going to raid the Social Security trust fund, too, because there is no money there.

Add up the President's budget. I will do it in a minute. There is no money there. We will get a chart that shows those numbers.

Let's look at what the Republican amendment says. I must credit and give compliment to those who crafted the language on the other side. It is very attractive language.

Here is what it says. They say they have a lockbox for Medicare. But then they have this clause which they call ''exception''.

''Subparagraph A''—that is the language that gives protection—''shall not apply to Social Security reform legislation or Medicare reform legislation.''

Who can be against reform? I am certainly not. I have been an advocate and have voted for reform—even sometimes unpopular legislative proposals—because of the clear and compelling need for reform.

But when you write language such as this, it is a giant trapdoor because there is no definition of what constitutes ''reform.'' You can do anything and call it reform and use the money. That is what is wrong with the amendment on the other side. You could, under the cloak of reform, cut taxes. Under the cloak of reform, you could say with Medicare that we are going to take that money and pay for prescription drug benefits. Some might call that reform. The problem with that is that it is classic double counting. That is exactly how we will get in trouble around here—if we first say money is attributed to the Medicare trust fund for the purposes of keeping the promises already made, and then we take a part of it and use it for new promises.

That is a mistake. That will do nothing but create financial trouble for this country. The trouble it will create is if money is diverted from the Social Security trust fund or the Medicare trust fund—that money which is currently reserved for paying down the publicly held debt because it is not needed until a later point in time—it reduces the amount of money available to pay down the publicly held debt. That means you pay down less debt. That means you have more of a hole to dig out of when the baby boomers start to retire.

I know the occupant of the chair disagrees with this analysis. He and I had a long conversation on the bus the other day.

I think it is undeniable that if you take money that is in the trust funds of Medicare and Social Security and divert that money for any other purpose, you are reducing what is used to pay down publicly held debt. I think it is undeniable. That has real economic consequences.

I want to go to the question of the President's budget because we have heard over and over that there is this contingency fund. I am unable to locate the contingency fund as I add up the President's numbers.

First of all, we have the $5.6 trillion projected surplus. Everybody agrees that is the projection. I think the first thing we should remember is that it is a forecast, and it may or may not come true. In fact, the forecasting agency itself has told us there is a 10-percent chance that number comes true; there is a 45-percent chance it is bigger; there is a 45-percent chance it is smaller.

There is also agreement on what follows. The Social Security trust fund is $2.6 trillion, according to the President's Office of Management and Budget. The Medicare trust fund is $500 billion. If we set them aside, that leaves

$2.5 trillion. That is not what the President's budget does because it only uses $2 trillion of the Social Security trust fund—he only reserves $2 trillion. The other $600 billion is left for, perhaps, privatization. I have been told by people close to the administration that is their intention.

As to the Medicare trust fund, they do not reserve it at all. But if we were to reserve it, as most of us believe is important, it leaves us with an available surplus of $2.5 trillion.

Then we look at the Bush tax cut, advertised at $1.6 trillion. Part of it has now been reestimated by the Joint Tax Committee for action in the House, and those two parts that they reestimated increased by $126 billion. So unless the President changes his proposal, the cost of his tax cut is now $1.7 trillion.

In addition to that, the President's proposal will have a dramatic effect on the alternative minimum tax. The alternative minimum tax today affects about 2 million taxpayers. The Joint Tax Committee has now told us that if the Bush plan passes, it will affect, at the end of the 10-year period, over 30 million taxpayers in the United States. Over 30 million taxpayers will be affected by the alternative minimum tax under the Bush proposal. And to fix it will cost $300 billion. This is not part of the President's plan, but it is made more necessary by the President's plan. He provides no resources—none, zero—to deal with it.

I do not believe, for one moment, that this Congress is going to allow over 30 million people to be caught up in the alternative minimum tax. But if we do not provide the resources to fix it, it will happen.

The third is the interest cost associated with the first two. That is another $500 billion.

Then we have the Bush spending proposals, those proposals that are above the so-called baseline of $200 billion. That adds up to $2.7 trillion. And that is before any defense initiative the President might apply or send as a suggestion.

The result is, we have a package here that simply does not add up. So I hope, I say to my colleagues, that before the end of the day we adopt this amendment to protect both the Social Security trust fund and the Medicare trust fund.

I thank the Chair and yield the floor.

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

The Senator from Virginia.

THE EDUCATION OPPORTUNITY TAX CREDIT ACT

Mr. ALLEN. Mr. President, I rise today in support of the education opportunity tax credit on behalf of myself as well as Senators WARNER, CRAIG, and ALLARD. This is a measure that was introduced last Thursday, March 8.

What the education opportunity tax credit would do is increase the amount and the quality of available academic services and technology-related resources for parents and for students.

This measure does several very good things. No. 1, it increases education spending with greater parental involvement. No. 2, it is a tax cut for families. And, No. 3, it brings forth more funds available for technology and specialized tutoring-type teaching.

I know the Presiding Officer and other Members of the Senate recognize how important education is for our children and for the future of our Nation. It is essential for our children's futures because the best jobs will go to those who are the best prepared. The education opportunity tax credit helps in that regard.

In education, good quality classrooms and good teachers, able to impart knowledge to our children, are important. Academic standards and accountability and the measurement of those high academic standards in the basics of English, math, science, social studies, and economics are all important, but also as important as teachers and administrators in the education of our children are the parents; and parents need to be empowered. Their involvement is key for the academic success of their children.

Indeed, parents know their children's names. They know the specific needs of their children much more than any bureaucracy in Washington, DC.

Finally, children need to have computer skills to be able to compete and succeed in the future. Computers and wiring in schools and access to the Internet in schools and in libraries is a good idea and is very important. Community centers are important.

Last week, the Republican Senate High-Tech Task Force visited an Intel clubhouse. It is working in conjunction with the Boys and Girls Club here in Washington, DC. There are many good ideas in these community centers, but we need to make sure there are computers and software programs and educational programs at home because homework is done at home and on weekends.

This is what the education opportunity tax credit does. It provides families with a $1,000-per-child education opportunity tax credit. It is capped at $1,000 per year per child, and capped at $2,000 per year per family if they have more than one child. It defrays the cost of education-related expenses for computers and computer-related accessories and technology. Educational software, Internet access, and tutoring services could be expenditures that would thereby get the tax credit. It does not apply to private school tuition. And as introduced, it is refundable.

This is a family-oriented education tax incentive that will have a very real impact on the ability of parents to better afford education-related services and technology resources.

This is the financial situation of a family with an income of $38,900. That is the median family income in the United States.

After a family pays all the money in taxes to the Federal Government, the State Government, the local government, and after they pay for their housing, their clothing, their food, their medical care, and their transportation—these are all absolutely essential for the survival of a family—the real disposable income gets down to about $2,100.

Now, educational expenses normally are going to be school supplies and a variety of other items that are important. But you realize, with that amount of money, if you bought a computer, purchased a used printer, software, and Internet access, that totals over $2,400. So the amount that would be added to credit card debt would be $241 a year.

The reality is, once you pay your taxes to all levels of government, once you pay for food and clothing and housing and putting gas in the car, and a car payment, and all the rest, the average family has about $180 left a month for everything else. And the average cost of a computer is going to be about 70 percent of that.

You can have the statistics, but real people in the real world, folks such as Jim and June Meadows, support this proposal because it would help them afford specialized software for their daughter Morgan, who has dyslexia, without sacrificing the education needs of their other daughter, Meghan, who is age 10.

You do not have to go outside the beltway to find these working folks. In fact, right here in the Capitol you will find people who are working who recognize the value of this. In fact, Milton Salvadore, who I ran into in the Senate restaurant a few weeks ago, is such a working family man—he works, his wife works, and they have young children—I asked him: Do you all have a computer for your young school-aged children?

He said: No. No.

I said: Why not?

He said: Look, we have all these bills, and so forth. My wife and I are working hard, but we do not have enough money for that. We do not want to go into debt to go get a computer and Internet access for our children. He said it would help him and his hard-working wife afford a computer for his family, if this education opportunity tax credit were in effect.

The tax impact on the average family of three with an adjusted gross income of approximately $39,000 a year, if they took the full $1,000 tax credit for their children's education expenses, that would save nearly 34 percent on their yearly Federal tax bill. A family of four with an income of $39,000 taking the full $2,000-per-family tax credit would realize a savings of 95 percent on their taxes owed for the year.

If we are going to seriously address the digital divide—and the digital divide is a divide in opportunities—we must act to provide families and children with the financial means to take

advantage of education opportunities. Closing the digital divide is important. The education opportunity tax credit provides the financial resources to achieve this goal by making the tax credit fully refundable so that lower income families who owe the Government less money than the maximum available tax credit—say they owe $700—or if they have no tax liability at all, would get the full credit. Everyone would be able to take full advantage of this opportunity.

The digital divide is a function of many factors, including geography and educational levels of parents. Hence, the most salient and determinative factor is family income. According to numbers released in October of 2000 by the U.S. Department of Commerce—these figures are borne out by studies by Virginia Commonwealth University—we find that of the 92 percent of people who are computer owners, 29 percent have Internet access. So these figures do match in that regard with Virginia. If we look at households with less than $15,000 in annual income, 12.7 percent of them have Internet access, which is pretty much equal to computer ownership. Families falling within the $15,000 to $24,000 per year range have a 21-percent rate of Internet access. Families with incomes of $75,000 per year or more have about a 77-percent Internet access rate.

These numbers show how this bill will help all people, but that the main value will be to those of middle income and lower middle income who will be able to purchase computers, Internet access, and educational computer software for their children. This is more than just a purely personalized education tax and parental involvement technology issue. This is about—the digital divide and making sure people are getting a good education and access to technology so they are literate and capable. It is vital to the future of the United States in a global economy. It is important for our domestic economy, and it is obviously important for individual families.

In maintaining our economic growth, the Department of Commerce estimates that information technology industries accounted for 30 percent of the country's total real economic growth between 1995 and 1999. Between just 1997 and 1999, there were over 1.2 million new jobs. The average wage of technology jobs in the Nation was $58,000 compared to $32,000 in the overall economy.

What we need to understand is, without a continued influx of qualified, competent workers, the growth in the technology industries will stall and Americans, if not properly educated, will not be able to seize the opportunities. Whether it is in the Silicon Valley of California, the silicon Dominion of Virginia, or whether it is in Idaho, Pennsylvania, Florida, Iowa, or anywhere else, it is important that our youngsters are getting a solid education.

The number of U.S. college graduates with high-tech degrees in the country is declining. Since 1990, the number of high-tech degrees has dropped by 2 percent. Undergraduate degrees in math have declined by 21 percent, computer science degrees have declined by 37 percent, and electrical engineering degrees by 45 percent. Although, this wasn't the trend we saw in Virginia in the 1990s. Actually, there was a big increase of jobs and degrees—Virginia having the third fastest growth in technology jobs—however there was the same income differential between technology-related jobs and other forms of employment. The studies from Virginia showed that the average technology job paid $66,000 a year versus $31,000 in the overall economy.

As a country, unless we better prepare all students, they will not be able to meet the high-tech job demand; the number of innovations and new technology developments will decline, and businesses and jobs will move offshore.

I say to my colleagues in the Senate, it is time for us to act to make sure we keep these well-paying jobs, these high-tech jobs, in America for Americans.

There is broad-based support by Virginia voters for the education opportunity tax credit. This is not a conservative versus liberal, or Democrat versus Republican, or men versus women type issue; it is a commonsense, good for families, education spending and tax cut issue.

What we found in Virginia with this idea—and it did get pretty well debated in the recent campaign—is that—and this was from polling—61 percent of liberals liked the idea; 69 percent of conservatives liked it, and moderates actually liked it the best, 71 percent. Men liked it at over 70 percent. It was supported by nearly 70 percent of women. It didn't matter someone's race, where they lived, ideology or political persuasion, or if they were not involved in any organized political party. It was very strongly supported by everyone in Virginia.

The people of Virginia recognize that it helps them with their own children. In fact, at the Flying J truckstop in Caroline County, I was going in to pay my bill, and the woman who was there taking my credit card said: I like your education tax credit.

I said: That's great, ma'am. I am glad you know what is going on with this measure. Do you like it?

She said: I am a tutor in Caroline County schools in mathematics.

It is a county with many people who cannot afford a tutor, and she saw that those students who needed help in math and their families could better afford her or other tutoring services so they could get up to speed in mathematics with the support of this tax credit. This is an idea that is appreciated by people in Virginia. As we work to make sure our fellow Senators know about this idea, they will realize it is something on which we will need to have to take action very soon, to make sure our students have the highest quality and most appropriate education possible.

We need to trust parents to be involved in their schools. They know their children's needs. They know their specific areas that will be of interest and what will best benefit them. Through this substantial tax benefit, all families will have access to a full spectrum of available education opportunities and related technologies.

I hope my colleagues will look into this matter. The Education Opportunity Tax Credit Act will provide families with choice and opportunity. I look forward to working with my colleagues, Senator WARNER of Virginia, Senator CRAIG of Idaho, and Senator ALLARD of Colorado, as well as other Members, in making sure that we ensure the passage of the education opportunity tax credit to empower parents, to increase education spending, and also to reduce taxes while providing more technology capabilities to the children of America.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. CRAIG). Morning business is closed.

BANKRUPTCY REFORM ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 420. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 420) to amend title 11, United States Code, and for other purposes.

Pending:

Schumer amendment No. 25, to ensure that the bankruptcy code is not used to exacerbate the effects of certain illegal predatory lending practices.

Feinstein modified amendment No. 27, to place a $2,500 cap on any credit card issued to a minor, unless the minor submits an application with the signature of his parents or guardian indicating joint liability for debt or the minor submits financial information indicating an independent means or an ability to repay the debt that the card accrues.

Leahy amendment No. 20, to resolve an ambiguity relating to the definition of current monthly income.

Conrad modified amendment No. 29, to establish an off-budget lockbox to strengthen Social Security and Medicare.

Sessions amendment No. 32, to establish a procedure to safeguard the surpluses of the Social Security and Medicare hospital insurance trust funds.

Wellstone amendment No. 35, to clarify the duties of a debtor who is the plan administrator of an employee benefit plan.

Wellstone amendment No. 36, to disallow certain claims and prohibit coercive debt collection practices.

Wellstone amendment No. 37, to provide that imports of semifinished steel slabs shall be considered to be articles like or directly competitive with taconite pellets for purposes of determining the eligibility of certain workers for trade adjustment assistance under the Trade Act of 1974.

Kennedy amendment No. 38, to allow for reasonable medical expenses.

Kennedy amendment No. 39, to remove the dollar limitation on retirement savings protected in bankruptcy.

Collins amendment No. 16, to provide family fishermen with the same kind of protections and terms as granted to family farmers under chapter 12 of the bankruptcy laws.

Leahy amendment No. 41, to protect the identify of minor children in bankruptcy proceedings.

The PRESIDING OFFICER. Under the previous order, the Senator from South Carolina, Mr. HOLLINGS, is recognized for not to exceed 20 minutes to speak on the lockbox issue.

Mr. HOLLINGS. Mr. President, I had a lockbox amendment at the desk, but I am not calling it up at this time. In the limited time granted me, I want to support the Conrad amendment, which will be introduced later, having to do with procedure. I didn't want to bring about any confusion because I think the Conrad amendment is a sound one. I know that the particular amendment I have at the desk was designed by the Administrator of Social Security. It is a true lockbox.

But we have a more serious problem here. There isn't any question that with the Concord Coalition coming out yesterday afternoon with a joint statement by Warren Rudman, Sam Nunn, Peter Peterson, Robert Rubin, and Paul Volcker, we are just about ready to break the discipline with respect to paying down the debt. They strongly point out the reasons we should continue the discipline.

I ask unanimous consent that their particular summary be printed in the RECORD at this point.

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

[From the Concord Coalition, Mar. 12, 2001]

JOINT STATEMENT BY WARREN RUDMAN, SAM NUNN, PETER PETERSON, ROBERT RUBIN AND PAUL VOLCKER

WASHINGTON.—Congress and the Bush administration face the critical challenge this year of adopting a framework for using near-term budget surpluses to help fill the huge long-term gaps in federal entitlement programs and household savings, and to best further our continued economic well being. This is certainly a more welcome challenge than eliminating budget deficits, but it is every bit as vital.

What are we concerned about?

We are concerned that the mere prospect of very large, but highly uncertain, budget surpluses is being used as an excuse to abandon fiscal discipline, creating the threat of renewed non-Social Security deficits and failing to realize the full opportunity of paying down the publicly held debt.

Then there is the fundamental long-term challenge, which The Concord Coalition has always stressed, of setting aside sufficient resources to meet the huge retirement and health care costs associated with the coming ''senior boom.'' The surpluses provide an opportunity to help meet this challenge—but only if we are careful to preserve them.

The obvious question: How much should we be willing to gamble on 10-year projections that the Congressional Budget Office itself say could be off by trillions of dollars?

Answer: The Concord Coalition believes that it is unwise to rely on these projections to commit ourselves to a series of large escalating tax reductions over a 10-year period, particularly in advance of addressing the huge and daunting future deficits of Social Security and Medicare. Doing so would be to rely on the unreliable while we ignore the inevitable.

We believe that fiscal discipline is the key to providing for the unmet needs of the future.

Savings from deficit reduction, and now surpluses, have helped provide the capital to increase the productivity of American workers—a major factor in the record growth of the last 10 years. Further gains in productivity will become especially urgent when the retirement of the huge baby boom generation virtually halts the growth in the size of the U.S. work force.

Continued debt reduction is the government's most direct contribution to net national savings. Increasing national and personal savings is the single most effective policy the government can pursue to promote long-term economic growth and retirement security. Budget proposals should be assessed in that context.

As public debt is reduced to the low levels possible, other policies such as retirement savings accounts also play an important role. Household savings are nowhere near adequate to prepare for ever-lengthening retirements.

We recommend that as Congress and the Bush administration decide how best to deploy budget surpluses, they be guided by the following framework:

Ensure the continued economic benefits of a stable fiscal policy by maintaining discipline and avoiding both a spending spree and large escalating tax cuts.

It is exceedingly unwise to lock in a large 10-year tax cut based on unreliable long-term budget projections.

An immediate moderate tax cut is justified and reasonable as a surplus dividend, given last year's surplus and in light of near-term economic and budgetary prospects.

However, a back loaded 10-year tax cut is not the right tool to provide short-term economic stimulus—particularly at the expense of the urgent long-term need to fund our senior entitlements and retirement savings needs.

Realize the full opportunity for paying down the public debt to the low levels possible.

Establish a new set of firm, but realistic discretionary spending caps.

Consider establishing a system of mandatory, individually owned retirement accounts to help families build a more ample nest egg while alleviating concerns that future budget surpluses will result in either higher spending or in a large build up of government-owned private sector financial assets.

Mr. HOLLINGS. The only objection I have to it—and I commend them for their leadership—is they say an immediate moderate tax cut is justified. You see, therein is the difference with this particular Senator and the ''wag.'' Surpluses, surpluses, surpluses—everywhere men cry surpluses. But there is no surplus. Mind you me, I have been elected seven times to the Senate, and to paraphrase our wonderful leader, President Richard Nixon, I am not a nut. I believe in tax cuts, too—if you have some taxes to cut. So let's see where the taxes are to cut. They say the so-called surpluses belong to the people, but I find nothing but indebtedness belonging to the people.

For example, we have gone, in the past 20 years, from a creditor nation to the largest debtor nation in history—some $2 trillion. We actually have a current account deficit of $439 billion, or more, and going up. There is a deficit in the balance of trade up, up, and away, where we used to have a plus balance of trade. With respect to surpluses, actually, we owe Social Security some $1.164 trillion Medicare accounts are $238 billion in the red. Military retirement is $156 billion in the red. Civilian retirement is $544 billion in the red. Unemployment compensation is $92 billion in the red.

Mr. President, I ask unanimous consent that this table of Congressional Budget Office figures be printed in the RECORD at this particular point.

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

TRUST FUNDS LOOTED TO BALANCE BUDGET

[By fiscal year, in billions]

	2000	2001	2002
Social Security	1,007	1,164	1,336
Medicare			
HI	169	198	234
SMI	45	40	39
Military Retirement	149	156	164
Civilian Retirement	512	544	575
Unemployment	86	92	98
Highway	31	31	30
Airport	13	15	17
Railroad Retirement	25	26	27
Other	72	74	77
Total	2,109	2,340	2,597

Mr. HOLLINGS. This shows the total sum of all trust funds—not just Social Security, but all the trust funds—including black lung, nuclear and otherwise. So the total amount that we now owe in Government accounts—since they want to split it—is $2.3 trillion.

Let me go right to that particular point: $2.3 trillion, as compared to the $3.4 trillion they call public debt. You see, that is where Mr. Greenspan and others start the monkey business of dividing the debt that belongs to us all. We are the Government, and the public debt and the Government debt, or the intergovernmental accounts, are all our indebtedness. It is $5.7 trillion. Now that Government debt has not gone down. We ended the last fiscal year $23 billion in debt. The national debt went up some $23 billion.

I ask unanimous consent to have printed in the RECORD page 20 of the Treasurer's report showing the difference in how it increased.

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

TABLE 6.—MEANS OF FINANCING THE DEFICIT OR DISPOSTION OF SURPLUS BY THE U.S. GOVERNMENT, SEPTEMBER 2000 and OTHER PERIODS

[In millions of dollars]

Assets and liabilities directly related to budget off-budget activity	Net transactions (−) denotes net reduction of either liability or asset accounts			Account balances curent fiscal year		
	This month	Fiscal year to date		Beginning of		Close of this month
		This year	Prior year	This year	This month	
Liability accounts						
Borrowing from the public: Public debt securities, issued under general Financing authorities:						
Obligations of the United States, issued by:						
United States Treasury	−3,644	17,908	130,078	5,641,271	5,662,822	5,659,178
Federal Financing Bank	.....	.....	.....	15,000	15,000	15,000
Total, public debt securities	−3,644	17,908	130,078	5,656,271	5,677,822	5,674,178
Plus premium on public debt securities	−26	697	−200	2,002	2,725	2,699
Less premium on public debt securities	−832	−5,157	1,648	80,698	76,373	75,541
Total public debt securities net of Premium and discount	−2,839	23,761	128,230	5,577,575	5,604,175	5,601,336
Agegncy securities, issued under special financing authorities (see Schedule B, for other Agency Borrowing, see Schedule C)	31	−832	−854	28,605	27,641	27,672
Total federal securities	−2,808	22,929	127,376	5,606,080	5,631,817	5,629,009
Deduct:.						
Federal securities held as investments of government accounts (see Schedule D)	29,557	246,453	221,530	1,989,308	2,206,204	2,235,761
Less discount on federal securities held as investments of government accounts	30	853	5,460	16,148	16,970	17,001
Net federal securities held as investments of government accounts	29,527	245,600	216,070	1,973,160	2,189,234	2,218,760
Total borrowing from the public	−32,334	−222,671	−88,694	3,632,920	3,442,583	3,410,248
Accrued interest payable to the public	13,024	1,608	−2,845	42,603	31,187	44,211
Allocations of special drawing rights	−21	−440	80	6,799	6,380	6,359
Deposit funds	−1,171	[1] −1,151	97	3,997	4,017	2,846
Miscellaneous liability accounts (includes checks outstanding etc.)	5,329	−461	498	4,420	−1,370	3,959
Total liability accounts	−15,174	−223,116	−90,864	3,690,739	3,482,798	3,467,624
Asset accounts (deduct)						
Cash and monetary assets:						
U.S. Treasury operating cash: [2]						
Federal Reserve accounts	2,498	1,818	1,689	6,641	5,961	8,459
Tax and loan note accounts	36,981	−5,618	15,891	49,817	7,218	44,199
Balance	39,479	−3,799	17,580	56,458	13,180	52,659
Special drawing rights:						
Total holdings	−34	33	178	10,284	10,350	10,316
SDR certificates issued to Federal Reserve Banks	1,000	4,000	2,000	−7,200	−4,200	−3,200
Balance	966	4,033	2,178	3,084	6,150	7,116
Reserve position on the U.S. quota in the IMF:						
U.S. subscription to International Monetary Fund:						
Direct quota payments	.....	.....	14,763	46,525	46,525	46,525
Maintenance of value adjustments	−257	−3,336	412	5,027	1,947	1,691
Letter of credit issued to IMF	−43	−5,194	−15,750	−30,633	−35,784	−35,827
Dollar deposits with the IMF	2	4	−36	−121	−119	−117
Receivable/Payable (−) for interim maintenance of value adjustments	183	2,234	−562	−815	1,235	1,418
Balance	−114	−6,292	−1,173	19,982	13,804	13,690
Loans to International Monetary Fund	.....	.....	.....	.....	.....	.....
Other cash and monetary assets	927	908	386	23,983	23,964	24,891
Total cash and monetary assets	41,258	−5,151	18,476	103,507	57,098	98,356
Net Activity, Guaranteed Loan Financing	−2,472	−4,327	−4,156	−18,518	−20,373	−22,845
Net Activity, Direct Loan Financing	9,727	21,744	18,605	83,894	95,911	105,638
Miscellaneous asset accounts	2,181	−1,602	1,579	1,496	−2,288	−106
Total asset accounts	50,694	10,664	34,505	170,378	130,348	181,043
Excess of liabilities (+) or assets (−)	−65,868	−233,780	−125,369	+3,520,361	+3,352,449	+3,286,581
Transactions not applied to current year's surplus or deficit (see Schedule a for Details)	46	−3,213	1,009	.....	−3,258	−3,213
Total budget and off-budget federal entities (financing of deficit (+) or disposition of surplus (−))	−65,822	−236,993	−124,360	+3,520,361	+3,349,191	+3,283,369

[1] Outlays for the Department of the Interior have been decreased in October 1999 by $329 million; to reflect the reclassification of the ''Tribal Trust funds'', Office of the Special Trustee for the American Indians; from a trust fund to a deposit fund.

[2] Major sources of information used to determine Treasury's operating cash income include Federal Reserve Banks, the Treasury Regional Finance Centers, the Internal Revenue Service Centers, the Bureau of the Public Debt and various electronic systems. Deposits are reflected as received and withdraws are reflected as processed.

. . . No Transactions.

(**) Less than $500,000.

Note.—Details may not add to totals due to rounding.

Mr. HOLLINGS. Mr. President, we not only ended the fiscal year with a $23 billion deficit, but look at the debt to the penny, which I printed just a half hour ago from the U.S. Treasury Web site, and you will see that we continue to run deficits. U.S. Treasury Secretary O'Neill, when I had him at the hearing, said, ''That is your paper, Senator.'' I said, ''No, this is your paper, Secretary O'Neill.'' The public debt numbers found on-line show that the debt has increased from $5.674 trillion at the end of September last year—at the beginning of this fiscal year, 2001—to $5.747 trillion. So the debt has gone up $73 billion.

Let me emphasize the split in the debt. The Treasury Secretary says who owes the public debt. He has the public debt held by the public, and he has another listing of intergovernmental holdings. In January, for the years preceding—Mr. President, that used to be Government debt. Now they are trying to change the phraseology so you are misled—intergovernmental holdings. That is an indebtedness. The public debt has gone up $21 billion. Did you hear that? Mr. Greenspan, Chairman of the Federal Reserve, is running around saying, ''My problem is we are going to pay down too much debt,'' when it has gone up in the beginning of the fiscal year some $21 billion. It is $3.4 trillion, going down $21 billion. Go down $100 billion, go down $200 billion, go down $300 billion, $400 billion, and you still

have $3 trillion to pay off. Don't worry about paying down too much debt.

It was an absolute charade to see the Chairman of the Federal Reserve come to the Congress with that nonsense about ''we have too much debt to pay down.'' I mean, we are paying down too much debt and we are going to have to pay a penalty on our fiscal holdings.

With respect to the intergovernmental holdings, or public debt, it is $52 billion. So as of this morning, a half hour ago, the Secretary of the Treasury reports that the debt has gone up $73 billion. It is not going down. That is the problem with the Concord Coalition.

I ask unanimous consent that these documents be printed in the RECORD at this point.

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

THE DEBT TO THE PENNY

[Updated March 12, 2001]

	Amount
Current: 03/09/2001	$5,747,792,825,182.88
Current month:	
03/08/2001	5,747,550,277,632.42
03/07/2001	5,747,491,094,329.69
03/06/2001	5,749,734,337,611.83
03/05/2001	5,743,401,716,650.84
03/02/2001	5,742,769,797,856.70
03/01/2001	5,726,774,439,028.95
Prior months:	
02/28/2001	5,735,859,380,573.98
01/31/2001	5,716,070,587,057.36

THE DEBT TO THE PENNY—Continued

[Updated March 12, 2001]

	Amount
12/29/2000	5,662,216,013,697.37
11/30/2000	5,709,699,281,427.00
10/31/2000	5,657,327,531,667.14
Prior fiscal years:	
09/29/2000	5,674,178,209,886.86
09/30/1999	5,656,270,901,615.43
09/30/1998	5,526,193,008,897.62
09/30/1997	5,413,146,011,397.34
09/30/1996	5,224,810,939,135.73
09/29/1995	4,973,982,900,709.39
09/30/1994	4,692,749,910,013.32
09/30/1993	4,411,488,883,139.38
09/30/1992	4,064,620,655,521.66
09/30/1991	3,655,303,351,697.03
09/28/1990	3,233,313,451,777.25
09/29/1989	2,857,430,960,187.32
09/30/1988	2,602,337,712,041.16
09/30/1987	2,350,276,890,953.00

Source: Bureau of the Public Debt.

WHO HOLDS THE DEBT?

[Beginning 1/31/2001 (debt held by the public vs. intragovernmental holdings) historical debt prior to January 31, 2001]

	Debt held by the public	Intragovernmental holdings	Total
Current:			
03/09/2001	$3,426,528,227,885.96	$2,321,264,597,296.92	$5,747,792,825,182.88
Prior months:			
02/28/2001	3,401,737,625,377.06	2,334,121,755,196.92	5,735,859,380,573.98
01/31/2001	3,388,015,685,287.98	2,328,054,901,769.38	5,716,070,587,058.36

WHO HOLDS THE DEBT?

[Thru 1/30/2001 (debt held by the public vs. intragovernmental holdings) historical debt beginning with January 31, 2001]

	Debt held by the public	Intragovernmental holdings	Total
Prior months:			
01/30/2001	3,369,903,111,703.32	2,370,388,014,843.13	5,740,291,126,546.45
12/29/2000	3,380,398,279,538.38	2,281,817,734,158.99	5,662,216,013,697.37
11/30/2000	3,417,401,544,006.82	2,292,297,737,420.18	5,709,699,281,427.00
10/31/2000	3,374,976,727,197.79	2,282,350,804,469.35	5,657,327,531,667.14
Prior fiscal years:			
09/29/2000	3,405,303,490,221.20	2,268,874,719,665.66	5,674,178,209,886.86
09/30/1999	3,636,104,594,501.81	2,020,166,307,131.62	5,656,270,901,633.43
09/30/1998	3,733,864,472,163.53	1,792,328,536,734.09	5,526,193,008,897.62
09/30/1997	3,789,667,546,849.60	1,623,478,464,547.74	5,413,146,011,397.34

Mr. HOLLINGS. Mr. President, what is happening? Well, we got on course. Reaganomics II. We know what Reaganomics I did. I notice my friend, the distinguished Senator from Pennsylvania, Mr. SPECTER, called it in the interviews over the weekend Kemp-Roth. He didn't want to hurt President Reagan's feelings. I don't either, but President Reagan adopted this idea of ''starve the beast.'' All we have to do is cut the revenues. The money belongs to the people, and the people know how best to spend their money, and we will have prosperity galore.

What happened? Well, President Lyndon Johnson last balanced the budget. During 200 years of history, in the course of all the wars, we had accumulated less than a trillion dollars in debt.

But when President Reagan came in with Reaganomics, that less than a trillion dollars in debt went up to $4 trillion and is now up to $5.7 trillion. What happens? I speak now to my colleagues because this is the greatest waste. I served on the Grace Commission to abolish waste, fraud, and abuse. The greatest waste ever proposed or propounded in the history of Government is the interest costs, the carrying charges on the national debt.

When President Johnson balanced the budget and for the 200 years of history, the interest cost on the debt was only $16 billion. Now it has gone up to $365 billion and is projected by CBO to go to $371 billion. The first thing the Government did this morning at 8 o'clock was go down to the bank, borrow $1 billion and add it to the debt. Tomorrow we are going to do the same thing. On Saturday do you think the banks are closed? No. We are going to borrow another $1 billion on Saturday, and on Sunday and on Christmas Day. Each and every day, we are going to borrow $1 billion for nothing—$365 billion.

The distinguished Presiding Officer could buy all sorts of things with this money. We could get an energy policy, a forestry policy, a research policy. We could pay for education. We could almost double everything that anybody wanted. This $365 billion amount is bigger than the national defense. National defense is supposed to go from $305 billion to $310 billion. We are paying out more just in carrying charges, waste, and nobody seems to care.

The point is, when you are in a deficit and debt position, you cannot cut taxes without increasing taxes. That is exactly where we are. The so-called tax cut that President Bush is insisting upon is a tax cut that wore no clothes.

He is running all around the country. Talk of a tax cut started back in September and October, when he was ascending in the polls. Then the market started to decline. In November, the distinguished Mr. CHENEY said it looked like a recession. They insisted on the tax cut in December, January, and February. Can you imagine the President having to go out and sell a tax cut?

People ought to sober up on that particular point. Do you have to sell a tax cut? What is the market saying? The market is saying: Look, with all this indebtedness, awash in debt, a devalued dollar, they are not going to, by gosh, buy our instruments, our bonds, they are not going to continue to finance our debt, and they are going to have to raise the interest rates. That is exactly what happened in Reaganomics I, and we have Reaganomics II on course. There is no education in the second kick of a mule. We should all like the Concord Coalition: Pay down the debt; enforce the discipline; quit running around bribing, if you please, the people with their own money.

It is a sordid trick. We ought to be ashamed of ourselves. Responsible Congressmen and Senators ought to tell the truth. We have gone bilingual when it comes to the budget. The second language is truth. We are running around here saying surplus, surplus, surplus everywhere, and there is no surplus. Even the President says there is no surplus.

I hold in my hand President Bush's document that he just submitted. On page 201, you can see the debt this year: $5.637 trillion. He projects that the national debt will go to $7.159 trillion—not a surplus. This is President Bush. Why don't they ask him: Mr.

President, you say ''surplus,'' but your own budget shows the debt increasing.

I ask unanimous consent to print in the RECORD page 201.

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

TABLE S–16.—FEDERAL GOVERNMENT FINANCING AND DEBT

[In billions of dollars]

	Actual 2000	Estimate										
		2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Financing:												
Unified budget surplus	236	281	231	246	268	273	307	341	372	412	459	524
On-budget surplus/reserve for contingencies	86	124	60	53	57	36	55	71	84	109	136	181
Off-budget surplus	150	157	171	193	211	237	252	270	287	303	323	343
Means of financing other than borrowing from the public:												
Premiums paid (−) on buybacks of Treasury securities	−6	−10	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Changes in:												
Treasury operating cash balance	4	3	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Checks outstanding, deposit funds, etc.	3	−*	−1	.....	.....	.....	.....	.....	.....	.....	.....	.....
Seigniorage on coins	2	2	2	2	2	2	2	2	2	2	2	2
Less: Net financing disbursements:												
Direct loan financing accounts	−22	−39	−4	−17	−18	−17	−16	−16	−16	−16	−16	−15
Guaranteed loan financing accounts	4	−1	−1	1	—	—	1	1	1	1	1	1
Total; means of financing other than borrowing from the public	−13	−45	−4	−15	−16	−15	−14	−13	−13	−13	−13	−13
Total, amount available to repay debt held by the public	223	236	227	232	252	257	294	328	359	399	446	511
Change in debt held by the public:												
Change in debt held by the public (gross)	−223	−236	−227	−232	−252	−257	−294	−328	−181	−125	−71	−50
Less change in excess balances	.....	.....	.....	.....	.....	.....	.....	.....	−178	−274	−375	−461
Change in debt held by the public (net)	−223	−236	−227	−232	−252	−257	−294	−328	−359	−399	−446	−511
Debt Subject to Statutory Limitation, End of Year:												
Debt issued by Treasury	5,601	5,610	5,640	5,697	5,752	5,822	5,878	5,918	6,120	6,396	6,750	7,139
Adjustment for Treasury debt not subject to limitation and agency debt subject to limitation	−15	−15	−15	−15	−15	−15	−15	−15	−15	−15	−15	−15
Adjustment for discount and premium	6	6	6	6	6	6	6	6	6	6	6	6
Total, debt subject to statutory limitation	5,592	5,600	5,630	5,687	5,743	5,813	5,868	5,908	6,110	6,386	6,740	7,129
Debt Outstanding, End of Year:												
Gross Federal Debt:												
Debt issued by Treasury	5,601	5,610	5,640	5,697	5,752	5,822	5,878	5,918	6,120	6,396	6,750	7,139
Debt issued by other agencies	28	27	27	26	25	24	23	21	21	21	20	20
Total, gross Federal debt	5,629	5,637	5,666	5,723	5,777	5,846	5,901	5,939	6,141	6,417	6,770	7,159
Held by:												
Debt securities held as assets by Government accounts	2,219	2,463	2,719	3,007	3,314	3,640	3,988	4,355	4,737	5,138	5,562	6,001
Debt Securities held as assetes by the public:												
Debt held by the public (gross)	3,410	3,174	2,947	2,715	2,463	2,206	1,912	1,585	1,404	1,279	1,208	1,158
Less excess balances	.....	.....	.....	.....	.....	.....	.....	.....	−178	−452	−827	−1,288
Debt held by the public (net)	3,410	3,174	2,947	2,715	2,463	2,206	1,912	1,585	1,226	827	381	−130

Mr. HOLLINGS. Mr. President, there it is. We have been engaged in the most sordid activity one can possibly imagine with these 10-year budgets. I remember when I was chairman of the Budget Committee in 1979 and 1980, we had a 1-year budget. The country sustained, survived, succeeded 200 years of history on 1-year budgets. If you were a Governor of a State and you submitted a 10-year budget, Moody's and Standard & Poor's would immediately lift your credit rating. But wait a minute, the best campaign finance trick is to use the Government's budget to get ourselves reelected, running around and promising visions of sugarplums dancing in their heads: Give the money back; the people know how to spend their money.

Of course, every morning we are borrowing $1 billion, and they say give it back to the people, but we are increasing the debt and increasing the waste. We run amok with these 10-year budgets, and we ought to go back to 1-year budgets. Let's take the budget we passed in December, a few months ago, and debate all the cuts and vote on them.

With respect to the increase, we should have the pay-go rule. You have to have an offset and withhold, not abolish. If President Bush and this Government has a surplus by the end of this fiscal year, I will vote for President George W. Bush's tax cut. I will vote for it—I have to say that publicly—if we have a surplus. But as long as we continue to increase the debt, let's hold up and find out.

As much as I hate to, I think we might have to go with a capital gains tax cut, instead of an across-the-board tax cut, to really get the market going. An across-the-board cut is not going to infuse consumer confidence.

If the President came back here today—that is our problem. These Presidents continue to run for office, they continue to work at keeping the job rather than doing the job. If he would only come back and tend to the real problems of the country and quit running all over the place trying to sell a tax cut, I think the market would start back up. It is not lack of consumer confidence in the economy, it is citizens' lack of confidence in their Government. When they see us play this sordid game of 10-year budgets, calling deficits and debt surpluses and sending the money back with a childish cause that people are going out and spending their money best and that kind of nonsense, that is what is happening to the stock market. They can see we are going to an inflated economy, the results we had from Reaganomics I. We are going to have Reaganomics II, and we are going to really be in economic trouble.

The ox is in the ditch. We have everyone running around talking about surpluses and 10-year budgets where everybody is right and everybody is wrong. If we can just hold the line and get back to that 8-year record of paying down the debt and fiscal discipline, then the people will begin to appreciate this Congress at the market level.

Right now, we ought to be ashamed of ourselves with this sordid game of again and again calling deficits and debt surpluses in order to buy the people's vote. That is all we are doing. We will, with April 15, have a large influx of revenues, and some debt will be paid down, but they will never get to paying down $3.4 trillion in the Presiding Officer's time and in my time.

Do not worry about paying down the public debt. Let us worry about the increase of the overall national debt and go back to the Concord Coalition's recommendation of fiscal discipline.

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

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

Mr. SESSIONS. Mr. President, we are now proceeding on our debate and discussion on the bankruptcy bill that is pending. I do hope those who have amendments and want to make statements on them will come down and take advantage of this time. It is an opportunity to discuss the important questions that are before us.

As I have noted before, bankruptcy reform is, in fact, a second look at the 1978 bankruptcy law. That law reformed the way bankruptcy courts deal with debt in America. We have had experience now for over 20 years with

that reform. We have seen how the law has been manipulated and abused, and it is perfectly appropriate for us to try to create a system that is honest and fair, eliminates abuses, and helps us make sure that what happens in bankruptcy court is rational and defensible and furthers good public policy.

That is what we are about. It is not legislation to fix all problems dealing with credit in America. It is what happens when a person files in bankruptcy. As the Members of this body know, we have in this legislation a provision that says if you make above median income in America, and a judge finds you are capable of paying back as much as 25 percent of your debts, and he calculates the current income and what your debts are, if he determines that is possible, instead of wiping out all your debt, you may be moved from chapter 7—in which debt is wiped out in bankruptcy—to chapter 13, in which you would pay back, over a number of years, 25 percent of the debts you owe.

It is my view, and I think the view of a majority of Americans, that bankruptcy is a good thing. But if you can pay back your debts, you ought to pay them; that we ought not say a person with a $100,000 income, perfectly capable of paying back a substantial portion of his debts, can just not pay them. In fact, some of these people, over a period of 3 to 5 years, can pay back all of their debts, we have learned.

That is the change. I think well over half of the people who file bankruptcy, maybe three-fourths, maybe even more, will be below median income, so they will not be affected by this means testing of bankruptcy. It is just those above median income based on family size and other criteria.

I believe we are doing the right thing. I believe it is the right approach, it is fair and just, and we ought to move in that direction.

We have also improved the system by eliminating quite a number of abuses by good lawyers. Some people put them down, but I cannot blame a lawyer for advising his client there is an opportunity to not pay something if they do not have to under the current bankruptcy law. They have learned how to advise clients to take advantage of the current law. It is up to us now to fix that.

One of the aspects in the bill that I think is of great value is an amendment I offered to encourage credit counseling. A lot of people do not understand credit counseling. I, frankly, did not fully understand it until I spent virtually a day with a good credit counseling agency in Mobile, AL. They are off the main thoroughfare. They had a nice area. People came there to deal with their debts.

What they do is negotiate with the creditors of the people who come in to see them for counseling, and they will get them to reduce their interest rates, get them to stretch out their payments, and they will help that family develop a budget by which they can pay off their existing debts.

Not only do they get them on a budget, but they save marriages. That is because one of the highest causes of marital breakup is financial discord. They sit the whole family down—children, wife, husband—and go over their income. They go over their expenditures, what they can reduce in their budget expenditures: Do they really need this cell phone? Do they really need the higher level cable TV? They knock it down.

Then they get the creditors to see this family is in trouble. If you reduce your interest rate so that payment to the credit card company is reduced, the payment to the furniture store is reduced, the payment to the brother-in-law is reduced, maybe the deficiency on rent is reduced—they work out a budget so the family can work themselves out of this.

The beauty of this is that for the first time, many of these families learn how to manage money. Too often they have not been taught that in America today. I think it is a very good thing. I believe that is healthy. Some have complained that our amendment says before you go to bankruptcy, you should go to a credit counseling agency and at least discuss with them the possibility that you could work out a debt repayment plan and come out better doing it that way rather than going straight into bankruptcy without that option.

What is happening is there are lawyer mills in the country. You turn on your television; you look at your little flier at the corner market that shows what you buy and sell, automobiles, furniture and things, and you see advertisements by these lawyers about how to wipe out your debts and avoid paying what you owe.

People respond. When they go down to the lawyer's office, essentially the lawyer tells them—there is no mystery about this; I don't think I am misstating it—I believe you are entitled to bankruptcy. I believe you can wipe out these debts. It is now January 1, so you will need to pay me $1,000. What I want you to do is live off your credit card and all, but do not pay any of your other debts. Save up until you get the $1,000 and pay me, and I will file the bankruptcy. Then you can wipe out all your debts.

That is what they do, and they make money off that. I know an instance where one of these lawyers does at least 1,000 of those cases a year. That is $1 million in income in chapter 7, chapter 13, routine filings. He doesn't even meet his clients. Basically his paralegals do that and pretty much that is what goes on in America.

For people who need that, that is fine. For people who are not able, hopelessly in debt for various reasons, that is fine. But if they can pay their way out of it, I think somebody ought to be concerned about helping them figure a way to do so. They will feel better about paying their debt.

We don't need a legal system in America that suggests paying your debt isn't important. What does that do for us on a moral basis—that we have a legal bankruptcy system that suggests you have no responsibility to pay your debt if you can pay those debts? I don't think that is good public policy.

I suggest at least there be an opportunity for every bankrupt to consider credit counseling. They are in virtually every community in America. If they are not there, the bankruptcy judge can certify that and the person doesn't have to go to credit counseling. But if there is a credit counselling agency, this bill would say to a bankrupt who is thinking about bankruptcy to go to them and talk to them. It is fundamentally an interview. They do not have to fill out forms or do anything at the credit counseling agency. They just have to certify that they have been there and they have considered that option because it is not being provided to them in the lawyer's office. Trust me. I believe for a certain number they are going to conclude that credit counseling—a matter they have never considered before—is better for them than going into bankruptcy. And the family will be better for it, and the legal system will be better for it.

That is what we are about today. Many people are in debt for many different reasons. Some say: Well, it is credit card debt.

Some college students are filing, but their numbers are not exceedingly high. The reason college students primarily are filing bankruptcy and the reason many of them are deeply in debt is paying for their tuition and fees—not on their credit card. It is their loan payment which has put them in debt very deeply. And at some point they end up running up credit card bills too, perhaps. But the biggest amount of debt for college students is a student loan and the money on which they have to borrow to live. Whatever the reason, we are not certain.

We know hospital bills are a big factor in tipping people into bankruptcy. That is a legitimate reason. We know many people are in bankruptcy because they have a compulsion to spend; one or more family members just cannot discipline themselves. I do not know if it is an illness or what it is, but they cannot discipline themselves and are unable to work their way out of adverse financial circumstances as other family members are able to do. Other family members every day in America are sitting down and deciding when they can buy a new suit of clothes, or whether or not they can take a vacation this year, or whether or not they can go on a school trip, or buy a new car. What are they asking themselves? How can we pay the money we owe and buy something new? Maybe we can't afford to do both this year. Maybe we need to pay down our debt.

We don't want to create a system that makes the honest, disciplined, frugal family look like a chump or look

like they are silly by working hard to pay off unexpected debt and rewarding those who do not make the effort.

This is a fundamental question to me. This bill provides all the protections for median income and below that are in the previous legislation, and it provides other benefits also. It places women and children at the highest possible level of protection. They get the first money out of a bankruptcy estate today under the new legislation instead of being seventh or eighth under the current bill in who gets paid from what is left in the bankruptcy.

It provides priority to pay alimony and child support in a way that we have never done before. It provides many other good provisions that help our country socially and economically do the right thing.

We are excited about that possibility. Just because you move from chapter 7 to chapter 13, if you are above median income—in fact, it isn't all bad that you have been damaged dramatically.

I saw an article recently where someone was talking to a bankruptcy lawyer. He said one person he was talking to had a $70,000-a-year income and wanted to rush out and file his bankruptcy bill under current law because under the new law he might have to go into chapter 13 and pay back some of his debts.

I ask you why a person who makes $70,000 a year shouldn't pay back some of his debt. They say: Well, it is medical bills. Maybe it is an unexpected medical bill. If he is making $70,000, why didn't he have insurance? If he is making below median income, or a low income, maybe I could be sympathetic because they didn't take out insurance. But if he is making $70,000, he ought to be able to provide some medical insurance. Maybe he shouldn't have such medical debts, No. 1. But, No. 2, why should we take the view that if you are able to pay back to your hospital some of the costs of the service that hospital provided you, why shouldn't you pay them?

I visited 20 hospitals in Alabama this year. I have talked to administrators, nurses, and doctors. They are in trouble. It is difficult for hospitals to make a living. They have a factor of uncollected debt. They do not abuse people. But they are not being paid a lot.

If a person cannot pay the hospital, and they are making below median income in America, I don't want them to have to worry about it. Wipe out the debt and go forward under this bill. But if they are making above median income and they owe the hospital $10,000 and over 5 years they can pay them $2,500, why shouldn't they? They got a benefit from the hospital. Somebody else is going to pay for it, if they don't. Who else is going to pay it? People are going to be paying for it through their taxes and other payments, and they will be making below median income. Why should a person who is honest and frugal making below median income pay for the hospital bill for somebody making $70,000 who can pay a portion of his hospital bill? Answer that. That is not justice.

We have a bill that takes a step toward achieving justice. They say: Well, you are just out defending big corporations, banks, and these collection agencies, and you are oppressing the poor. There is no change for the poor. There is no change in this bill for the 75 or 80 percent of the people who file bankruptcy who already make below median income. There is no change in that. It is only if you make above median income that a judge can order you to pay some of your debt.

I think that is right. I don't apologize for that. I do not believe in this class warfare argument we are hearing time and time again that it is oppression of the poor. Those are the same arguments we have heard today. It seems that the hospital providing good care to an individual and does not get paid for it is oppressing the person who is making above median income by asking them to pay for it; if a credit card company has loaned money, or a bank has loaned money to somebody to go out and buy a house, buy a car, buy things a family needs, they are oppressing them by giving them the money and asking them to pay it back when the time comes to pay your debts back. Most Americans pay their debts. I think credit cards are great.

We have had serious complaints in this body—and rightly so—that banks and credit companies are not fairly making credit available to poor people.

We have a bill called redlining that prohibits banks from opposing and refusing to allow people with marginal incomes to borrow money because they might think it is risky.

The PRESIDING OFFICER. The Senator's time has expired. Under the previous order, 5 minutes was reserved for Senator FEINSTEIN to begin at 11 o'clock.

Mr. SESSIONS. I see Senator FEINSTEIN is here. I will be glad to conclude.

Fundamentally, this bill is not unfair. I would be willing to look at any particular part of it. It has been pounded on for 4 years now. Every jot and tittle of it has been looked at. We have tried to make sure it is fair in every way. But we do say you ought to seek credit counseling. Maybe there is an alternative to bankruptcy.

We say, if you make above the median income, you can pay back some of your debts. But if your debts are so big, even if you make above median income, you do not have to pay them; you can wipe them out, and that is OK. And remember the great protection of bankruptcy for people in debt is they cannot be subject to harassing phone calls and letters, demands for payment and lawsuits.

When you file bankruptcy, all lawsuits and demands for payment have to stop, whether you are in chapter 7 or chapter 13. A family can put their lives in order under the bankruptcy laws now and in this new bill in the same way that will allow them to have some stability in their lives, to bring a conclusion to their credit difficulties, to not be fighting lawsuits and credit demands that disrupt their lives.

I thank the Chair and yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

AMENDMENT NO. 27, AS MODIFIED

Mrs. FEINSTEIN. Mr. President, the amendment on the bankruptcy bill that I have proposed is a very straightforward amendment. It simply says credit card companies that issue credit cards to minors must limit that debt to $2,500 a credit card, unless the minor demonstrates the means to pay back the debt, or a parent cosigns for the debt.

In addition, the amendment would entitle parents who cosign on their child's credit card the opportunity to be consulted before the debt limit on the card is increased.

The amendment is basically a compromise. I amended the amendment to place a cap of $2,500 a card rather than $2,500 on all cards a minor might have.

The reason for the amendment is a simple one. Student credit card debt has increased 46 percent over the last 2 years alone. Bankruptcy filings among youth have increased sevenfold since 1996. The problem is, there is no limit on the credit card debt a youngster can accumulate. This amendment would end that problem, give parents the responsibility of choosing to cosign for their youngster if they want more than a $2,500 cap, unless the youngster could demonstrate that they had the source of income to support the debt.

So essentially what this amendment does is provide a credit card limit of debt of $2,500 a card for a youngster who is under the age of 21.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time in opposition?

If no one yields time, time will be charged equally to each side.

Approximately 2 minutes remain in opposition to the Feinstein amendment.

AMENDMENT NO. 39

Mr. SESSIONS. I will confine my remarks to the other amendment we will be voting on, unless someone else wants to respond to the Feinstein amendment.

At 11 o'clock, we will also be voting on the Kennedy amendment that attempts to remove the cap of $1 million on how much a bankrupt can protect in their IRA account.

I know Senator KENNEDY steadfastly opposed the homestead law under the current bill and I agreed. We made substantial progress in containing the abuse of homestead that is unlimited in a few States. Right now, if you pour millions of dollars into a home, you can protect that home, you can file bankruptcy, and not pay your debtors, and keep the $2 million home. To me,

that is not right, so I have supported that change. And we could not get as far as we wanted because a number of States have provisions in their constitutions that protect homesteads. We made a number of steps to curtail that abuse—real steps—but we did not go as far as I wished we could have gone.

This is a very similar situation. Why should you not pay individual debtors—why should you not pay your hospital debt and other debts and be able to file bankruptcy and have $2 million in your IRA account? Can't a person live on $1 million at a 6-percent return a year? That is $60,000 a year the rest of your life without touching the principal.

So I think this is an abuse by rich people, really, to protect over $1 million in savings.

The PRESIDING OFFICER. All time has expired on the Feinstein amendment.

Does the Senator wish to continue under the 2½ minutes in opposition to the——

Mr. SESSIONS. I think Senator KENNEDY is here. He would wish to speak on his amendment.

I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, for the first time in the history of bankruptcy, we will put at risk the retirement savings of workers. In this instance, we do not have a limitation in terms of the retirement savings under the 401(k) programs. There are virtually no limitations. But there are limitations in terms of the IRAs.

The IRAs are the programs that are most used by working families. They can only contribute $2,000 a year to an IRA. There was no history and no comments in the long testimony we took before the Judiciary Committee that this was being abused, that people were putting money into their IRAs in order to be able to circumvent bankruptcy. They cannot do it in the first place because they can only contribute $2,000 a year. But there are many hundreds of thousands of workers in this country who are putting aside the $2,000 a year and hope to build up a sufficient nest egg that will augment their Social Security so they will be able to live with some dignity. Now we are putting that money at risk.

In many instances, the people who are going into bankruptcy are going into bankruptcy because their health insurance has failed or they do not have health insurance. They go to the hospital for 4 days and they run up these enormous bills.

What the current proposal before the Senate is saying is, OK, that is going to be too bad. We are going to suck up the 25 years of payments into retirement programs for working families.

We say, we do not do it for the 401(k) programs, which are the retirement programs for the more wealthy and affluent. We should not do it for the IRAs. Starting now, at $1 million, it will just continue to come down. And we are putting these savings at risk. It does not belong in this bill. I hope my amendment will eliminate it. I think it is the proper way to proceed.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I thank Senator KENNEDY. I know we worked hard on this bill to gain his support. Basically, the language that is in the bill now has been modified to deal with a number of the concerns he raised.

The Department of Justice, under the Clinton administration, said:

> A debtor should not be able to shield abundant resources from creditors, including Federal, State, and local governments, in the form of retirement savings.

What is ''abundant resources''? We say, over $1 million. I do not think that is too much to allow somebody to keep when they are not paying their debts.

From the Securities and Exchange Commission:

> We have seen insider traders, who do their trading through IRAs, and fraud participants stash their profits in IRAs. The State law exemptions have not defeated our Federal statutory claims to date, but a new Federal exemption—

Which we could be doing here—

> could do so. I am concerned about the grave potential for abuse that the exemption for all retirement assets from bankruptcy estate poses.

We have asked—and the Senator from Massachusetts and others voted for an amendment I sponsored—to limit homesteads to $100,000 as the amount you could put in your homestead and not pay your debtors. Yet there is an objection for some reason to saying you can't maintain more than $1 million in your IRA and not pay your debts.

This is a reasonable cap. It will not hurt people. It will allow them to have an income of $60,000 or more per year to live on without even touching their principal under this IRA plan. It will, as the Securities Commission says, avoid the dangers of fraud and just the unfairness of not paying your local businesses, not paying your local hospital, not paying your local neighbors what you owe and living high on the hog with multimillions of dollars, perhaps, stuffed in an IRA plan.

That is why we are in disagreement on this bill.

VOTE ON AMENDMENT NO. 27, AS MODIFIED

Mr. SESSIONS. Mr. President, I move to table both the Kennedy and Feinstein amendments. I ask unanimous consent to do that.

The PRESIDING OFFICER (Mr. CHAFEE). It is not in order to move to table both amendments at this time. The Senator may move to table the Feinstein amendment.

Mr. SESSIONS. Mr. President, I move to table the Feinstein amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, is there time remaining on the amendment?

The PRESIDING OFFICER. There is not time remaining.

The question is on agreeing to the motion to table the Feinstein amendment No. 27, as modified. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

Mr. NICKLES. I announce that the Senator from Oklahoma (Mr. INHOFE) is necessarily absent.

I further announce that if present and voting, the Senator from Oklahoma (Mr. INHOFE) would vote ''yea.''

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE) is necessarily absent.

The result was announced—yeas 55, nays 42, as follows:

[Rollcall Vote No. 20 Leg.]

YEAS—55

Allard	Dorgan	Miller
Allen	Ensign	Nelson (NE)
Bayh	Enzi	Nickles
Bennett	Frist	Roberts
Biden	Gramm	Santorum
Bond	Grassley	Sessions
Brownback	Gregg	Shelby
Bunning	Hagel	Smith (NH)
Burns	Hatch	Smith (OR)
Campbell	Helms	Snowe
Carper	Hutchinson	Specter
Chafee	Hutchison	Stevens
Cleland	Johnson	Thomas
Cochran	Kohl	Thompson
Collins	Kyl	Thurmond
Craig	Lott	Voinovich
Crapo	Lugar	Warner
DeWine	McCain	
Domenici	McConnell	

NAYS—42

Akaka	Durbin	Lincoln
Baucus	Edwards	Mikulski
Bingaman	Feingold	Murkowski
Boxer	Feinstein	Murray
Breaux	Graham	Nelson (FL)
Byrd	Harkin	Reed
Cantwell	Hollings	Reid
Carnahan	Jeffords	Rockefeller
Clinton	Kennedy	Sarbanes
Conrad	Kerry	Schumer
Corzine	Landrieu	Stabenow
Daschle	Leahy	Torricelli
Dayton	Levin	Wellstone
Dodd	Lieberman	Wyden

ANSWERED ''PRESENT''—1

Fitzgerald

NOT VOTING—2

Inhofe Inouye

The motion was agreed to.

The PRESIDING OFFICER (Mr. ENZI). The Chair recognizes the Senator from Alabama.

Mr. SESSIONS. Mr. President, I move to reconsider the vote.

Mr. HATCH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 39

Mr. SESSIONS. Mr. President, I move to table the pending amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE) is necessarily absent.

The result was announced—yeas 61, nays 37, as follows:

[Rollcall Vote No. 21 Leg.]

YEAS—61

Allard	Dorgan	Nelson (FL)
Allen	Ensign	Nelson (NE)
Bayh	Enzi	Nickles
Bennett	Frist	Reid
Biden	Gramm	Roberts
Bingaman	Grassley	Santorum
Brownback	Gregg	Sessions
Bunning	Hagel	Shelby
Burns	Helms	Smith (NH)
Campbell	Hutchinson	Smith (OR)
Carnahan	Hutchison	Snowe
Carper	Inhofe	Stabenow
Chafee	Johnson	Stevens
Cleland	Kohl	Thomas
Cochran	Kyl	Thompson
Collins	Lott	Thurmond
Conrad	Lugar	Torricelli
Craig	McCain	Voinovich
Crapo	McConnell	Warner
DeWine	Miller	
Domenici	Murkowski	

NAYS—37

Akaka	Edwards	Lieberman
Baucus	Feingold	Lincoln
Bond	Feinstein	Mikulski
Boxer	Graham	Murray
Breaux	Harkin	Reed
Byrd	Hatch	Rockefeller
Cantwell	Hollings	Sarbanes
Clinton	Jeffords	Schumer
Corzine	Kennedy	Specter
Daschle	Kerry	Wellstone
Dayton	Landrieu	Wyden
Dodd	Leahy	
Durbin	Levin	

ANSWERED ''PRESENT''—1

Fitzgerald

NOT VOTING—1

Inouye

The motion was agreed to.

Mr. GRASSLEY. I move to reconsider the vote and move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now occurs on amendment No. 41.

Mr. GRASSLEY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will please call the roll.

The legislative clerk proceeded to call the roll.

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

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

THE ECONOMY AND TAX CUTS

Mr. DURBIN. Mr. President, I seek recognition as in morning business to address the Senate in reference to the state of the economy. I think most of us have read the press reports about what happened to the stock market yesterday. We certainly hope that was an anomaly and that it will not continue and that our economy rebounds quickly from what apparently has gone beyond a soft landing and is now headed toward what appears to be a harder landing.

The news out of my home State of Illinois is not encouraging. This morning, Motorola announced it is cutting 7,000 more jobs in its cellular phone division, increasing to 12,000 the number it will have eliminated in operations since December. These reductions to its global workforce of more than 130,000 will take place over the next two quarters.

We have seen this phenomenon not just at Motorola but at other industries across America. It raises a very important question about our responsibility in Washington to respond to what is clearly an economic challenge, if not more.

I hope we in the Senate, as well as the House, working with the President, can take the current debate over a tax cut and make it part of a much larger question about economic growth in America. What is our plan? What are we, as a nation, prepared to do to turn around this economy and to start it moving forward again?

We have just come off an extraordinary period of time when the economy of the United States reached record-breaking prosperity numbers, where we had some 22 million jobs created over the last 10 years. Some 2 million more businesses were created over the last 10 years, with more home ownership than any time in our history, with inflation under control, the welfare rolls coming down, and the number of violent crimes committed across America decreasing. All of the positive things we want to see in America occurred during the last 8 or 10 years.

But we seem to have taken a turn in the road. I am sorry to report that these numbers coming out of Motorola, and employers across America, as well as the Dow Jones index, and other stock indices, suggest to us we need to step back for a second and ask, What is right for this country?

The economic prosperity we knew for so long has now been challenged. The feeling of optimism in America, which really had us in its thrall for such a long period of time, is now changing dramatically. We have seen $5 trillion of economic value that has been wiped out in the last few months because of this economic downturn. When I say $5 trillion wiped out, what am I talking about? I am talking about the pension plans, the 401(k)s, the IRAs, the savings, the mutual funds of families across America have all taken a plunge. My family has experienced this just as every other family.

We know our value, our net worth in terms of what we have saved and what we hope to have for our future, has been diminished. The question, obviously, before us is, What are we going to do in response.

I think the President has focused almost exclusively on one idea, and that idea is a tax cut. The general idea of a tax cut is popular. It is hard to think of two words that a politician can utter that would be more popular. But, clearly, the President is having a tough time closing the deal. To think that a President has to go out on a nationwide rally, crusade, campaign, to convince the American people of a tax cut suggests that it may not be as easy as it appears to him.

People across America are skeptical of a tax cut that is based on projections of surpluses that may not occur for 5, 6, 7, 8, 9, or 10 years. They understand this idea of a tax cut was actually part of the President's campaign platform 2 years ago when America was in prosperity. This tax cut was not designed by President Bush as an economic stimulus then. Our economy had plenty of stimulation. It was doing well. But now the President has said: What I really meant to say is that the tax cut will breathe life back into the economy.

Hold the phone here. Take a look at the tax cut President Bush is proposing. Even if he has his way and gets everything he wants, the tax cut will not kick in to our economy in full force for 5 years. I can tell you that the employees at Motorola can't wait 5 years. The people across America who have seen their savings dwindle can't wait 5 years. So the medicine which President Bush is prescribing does not fit the illness that currently affects America.

Frankly, what we need at this point is a tax cut that is reasonable, that will create some stimulus, but is not too large as to really be irresponsible. The President has said $1.6 trillion over 10 years is not that much in a $5.6 trillion surplus. We know frankly, his number is much larger when you add in all the hidden costs. He wants to spend some $2.6 trillion on his tax cut.

It is unfortunate but true that 43 percent of President Bush's tax cut goes to people making over $300,000 a year. Forty-three percent of the benefits go to people making over $300,000 a year.

I believe everyone in America should have a tax cut, but for goodness' sake, do not shortchange families in middle-income categories and working families to give a bigger tax cut to the wealthiest among us. We have to look at this tax cut in terms of fairness and the fact that it could be an economic stimulus.

On the Democratic side, we believe we should have an honest tax cut that we can afford. We should not overextend ourselves in anticipation of surpluses that may not arrive. How can we have day after day of bad news about the state of the economy, and the economists in this town not take that into consideration? If we are having more people laid off, that means fewer people paying their taxes into the Treasury creating surpluses.

So this anticipation by the President of a great surplus, unfortunately, may not occur, as many economists have predicted.

President Bush, as Governor of Texas, faced this situation once before. When he became Governor of Texas, he had a surplus in his Treasury. He declared a tax cut that, unfortunately, was too large and now the State of Texas is back in the deficit ditch, with other States seeing the same thing happening.

Why can't we learn from this experience on a national level and not overextend this surplus, not overextend this tax cut, to find ourselves returning to the days of deficits? I think that is the challenge for this Congress.

Equally important, we have to take the tax cut as part of a larger discussion. What is it that we can do responsibly now to create economic growth again in America? To ignore what is happening with the layoffs and the situation in the stock market and the loss of savings by American families is to ignore reality.

To take the President's tax cut that will not kick in for 5 years, that is no stimulus to the current economy.

It is time we looked at things that can make a difference.

Mr. REID. Mr. President, will the Senator yield for a question?

Mr. DURBIN. I am happy to yield to the Senator from Nevada.

Mr. REID. One of the problems I have had during the past 6 months or so is that we have heard from the man running for President, and now President, always bad news about the economy, always something negative about the economy. There are some economists and others who say that one of the reasons keeping the stock market high is optimism. As we know, the prior administration was very optimistic about the economy. Does the Senator think that the negative talk about the economy for such a long period of time has finally gotten the wish granted?

Mr. DURBIN. I heard the observation of the Senator from Nevada yesterday along these same lines. I agree with the Senator from Nevada. For the leader of our country to repeatedly say that our economy is in trouble is to, frankly, have a self-fulfilling prophecy. In this situation I am afraid people lose confidence if the leader of our country doesn't have confidence. Some of the campaign rhetoric should have been abandoned as soon as the President took office. The spirit of optimism and growth, a positive feeling about the future is important for American families to feel they can do the right thing by perhaps buying a new home or putting an addition on their home, perhaps buying a car, whatever it might be that makes a difference in terms of economic growth. The Senator from Nevada is right.

Mr. REID. If I could ask one more question, I spoke to the American Legion today. Prior to my going to the rostrum to speak, their national security director gave a long speech about the need for increased spending on the military and national missile defense. When I spoke about a number of issues, I said: All of you out there have to understand that we should have a tax cut, but it should be a modest tax cut. I have heard the Senator from Illinois say that. I think we all agree with that. We also have to pay down the debt. If we are going to have additional spending for the military and we want a prescription drug benefit for seniors, if we want to increase spending for education, does the Senator agree we are going to have to save some of that surplus for some of these things that our country badly needs?

Mr. DURBIN. I agree with the Senator from Nevada. What the President has said to America is—he arrived initially to find a good, strong economy and a big buffet of opportunities—let's eat our dessert first. You don't have to eat your vegetables; eat your dessert first. Let's have a tax cut and a big one.

A lot of us are saying: Isn't it better for America to have a sensibly sized tax cut that helps working families and middle-income families and not just the wealthy and one that also pays off our national debt and leaves money aside for important investments in our future? If we are going to have a plan for economic growth in America, the Senator from Nevada will agree with me that education ought to be the first item on the agenda.

The American people, interestingly enough, when you ask them what we should do with the surplus, do not say: Give me a tax cut. Their first response is: Do something to help our schools and our teachers.

When you look at these priorities and investments that can mean economic growth for a long period of time, we ought to start with education. As the Senator from Nevada says, if the President has his way, if the tax cut is too large, if it goes to the wealthiest people among us and doesn't help working families, we will squander the opportunity to invest in education, to invest in a prescription drug benefit under Medicare, to invest in Social Security and Medicare for the future. The American people understand that. If it sounds too good to be true, as the old saying goes, it probably is.

For the President to suggest we can have it all, we can give this tax cut of $2.6 trillion and take care of all of our other problems, really strains the credibility of his position.

Mr. REID. One last question: In the western part of the United States—and it is coming back here—there is the high cost of purchasing electricity in the home. I have received a number of very sad letters—for lack of a better description—from people who are senior citizens saying: I have to have electricity in my home. I am now having to make the choice not only whether I am going to have food or a prescription drug but electricity.

With the one-third that we are suggesting should be saved for taking care of some important programs in this country, would the Senator agree that one of the most important priorities, second only to education, would be a prescription drug benefit for the senior citizens of this country who certainly deserve a change in the Medicare program?

Mr. DURBIN. I agree with the Senator from Nevada. The President's suggestion when it comes to prescription drugs is entirely inadequate. Once you have funded his tax cut, you don't have the resources available to create a universally affordable voluntary prescription drug benefit under Medicare, a position which the Senator from Nevada and I share. In fact, let me read from an article in the New Yorker which appeared March 12, 2001, by Henrik Hertzberg in which he describes President Bush's prescription drug plan as follows: When the President said that no senior in America should have to choose between buying food and buying prescriptions, he received quite a bit of applause at his State of the Union Address. But he omitted the details. For example, under President Bush's prescription drug plan, a widow living on as little as $15,000 a year would receive no help in paying for drugs until she has already spent $6,000 of her own money. That is, she would have to have already left more than a third of her income at the pharmacy to qualify for President Bush's prescription drug plan.

To put it another way: Her deductible for the President's prescription drug plan, this lady living on a fixed income, would be $115 per week, not per year.

That is what happens when you take a $2 trillion tax cut and ignore education, ignore prescription drugs. You can have something that is called a prescription drug benefit, but when you look at the details, is it reasonable that someone who is making $15,000 a year—imagine scraping by on that amount—who is a fixed-income senior, has to spend down $6,000 each year on their own pharmacy costs before the benefit helps them?

I can tell the Senator from Nevada, who has spoken to a lot of seniors in his part of the world, that sort of approach is no benefit, and it isn't to most of the people to whom I have spoken in the State of Illinois.

Let me speak for a moment about the national debt. The national debt is an important issue for us not to ignore. The President says out of the $5.6 trillion surplus, we can only spend down or pay down $2 trillion of the national debt. I disagree. Much more can be spent down and should be. We collect $1 billion in taxes every single day in America; $1 billion from families, businesses, and individuals to pay interest on the old debt. We have a national mortgage of $5.7 trillion. Most of it did not occur until after 1980, when President Reagan and the former President Bush came to office.

Under President Clinton, we started paying down this debt, but it is still a $5.7 trillion national mortgage. If we

don't take this seriously, we are going to find ourselves in a predicament where that is a mortgage we are going to leave our kids. I take no comfort in promising a tax cut to myself or anyone else and then leaving my son, my daughters, or my grandson a national mortgage of $5.7 trillion.

The President likes to say if we have a surplus in Washington, it belongs to the people. Well, I ask the President: To whom does the national debt belong? That belongs to our Nation as well. Do we not have a responsibility in good times of surplus to pay off the mortgage before we tell everybody go ahead and eat your dessert, go ahead and declare a dividend?

What the Democratic side is suggesting, as the Senator from Nevada has said, is take a third of any real surplus, not any guess, and give it to people in the form of a tax cut that helps everybody across the board, not just the wealthy; take a third of it and pay down the national debt so this mortgage is reduced for our kids. And then take a third and invest in things that will get this country moving again: education, worker training, investments in technology. These are things which are good in the long term for America.

Sadly, this President is stuck on a one-note song: Tax cut, tax cut, tax cut.

The tax cut is not a plan for economic growth. It is not a plan for economic prosperity. The President proposed this tax cut in the campaign after he was challenged by Steve Forbes to come up with a massive tax cut. Well, he came up with one. He is still sticking with that song 2 years later.

America has changed. Our needs have changed. The President's response is still the same. If he has his wish and this tax cut goes through, we will find ourselves realizing its benefits 5 years from now, not when we need it. And we will find ourselves short on funds to invest in things important for America, and we won't put the money necessary into paying down our national debt.

This is not a popular thing I am preaching here. The most popular thing is to tell people we can give the biggest tax cut in the world and we are all for it. I guess you can get reelected on that platform. But part of our responsibility on Capitol Hill is to speak honestly to the people about the real problems facing our Nation.

The real problems suggest that the President's tax cut goes too far. It is ironic to me that this President is traveling around the country, going to South Dakota and North Dakota, trying to sell this concept and having a tough go of it, because although Americans like tax cuts, they are genuinely skeptical when the President tells us we can have everything.

The fact is that we need to use the same fiscal responsibility, we need to use the same fiscal conservatism that finally turned the corner a few years ago and got us out of the deficit world and into the surplus world. When you look at the state of our current economy, we need it now more than ever.

I hope we can find a bipartisan agreement for a tax cut that is sensible. I look at families across Illinois, and I don't believe that two people, husband and wife, who are public school teachers in the city of Chicago, making about $100,000 a year, are wealthy people at all. I think they are struggling to pay their mortgage, to put kids through school, to make sure they put savings aside for the future. These people need to benefit from the tax cut as much as, if not more than, people making over $300,000 a year.

I believe if you have an income of $25,000 a month, the idea of a President Bush tax cut that gives you $46,000 a year in tax cuts is something these people will hardly even notice, if they are making $300,000 a year. But I can tell you that several thousand dollars to a family making $100,000, or $75,000, or $50,000 a year can make a real difference.

The President's tax cut, incidentally, leaves 30 million Americans behind—30 million Americans who pay no income tax. The President says, why should they get a tax cut? These 30 million Americans are paying payroll taxes, my friends. I don't think the President would like to look them in the eye and say they are not paying taxes. They are paying a lot of taxes. It is coming out of their paychecks.

The President's tax cut provides no income tax benefit or other tax credit to help those wage earners. So let's come up with a balanced and fair tax cut, in a way to get the economy moving again. Let's not get stuck on the old rhetoric of the political campaign of 2 years ago. Let's have a vision that speaks honestly to the people and puts together investments and things that make a difference.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, how ironic it is that we hear about the negativism of the President toward the economy. And then, in turn, we hear all of this negative comment about the new President. It just doesn't quite add up.

I can stand here and talk about the Clinton recession we might be in because the manufacturing index turned down in September and has been turning down since. I could talk about the Clinton recession from the standpoint of the confidence index, which started turning down in August. But I don't think blaming gets much accomplished.

I think we have to look to the future, and the future is that we can pay down the national debt. We have a tax surplus. We can give tax relief to every taxpayer—the working men and women who have made a big difference, the entrepreneurs who have made a big difference over the last 10 years to help us pay down the national debt. We can fund our priorities.

When we use the Congressional Budget Office, a nonpartisan economist, to judge what the future is—and it is a difficult thing to do, but it is no more difficult than the young workers who are trying to look ahead to see what their income is going to be and convince the banker that they ought to get a 30-year mortgage. They put a lot of trust in the future in order to pay off that mortgage. We put a lot of trust in the future, too, to make a determination of how much income we are going to have coming in over the next 10 years. We determined that that is about $28 billion, $29 billion. Out of that, we will have a $5.6 trillion surplus. Out of that $5.6 trillion surplus, we are going to take $3.1 trillion off because of trust funds—Social Security: Save Social Security income just for Social Security, Medicare money just for Medicare. And then we have money for a $1.6 trillion tax cut. Every American who pays income tax will get a tax cut. Every American who is at a $35,000 income—a family of four—will have a 100-percent tax reduction. A family of four at $50,000 will have a 50-percent tax reduction. Six million people who are now paying taxes won't pay any taxes after this program is passed.

When we are all done passing this legislation, the wealthy, the higher income people of America, will actually be paying a higher share of the total income tax money coming into the Federal Treasury than before under present law.

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

Mr. GRASSLEY. Yes, I will.

Mr. SANTORUM. The Senator made a point that I think has to be emphasized because you hear a lot of comments that this is a ''tax break for the rich'' or this is ''benefiting the wealthy.'' But the Senator said something that is probably the most important point of this entire debate about fairness. That is, if you look at all the taxes being paid and who pays them before the tax cut, and look at all the taxes being paid and who pays them after the tax cut, what he said is vitally important for people to understand. Would the Senator repeat what happens to the tax burden?

This tax burden was set back in 1993 when we in the Senate raised the top tax bracket and President Clinton signed the bill that shifted the tax burden to higher income individuals, creating another rate at the top and, at the same time, increasing the top income tax credit which goes to people who don't pay income tax. So we raised taxes on people in higher income brackets and took that money and gave it to people who don't pay income taxes. At that point, Democrats said the distribution of taxes between the wealthy and lower income was now fair. What the Senator is saying is we are going to now take this fair distribution and change it. How are we going to change it?

Mr. GRASSLEY. When we are all done passing the proposal the President has put before Congress, we will actually have the high-income people of America paying a higher percentage of the income tax coming into the Federal Treasury than right now.

Mr. SANTORUM. So when the Democrats, in 1993, said, ''We have now fixed the Tax Code; we have now changed it so higher income individuals are going to pay more of their fair share''—I think that was the term—and that ''we have a fair Tax Code''—I heard that over and over again—what the Senator is suggesting is that we are going to make it even fairer by shifting the burden even more, and the argument on the other side is that isn't fair enough. Their argument is that we need to increase taxes even more on higher income individuals.

Mr. GRASSLEY. Yes. Let me tell you why we don't hear that from the other side. They talk about tax cuts, but they don't have a passion for tax cuts. They talk about reducing the national debt, but they don't have a passion for reducing the national debt. What they have a passion for is muddying the waters, maintaining the status quo, keeping the high level of taxation we have today, so that when we have 20.6 percent of the gross national product coming into the Federal Treasury in taxes today, at the highest level in the history of the country—if we maintain the status quo, in 10 years it will be at 22.7 percent. They are going to be able to spend that. They have a passion for spending. That is why they do not like this program that gives every working man and woman in America, every taxpayer in America who pays income taxes, a tax cut, and it has a larger share of tax cuts for lower and middle-income people than for higher income people.

Mr. SANTORUM. I thank the Senator for his clarification.

Mr. GRASSLEY. Mr. President, we will have $28 trillion coming into the Federal Treasury over the next 10 years. We are taking $3.1 trillion of that off the table for Social Security. Social Security money will only be spent on Social Security, and Medicare money will only be spent on Medicare.

We have the $1.6 trillion tax cut because Americans are overtaxed. We are going to give tax relief to every taxpayer.

We have $900 billion left over. That is a rainy day fund. When they raise questions, as they have just now, on the other side of the aisle—Will we be able to afford it? Will we have the money for prescription drugs for seniors in America?—we will have a plan that will give universal coverage to seniors in America. It will be affordable, and we will improve Medicare so that Medicare fits the practice of medicine today. When it was passed in 1965, the practice of medicine was to put everybody in the hospital. Today, the practice of medicine is to keep people out of the hospital.

Obviously, prescription drugs are a big part of why not so many people are going the expensive route of hospitalization.

I hope it is clear that this is well thought out, and we will be able to do the things we have said we would do. If we do nothing and that money is in the pockets of Congressmen and Senators in Washington, it is surely burning a hole, and if it is burning a hole, it has to be spent.

If we keep up the level of spending that recent remarks indicate we ought to, at 6 percent growth each of the last 3 years, and continue that for 10 years instead of a $1.6 trillion tax relief, we will not only eat up the $1.6 trillion, we will eat up a half trillion dollars more. Then we get that level of expenditure up to where we are now at 20.6 percent of gross national product, and we see a downturn in the economy about which these nervous nellies are concerned.

The income is going to go down but the expenditures never go down. We do not operate as a business in the sense of when there is a change of income, we change our spending behavior.

That is what needs to be considered by everybody. By having a surplus of only 5.6 percent of the $28 trillion coming in over the next 10 years, a little bit less than one-third is going to go to the taxpayers, some of it is for a rainy day, and the rest of it is to keep our commitment to Social Security and Medicare.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I would like to respond to the statements that have been made by my friend from Iowa, as well as the Senator from Pennsylvania. I think the Senator from Iowa realizes the honest measurement of the size of the Federal Government is the proportion of the gross domestic product—the total value of goods and services in America—against the amount we spend in the Federal Government.

When President Bush's father left office, we were spending 22 percent of our gross domestic product on the Federal Government. During the Clinton years, that was reduced to 18 percent. We have seen a steady decline in the size of Government against the size of America's economy.

We have to ask ourselves: Is this a trend which we should criticize? I think not. It is a good trend. We have shown we can be more efficient, but when the Senator from Iowa stands before us and supports plans, as I do, for a prescription drug benefit under Medicare, that will be more Federal spending. He and I will support that. We believe the seniors and disabled across America are entitled to it.

We have to make sure we reserve enough money, in terms of what our plans are for tax cuts and deficits and debt reduction, so we can still make investments to make sure there is a prescription drug benefit under Medicare.

Let me add another point. The Senator from Iowa understands as well as anyone that we are going to face a balloon payment in Social Security and Medicare when the baby boomers all show up. If we do not make plans right now to protect Medicare and Social Security, we will find ourselves without the resources to take care of these people. We made a promise that throughout their working lives, if they paid into Social Security and Medicare, it would be there when they needed it. We are not providing for that with President Bush's tax cut. In fact, in order to fund his tax cut, he has to reach into the Medicare trust fund and take out money. If you take the money out of this trust fund, it will not be there when the baby boomers show up. The balloon payment will be there.

We will have to pay it to keep our contract with the American people, and the President's tax cut and his strategy will have eaten up the Medicare trust fund.

Senator CONRAD of North Dakota is going to offer an amendment to protect the Medicare trust fund, and Members on both sides of the aisle will have a chance to stand up and say: We are not going to raid the Medicare trust fund to pay for President Bush's tax cut. I am anxious to see how that vote comes out.

If Members of Congress believe as strongly as I do about protecting Medicare and Social Security, then they should vote in favor of Senator CONRAD's amendment, which will be offered this afternoon.

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

Mr. DURBIN. I will be happy to yield to the Senator.

Mr. REID. One of the points the Senator from Illinois made during his initial statement was that he believes it is time we had a bipartisan agreement on the budget and on taxes generally.

I heard the Senator say—and I am commenting on the comment my friend from Iowa, the chairman of the very important Finance Committee, made—we are talking negatively. I say to my friend from Iowa, the Senator from Nevada and the Senator from Illinois are talking about the economy. We are talking about the need to do something about it.

If we, with a 50–50 Senate, butt heads here, we are going to get nothing done.

Will the Senator elaborate a little bit on one of his initial statements that we need to work on a bipartisan agreement to come up with something that is good for the American people?

Mr. DURBIN. The Senator understands President Bush was elected promising he was going to change the tone in Washington—more civil and more bipartisan. I actually thought he got off to a good start. He invited Democratic Congressmen and Senators to the White House. They had a good time. They watched movies, he gave them all nicknames, and it looked as if it was going to be a great change in atmosphere.

In the last week or two, things have not improved. They have gone the other way: The decision in the House of Representatives by the Republican leadership on the tax cut vote they would not even allow amendments from Democrats or Republicans on the floor. They allowed one substitute vote. Their hearings in the Ways and Means Committee did not allow any bipartisan exchange.

Frankly, I do not think that is in keeping with the President's promise of more bipartisanship. It is going to occur over here. There will be a real debate on taxes in the Senate. Senator GRASSLEY, as chairman of the Finance Committee, is going to provide an opportunity for amendments and discussion in his committee. We will have a chance to offer amendments on the floor, and a 50–50 Senate finally will debate this bill.

The last week has not been promising. The decision of the President to go to the home State of the minority leader, TOM DASCHLE, was an interesting choice. I do not think it was the best political decision for a President preaching bipartisanship, but it was his decision. I hope we can return to his promise of bipartisanship.

I guess the Senator from Nevada heard the comment of the Senator from Pennsylvania a few minutes ago about the decision in 1993 by the Clinton administration to put together a package to do something about our deficits. That package, which passed in the House and the Senate, did not have a single Republican in support of it. Many of the Republicans who are saying President Bush's tax cut is the best medicine for America also voted against President Clinton's plan in 1993.

That plan turned it around. We got out of the deficit mentality and deficit experience and started creating surpluses.

The Senator from Pennsylvania talked earlier about the unfair tax burden. I will read from the same New Yorker article I quoted earlier about that tax plan in 1993:

> From 1992, the year before a supposedly onerous new marginal tax rate kicked in, through 1998, the most recent figure for which the IRS has information available, the average after-tax income of the richest 1 percent in America rose from $400,000 to just under $600,000—

That is in a 6-year period of time.

> and from 12.2 percent of the national net income to 15.7 percent.

Our friends on the Republican side do not want to acknowledge that we not only put a plan in place that ended the deficits in this country but also created income, wealth, and prosperity, the likes of which we have not seen in modern history. Now comes President Bush saying I want to return to the concept that I tried in Texas, where I started with a surplus, put in a tax cut, and ended up with a deficit.

Excuse me if many Members of the Senate are skeptical of that approach.

RECESS

The PRESIDING OFFICER. Time has expired. Under the previous order, the time of 12:30 having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:15 p.m.; and reassembled when called to order by the Presiding Officer (Mr. INHOFE).

BANKRUPTCY REFORM ACT OF 2001—Continued

The PRESIDING OFFICER. Under the previous order, there will now be 30 minutes for closing remarks on amendment No. 29, as modified, and amendment No. 32 to be equally divided in the usual form.

The Senator from North Dakota is recognized.

AMENDMENT NO. 29, AS MODIFIED

Mr. CONRAD. Mr. President, my amendment is designed to protect the Social Security trust fund and the Medicare trust fund. It has been called the Medicare-Social Security lockbox. That is a good description. It is designed to try to prevent these trust funds from being used for other purposes, from being used as we saw in the past for spending on other programs.

A quick description of what my amendment provides is the following:

First, it protects Social Security surpluses in each and every year;

Second, it takes the Medicare Part A trust fund off budget just as we have taken the Social Security trust fund off budget, again to try to protect it from being raided and used for other purposes;

Third, it gives Medicare the same protections as Social Security;

Fourth, it provides strong enforcement legislation and strong enforcement provisions to make certain that protections hold.

The alternative—the legislation that will be offered by my colleague, the Senator from New Mexico, chairman of the Senate Budget Committee—does not take Medicare off budget. It contains huge trapdoors for anything labeled ''Social Security and Medicare reform.''

In other words, they have a lockbox that leaks. They have a lockbox where the door is wide open. The money can be used for other purposes as long as they call it Social Security or Medicare reform. There is absolutely no definition of what constitutes Social Security or Medicare reform.

The proposal of my colleague does not add any new protections for Social Security and does not protect Medicare from sequester. This constitutes what I call the broken safe. The door is wide open to what my colleague from New Mexico is presenting.

Under the President's budget, not a penny is reserved for Medicare. In fact, the President takes the Medicare trust fund and puts it into a so-called contingency fund available for other purposes. In fact, as we have already heard, he went to my State and told folks there that if they need money for agriculture, go to the contingency fund. If people need money for defense, they are being told to go to the contingency fund. If they need more money for education, go to the contingency fund. If they need money for a prescription drug benefit that really delivers something, go to the contingency fund. That money is going to be spent four or five times over.

Some on the other side say: Look, there is no trust fund surplus in Medicare.

That is not what the Congressional Budget Office says. On page 9 of the ''Budget Outlook,'' under the table ''Trust Fund Surpluses,'' they start with Social Security. Then they go to Medicare. And they point out that Part A of Medicare has over a $400 billion surplus. They point to Medicare Part B. And that is in rough balance over the 10 years of this forecast period.

Some on the other side say: Oh, there is a huge deficit in Medicare Part B; therefore, we should not worry about the surplus in Medicare Part A. I just say to them, the law does not say that. The actuaries do not say that. Medicare Part A is in surplus. Medicare Part B is in rough balance. There is no justification for taking the Medicare trust fund that is in surplus and moving that money into this so-called contingency fund that is available for other spending. That is precisely what will get us into financial trouble in the future.

I hope my colleagues will support having a protection mechanism for both the Social Security trust fund and the Medicare trust fund. It makes sense for the country, it makes sense for taxpayers, and it makes sense for beneficiaries. Most of all, it makes fiscal sense. And that is what my amendment is all about: to wall off the Social Security trust fund and the Medicare trust fund so they cannot be raided for other purposes.

I thank the Chair and yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. First, let me say I am very pleased this afternoon to be on the floor with Senator CONRAD. I think those who watch the Senate as it conducts business are probably, in the next 3 weeks, going to see a lot of us because we will have the whole budget up here for at least a week. Senator CONRAD manages it for the other side of the aisle, and I manage it on this side.

I am very hopeful that, while this is a very interesting and somewhat difficult issue today, we will handle it in a very civil manner between the two of us as to what we ought to do.

First of all, everybody should know that when we offered a lockbox on Social Security on this side—it is the only one you could really call a lockbox—the other side of the aisle opposed it because it was too rigid. And

they found out from the Secretary of the Treasury it may have been even too difficult for the U.S. Government to manage in terms of managing its debts.

So we have come from that point to what we generally call a lockbox here, to make any expenditures from that fund that are not authorized in that law itself subject to a 60-vote point of order. That generally is called a lockbox because it will call it to the attention of those affected, and it will require a supermajority to vote for it. That is what our amendment does for both Social Security and Medicare. But what it does in both programs is exactly what the House did. It passed by over 400 votes. Essentially, it says only for Social Security and/or Social Security reforms. And on Medicare it says Medicare Part A and/or reforms.

My distinguished friend on the other side of the aisle would say we take Medicare off budget. We no longer get to count it as an asset of the budget. And in addition, it cannot be used for the reforms that are going to be necessary when we improve that program and add to it prescription drugs.

So the difference is big. As a matter of fact, it is as if my friend on the other side of the aisle had concocted an approach so we cannot get a tax cut because, for some reason, the $1.6 trillion tax cut just is not within the grasp of those on the other side. They do not want to give that back to the American people. In a moment, or in closing arguments, I will share with you the fact that it is a very responsible tax cut. It is very small in proportion to the total tax take of the United States of America.

But for now let me just, again, discuss these two issues.

First, the distinguished Senator, Mr. KENT CONRAD, my opponent here would take Medicare off budget and not permit it to be used for reform and say to us, use it to pay down the debt. I want to just take a minute to talk about the debt because everybody ought to understand.

The President of the United States has asked us to reduce the debt of the United States from $3.2 trillion to $1.2 trillion—a $2 trillion reduction. The President says—as did President Clinton before him who also said, through his experts—that is all we can pay down without paying a big penalty and costing the American taxpayers money.

This little chart I have here shows what is going to happen to the ownership of American debt as we buy down the debt and attempt to minimize it. You can see, the red is all foreign investment and foreigners. That grows because they do not want to sell the American bonds. They hold on to them. I understand that if we said, you are going to pay those people anyway, even though they do not want to sell—they are under an arrangement they like in terms of the terms of the bonds—then what we would have to do is we would have to pay a premium that would cost the American people a 21-percent premium on the money we pay to them to buy down the bonds. We will pay a 21-percent premium.

Isn't it amazing that we are being asked to vote for an amendment that, on the one hand, is calculated to prevent us from getting a tax reduction for the American people, and, on the other hand, unintentionally, I assume, we are going to have to pay that money at a 21-percent premium to foreign countries and foreigners from whom we are going to buy these bonds because we are going to say to them: If you don't want to sell them, we want you to sell them anyway. It is similar to a marketplace gun you put there and say: Sell them to us. And, of course, we will throw away money in the process.

The amendment that will be voted on second is their lockbox and its operation. It is a lockbox for which everybody in this Senate has voted. It requires a 60-vote majority to use any of the Social Security trust fund for anything but Social Security or Social Security reform. It is the same lockbox on Medicare that we voted for heretofore on a number of occasions that says, Medicare cannot be used—I say to the Finance Committee chairman, who is bound by all these rules—for anything other than Medicare and/or Medicare reform.

I note the presence of the chairman of the Finance Committee. I note my friend, who is on the other side of the aisle on this issue, is a member of the Finance Committee. They have a very important job. They are going to have to decide whether they want to reform Medicare.

As a matter of fact, it is most interesting, for those who are interested in this debate, we had not had a formal Medicare reform put forth by the former President for 8 years. We have not had one put forth by the other side of the aisle, except in the Breaux-Frist amendment or bill which came out of a commission. We still do not have one from the other side of the aisle. I do not know why.

I am very hopeful the Finance Committee will, indeed, produce a bipartisan Medicare reform proposal—under the Domenici amendment, which is the second amendment, that can be done—because without reforms, the Medicare trust fund is doomed. There will not be enough money for the senior citizens.

As the chart demonstrates, by 2010, the spending exceeds the income; by 2018, the spending exceeds the income plus interest; and by 2026, the trust fund is depleted.

We already have heard testimony from experts that our tax reduction of $1.6 trillion does not have anything to do with that. What has to do with that is that you must reform the Medicare system in order to get your job done.

I close by saying, I think the Medicare trust fund should be used for Medicare reform. I do not think it should be used to pay huge premiums to foreign countries and foreigners by trying to coerce them to buy the debt.

My last observation is, Medicare is a very mixed program. Part of it is paid out of the trust fund until there is no money. Then what will we do? And part of it, a big part of it, including doctors, home health care, and a long list of items, is paid for under Part B, which is the general taxpayer.

How would you split them apart and take one and put it off budget, to be used for debt service, and the whole other one just left there to be paid by the taxpayer?

I believe reform should include a process that would envision both of those problem areas and reform them, to the future benefit of our senior citizens.

I have great admiration for my friend on the other side, but I do think on this one, it is subject to a point of order and we ought to let it die. We ought to vote on the second one and approve it because the House did it, and it could become law because it would be the same as theirs. It is a very good way to attempt to save Medicare for nothing other than Medicare.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, let me respond briefly and then we will have a chance to hear from the chairman of the Finance Committee.

Senator DOMENICI said Democrats voted against a lockbox last year. That is only part of the story. Democrats voted for the lockbox that passed on a bipartisan basis. We voted against one version of the lockbox that threatened, according to the Secretary of the Treasury, the ability of Congress to pay the national debt. Yes, we voted against the lockbox provision that threatened the good credit of the United States, but we supported the lockbox that protected Social Security and Medicare that passed on a bipartisan basis.

Second, the Senator says the House passed, by a huge margin, the lockbox he is offering. The House was not permitted to consider an alternative. This alternative, the one I am offering that passed the Senate last year, is far stronger.

Third, the Senator says we would take the Medicare Part A trust fund off budget. That is exactly right. We would treat it the same way we treat the Social Security trust fund to give it the full protection it deserves.

Finally, the Senator says we threaten Medicare reform and the ability to write a prescription drug benefit. That is not the case. My amendment creates a point of order against legislation that makes the trust fund less solvent, not more solvent. Medicare reform is intended to make Medicare more solvent, not less solvent. In addition, new spending for a drug benefit would not reduce the Part A surplus and, therefore, would not be subject to any point of order under my amendment.

This measure is not meant to defeat a tax cut or any other measure. It is designed to protect the Social Security and Medicare trust funds. This is what we voted for on a bipartisan basis last year. I hope we will do the same this year and say, whatever else we do, we are not going to raid the trust funds of Social Security and Medicare.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself 4 minutes of the time remaining.

Senator CONRAD's amendment is very bad medicine for our seniors, in terms of this fuzzying up the issue. If we allow this to happen, we are going to perpetuate the hoax that Medicare is running a surplus so that we can postpone urgently needed improvements in Medicare.

The Senator's amendment also leads Americans into believing we can't provide tax relief for hard-working families and at the same time protect Medicare and Social Security. The Senator is just plain wrong because over the next 10 years we will be spending $3.8 trillion just on Medicare. That is more than two times the size of any proposed tax cut. To say that we on this side of the aisle are shortchanging seniors is ludicrous. In fact, the Senator's amendment would shortchange Medicare patients by splitting Medicare in half and leaving Part B of the program, including prescription drugs, unprotected.

In 1993, Congress voted to tax up to 85 percent of Social Security benefits and transfer those taxes into the Part A trust fund. In 1997, Congress voted to transfer the cost of home health out of Part A trust fund into Part B. Had these two actions not occurred, there would be no surplus in Part A. Medicare Part B will run a deficit of more than $1 trillion over the next 10 years, completely offsetting the $400 billion surplus in Part A. Splitting Medicare in half would only further these accounting gimmicks and mislead seniors into believing Medicare is secure. Of course, we know that is not the case.

We think it is time to be very open with our seniors about Medicare's financial condition. We have the opportunity this year to modernize Medicare, provide prescription drug coverage, and put the program on a sound footing for our seniors, particularly for baby boomers. We want to protect the Medicare surplus so it can be used for this purpose, and this purpose only.

Senator CONRAD's amendment will deprive seniors of what they need most, a stronger, updated Medicare program, by locking away the Medicare dollars and making them unavailable for much-needed improvements. Is this what our seniors want? I don't think so. They want something for future generations.

This lockbox approach has one additional problem: When you add it to the additional one-third of the on-budget surplus the amendment would then reserve for debt reduction, it would equal $3.8 trillion. That exceeds the total amount of publicly held debt by $700 billion, and it exceeds the amount of debt available to be repaid by $1.5 trillion. As a result, the Government will be forced to invest the excess surplus in the private sector.

Federal Reserve Chairman Greenspan has warned that such investments could disrupt financial markets and reduce the efficiency of our economy. My colleague from New Mexico has said that very well and demonstrated it with the chart.

Moreover, it is important to remember that the Senate has already voted 99–0 in the year 1999 against allowing the Government to invest the Social Security surplus in the private sector.

I oppose the amendment by the Senator from North Dakota and support Senator DOMENICI's amendment.

The PRESIDING OFFICER. Who yields time?

Mr. CONRAD. I yield time to the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I very much appreciate the points made by our good friend from New Mexico, the chairman of the Budget Committee, as well as by Senator GRASSLEY, the chairman of the Finance Committee.

However, the long and short of it is, the amendment offered by Senator CONRAD is very simple. It is probably the only responsible thing to do. Essentially it says Social Security trust fund money is to be kept for Social Security. We are going to keep it in the trust fund so the trust fund continues to build. It also says that the Medicare Part A trust fund money is to be kept in that trust fund to be used as it is supposed to be used.

To be honest, we hear lots of arguments on the other side, but, frankly, they sound like Senators doing the administration's bidding by trying to desperately grab shoestring kinds of arguments to try to counter this amendment. If we look at all the arguments, they are transparently false.

No. 1, we are playing footloose with senior citizens because it would make it sound as if the Medicare Part A trust fund is in good shape. The fallacy of that is, if we rob Peter to pay Paul, if we rob Part A to pay for Part B, it is going to make the Medicare problem more urgent. I don't think any senior wants that.

Second, we hear: Those Democrats don't want to reduce taxes. That is a patently false argument. We are just saying protect Social Security, protect Medicare, because that is what our seniors expect, and that is what the baby boomers certainly expect when they retire on down the road.

Third, we hear the argument, gee, if this amendment passes, you are going to have to pay a 21-percent premium on foreign debt. That is totally false. Nobody knows where those figures come from, except I hear them from my good friend from New Mexico.

It is true that if this amendment were to be enacted, as it very much should, then earlier, rather than later, we could be facing the question of debt retirement and what debt would be involved and what not. But there are other options. We can use the money for other forms of savings—that is savings provisions outside Social Security or Medicare. Or if we come to the premium question on redeeming debt, we will cross that bridge when we get there. Nobody knows what the premium is. There is a debt rescheduling going on currently. We are buying back debt, and it is working.

My main point is that this is a very simple amendment. It is the most responsible thing to do because it starts to protect Social Security and Medicare for senior citizens and for the future.

I might add, Mr. President, the alternative amendment we are going to be asked to vote on has, as I think the Senator from North Dakota characterized it, a trapdoor. It is a ''nothing'' amendment. It doesn't do what it purports to do. If you want honesty in budgeting and in amendments, honesty in what provisions actually say, I ask you to look at the language of the amendment offered by the Senator from North Dakota and look at the language of the alternative. You will very clearly see, if you read the language, one does protect Social Security and Medicare, the other does not.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, I want to respond briefly to my colleague from Iowa who said a series of things that are just not so. He said this amendment is bad medicine for seniors. Come on. This amendment protects the Social Security trust fund, and it protects the Medicare trust fund. It prevents them from being looted and raided for other purposes. That helps seniors.

He says it suggests there is a trust fund surplus in Medicare. It doesn't just suggest it; there is one. This is from the Congressional Budget Office. It says very clearly there is $400 billion in surpluses. The President's budget says $500 billion in the Medicare trust fund.

The Senator from Iowa says you can't have a tax cut with this amendment. Nonsense. You can have a tax cut with this amendment. This only says don't raid Social Security, don't raid Medicare. The only way it endangers a tax cut is if their intention is to raid Social Security and Medicare to pay for one.

Now, finally, Senator GRASSLEY has the plan I have talked about being all mixed up. He has taken the $2.9 trillion dedicated for reduction of the publicly held debt and he added that to the $900 billion that is reserved for strengthening Social Security for the long term and says all of that money is designed

to deal with short-term debt. Wrong. That is just wrong. The $2.9 trillion is to eliminate our short-term debt. The $900 billion is to deal with long-term debt. Unfortunately, they have not set aside any money to deal with long-term debt.

This amendment is simple. It is designed to protect the trust funds of Social Security and Medicare against raids for other purposes.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I think the Medicare trust fund should be used for Medicare and Medicare reform. I don't think we should use it to fund, in any way, a requirement that we pay huge premiums—some estimate as high as 21 percent—to attract foreign investors to retire our debt.

I yield whatever time I have to Senator FRIST.

Mr. FRIST. Mr. President, I rise to sustain the point of order against the proposal of the Senator from North Dakota for three reasons. No. 1, our trust funds need to be strengthened by combining the hospital trust fund with the physician trust funds. That is Medicare. You need physicians and hospitals. The real question is, What do we do with the surplus on the hospital side? Medicare has a deficit. I think we should not tell taxpayers we are going to take that money and use it to pay down the debt. We ought to reassure them that we can take that money forward and use it to modernize Medicare, strengthen it, eliminate the redtape, and install tools in our Medicare system that explain and get rid of the fact that an aspirin may cost $2. That makes our seniors mad.

Third, and last, every nickel that the taxpayer pays today will go for Medicare, will be used for Medicare. The President has said it. The underlying amendment by the Senator from New Mexico also will guarantee that every nickel paid in will be used for Medicare.

The PRESIDING OFFICER. The Senator from North Dakota has 1 minute 41 seconds remaining.

Mr. CONRAD. Mr. President, the argument of my colleague from New Mexico that somehow we are going to be paying big premiums to foreign debtholders has nothing to do with my provision here. My provision protects the trust funds of Social Security and Medicare against raids for other purposes. If you save the Social Security and Medicare trust funds in that way, there is no cash buildup problem until the year 2010—2010.

If the issues the Senator from New Mexico addresses become a problem, we have a lot of time to deal with it. You can save every penny of these trust funds and not have any of the problems he talked about, at least until the year 2010. Many of us believe we will never have them.

Mr. President, what is this amendment about? It is very simple: It says we are going to provide the same protection to the Medicare trust fund that we provide the Social Security trust fund. It says we are going to provide additional protection to the Social Security trust fund so that this Congress can't go back to the bad old days of raiding every trust fund in sight to pay for other purposes. That is what we used to do. We have stopped that practice. Let's make certain it doesn't start again. Let's protect the trust funds of Social Security and Medicare. It is the fiscally responsible thing to do.

Pursuant to section 904 of the Congressional Budget Act, I move to waive the applicable sections of the act and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. CONRAD. Mr. President, I also raise a point of order that the pending Sessions amendment violates section 306 of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. That point of order will be recognized when that amendment comes up. First, the Senate will vote on the motion to waive.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 22 Leg.]

YEAS—53

Akaka	Dorgan	Lincoln
Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Fitzgerald	Nelson (NE)
Breaux	Graham	Reed
Byrd	Harkin	Reid
Cantwell	Hollings	Rockefeller
Carnahan	Inouye	Sarbanes
Carper	Johnson	Schumer
Cleland	Kennedy	Smith (OR)
Clinton	Kerry	Specter
Conrad	Kohl	Stabenow
Corzine	Landrieu	Torricelli
Daschle	Leahy	Wellstone
Dayton	Levin	Wyden
Dodd	Lieberman	

NAYS—47

Allard	Enzi	McConnell
Allen	Frist	Murkowski
Bennett	Gramm	Nickles
Bond	Grassley	Roberts
Brownback	Gregg	Santorum
Bunning	Hagel	Sessions
Burns	Hatch	Shelby
Campbell	Helms	Smith (NH)
Chafee	Hutchinson	Snowe
Cochran	Hutchison	Stevens
Collins	Inhofe	Thomas
Craig	Jeffords	Thompson
Crapo	Kyl	Thurmond
DeWine	Lott	Voinovich
Domenici	Lugar	Warner
Ensign	McCain	

The PRESIDING OFFICER (Mr. CRAPO). On this vote, the yeas are 53, the nays are 47. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. DOMENICI. Mr. President, I move to reconsider the vote.

Mr. SANTORUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 32

Mr. DOMENICI. I make a point of order on the Conrad amendment.

On the next amendment, does the Senator from North Dakota want to raise a point of order?

Mr. CONRAD. Mr. President, I raise a point of order that the pending Sessions amendment violates section 306 of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. Does the senator from New Mexico raise a point of order?

Mr. DOMENICI. Has the point of order been ruled on?

The PRESIDING OFFICER. The point of order has not been ruled on. The Senator from New Mexico has raised a point of order.

Mr. DOMENICI. Yes; he has. The point of order is that the Conrad amendment violates the Budget Act.

The PRESIDING OFFICER. On the amendment of the Senator from North Dakota, the Senator from New Mexico has raised a point of order that it violates the Congressional Budget Act. Since this is a matter of jurisdiction of the Senate Budget Committee, the point of order raised by the Senator from New Mexico is sustained and the amendment falls.

Mr. CONRAD. Mr. President, parliamentary inquiry.

Mr. WELLSTONE. Mr. President, could we have order in the Chamber? We can't hear.

The PRESIDING OFFICER. The Senate will come to order.

Mr. CONRAD. Parliamentary inquiry: Didn't the Senator from New Mexico have to have raised a point of order against my amendment before the amendment was voted on?

The PRESIDING OFFICER. The amendment was not voted on. The Senate voted on a motion to waive the Budget Act.

Mr. CONRAD. Mr. President, is it in order at this point for me to raise a point of order against the amendment?

The PRESIDING OFFICER. A point of order is now timely.

Mr. CONRAD. I raise a point of order that the pending Sessions amendment violates section 306 of the Congressional Budget Act of 1974.

Mr. DOMENICI. I move to waive that pursuant to the appropriate provisions of the law and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to waive the Budget Act in relation to the Sessions amendment No. 32. The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 52, nays 48, as follows:

[Rollcall Vote No. 23 Leg.]

YEAS—52

Allard	Frist	Murkowski
Allen	Gramm	Nickles
Bennett	Grassley	Roberts
Bond	Gregg	Santorum
Brownback	Hagel	Sessions
Bunning	Hatch	Shelby
Burns	Helms	Smith (NH)
Campbell	Hutchinson	Smith (OR)
Chafee	Hutchison	Snowe
Cochran	Inhofe	Specter
Collins	Jeffords	Stevens
Craig	Johnson	Thomas
Crapo	Kyl	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Voinovich
Ensign	McCain	Warner
Enzi	McConnell	
Fitzgerald	Miller	

NAYS—48

Akaka	Dayton	Levin
Baucus	Dodd	Lieberman
Bayh	Dorgan	Lincoln
Biden	Durbin	Mikulski
Bingaman	Edwards	Murray
Boxer	Feingold	Nelson (FL)
Breaux	Feinstein	Nelson (NE)
Byrd	Graham	Reed
Cantwell	Harkin	Reid
Carnahan	Hollings	Rockefeller
Carper	Inouye	Sarbanes
Cleland	Kennedy	Schumer
Clinton	Kerry	Stabenow
Conrad	Kohl	Torricelli
Corzine	Landrieu	Wellstone
Daschle	Leahy	Wyden

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays are 48.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The Chair will now rule on the point of order.

Mr. HATCH. Mr. President, I move to reconsider the vote. I am sorry.

The PRESIDING OFFICER. The Senator from Utah is correct in moving to reconsider.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Chair will now rule on the point of order. The amendment of the Senator from Alabama would add a new point of order to the Budget Act. Since this is a matter within the jurisdiction of the Senate Budget Committee, the point of order is sustained and the amendment falls.

The Senator from Connecticut.

Mr. DODD. Mr. President, just so we understand the order of things here, as I understand it, my friend from Utah has a brief statement he wants to make, and then my colleague and friend from New York has a request to make, and then I would ask unanimous consent, at the conclusion of both of these, the statement and request, that the Senator from Connecticut be recognized to offer an amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DURBIN. Mr. President, reserving the right to object, I would like to put my name in the queue after the Senator from Connecticut has offered an amendment.

The PRESIDING OFFICER. Does the Senator from Utah raise an objection?

Mr. HATCH. I do raise objection to that.

The PRESIDING OFFICER. Objection is heard.

Mr. DURBIN. Mr. President, I withdraw my reservation and suggestion.

The PRESIDING OFFICER. Does the Senator from Utah raise an objection to the original request which would have the Senator from Connecticut following the two statements?

Mr. HATCH. Would the Chair tell me the original request?

Reserving the right to object, what is the original request?

The PRESIDING OFFICER. The original request was that the Senator from Connecticut be recognized to offer an amendment following a statement by the Senator from Utah and a request by the Senator from New York.

Mr. HATCH. Repeat the request one more time.

The PRESIDING OFFICER. The Senator from Connecticut has requested that following the statement of the Senator from Utah and a request by the Senator from New York, he be recognized to offer an amendment. Is there objection to the request?

Mr. HATCH. Is the offer of the Senator from New York an offer to make a statement only, or does the Senator want to call up an amendment?

Mr. SCHUMER. What I would like to do is get a time. I was assured, when I brought this amendment up last time, that we would get a vote on it. The regular order is still our amendment. We departed from it to do many other things. I want to get that assurance before the cloture vote tomorrow, that I get a set time when we can do that, which Senator GRASSLEY assured me of, as I can read here in the RECORD.

Mr. HATCH. Mr. President, let me object for now until Mr. GRAMM, the Senator from Texas, arrives on the floor.

The PRESIDING OFFICER. Objection is heard.

Mr. SCHUMER. Will the Senator yield?

Mr. HATCH. I yield for a question.

Mr. SCHUMER. I would say to the Senator, I have no problem waiting until we touch base with Senator GRAMM. I want to make as part of this order that I would then be allowed to take the floor and renew my request.

Mr. HATCH. Why don't we ask unanimous consent that I be allowed to make a statement as if in morning business and then the distinguished Senator may make his statement until the distinguished Senator from Texas gets here.

Mr. SCHUMER. Is he on his way?

Mr. HATCH. As I understand, he will be here in 5 minutes or so.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Reserving the right to object, I am not going to object to my friend from Utah making a statement under normal comity in this body. If I could have the attention of the Senator from Utah for a moment, I am obviously not going to object to his making a statement, nor would he object to my doing the same. I keep reading statements from some of the leadership that we should hurry up this bill so that we would be allowed to vote. The Senator from New York had his amendment here on Thursday of last week and hasn't been able to get a vote. We began the bankruptcy bill and it was pulled down at the request of the Republican leadership to bring up ergonomics. I hope that the Republican leadership will allow us to start having some votes on some of these amendments and not just wait until such time as we have a cloture vote.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. HATCH. Mr. President, does the Senator want me to yield for a question? I just want to make a statement.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak for 1 minute.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. So long as I don't lose my right to the floor after he finishes his 1 minute.

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

Mr. WYDEN. I thank my friend, the distinguished Chair. I am mostly interested in getting in the queue to offer an amendment with Senator SMITH. I would like to yield to Senator BOXER for a moment because I know her time is short. She has consulted with us on this amendment. I would like to yield to her for a quick moment.

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

Mrs. BOXER. May I just ask what the order is. Is there an amendment pending? Is Senator WYDEN's amendment pending?

Mr. HATCH. The Senator is asking me?

The PRESIDING OFFICER. The Chair advises that a series of amendments have been offered. All have been set aside. There are 24 seconds remaining on the unanimous consent request.

Mr. WYDEN. Mr. President, I wish to be in the queue here on an amendment on which I have worked with Senator SMITH, and Senator BOXER would like to make a quick comment. I will yield back. I thank the Senator from Utah for his courtesy. I yield the floor.

The PRESIDING OFFICER. The time of the Senator from Oregon has expired.

Mr. HATCH. Mr. President, I understand we are going to go to Senator SCHUMER, and after the distinguished Senator from New York, the distinguished Senator from Connecticut.

Mr. DODD. Mr. President, I was going to offer an amendment. I graciously yielded to a couple of things happening here. I am happy to yield to people to make statements unrelated to the bill, but I want to be protected. I would like to ask unanimous consent that at the conclusion of these remarks, I be allowed to offer an amendment.

The PRESIDING OFFICER. Is there objection to the request?

Mr. SCHUMER. Reserving the right to object, I don't have a problem with that, except that I want to make sure that before we get to that, I get to make my request.

Mr. REID. Will the Senator from Utah yield for a brief statement on the subject matter before the Senate?

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I say to my friend, the manager of the bill, along with Senator LEAHY, there is no question that there are amendments that should be voted upon. However, the distinguished Senator from New York is in a little different category because when he allowed his amendment to be taken down, the manager of the bill at the time, the chairman of the Finance Committee, someone who has worked on this bill for so long, this bankruptcy bill, Senator GRASSLEY of Iowa, said he would allow a vote on Senator SCHUMER's amendment. He said he didn't know when it would be, but there would be a guaranteed vote on that.

So I want to make sure the Senator from New York—everybody realizes he is in a little different category than everyone else, even though there are many other votes that should take place. There is no question but that the Senator from New York has been guaranteed and assured there would be a vote on his amendment. That is why he agreed last week to take it down.

The PRESIDING OFFICER. Is there objection to the request?

Mr. HATCH. Mr. President, reserving the right to object, let me just say this. Let me make this statement: As I understand it, we are waiting for the distinguished Senator from Texas to get here because he has an amendment, I believe, to the amendment of the distinguished Senator from New York. And then I will put in a quorum call and we will get this resolved.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. I object.

Mr. MURKOWSKI. Mr. President——

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. HATCH. Mr. President, I ask unanimous consent that the Senator from New York be permitted to call up his amendment, that there is expected to be an amendment to his amendment by Senator GRAMM, and I ask unanimous consent Senator GRAMM be permitted to do that, and that we then go to the Senator from Connecticut.

The PRESIDING OFFICER. Is there objection?

Mr. SCHUMER. Reserving the right to object, I am not here to try to hold up the business. I want to make sure that since my amendment—I don't think we have to move to it because of the pending business. I want to make sure we get a time agreement as to when we are going to vote on my amendment.

That is all I want. But I will not relinquish the floor or allow any amendment to be offered until we get a time.

Mr. REID. Will the Senator yield?

Mr. SCHUMER. I will be happy to yield.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. REID. Will the Senator from Utah allow me to make a brief statement?

Mr. HATCH. I will be happy to.

The PRESIDING OFFICER. Is there objection to the Senator's request?

Mr. REID. I do not want him to lose the floor. I say to my friend from Utah, my friend from Vermont, and my friend from New York, I do not know where we got into the idea that we are going to have an amendment offered to Senator SCHUMER's amendment. I have the CONGRESSIONAL RECORD of March 8, 2001. Senator Grassley said:

> The point is we can assure the Senator from New York the yeas and nays on his amendment, not someone else's amendment. We can't assure the Senator from New York when we are going to vote on this amendment, but there is going to be a vote on the amendment.

My only point is, how can we now change this to say we are going to be voting on a Gramm amendment? The Senator from New York was assured a vote on his amendment.

Mr. SCHUMER. Reclaiming the floor.

The PRESIDING OFFICER. The Senator from Utah has the floor. The pending matter is the unanimous consent request of the Senator from Utah.

Mr. SCHUMER. Reserving the right to object.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. What I want to do—I see the Senator from Texas has come to the floor—is ask a question. Does the Senator from Texas have a second-degree amendment to my amendment which is the pending amendment?

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

Mr. SCHUMER. I object.

The PRESIDING OFFICER. Objection is heard.

The legislative clerk continued the call of the roll.

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

The PRESIDING OFFICER. Is there objection?

Mr. SCHUMER. I object.

The PRESIDING OFFICER. Objection is heard.

The legislative clerk continued the call of the roll.

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

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. I object.

The PRESIDING OFFICER. Objection is heard.

The legislative clerk continued the call of the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent that the distinguished Senator from Connecticut be permitted to proceed with his amendment with a half hour time limit equally divided, and that immediately after the vote on his amendment, the distinguished Senator from New York be given the floor on his amendment.

Mr. DODD. Just to clarify how the amendment will be handled, will the Senator from Utah make it 45 minutes equally divided with no second degrees? Will the Senator add that element to it?

Mr. SCHUMER. I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Utah has the floor.

Mr. SCHUMER. I object. That is it.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, so everybody understands where we are, the Senator from New York brought up an amendment on Thursday. He was promised on the RECORD by the manager of the bill that he would get a vote. The Senator from New York is within his rights to ask for that vote.

It seems to me to be a concern that everybody is holding things up so we cannot have votes. Is there any reason why we cannot set up a situation here—and both my friend from Connecticut and my friend from New York are on the floor—that we could have some kind of agreement that says, within the next 45 to 50 minutes, we could have at least two stacked votes, that of the Senator from New York and that of the Senator from Connecticut, with the understanding we can have one or two others after that; otherwise, we can spend as much time making unanimous consent requests to vote.

Why would that not be sensible? It is not just enough to say the Senator from Connecticut will bring up his, and after his vote on it we will have somebody else, if the vote turns out to be tomorrow afternoon at 5. I want to get a few votes today.

Mr. DORGAN. Will the Senator from Vermont yield for a question?

Mr. LEAHY. Sure.

Mr. DORGAN. I have not been involved in this discussion out here except to understand that today, yesterday, and Friday there was a great deal of complaining about this bill moving too slowly, it is not moving along, people are concerned and frustrated about it.

My understanding is that the Senator from New York offered his amendment, was committed to having a record vote on his amendment, and now we see delay, delay, delay on getting him a record vote on his amendment.

I ask the Senator from Vermont, is it his understanding the Senator from New York has a commitment that he will get a vote on his amendment?

Mr. LEAHY. I tell my friend from North Dakota it is in the CONGRESSIONAL RECORD that the majority side gave a commitment to the Senator from New York to have a vote. I would like to know when that vote will occur. I am a man of great and deep abiding faith, and I even believe in miracles, but I would feel a little more comfortable if, instead of dealing with a miracle, we had a precise time.

I suggest we have a vote at 4:45, 5, 5:15 or something like that on the amendment of the Senator from New York, and following that, a vote on the amendment of the Senator from Connecticut, followed by votes on other amendments.

Mr. DORGAN. Is it the case if the Senator from New York does not get a vote and there is a cloture vote that prevails, the Senator from New York will not ever get a vote on his amendment?

Mr. LEAHY. It is a possibility that the Chair may rule it is not germane and he would not get a vote, contrary to the commitment given by the Senate majority.

Mr. WYDEN. Will the Senator yield?

Mr. LEAHY. Without losing my right to the floor.

Mr. WYDEN. I am baffled why it has been so difficult to set up a queue. I have an amendment with Senator SMITH. I worked very closely with Senator BOXER to make some perfections on which she insisted. We are here to go with the queue so Senator DODD's and Senator SCHUMER's interests are protected as well as others.

Perhaps we could be enlightened what it will take to get a queue so a bipartisan amendment such as ours can go forward.

Mr. LEAHY. I don't know. We have several pending amendments that could all be voted on. I have one or two. We have the yeas and nays ordered, and I am willing to have a 2- or 3-minute time agreement.

I suggest to those who keep complaining about why this is taking so long, the amendments we know are going to require rollcall votes, we could dispose of more than half of them by 7 o'clock this evening.

Mr. REID. Will the Senator yield?

Mr. LEAHY. I yield without losing the floor.

Mr. REID. Mr. President, we work in this body by unanimous consent, by agreement. The senior Senator from New York, in good faith, allowed the Senate to proceed on Thursday with the express agreement he would have a vote on his amendment. I know the good faith of the Senator from Texas. He believes, at least it is my understanding, that some of the subject matter in this amendment that the Senator from New York has brought is under the jurisdiction of the Banking Committee. That may be true. But the fact is, there was a gentleman's agreement in this Senate that Senator SCHUMER would have a vote on his amendment.

I think it would set a bad tone in this bipartisan Senate if someone goes back on their word. When a manager of a bill is operating in the Senate, he is operating for the caucus that he represents—in this instance, Senator GRASSLEY, one of the most senior Members, chairman of the Finance Committee. No one has been more heavily involved, with the possible exceptions of Senators LEAHY and HATCH.

I think we should get a time set to vote on the Schumer amendment. If my friend from Texas has an amendment, he should propose it.

I think it will create a very difficult situation if someone such as Senator SCHUMER is told by a manager of the bill he will have a vote and suddenly that agreement is voided. That is, in effect, what is happening. It would set an extremely bad tone.

Mr. LEAHY. I yield for the purpose of a question.

Mr. GRAMM. I will get recognized on my own.

Mr. SCHUMER. Will the Senator yield?

Mr. LEAHY. I yield without losing my right to the floor.

Mr. SCHUMER. I understand the difficulty we are in. I understand the difficulties of the Senators from Connecticut and Oregon. However, as was stated, I was promised a vote, unequivocally. I could have insisted on the vote then and there. The Senator from Texas wouldn't even have been on the floor to object. I didn't.

I will repeat the words, because this has been going on long enough. I—Mr. SCHUMER—said, from the March 8 RECORD:

> If the Senator from Iowa will yield, as long as we get the yeas and nays on this amendment in due course.

Previous to that, the Senator from Iowa had requested that I temporarily lay aside the amendment.

And Mr. GRASSLEY said:

> The point is, we can assure the Senator from New York the yeas and nays on his amendment.

That is as good an assurance as one can get on this floor. I feel constrained to object to anything moving forward until we get an agreement as to when we will vote on my amendment. I offer this to think about. I know the Senator from Texas wants to study it. We could, for instance, debate the amendment of the Senator from Texas for 45 minutes, debate my amendment for 45 minutes, and move to vote on both the amendment of the Senator from Connecticut and my amendment. Or we could use some other process.

Until I am given an assurance that we will have a vote on this floor on this amendment, until I am given a time—I have been given an assurance; I should not have to be given a second—until I am given a time as to when we will vote on my amendment, I am constrained to object to every amendment, even those from friends, even those with whom I might agree.

I yield.

Mr. LEAHY. Mr. President, I will yield the floor in a moment. I know the Senator from Texas wishes to speak, and I don't want to deny him that privilege.

The Senator from New York was given a commitment by the Republican leadership to have a vote. Frankly, at the rate we are going, I don't see that commitment being fulfilled. I have been here 26 years and I have never seen an instance where the majority—and I have been here three times the majority and three times the minority—I have never seen an instance where the majority has given such a commitment that hasn't been carried out.

I urge Senators on both sides of the aisle to make sure this will not be the first time in 26 years such a commitment was not carried out. This is a very serious matter.

There are only 100 Members who represent a nation of over a quarter of a billion people; 100 Members have a special responsibility because we are a small number. One is a responsibility to always carry forth our commitment. The Senator from New York has a commitment. It should be carried out. Frankly, we are only 3 months into this Congress. On a bill as serious as this, we should not have to be debating keeping a commitment that is laid out in the CONGRESSIONAL RECORD but, rather, try to find how to get the votes and vote amendments up or down.

I have amendments. I am prepared to go to vote with a 2- or 3-minute time agreement. Let's not delay on the Senate floor and then hold press conferences by the Ohio clock saying: We can't understand why this bill is taking so long; I guess we have to file cloture.

The fact is, the bill could have been finished last week if people had let the votes occur.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, first, I just came into this discussion. I've had a lot of people speaking on my behalf, and I greatly appreciate it, but I am even more appreciative of the right to speak for myself. I never made any agreement with regard to this amendment.

One of my predecessors, Lyndon Johnson, used to say, ''I resent a deal I am not a party to.''

Having said that, when I read Senator GRASSLEY's comments in full, I do not see the deal that our dear colleague from New York sees. Senator GRASSLEY says on March 8, on page S. 2032, ''The point is we can assure the Senator from New York the yeas and nays on his amendment. We can't assure the Senator from New York when we are going to vote on the amendment.''

Reasonable men looking at the same facts are prone to disagree, as Thomas

Jefferson said. But it looks to me as if this is a commitment to have the yeas and nays on having a rollcall vote. I don't see any commitment about ending debate on the amendment in advance.

Having said that, let me say what I want to say.

No. 1, I will object to a time limit on any amendment within the jurisdiction of the Banking Committee from this point forward. We have all had a good time. We have debated a lot of amendments, many of which were of dubious merit and no relevance whatsoever to the underlying bill. But we have reached the point now where you are either for the bankruptcy bill or you are against it. I am for it. And I think we need to get on with our job. Cloture has been filed. We are going to vote on that tomorrow.

What I am willing to do is sit down with the Senator from New York and his staff, if we can do that, and try to figure out exactly what it is he is trying to do, get an opportunity to raise concerns I have, and then basically make a decision as to whether we can move forward with an amendment or substitute. But in terms of reaching a resolution, the best use of our time would be to sit down for a few minutes with our staff and see if we can potentially work something out. I would like to propose that to my colleague from New York.

Let me also make clear, it would make me happy to have no more amendments. I don't understand why we are continuing to have all these votes. If the Senator wants to hold the Senate up and not allow votes, that doesn't break my heart. But that is up to the Senator from New York. What I would like to do is see if something can be worked out and for the two of us and our staff to sit down and see if something can be worked out.

Since there is confusion about what Senator GRASSLEY meant, I don't have any doubt that the Senator from New York reads it the way he is saying it is written. I read it the other way. The point is, perhaps something can be worked out. However he wants to proceed, I think our time would be well spent to take about 10 minutes and sit down and talk to the amendment.

With that, let me 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. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate now resume consideration of the Schumer amendment, No. 25, that the amendment be modified, and following a statement by Senators GRAMM and SCHUMER—with Senator GRAMM going first—for up to 5 minutes each, the amendment be temporarily laid aside in order for Senator DODD to offer an amendment, No. 75.

I further ask consent that there be 40 minutes equally divided for debate in relation to the Dodd amendment and, following that time, the Senate proceed to vote in relation to the Schumer amendment, to be followed immediately by a vote in relation to the Dodd amendment, and that no second-degree amendments be in order prior to the vote.

I further ask consent that following those votes, the Senate proceed to consideration of the Wyden amendment, No. 78.

The PRESIDING OFFICER. Is there objection?

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Reserving the right to object, I, first of all, express my appreciation to the chairman of the Banking Committee for allowing us to go forward. I understand, as I indicated earlier in the day, the sincerity of his concern about this. I am happy to have him claiming jurisdiction. As I indicated to him, I have the same problem in my committee—Environment and Public Works—always trying to catch up to what the Energy Committee has done to us. So I express my appreciation of the entire Senate for the Senator's cooperation and also the patience of Senator DODD and the general work of everyone. I think this is a good agreement and we can get rid of this bill in a timely fashion.

Mr. HATCH. Mr. President, before you rule on my unanimous consent request, I would like to express my appreciation to both the distinguished Senator from Texas and the distinguished Senator from New York, and also the distinguished Senator from Oregon, as well as the distinguished Senator from Connecticut, for working out these various matters.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 25, AS MODIFIED

The amendment (No. 25), as modified, is as follows:

At the appropriate place, insert:

SEC. 204. PRESERVATION OF CLAIMS AND DEFENSES UPON SALE OF PREDATORY LOANS.

Section 363 of title 11, U.S. Code, is amended by adding at the end the following:

''(p) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is subject to the Truth in Lending Act (15 U.S. Code 1601 et. seq.), or any interest in a consumer credit contract as defined by the Federal Trade Commission Preservation of Claims Trade Regulation, and that interest is purchased through a sale under this section, then that person shall remain subject to all claims and defenses that are related to the consumer credit transaction or contract, to the same extent as that person would be subject to such claims and defenses of the consumer had the sale taken place other than under title 11.''

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Texas is recognized for up to 5 minutes.

Mr. GRAMM. Mr. President, this is a very complicated issue. I am opposed to the amendment. There was a dispute about whether an agreement had been reached. I think you can read the language and argue it one way or the other, but the Senator from New York thought he had an agreement. And if he thought he had an agreement, I am willing to defer to it.

Here is the whole argument in a nutshell. The amendment would affect insurance companies, mortgage companies, securities companies. It is a change in current law. Here is the whole issue.

Currently, if I have a mortgage, or if I am a customer of a company, and the company holds an asset as a result of my doing business with them, when bankruptcy occurs and that company goes out of business—declares bankruptcy—my ability to file a claim against those assets is severed. Why is that the case? It is severed because at that point the people who are creditors of the company that has gone bankrupt have first claim against its assets.

If the amendment of Senator SCHUMER is adopted, well-intended as it is—and I am sure we will have dire examples of why it would be a good thing in some very limited cases—what it will really mean is that if I have a mortgage with a company that goes bankrupt, under current law the creditors of that company can sell that mortgage to try to pay off their debt. Under the Schumer amendment, at that point, never having raised any complaint whatsoever, I would have the right to come in and say: I believe there was something wrong. I never raised the point before, but now that the company has gone bankrupt, I want to claim that there is a problem with that loan and whoever bought the loan should carry the problem with them.

Here is the problem in a nutshell: This will destroy the secondary market for the assets of bankrupt companies. Now, who will suffer? Senator SCHUMER is going to say, maybe these people are crooks. But they are not going to suffer. They went bankrupt. The people who are going to suffer are the creditors who won't be able to sell the assets of the company because there will be a potential cloud against those assets.

This is a perfect case in point where, to correct a little wrong, you create a great big wrong that hurts ten thousand times as many people. The reason we have bankruptcy laws is that the first claim against assets goes to creditors, not people who may have real or imagined or made-up grievances against the company.

Surely in the midst of bankruptcy law in a country where we have a sanctity of contracts and where creditors have first claim, we are not going to create a situation where we taint the assets of a bankrupt company so that

the people to whom the company owes money will end up not being able to get their money. That is the problem in a nutshell.

I am not saying there may not be unscrupulous lenders. The point is, if you listen to Senator SCHUMER, he is, essentially, penalizing not on the unscrupulous party, but the people who are owed money. What we would do if this amendment passed is we would literally cloud the title and the marketability of every financial asset of every financial company in America.

I hope this amendment will not be adopted. If it is adopted, I am determined that it not become law. I urge my colleagues to look at this amendment and keep in mind that bankruptcy law is primarily aimed at protecting creditors. Destroying the marketability of financial assets by creating the potential to raise new claims after the bankruptcy is something that cannot be in the public interest. It does nothing to hurt the bankrupt company.

If we want to strengthen laws to put people in jail longer for bad lending practices, that is one thing. To punish creditors who have had nothing to do with this issue is fundamentally wrong.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

Mr. SCHUMER. Mr. President, I thank my colleagues from Nevada and Utah for helping, as well as Senators from Connecticut and Oregon.

I say to my good friend, the Senator from Texas, his statements about the proposal are about as accurate as the statements about my title. I was elected to the Senate 2 years ago. He was calling me ''Congressman SCHUMER.'' He was about as accurate in my appellation as he is in his description of the amendment.

First, this amendment is a simple amendment. When someone is terribly victimized because of a predatory lender, this amendment prevents that predatory lender from declaring bankruptcy, selling its loans into the secondary market, and then vamoosing, leaving the poor homeowner with nothing. This has happened time and time again. Predatory lenders have filed Chapter 11.

United Companies, First Alliance, Conti Mortgage, all listed hundreds of individual suits, class actions, and State government enforcement actions pending when they filed. Worse yet, when they sold their loan portfolios, the purchasers of these loans were fully aware of the predatory claims pending and serious questions about whether all the mortgages were valid or enforceable.

This is not some innocent creditor. Any creditor who buys loans in bankruptcy knows the score. And even when they do, under present law they can say to the poor homeowner who has basically been financially raped: Sorry, you have no claim against us. Go sue the bankrupt predatory lender.

What this does in effect is allow new predatory lenders to exist because they know even if someone goes after them, having made all their money beforehand and paid it out in salaries and everything else, they can then sell the loans into the secondary market and start up the business in a new name. If the secondary lender knew they might be susceptible to the claims of the homeowner who was seduced, they wouldn't be so fast to buy the loan from the predatory lender.

This is an amendment that is narrow. I supported the amendment by my colleague from Illinois, but that was much broader, dealing with all predatory lending. Not this. This only deals with those predatory lenders who declare bankruptcy as a means of escaping claims of people who have struggled, who have saved their $25 and $50 and $100 every week or month, so that they buy their home, and when they buy that home, they find that the home is in disrepair, that the mortgage is not what they were told, and their American dream is smashed.

If this amendment is so detrimental to honest secondary mortgage buyers, then why do Fannie Mae and Freddie Mac support this amendment? They are the largest secondary market makers in the country when it comes to mortgages, far and away, and they are supportive. I am sure they are not doing something to damage themselves.

This is not an overreaching amendment. It is a modest amendment. It is the most modest amendment that has been offered on predatory lending on this bill. It does not involve the Banking Committee, no more so than any of the other amendments that deal with money and banks and credit cards because we solely amend the bankruptcy code, not RESPA or TILA or any of the other laws in the Banking Committee's jurisdiction.

What it does is very simple: It deals with the kinds of situations that my good colleague, Senator SARBANES, mentioned when he rose in support of the amendment: That the predatory lender sells knowingly to the secondary mortgagor and that mortgagor then says: There is nothing I can do. Even though I knew these were horrible loans that violated the law, I am immune from any claim.

It is a simple amendment. It is a fair amendment. It is a humane amendment. I expect that this kind of amendment on its own should pass close to unanimously in this body. I don't know if it will. Based on the merits, it could hardly be fairer or any less controversial.

I remind my colleagues that everyone who cares about this issue is watching this vote. It is a simple and fair one and seeks only to protect innocent consumers, American families, by whom we have each been elected.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Under the previous agreement, the Senator from Connecticut is recognized.

AMENDMENT NO. 75

Mr. DODD. Mr. President, I send my amendment, No. 75, to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD], for himself and Mr. KENNEDY, proposes an amendment numbered 75.

Mr. DODD. Mr. President, 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:

(Purpose: To amend the Truth in Lending Act with respect to extensions of credit to consumers under the age of 21)

At the end of Title XIII, add the following:

SEC. 1311. EXTENSIONS OF CREDIT TO UNDERAGE CONSUMERS.

(a) IN GENERAL.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

''(8) APPLICATIONS FROM UNDERAGE CONSUMERS.—

''(A) PROHIBITION ON ISSUANCE.—No credit card may be issued to, or open end credit plan established on behalf of, a consumer who has not attained the age of 21, unless the consumer has submitted a written application to the card issuer that meets the requirements of subparagraph (B).

''(B) APPLICATION REQUIREMENTS.—An application to open a credit card account by an individual who has not attained the age of 21 as of the date of submission of the application shall require—

''(i) the signature of the parent, legal guardian, or spouse of the consumer, or any other individual having a means to repay debts incurred by the consumer in connection with the account, indicating joint liability for debts incurred by the consumer in connection with the account before the consumer has attained the age of 21;

''(ii) submission by the consumer of financial information indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account; or

''(iii) proof by the consumer that the consumer has completed a credit counseling course of instruction by an approved nonprofit budget and credit counseling agency that meets the requirements of section 111 of title 11, United States Code.''.

(b) REGULATORY AUTHORITY.—The Board of Governors of the Federal Reserve System may issue such rules or publish such model forms as it considers necessary to carry out section 127(c)(8) of the Truth in Lending Act, as amended by this section.

Amend the table of contents accordingly.

Mr. DODD. Mr. President, I believe that most people, including most of my colleagues, will understand the purpose and intent behind this amendment. It attempts to inject a sense of responsibility not only among those who have received credit, which this legislation purports to accomplish, but it also asks those who are extending credit to assume some responsibility as well. That is truly what the underlying legislation fails to accomplish. In my view, the underlying legislation fails to recognize that while creditors will gain much from this legislation, while young people in our country, those under the age of 21, remain unprotected

from the barrage of unsolicited credit card applications.

I am not exaggerating when I tell you that the mere signature of a student and the presentation of an identification card, indicating they are a student at that institution, is all they need to sign up for $3,000, $5,000, $20,000 worth of credit.

This amendment merely attempts to inject some responsibility into a process that is out of control in this country. I will show you in a moment the statistics which bear this claim out. This is not a small problem. It is a growing problem. We must demand that the credit card industry bear some responsibility before they go on college campuses and accept applications from these young people, enticing them with the offer of a free baseball cap, or a free T-shirt without anything more than a signature and an ID. This is the growing problem across our nation that this amendment attempts to address.

Mr. President, I strongly support the purported goal of the underlying bill: to curb bankruptcy abuses. My fear is in our zeal to prevent abuses, we have cast the net too broadly, and snared some very honest and hard-working parents and young people.

Of equal concern is that this legislation does little to focus on an issue of fundamental importance, and that is trying to help consumers avoid declaring bankruptcy in the first place. That ought to be our first line of defense: to minimize or offer a means by which people would not have to seek bankruptcy protection. There is precious little in this legislation, which is heavily slanted toward creditors, to provide consumers with the tools they need to understand the causes and effects of filing for bankruptcy protection.

If those who incur debt must meet their responsibilities, so, too, must creditors who extend credit with no reasonable expectation that those debts will be repaid. My amendment simply requires that any credit card issuer, prior to granting credit to persons under the age of 21, obtain one of three things: That they have a co-signature by a parent, guardian, or other responsible party; or the applicant demonstrates an independent means of financial support for paying off the amount of credit that is offered; or the completion of a certified credit counseling course, which is currently outlined in the underlying legislation.

This is not an onerous obligation. Federal laws in this country already put limitations on what people under the age of 21 can do. You can't drink alcohol anywhere in America if you are under age 21. The Tax Code makes the presumption that if someone is a full-time student under the age of 23, they are financially dependent on parents or guardians.

I ask a simple rhetorical question, if you will: Is it so much to ask that credit card issuers find out if someone under the age of 21 is financially capable of paying back the debt? Or that their parents or guardians are willing to assume financial responsibility? Or if they don't want to meet either of those two conditions, that they understand the nature and conditions of the debt they are incurring?

It is my understanding that there are responsible credit card issuers already requiring this information in one form or another. Is it too much to ask that the entire credit card industry strive to meet their own best practices when it comes to the most vulnerable in our society?

Providing fair access to credit is something I have fought for throughout my entire tenure in the Senate. Credit cards can play a very valuable role in assisting millions of people to pursue the American dream. They have been a wonderful asset for millions of people.

This amendment would not result in the denial of credit to worthy young people. However, it would help to protect financially unsophisticated young consumers from falling into a financial trap even before beginning their adult lives.

Mr. President, I don't believe this amendment is unduly burdensome on the credit card industry, nor is it unfair to people under the age of 21. It is the responsible thing to do. The fact is, these abusive creditors assume that if the young adult is unable to pay, they will be bailed out by their parents. Many times this means parents must sacrifice other things in order to make sure their child does not start out their adult life in a financial hole, with an ugly black mark on their credit history.

By adopting this straightforward amendment, the Senate would send a very clear message to those aggressive credit card companies that we will no longer countenance their abusive behavior. This amendment corrects that behavior by making those overly aggressive credit card companies exercise their best judgment when it comes to the people who are obtaining their own credit cards for the very first time.

Additionally, the legislation before us offers no protection for the most vulnerable in our society, who ironically are the primary targets of many credit card issuers—college students. This amendment, which I am offering with my friend and colleague from Massachusetts, is very simple. It makes a modest attempt to help educate young people, as well as help credit card issuers help themselves by making sure that those persons applying for credit cards have the reasonable ability to repay those debts, or that someone will cosign with them, or that they will take at least a course on understanding what their credit responsibilities would be.

In the context of the bankruptcy debate, I think it is important to understand that an estimated 150,000 young Americans declared bankruptcy in the year 2000. I will repeat that. 150,000 young Americans, last year alone, filed for bankruptcy protection. That is a staggering number. According to Houston University professor, Robert Manning, the fastest growing group of bankruptcy filers are those people who are 25 years of age or younger.

In fact, the number of bankruptcies among those under the age of 25 is more than 6 times that of what it was 5 years ago. One of the most troubling developments in the hotly contested battle between the credit card issuers to sign up new customers has been the aggressive way in which they have targeted people under age 21, particularly on college campuses across America.

Solicitations of this group have become more intense for a variety of reasons. First, it is one of the few market segments in which there are always new customers to go after. Every year, 25 to 30 percent of undergraduates are fresh faces entering their first year of college. It is also an age group in which brand loyalty can be established. In the words of one major credit card issuer, ''We are in the relationship business, and we want to build relationships early on.''

Recent press stories have reported that people hold on to their first credit card for up to 15 years, but in my view, some credit card issuers have gone just too far. They irresponsibly, target the most vulnerable in society and extend large amounts of credit with absolutely no regard to whether or not there is a reasonable expectation of repayment.

Although college students are one of the primary targets for credit card marketeers, they are not alone. One does not have to be in college to receive a credit card. In fact, one does not have to be old enough to read to qualify for one.

I am sure there are people who may be listening to this debate who can offer their own anecdotes.

I bring the attention of my colleagues a heartwarming story that was reported in the Rochester Democrat and Chronicle. The article relates the story of a 3-year-old child who received a platinum credit card with a credit limit of $5,000. Her mother filled in the application. I quote what she said:

> I would like a credit card to buy some toys, but I'm only 3 and my mommy says no.

This child's credit line is greater than the number of days she has been alive. The pitfalls of giving 3-year-olds platinum credit cards is self-evident, and this is happening with increasing frequency.

Let me take a moment to refocusing on the efforts of credit card companies on young people in our academic institutions. Credit card issuers are deeply involved in the business of enlisting colleges and universities to help promote their products. I find this shameful, and I hope they are listening: It is shameful what you are doing to these young people on your campuses.

According to Professor Robert Manning, banks pay the largest 250 universities nearly $1 billion annually for exclusive marketing rights to sell their credit cards on college campuses.

Other colleges receive as much as 1 percent of all student charges from the credit card issuers in return for marketing or affinity agreements. Even those colleges that do not enter into such agreements are making money. Robert Bugai, the president of College Marketing Intelligence, told the American Banker that colleges charge up to $400 per day for each credit card company that sets up a table on their campuses. That can run into tens of thousands of dollars by the end of just one semester.

A recent ''60 Minutes II'' piece that ran a few weeks ago vividly illustrated the impact that credit card debt can have on college students. A crew from the show ''60 Minutes II'' went to a major public university campus in this country and, with the use of hidden cameras, filmed vendors pushing free T-shirts, hats, and other enticements with credit card applications: Just sign on the dotted line, show me your ID, and you get $5,000 to $10,000 worth of credit. That is all you need. A signature, an ID, you get a hat, a T-shirt, and you incur $5,000 worth of debt.

''60 Minutes II'' revealed that the university, a well-known university in this country, was being paid $13 million over 10 years by a credit card company for the right to have a presence on their campus and to use the university logo on its credit cards. This public university is actually making money off its students who use these cards. As part of the agreement, the university receives four-tenths of a percent of each purchase made with the cards. Unbelievable. This university has a vested interest in getting their students in as much debt as possible.

We have a chance to do something about that. Look, if you are going to sign up a student under 21, and they do not have the independent means to repay, then a parent, guardian or other responsible party should co-sign or at least mandate that the student will take a course to understand what credit obligations are.

If you are in the military, you have a paycheck. This amendment has no effect on persons who have a source of income. I am not referring to those people. I am talking about kids who have no independent means of financial support, who are being given these cards without any consideration for what it is going to do to them or their families.

The ''60 minutes II'' piece also told the story of one student's circumstances, Sean Moyer. He made desperate attempts to handle the massive credit card debt he incurred. Sean Moyer's life began to spin out of control as a result of the huge debts racked up in 3 years in college. He could not get loans to go to law school like he dreamed. His parents could not afford to pay his way. So in 1998, Sean Moyer took his own life.

''It is obscene that the universities are making money off the suffering of their students,'' said Sean Moyer's mother. Sean Moyer had 12 credit cards and more than $10,000 in debts when he committed suicide nearly 3 years ago. He had two jobs, one at the library and another as a security guard at a Holiday Inn, but he still could not pay his collectors.

Three years after his son's death, his mother still gets pre-approved credit card offers in Sean's name from some of the same companies to whom he owed thousands of dollars. One company pre-approved Sean for a $100,000 credit line, according to his mother.

Do not misunderstand me. People have to take responsibility for their actions. If you are going to apply for a credit card, you have to understand your responsibilities. All that I ask is that there be a commensurate responsibility on those soliciting these individuals. That is all I am asking for: some sense of balance in this bill.

In the last Congress, I went to the main campus of the University of Connecticut in my home State to meet with student leaders about this issue. I was surprised at the amount of solicitations occurring at the student union at the University of Connecticut. I was surprised at the degree to which the students themselves were concerned about the constant barrage of offers they were receiving.

The offers seemed very attractive. One student intern in my office received four solicitations in 2 weeks: One promised ''eight cheap flights while you still have 18 weeks of vacation.'' Another promised a platinum card with what appeared to be a low interest rate until you read the fine print that it applied only to balance transfers, not to the account overall.

Only one of four, the Discover card, offered a brochure about credit terms, but in doing so also offered a spring break sweepstakes. In fact, last year the Chicago Tribune reported that the average college freshman will receive 50 solicitations during their first few months at college—50 solicitations from credit card companies. All you have to do is sign up and show your ID. You get five grand of credit. Is it too much to ask that the student show they can repay these debts? Or have an independent source of income? Or, in the absence of that, mom and dad or guardian are going will cosign the application? Or the student will complete a credit education course to understand what credit obligations are? It can be any one of these three options. That is all this amendment does.

College students can get green-lighted for a line of credit that can reach more than $10,000 on a signature and an ID, according to the Chicago Tribune.

There is a serious public policy question about whether people in this age bracket can be presumed to be able to make the sensible financial choices that are being forced on them from this barrage of marketing. It is very difficult to get reliable information from the credit card issuers about their marketing practices to people under the age of 21.

However, the statistics that are available are deeply troubling. I refer to chart #2, titled ''Undergraduates pile on credit cards and debt.'' Nellie Mae, a major student loan provider in New England, conducted a recent survey of students who applied for student loans. It termed the results ''alarming''.

The study found the following: 78 percent of all undergraduate students have at least one credit card. That is up in 2 years from 67 percent to 78 percent. Of those students, the average credit card balance is $2,748. That is up from $1,879, 2 years ago.

In 1998, 67 percent of these students with credit cards, and in 2 years it jumped 11 percent. In the same 2-year period, the obligations have gone up nearly $1,000, with every indication that student credit card debt is on the rise. We can do something now or wait until the problem is more severe. Ten percent of the college students have over $7,000 in credit card debt; 32 percent of the undergraduates had four or more credit cards in the survey.

Some college administrators are bucking the trend of using credit card issuers as a source of income. Some have become so concerned they have banned credit card companies from their campuses. I applaud them. Some have even gone so far as to ban credit card advertisements in the campus bookstores.

Roger Witherspoon, the vice president of student development at John Jay College of Criminal Justice in New York, banned credit card solicitors, saying indebtedness was causing students to drop out. Middle-class parents can bail out their kids when this happens, but lower income parents can't.

I don't completely agree with Mr. Witherspoon on that statement. I don't think middle-class parents can afford it, either. Middle-class parents trying to make ends meet can hardly assume this kind of burden. Only the most affluent of people can assume these obligations.

Mr. Witherspoon also said, ''kids only find out later how much it messes up their lives.''

An important component of this amendment is requiring credit counseling.

Let me explain how this works. Much like we encourage our children who reach driving age to take driver's education courses to prevent automobile accidents, I think we should teach young people, young consumers, the basics of credit to avoid financial wrecks. Educating our Nation's youth about responsibilities of financial management is critical. Currently, we hardly do a very good job.

There is overwhelming evidence student debt is skyrocketing. Most surveys also show the same group of consumers is woefully uninformed about

basic credit card terms and issues. According to the Jump Start Coalition for Personal Financial Literacy, a nonprofit group which conducts its annual national survey of high school seniors' knowledge of personal finance, financial skills are poorer today than 3 years ago.

I will not go into all of the data they provided, but a startling number, well over a majority of students, have little or no understanding how credit works.

Without any question in my mind, some credit counseling requirement is needed before you can sign on for the kind of debt being offered by the credit card issuers. The amendment I offer does not take any draconian action against the credit card industry.

I agree with those who argue there are many millions of people under the age of 21 who hold full-time jobs, are deserving of credit. I also agree students should continue to have access to credit, that we should not try to prohibit the market from making credit available to them. Again, this amendment does nothing to affect these persons. However, you ought to be required to have more than just a student ID to qualify for credit. That is all that is currently required. I don't think asking for a co-signature, or proof that you have a job id too onerous. Barring the absence of those two qualifications, you need only take a course in credit responsibility.

I think parents across the country would applaud the passage of this amendment. How many parents with kids who are currently in college are incurring more debt than they can afford. Are they perhaps affecting the ability of another sibling to go to school because of the debt they have accumulated? I think every mother and father in America would applaud a Senate that said: When you tighten the bankruptcy laws for debtors, make the credit card companies more responsible, too.

This is a modest amendment. Can't we adopt this amendment, include this sort of simple proposal, to add some basic sense of responsibility for creditors? This bill should help families, not hurt them. If I have to choose between the credit card companies versus the parents, I believe that we should side with the parents. On this issue, parents should get our vote.

I hope my colleagues, Republicans and Democrats, whatever else their views may be on this bill, will decide tonight, as parents and children gather around the dinner table, we will vote for this amendment, and cast a ballot tonight on behalf of families.

Mr. HATCH. How much time remains?

The PRESIDING OFFICER. The Senator from Utah has 20 minutes under his control; no time remains for the Senator from Connecticut.

Mr. HATCH. Mr. President, I appreciate the feelings of my colleague from Connecticut. He is a good man.

I think this is a discriminatory amendment which would unduly restrict access to credit cards for adults between the ages of 18 and 21. It is a paternalistic amendment and some believe it is paternalism at its worst. It puts a complete prohibition on the issuance of a credit card to those adults unless, one, their parent, guardian, spouse, or someone else with means agrees in writing to joint liability for the debt; or, two, if a person submits proof of independent means of repayment; or, three, the consumer proves he has completed a credit counseling program.

These hurdles, targeted at adults between the ages of 18 and 21, in our opinion, are not warranted. In short, adults between the ages of 18 and 21 can vote, serve in the military, obtain a driver's license, and under longstanding law enter into legally binding contracts. Discriminating against them when it comes to obtaining credit cannot be justified.

The unnecessary and burdensome requirements of making various paperwork submissions under this amendment will make the cost of credit more expensive for everybody and the process inefficient.

Of course, this amendment strikes me also as ironic. Those who oppose parental consent for abortion for those under the age of 18 want parental consent for individuals over 18 to get credit cards. Something is wrong with that picture. That, it seems to me, is ironic.

Finally, we have already had a 55–42 vote to table an amendment that attempted to restrict access to credit to adults between the ages of 18 and 21. This amendment by the distinguished Senator from Connecticut is even more restrictive and unfair than that amendment.

One last comment I have is this amendment is based on the myth younger borrowers are less responsible than older borrowers. The truth is that they are more responsible.

As of 1999, 59 percent of all college students in America paid their balance in full at the end of each month compared to only 40 percent of the general population, And 86 percent of students pay their credit cards with their own money, not with their parents' money.

Frankly, there is little or no reason to have this amendment. I know it is well intentioned, but just the costs alone would be passed on to every person in the country. Frankly, I think this amendment discriminates against young people between 18 and 21, the age of accountability in the eyes of most States, where they can legally enter into contracts. What are we going to do next, take away their rights to enter into contracts because we don't trust them or we don't think they are adult enough to be able to handle these matters?

Again, I think this amendment is well intentioned, but these young people have all these obligations in life that they have to live up to, and they are living up to them. Yes, there are horror stories such as those the Senator has indicated, but I can give you horror stories among adults, too, 40, 50, 60 years of age who just didn't live up to the obligations to pay their debts.

I think bankruptcy is a sorry thing for everybody. I wish nobody had to go into bankruptcy. But I will tell you one thing: To pass on additional costs and additional burdens to everybody else because there are some people who are irresponsible is not the right thing to do.

Last but not least, under this bill, if they are under the average median income in their particular area, they will not have the obligation of going into the other chapter and having to try to pay back some part of these debts. I think society understands that.

What we are trying to do is get people to be more responsible in this area. I think this bill will go a long way towards doing that. I appreciate my colleague, but I have to move to table this amendment. I am prepared to yield the remainder of my time.

Does the Senator need any more time? I am prepared to yield the remainder of my time.

Mr. DODD. If the Senator will yield 5 minutes of his time for one Member who would like to be heard on the amendment? I have no time.

Mr. HATCH. I am happy to yield to the distinguished Senator from New York from my time, and then if I could have 1 minute after that.

I yield 5 minutes to the distinguished Senator from New York.

Mrs. CLINTON. Mr. President, I join in support of this amendment because we know, from a lot of the work that has been done over the last several years, many students are being deliberately solicited, even targeted, for credit cards before they are financially independent, responsible, or knowledgeable about what it is they are signing up for. Story after story has demonstrated clearly that this particular amendment by my good friend, the Senator from Connecticut, targets a real problem.

I think all of us are committed to ensuring that people who are irresponsible with their financial affairs are held accountable. But I think we should look at our young people in a different category. It used to be no one could be held financially responsible when they were under 21. Then the age was dropped for many purposes to 18. But despite how quickly it seems our children grow up these days, there are many young people in college or out working who are not yet 21 who do not really have the experience to deal with the solicitations that come flooding through the mail and over the telephone that we know are targeting them with these credit card applications.

This morning, I was talking with another colleague of ours who told me he was babysitting for his very young grandchildren. He put them to bed, the phone rang, and the person on the other end asked for one of his granddaughters. Our colleague said: What is

this about? He was told, much to his amazement, that his 5½-year-old granddaughter had been approved for a new credit card. He said he was shocked this kind of activity was going on and did not really believe it until it happened in his own family.

I urge our colleagues, regardless of the position we take on the underlying legislation, we should stand behind the basic principle that our young people should not be solicited, they should be given some better credit training as this amendment proposes, and there should be some sense of responsibility on the part of creditors before they reach out to entice our young people into these credit cards before they even know what it is they are signing up for. It looks all so easy, and they end up in trouble, with debts they cannot pay.

Let's try to avoid that. That does not mean they cannot ever become customers, but let's make it a little more reasonable in the steps that have to be taken in order for them to qualify.

I certainly urge passage of this amendment. I thank my good friend, the Senator from Utah, for yielding time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I will just take a minute.

I understand this amendment is well intentioned. Think about it. We are talking about taking away the rights of people who have to go to work, people who have a driver's license, people who can enter into legal contracts. That is paternalism at its worst.

According to a national survey by the Educational Resources Institute, a majority of students use credit cards responsibly and do not accumulate large amounts of credit card debt. The majority of students, 59 percent, typically pay off their monthly balances right away. Of the 41 percent who carry over their balances each month, 81 percent pay more than the minimum amount due. In addition, the overwhelming majority of students pay their own credit card bills. The 14 percent of students who do not pay their own bills receive assistance mostly from parents or spouses.

The average monthly balances reported by students also appear to be manageable. Eighty-two percent of students with credit cards who know their balance report average balances of $1,000 or less, and 9 percent have average balances between $1,001 and $2,000. In addition, slightly more than half of student credit card users report combined limits of $3,000 or less. All of these factors indicate the majority of students use credit cards responsibly.

A significant portion of students with credit cards use them to pay for education-related expenses.

This amendment is much more restrictive than the prior amendment by the distinguished Senator from California, which was voted down.

I am prepared to yield back the remainder of my time, having said that.

VOTE ON AMENDMENT NO. 25, AS MODIFIED

On the Schumer amendment, I move to table and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to table amendment No. 25, as modified. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

The result was announced—yeas 44, nays 55, as follows:

[Rollcall Vote No. 24 Leg.]

YEAS—44

Allard	Gramm	Murkowski
Allen	Grassley	Nickles
Bennett	Gregg	Roberts
Bond	Hagel	Santorum
Brownback	Hatch	Sessions
Bunning	Helms	Shelby
Burns	Hutchinson	Smith (NH)
Campbell	Hutchison	Smith (OR)
Cochran	Inhofe	Snowe
Craig	Kyl	Stevens
Crapo	Lott	Thomas
DeWine	Lugar	Thompson
Domenici	McCain	Thurmond
Enzi	McConnell	Voinovich
Frist	Miller	

NAYS—55

Akaka	Dodd	Lieberman
Baucus	Dorgan	Lincoln
Bayh	Durbin	Mikulski
Biden	Edwards	Murray
Bingaman	Ensign	Nelson (FL)
Boxer	Feingold	Nelson (NE)
Breaux	Feinstein	Reed
Byrd	Graham	Reid
Cantwell	Harkin	Rockefeller
Carnahan	Hollings	Sarbanes
Carper	Inouye	Schumer
Chafee	Jeffords	Specter
Cleland	Johnson	Stabenow
Clinton	Kennedy	Torricelli
Collins	Kerry	Warner
Conrad	Kohl	Wellstone
Corzine	Landrieu	Wyden
Daschle	Leahy	
Dayton	Levin	

ANSWERED ''PRESENT''—1

Fitzgerald

The motion was rejected.

Mr. HATCH. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 25, AS MODIFIED

The PRESIDING OFFICER. The question occurs on amendment No. 25, as modified.

Mr. HATCH. Mr. President, I ask unanimous consent that the yeas and nays be vitiated.

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

The question is on agreeing to the amendment.

The amendment (No. 25), as modified, was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 75

Mr. HATCH. Mr. President, I move to table the Dodd amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to table the Dodd amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

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

The result was announced—yeas 58, nays 41, as follows:

[Rollcall Vote No. 25 Leg.]

YEAS—58

Allard	Feingold	Miller
Allen	Frist	Murkowski
Bayh	Gramm	Nelson (NE)
Bennett	Grassley	Nickles
Bond	Gregg	Roberts
Brownback	Hagel	Santorum
Bunning	Hatch	Sessions
Burns	Helms	Shelby
Campbell	Hutchinson	Smith (NH)
Chafee	Hutchison	Smith (OR)
Cleland	Inhofe	Snowe
Cochran	Jeffords	Specter
Collins	Johnson	Stevens
Craig	Kohl	Thomas
Crapo	Kyl	Thompson
DeWine	Lincoln	Thurmond
Domenici	Lott	Voinovich
Dorgan	Lugar	Warner
Ensign	McCain	
Enzi	McConnell	

NAYS—41

Akaka	Dayton	Lieberman
Baucus	Dodd	Mikulski
Biden	Durbin	Murray
Bingaman	Edwards	Nelson (FL)
Boxer	Feinstein	Reed
Breaux	Graham	Reid
Byrd	Harkin	Rockefeller
Cantwell	Hollings	Sarbanes
Carnahan	Inouye	Schumer
Carper	Kennedy	Stabenow
Clinton	Kerry	Torricelli
Conrad	Landrieu	Wellstone
Corzine	Leahy	Wyden
Daschle	Levin	

ANSWERED ''PRESENT''—1

Fitzgerald

The motion was agreed to.

Mr. WYDEN. I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 78

The PRESIDING OFFICER. Under the previous order the clerk will report the Wyden amendment.

The legislative clerk read as follows:

The Senator from Oregon [Mr. WYDEN], for himself, Mr. BAUCUS and Mrs. MURRAY, proposes an amendment numbered 78.

Mr. WYDEN. Mr. President, I ask unanimous consent reading of the amendment be dispensed.

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

The amendment is as follows:

(Purpose: To provide for the nondischargeability of debts arising from the exchange of electric energy)

After section 419, insert the following:

SEC. 420. NONDISCHARGEABILITY OF DEBTS ARISING FROM THE EXCHANGE OF ELECTRIC ENERGY.

(a) IN GENERAL.—Section 1141(d) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(6) The confirmation of a plan does not discharge a debtor—

''(A) in the case of a debtor that is a corporation, from any debt for wholesale electric power received that is incurred by that debtor under an order issued by the Secretary of Energy (or any amendment of or attachment to that order) under section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)) and requested by the California Independent System Operator; or

''(B) in the case of debt owed to a Federal, State, or local government agency named in an order referred to in subparagraph (A) for wholesale electric power received by the debtor except to the extent the rate charged for power traded by the California Power Exchange delivered to the California Independent System Operator is determined by the Federal Energy Regulatory Commission to be unjust and immeasurable, in which case this subpargraph should only apply to debt for the actual cost of production and distribution of energy.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by this Act, is amended—

(1) in paragraph (28), as added by section 907(d) of this Act, by striking ''or'' at the end;

(2) in paragraph (29), as added by section 1106 of this Act, by striking the period at the end and inserting ''; or''; and

(3) by inserting after that paragraph (29) the following:

''(30) under subsection (a), of the commencement or continuation, and conclusion to the entry of final judgment or order, of a judicial, administrative, or other action or proceeding for debts that are nondischargeable under section 1141(d)(6).''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—Section 1141(a) of title 11, United States Code, is amended by striking ''subsections (d)(2) and (d)(3) of this section'' and inserting ''paragraphs (2), (3), and (6) of subsection (d)''.

(d) APPLICABILITY.—This section and the amendments made by this section shall apply with respect to any petition for bankruptcy filed under title 11, United States Code, on or after March 1, 2001.

Mr. WYDEN. I offer this bipartisan amendment tonight on behalf of my colleague from Oregon, Senator SMITH, from the Pacific Northwest. It was perfected in close consultation with Senator BOXER because of the importance of this matter to Senator BOXER's California constituents.

As all of our colleagues know, during the California energy crisis a number of regions of this country have tried to assist. In the Pacific Northwest we believe we have been more than a good neighbor. Bonneville Power and other governmental agencies up and down the west coast have repeatedly shifted power to California to help out at critical times.

Various California public officials have thanked profusely the Bonneville Power Administration and others for helping California avoid blackouts, help that was a real hardship for many in the Pacific Northwest because we have had a tough year, a low-water year. A variety of concerns were very much on the mind of those whom Senator SMITH and I represent.

To give an idea of how appreciative California public officials have been, I will read a letter Senator FEINSTEIN wrote to Bonneville Power Administration recently.

It reads:

DEAR MR. WRIGHT: I am writing to express my gratitude to Bonneville Power Administration for selling power to California yesterday.

Yesterday my State nearly had an energy catastrophe. In a meeting at my office yesterday to discuss California's energy situation with Governor Davis, Secretary Richardson from the Department of Energy, and Federal Energy Regulatory Commission Chairman Hoecker, calls came into my office that within the hour, a rolling blackout could hit California and that the California Independent System Operator (ISO) would not be able to purchase the power necessary to ''keep the lights on.''

Twelve energy generators, marketers and utilities, mostly located outside of California, contacted the California ISO yesterday and indicated their reluctance to sell electricity into California without letters of credit from California's investor owned utilities, who they feared would not be able to pay for this power because of their economic circumstances.

I am very grateful for BPA's cooperation! THANK YOU!

Mr. WYDEN. Mr. President, thank-you letters are certainly appreciated, but Bonneville Power still is in a position where they need to be repaid. As of now, Bonneville Power is owed more than $120 million by California, and various other public entities such as the Western Area Power Administration and various municipal utilities up and down the west coast are also owed funds. The fact is that they do not have shareholders as do the big, private California utilities. The people we are speaking for in this amendment do not have any stockholders to absorb the costs if they are not paid what they are owed. The public entities that would get a fair shake under this amendment would have to pass the costs on directly to the consumers if they were not in fact repaid.

Our amendment makes nondischargeable in bankruptcy any debts under the Department of Energy emergency orders or otherwise owed for electric power sent by Federal, State, or local governmental agencies. This means these debts would have to be paid in full unless there was a determination by the Federal Energy Regulatory Commission that the rates charged in California for electric power were unjust and unreasonable.

I want to make it very clear, because we have seen a lot of letters passed around, exactly what Senator SMITH and I are saying in this bipartisan amendment. All we are saying in this amendment is that if you are in a chapter 11 bankruptcy proceeding, you have to have a plan to pay the public back when the public has assisted you in these emergency situations.

Let me repeat that. There is no preference given to anybody—nobody—in this amendment. But it does say that instead of stiffing the people of the Pacific Northwest and some other public entities such as in the Western Power Administration that serves Montana and other areas, you have to have a plan in order to pay those folks back.

Mrs. BOXER. Will my friend yield?

Mr. WYDEN. I am happy to yield to my friend from California.

I want to make clear to her we very much appreciate her being involved because this is so important to her constituents. We tried to perfect it so as to address her legitimate concerns.

Mrs. BOXER. I thank my friend.

Mr. LEAHY. Mr. President, if I may interrupt, I hope Senators who have amendments they want to bring down, and I hope they will because I think many of us would like to get some amendments that would be in a position to be voted on perhaps early tomorrow morning so we can start fairly quickly.

As I said, we would have finished this bill last week had we not had ergonomics and other things interfering.

Mr. WYDEN. I express again my appreciation to the Senator from California because we want to come up with something that will work for the whole west coast and not pit people against each other. I am happy to yield to the Senator at this time.

Mrs. BOXER. Let me say to my friend, what I would like to do is state my understanding of the amendment by the two Senators from Oregon, and then ask my friend to comment if I am correct in my assumptions about this amendment.

First, I appreciate the Senator's openness, working with me. The fact is I agree with my colleague; we on the west coast are going to have to work together. We need each other because there are some times when they will need power and we will have excess power. That may happen at some point. It has happened in the past. Certainly in this recent example we desperately need the power, and even though they had a hard time doing it, they came through for us. That is why we have thanked them. I say again a very big thank you on behalf of my constituency.

As we all know, power is not a luxury item; you need it to live. If you are elderly and it is cold, you need it to stay warm. You need the lights. Certainly our jobs depend on electricity. So I do think the spirit with which my friends offer this amendment is not a spirit of anger but I think it is a spirit of fairness.

I want to point out to my friend my understanding, and I hope when he comments on my remarks he will tell me if I am right, that there are 12, as we have read it, public power entities in California which will benefit from his amendment. In other words, it is not only Bonneville but, in essence, what I understand the Senator is saying is if public utilities stepped in and helped us during this period, the utilities should pay their bills. I think it is fair. I don't think we can say thank you very much and then let them be there hanging, without getting paid.

I think it also says if the private sector was forced to sell power in addition to the public sector during that crisis

period, in fact they will get paid, except they will not get paid back that portion that the FERC says was unfair and unreasonable.

I really appreciate my friend including that language in his amendment because while I want to pay people a fair price, I do not think we should have to pay it if it is gouging. My friend was very quick to say he would, in fact, add that language.

So my understanding is the purpose of this is to protect, in general, public utilities that are selling to California, to make sure they get paid; second, during that period of crisis, that any generator that was forced to sell, gets paid—except they do not get the part that may have been considered unjust and unreasonable charges.

As I understand it, the public power entities that will benefit from this are: California Department of Water Resources, City of Anaheim, City of Azusa, City of Banning, City of Burbank, City of Glendale, City of Pasadena, City of Riverside, City of Vernon, Sacramento Municipal Utilities District, Silicon Valley Power, and Western Area Power Administration in Folsom.

I have heard from these public utilities. They have told me, I say to my friend from Oregon, they are very frightened about not getting paid. While the big generators may be able to wait, these smaller public utilities really need this amendment so if the worst happens—and we certainly hope the worst will not happen—and there is a bankruptcy filing, these debts cannot be discharged.

Let me just wrap it up in this fashion. I know there are disagreements. The Governor does not agree with my position on it, Senator FEINSTEIN does not, others do. The fact of the matter is, I do not want to be known as a deadbeat State. California is too great to get that kind of reputation. I think what you are doing in this amendment is just assuring people that will not happen. I think it is important. It is the responsible way to proceed.

Frankly, as I look at reports that show our private utilities—and this is a fact—taking some of the windfall that they got at the beginning of deregulation and giving it to parent companies and, therefore, shielding it, this is not a good thing. This isn't a fair thing.

Why should a public utility that came to our rescue get punished because our private utilities took funds and essentially gave them over to a parent company? And now we cannot get at those funds.

So on behalf of these public power entities in California that will benefit from this—and, frankly, in the name of fairness—I think the Wyden-Smith amendment is a fair amendment. I hope that it shows my friends that I do think we are in this together, that the west coast has to stick together.

If this amendment is adopted—and I hope it is adopted—it is a signal that we are not saying, by virtue of this bill, that people can declare bankruptcy, utilities can declare bankruptcy, and run away from these bills they owe public utility companies and also some of the private generators during that period of the threatened brownouts.

So I ask my colleague if he agrees with my interpretation of his amendment and for any other comments he might have.

Mr. WYDEN. I think the Senator has stated it extremely well and put a very complicated, by anybody's calculation, and arcane subject into something resembling English. I really appreciate the Senator's explanation. I think the position the Senator has taken not only is correct, but it is very gutsy.

We all know this is a divisive issue in many quarters. I want the public to know the reason we have nailed down the protection for those various public entities, such as those California municipalities, is because Senator BOXER stood up for them. I want it understood that those FERC provisions, again, in the name of fairness, came about because the Senator helped us put that language together. I think when one looks consistently at who is out on the floor of the Senate standing up for the consumer, the Senator has shown that again and again. I think the spirit the Senator has shown in working with us on this issue is exactly what it is going to take to bring folks together in the Senate and on the west coast to really address this issue in a comprehensive way for the long term.

I thank the Senator and would be happy to yield to her for any other comments.

Mrs. BOXER. I thank the Senator again. This is a long, drawn-out fight. I hope we can work together in the future.

Mr. REID. Would the Senator from Oregon yield for a unanimous consent request?

Mr. WYDEN. Absolutely.

Mr. REID. This is a very difficult issue. A lot of people want to speak on it. I see a number of them on the floor this evening.

Senator CARNAHAN, the junior Senator from Missouri, has been here, in and out, all day long. She has an amendment to offer. She has asked to speak on the amendment for 5 minutes. Then we would return the floor to the Senator from Oregon.

I would ask those on the floor who are so concerned about this amendment offered by the Senator from Oregon to allow Senator CARNAHAN to proceed. I ask unanimous consent——

Mr. WYDEN. Will the Senator yield?

Mr. REID. Yes.

Mr. WYDEN. Clearly, I think west coast Senators may not agree on everything debated tonight, but I think all of us can agree it is very appropriate that Senator CARNAHAN get 5 minutes at this point.

Mr. REID. Mr. President, I ask unanimous consent that the pending amendment be set aside, that the Senator from Missouri be allowed to offer an amendment, and to speak on it for up to 5 minutes, and then the floor would be returned to the Senator from Oregon.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I just ask consent to speak for a moment before we go to the Senator from Missouri without it detracting from her time.

I am also delighted to see the Senator from Missouri here to offer and speak on her amendment. I want to add to what the Senator from Nevada said. He did his usual courtesy in providing for all Members on our side. The Senator from Missouri has been on the floor waiting to speak more today than has the Senator from Vermont as one of the managers. So it is only appropriate she proceed now. I commend the Senator from Missouri.

I yield the floor.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside. The Senator from Missouri is recognized for up to 5 minutes.

AMENDMENT NO. 40

Mrs. CARNAHAN. Mr. President, I call up amendment No. 40.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mrs. CARNAHAN], for herself and Ms. COLLINS, proposes an amendment numbered 40.

Mrs. CARNAHAN. I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To ensure additional expenses associated with home energy costs are included in the debtor's monthly expenses)

On page 10, between lines 17 and 18, insert the following:

''(V) In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the International Revenue Service, based on the actual expenses for home energy costs, if the debtor provides documentation of such expenses.

Mrs. CARNAHAN. The purpose of the amendment that Senator COLLINS and I are offering is to make sure that extraordinary and unexpected expenses related to home energy costs are taken into consideration in the means test.

Under the bill, monthly utility expenses are calculated based on the Internal Revenue Service standards. But these standards are only updated once a year from data based on the previous 12 months.

These standards do not take into account the potential for dramatic increases in home energy costs. The

sharp rise in home energy costs this winter has put a tremendous strain on low- and middle-income Americans. People across Missouri and, indeed, across the country have experienced dramatic increases in their home energy costs. Therefore, I believe the potential for significant increases in home energy costs must be considered in the means test.

Our amendment ensures that a debtor can include an additional allowance in his or her monthly expenses if the debtor can document a sharp rise in home energy costs. The bill already allows a debtor to include an additional allowance for food and clothing in excess of the IRS standard.

The logic of this amendment is similar. It would allow bankruptcy judges to consider whether an additional allowance related to home energy costs is appropriate. But the amendment requires that an additional allowance is only permitted when it is reasonable and necessary, and when the debtor can provide documentation of the additional expenses.

The added discretion provided by the amendment will enable bankruptcy judges to consider that families may be paying double or triple the price for heating their homes as they did when the IRS last calculated local energy costs.

Our amendment will ensure that full bankruptcy relief is not denied to individuals and families because they have been saddled with extraordinary utility costs.

Mr. President, I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I commend the Senator from Missouri for the amendment she has offered. As does the Senator from Missouri, I come from a State that has some very cold winters and a lot of snow. I know how important this issue is.

Any of us who live, basically, in the frost belt know how an unusually severe winter, sometimes even an enormously severe winter, can push somebody over the brink into bankruptcy.

I think the distinguished Senator from Missouri—I assume we will vote on her amendment tomorrow—has raised an extremely good point. I hope all Senators, whether they come from the northern-tier States or from more temperate States, will look at her amendment and support it. I applaud her for proposing it.

I yield the floor.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I will now resume consideration of the amendment I have offered with Senator SMITH. I, too, want to praise Senator CARNAHAN for an excellent amendment. I am happy she spoke on it at this time.

AMENDMENT NO. 78

Mr. President, just a couple of additional points. Again, I want to make it clear that nobody is going ahead of the line under this amendment that we have developed in close consultation with Senator SMITH. I want to make it clear that all that happens is in chapter 11 you have to have a plan to repay the public.

In providing for this review by the FERC, we are not in any way subjecting the Bonneville Power Administration and public entities to rate review by FERC. Rather, it would have rates for power traded or delivered in California subject to FERC review, to examine if they are unjust and unreasonable.

It was a very tough proposition for folks in the Pacific Northwest and elsewhere to send our power to California.

It has been a tough year. At the bipartisan town meetings Senator SMITH and I held earlier this year, again and again we heard from our constituents who were very irate—and understandably so—about being forced to send power to California. It doesn't seem to be fair—it is just not right—to say that all of those working families in the Pacific Northwest are going to be stiffed, that after thank-you letters have arrived, now somehow there could be a bankruptcy proceeding and the folks we represent just have to face the music and the extra cost.

I urge my colleagues to prevent this unfair result by supporting the bipartisan amendment Senator Smith and I developed with Senator BOXER from California.

I am happy to yield to my colleague from Oregon at this time.

AMENDMENT NO. 95 TO AMENDMENT NO. 78

Mr. SMITH of Oregon. Mr. President, I thank my colleague. I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. SMITH], for himself and Mr. WYDEN, proposes an amendment numbered 95 to amendment No. 78.

Mr. SMITH of Oregon. Mr. President, 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:

(Purpose: To provide for the nondischargeability of debts arising from the exchange of electric energy)

Strike all after the first word and insert the following:

420. NONDISCHARGEABILITY OF DEBTS ARISING FROM THE EXCHANGE OF ELECTRIC ENERGY.

(a) IN GENERAL.—Section 1141(d) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(6) The confirmation of a plan does not discharge a debtor—

''(A) in the case of a debtor that is a corporation, from any debt for wholesale electric power received that is incurred by that debtor under an order issued by the Secretary of Energy (or any amendment of or attachment to that order) under section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)) and requested by the California Independent System Operator; or

''(B) in the case of debt owed to a Federal, State, or local government agency named in an order referred to in subparagraph (A) for wholesale electric power received by the debtor except to the extent the rate charged for power traded by the California Power Exchange delivered to the California Independent System Operator is determined by the Federal Energy Regulatory Commission (Commission) to be unjust and unreasonable in which case this subparagraph shall only apply to the debt determined by the Commission to be just and reasonable.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by this Act, is amended—

(1) in paragraph (28), as added by section 907(d) of this Act, by striking ''or'' at the end;

(2) in paragraph (29), as added by section 1106 of this Act, by striking the period at the end and inserting ''; or''; and

(3) by inserting after that paragraph (29) the following:

''(30) under subsection (a), of the commencement or continuation, and conclusion to the entry of final judgment or order, of a judicial, administrative, or other action or proceeding for debts that are nondischargeable under section 1141(d)(6).''.

(c) APPLICABILITY.—This section and the amendments made by this section shall apply with respect to any petition for bankruptcy filed under title 11 as amended by this bill, United States Code, on or after March 7, 2001.

Mr. SMITH of Oregon. Mr. President, my second-degree amendment is very similar to that of my colleague, Senator WYDEN's. I have changed only the date of the applicability for bankruptcy filings to those that occur on or after March 7, 2001, and I have further clarified that just and reasonable debt owed will be paid to government agencies. I did this because it is important to recognize the efforts made by the State of California during the first week of March to begin to restore stability to the west coast energy market.

On March 5, the Governor of California announced that the State department of water resources had signed 40 long-term contracts for electricity. Prior to this, the State had required the investor-owned utilities to purchase all their power on the spot market, making these utilities very vulnerable to short-term price spikes.

While California is making some headway on restoring the creditworthiness of its utilities, it is imperative that the utilities in California not be able to export their bills to Oregonians and other Western States by seeking bankruptcy protection and avoiding repaying other power providers in the western United States for power that has literally kept the lights on in California in recent months.

My constituents and energy-sensitive businesses in Oregon are already feeling the effects of the price volatility in the west. Utilities in the northwest are facing current rate increases of 11 to 50 percent.

The customers of the Bonneville Power Administration are facing the prospect of 95 percent rate increases

beginning in October, when current contracts expire.

Much of the media attention in recent months has focused on the cost and availability of electricity in California.

But the West Coast energy market extends to eleven other western States, including Oregon, that are all interconnected by the high-voltage transmission system.

That's why avoiding bankruptcy for California's utilities is important for Oregon and other western states. From the middle of December until early February, western utilities were forced to sell their surplus power into California, with no guarantee of being paid.

If the California utilities subsequently seek bankruptcy protection, it will be Oregonians who are stuck with the bill for California's failed restructuring effort.

In fact, certain Oregon utilities are already receiving bills from California's power exchange for funds owed to the exchange by California utilities.

Other utilities are being paid 60 cents on the dollar for sales they made as far back as last November.

In addition, the Bonneville Power Administration is owed over $100 million for power sales it made into California as long ago as November 2000.

I know that certain state officials have refused to consider raising retail rates in California, claiming the State has the highest rates in the Nation.

However, let me point out just a few facts about California's energy use from publications by the U.S. Energy Information Administration:

California ranks 50th in the Nation in the amount of electricity the state can generate on a per capita basis. In fact, total generation has decreased nearly 10 percent in the last 10 years, while total consumption has increased over 10 percent.

In 1999, the average residential bill in California was actually $2.70 less than the average Oregonian's bill.

In 1999, Californians actually paid 17 percent below the national average for their monthly electricity bills.

Further, California consumers paid 32 percent less than consumers in Florida, $58.30 versus $86.34.

To put a human face on what is happening in my State, let me tell you about a letter I recently received from a small school district in my State.

Basically, they are pleading for the energy crisis to be fixed because, as a small school district, they are having to take resources away from students to pay energy bills. Their local utility has just added a 20 percent surcharge to the cost of electricity.

The district also heats a number of its school buildings with natural gas. In November 1999, the bill was $4,383.59. By November 2000, the bill to heat the same buildings was $11,942.

Another small school district in my State is concerned that its power bills may go up by $100,000. For them, that means laying off two teachers.

Oregonians area already paying for California's failed experiment in electricity restructuring. It is exacerbated by one of the worst drought years on record in the Northwest.

Our rates are going up, but we should not have to pay twice for California's mistakes by being stuck with the unpaid bills for being a good neighbor and helping California keep the lights on in recent months.

I urge my colleagues to support my amendment to the Wyden amendment.

I offer just a few concluding remarks. What Senator WYDEN and I are trying to say to our friends and neighbors in California is that Oregonians are already paying once in the form of higher energy prices because of the situation created by California's law. If there is a bankruptcy, they will pay a second time because the Bonneville Power Administration, in order to make its treasury payments, will be forced to add $100 million or more to the rates charged to Oregon, northwestern customers. This is not right.

We are simply saying, as kindly as we can, let's pay our bills. Let's be fair as neighbors.

On a personal level, I can only understand how officials of the State government of California must look with horror upon the rate cap that is there that is not allowing price signals for conservation and production to be sent. In very real and human terms, this law has created something of a Frankenstein that is roaming the lands of the Western States and it is wreaking havoc upon jobs, communities, schools, and discretionary income. It isn't right. It isn't fair.

I say to my friend from California: A regulated power market can work; a deregulated power market can work. One that is partially regulated and partly deregulated cannot work, as we are seeing to the lament of many people right now.

Our hope, Senator WYDEN's hope and mine, and others, is that we can simply say, as good neighbors, please fix this law. At the end of the day, if the ratepayers don't pay in California, the California taxpayers will pay because they are selling billions of dollars of bonds right now sucking up State surpluses that should be going to schools, should be going to streets, should be going to serve all kinds of human needs but instead are going to pay inflated power rates.

At the end of the day, it is their issue, but it affects all of us. We want simply to say, with this amendment, please fix the law. Please pay this bill because we are in it together. We know that. We care about California being prosperous. Ultimately, the citizens of California will pay. They will pay as ratepayers or they will pay as taxpayers. It is, frankly, their choice. We don't want to be hung further with this obligation. We want to pay our bills.

I thank my colleague.

Mr. WYDEN. I thank my colleague. I will make a couple of additional arguments on my time. I know colleagues want to speak, and I certainly want to give them the opportunity.

Today as we listen to this discussion, perhaps the central argument that has been advanced by some, that the amendment Senator SMITH and I offer is unwise, is the argument that somehow what we are going to do is force California utilities into bankruptcy. I will take just a minute to say why I don't think that is the case and, in fact, why I think our legislation is an incentive to bring about the kinds of negotiations that everybody on the west coast would like to see.

As our colleagues know, there is an effort underway in California to look at a comprehensive solution which presumably would involve repaying in full everyone who is owed money for sending power to California. That is about $12 billion in total. This amendment involves a few hundred million dollars owed under the emergency order plus debt owed to government agencies. The total, of course, is only a fraction of what is owed by California.

The question that is central is, How is it possible that California can go out and work on a deal to pay $12 billion in full but ensuring repayment of several hundred million dollars, as Senator SMITH and I are calling for, is going to force California utilities into bankruptcy?

I want to come back to this one last point before yielding, regarding the effort that Senator SMITH and I are pursuing. As I touched on earlier, this comprehensive approach to repaying those who are owed money under discussion in California involves about $12 billion in total. It just seemed to me to not be credible to say that California can work out a deal to pay $12 billion in full, but somehow ensuring repayment of several hundred million dollars is going to force the California utilities into bankruptcy.

My view is that other creditors truly believe they are going to be fully repaid under this $12 billion comprehensive solution. They would not risk forcing California utilities into bankruptcy. Other creditors will only be concerned about our amendment if, in fact, they don't think there is enough money to pay everybody back.

The amendment requires that Bonneville Power and other governmental agencies be repaid so that ratepayers and taxpayers don't end up holding the bag if these for-profit California utilities go into bankruptcy to avoid their debts. It does not—I repeat this—put these government agencies at the head of the line. It only keeps their current place in line to ensure that they would be repaid at some point.

All of us in this discussion are hopeful that there is not going to be a bankruptcy proceeding. I am prepared to work as one Senator—and I know Senator SMITH is as well—with our California colleagues to put in place a comprehensive agreement so that this amendment does not come into play.

I see my colleague from the State of California on the floor. I want to repeat that again. I am prepared to work with her, as I sought to do for several weeks now, to make sure that California can have every opportunity to put in place a comprehensive agreement so that this particular amendment never comes into play. But if that doesn't happen, and if there is a bankruptcy filing, and there isn't enough money to pay back everybody, then it seems to me that the people's power—the power that belongs to these public entities deserves an opportunity to get a fair shake in a chapter 11 proceeding so that our constituents are not shellacked as part of an effort to be good neighbors.

I yield the floor at this time.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. Mr. President, before I ask unanimous consent, it is obvious this has become a very partisan bill. We have people on both sides of the aisle on both sides of this issue. I guess we are making progress.

I ask unanimous consent that any votes ordered for the remainder of the evening with respect to amendments to be offered from the list submitted last Thursday by the leadership be postponed on a case-by-case basis until 10:30 a.m. on Wednesday.

I further ask unanimous consent that there be 2 minutes prior to each vote for explanation, that the votes be in stacked sequence with the first vote limited to 15 minutes and all remaining votes in the sequence limited to 10 minutes.

I further ask unanimous consent that, following those stacked votes, the Senate proceed to additional amendments and that the cloture vote be postponed to occur at 4 p.m. on Wednesday. Further, that just prior to the vote on cloture, Senator WELLSTONE be recognized to speak for up to 10 minutes.

This has been discussed with the Democratic leader and cleared on both sides of the aisle.

Mr. WYDEN. Reserving the right to object, just to ask the leader a question: Is it the leader's desire that this amendment be voted on tonight?

Mr. LOTT. This amendment would be voted on, if a vote is required, at 10:30 tomorrow morning in the stacked sequence.

Mr. WYDEN. I withdraw my reservation.

Mr. LOTT. I know there is a good deal of discussion that needs to go forward. I hope Senators on the floor will continue on this amendment and other amendments. Then, if votes are ordered, we would stack them.

I believe there would be probably three amendments that would be offered tonight, and therefore we would have probably a minimum of three stacked votes tomorrow at 10:30.

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

Mr. LOTT. Therefore, there will be no further votes this evening. I thank my colleagues for their cooperation. I look forward to listening to the debate on this particular issue. It is very interesting. I will listen and decide how to vote as the night progresses.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. REID. Will the Senator from Alaska yield for some parliamentary business for a second without losing his right to the floor?

Mr. MURKOWSKI. I am happy to do that.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I appreciate my friend yielding.

This is a very interesting issue. A lot of people want to talk on it. we have a number of people who are going to be required to offer amendments sometime tonight. We want to have some idea. There are at least two Senators waiting to offer amendments.

If I could ask my friend from Alaska, does he have a general idea how long he wishes to speak this evening?

Mr. MURKOWSKI. The Senator from Alaska will probably speak not more than 10 minutes. I am just going to comment on the amendment and the second degree offered by my two colleagues.

Mr. REID. How long does the Senator from Oregon wish to speak this evening?

Mr. WYDEN. I think we will have some back and forth. But certainly the major points I have been interested in making have been made. I am happy to be sure that we are fair to all of our colleagues and that we move expeditiously.

Mr. REID. I am not trying to cut back anybody's time. Does the Senator from California have an idea as to how much time she may take this evening?

Mrs. FEINSTEIN. I appreciate the question. I believe very strongly about this amendment, and I believe it is going to have untoward consequences and act directly contrary to what the Senator from Oregon believes. I cannot give a precise time. I have been here all day. I have done nothing else. I would like to have a chance to make the arguments against the amendment following the comments of the chairman of the Energy Committee.

Mr. REID. Just for the sake of Senators waiting around, does the Senator believe it will take an hour, hour and a half, 2 minutes, 3 minutes?

Mrs. FEINSTEIN. Probably not more than an hour.

Mr. REID. I thank the Senator from Alaska.

Mr. MURKOWSKI. Mr. President, first of all, let me share with you my own observation, with respect to the amendment and the underlying amendment by the two Senators from Oregon, that it is understandable their wanting to protect their public power entity, and to ensure that it receives just payment for power provided, to which they are entitled. What concerns the Senator from Alaska, as chairman of the Energy and Natural Resources Committee, are the questions of whether this establishes a precedent, whether this addresses the issue the Senator from Oregon has assured us would not be a factor, and whether this might force the two utilities in question into bankruptcy, with the resulting chaos that is pretty hard to predict.

What effect would it have on the California teachers' retirement fund which is invested in these utilities in the State of California? What effect might it have on the State employees' retirement? We don't know the answers to these questions. But there is a reasonable suggestion by knowledgeable people that this amendment may force a chapter 7 bankruptcy by these utilities. We all know what a chapter 7 is. It requires the utility to liquidate its assets and then the creditors stand wherever they stand.

Now to determine the intent of the amendment by the Senator from Oregon it is necessary to consider what the amendment says—it says the confirmation of a plan does not discharge a debtor. That means a bankruptcy judge cannot settle for 80 cents on the dollar, or even 50 cents on the dollar. It implies that, indeed, full payment must be made. That is what it says.

Now the question of the exceptions that go into section A of the amendment, and this covers the case of a debtor—that is, a corporation—from any debt for wholesale electric power received that is incurred by the debtor under an order issued by the Secretary of Energy. Recall that there was an order issued by President Clinton, and an order issued later by President George W. Bush, that required power-generating companies to sell into the California system; and the assumption has been, well, since the Government ordered it, and if the utilities can't pay then there is a case against the Government.

But it is rather curious, in examining that question, that was not a formal acceptance by the utilities. It was an understanding that they sell. So the question, legitimately, that counsel may ask is: Does this ensure that those power companies that sold into Pacific Gas and Electric and Southern California Edison have a case against the Government if indeed there is not some form of guarantee in that regard for repayment?

The answer seems to be nobody knows yet whether those companies that generate power and sold to Pacific Gas and Electric can get paid from the Government on the basis of that order because of a lack of formality. That is something that is going to employ a lot of lawyers for a long period of time if it comes to that.

Then it says in section (B) of the amendment: In the case of a debt owed to the Federal, State, or local government agency named in an order referred to in subparagraph (A).

Except for certain exceptions, it includes that the discharge that is initiated in the first portion is confirmed; that a plan—that would be a plan submitted by a bankruptcy judge. The bankruptcy judge cannot discharge the debt.

Let us be realistic. That just sets a criteria to ensure that Bonneville is repaid. California got Bonneville's power. Bonneville is entitled to repayment. What concerns me is what we are doing here and not knowing the implications of what we are doing.

Let us look at the history of why the California investor-owned utilities are on the brink of bankruptcy. We found the State of California designed a deregulation competition program that was flawed from the start. Hindsight is twenty-twenty, but California ordered its utilities to sell the bulk of their generation, the nonnuclear and nonhydro generation assets. California also ordered its utilities to purchase power only from the spot market, preventing them from entering into contracts to protect consumers from wholesale price spikes.

That was fine as long as there was a big spot market and there was a lot of competition, and the utilities could get very favorable rates, but that changed.

Then California did something else. They also decided to prevent the passthrough of wholesale rates into retail rates, despite the fact that this is contrary to Federal law.

I remind you California has received the power. Now they have to pay for it. The point was made, whether it be the California taxpayer or the California ratepayer, and they are the same, that somebody has to pay for this.

My colleagues should understand that the California program applies only to investor-owned utilities. Rather curious, because we have both municipally-owned and investor-owned utilities in the same competitive market. The result is potentially economic disaster for California's investor-owned utilities.

California's investor-owned utilities were required to purchase all of their on the spot market at high prices, and sell low on the State price-controlled retail market. You do not have to take Economics 101 to know if you buy high and sell low where you end up. You end up where they are: straight in bankruptcy. That is the reality of this situation.

Who is responsible? What is the solution? First, California has to act responsibly in that manner.

On the supply side, California must get over its aversion to new powerplants and transmission lines because the problem in California is having the supply necessary to meet demand. The supply is not there; yet the demand is there and it is increasing.

On the demand side, California simply has to recognize the realities and get over its unwillingness to pass through the wholesale costs. If the wholesale costs were passed through, we would not be having this debate. The utilities would not be on the brink of bankruptcy and Bonneville would have gotten paid.

Blaming others, driving utilities to the brink of bankruptcy, having the State buy power, taking over transmission lines, seizing utility assets is not going to solve California's problem. It only prolongs the agony and makes a lot of lawyers rich.

This reminds me of a recent survey which found that—this is evidently accurate—that two out of three people in California would rather have the lights go out than pay an increase in their rates. That is their choice, I guess, and if they continue to oppose powerplants and transmission lines some of them might get their wish.

There is no question that California faces a serious problem. We are sympathetic. We want to help them. We have to help them. But we have to find a meaningful solution. A Band-Aid approach that creates perhaps even more serious problems is what concerns me about this amendment.

It is not that the power suppliers the Senators from Oregon are concerned about are not entitled to payment. They are entitled to payment. They ought to be fighting for payment. Sometimes we throw the baby out with the bathwater, and I am not sure we know what we are doing here. This might force those utilities into bankruptcy, into chapter 7 where they simply take their assets and sell them off and you are a creditor like anybody else. I do not think that is what we want to happen, we want everybody to get paid.

I am also concerned about the bond holders, the teachers' retirement funds that have been invested in Pacific Gas and Electric, and Southern California Edison. Do we have a responsibility to protect them? I do not suppose we have a direct responsibility, but we have an implied responsibility. Those people invested in those utilities for retirement in good faith, and we have a responsibility to know what we are doing.

If this thing goes into bankruptcy, I just wonder if we have achieved the objective by protecting solely the merits of the PMA, in this case Bonneville.

I can understand Bonneville wanting some assurance that they are going to get paid, but I am not so sure if they the utilities go into chapter 7 that they are going to be any better off than any other creditor. I wonder if that will not create a worse situation for the utilities, the customers in California, the Federal PMAs, and the entire west coast and Pacific Northwest.

That is my concern, but I do respect and recognize the efforts of Senator WYDEN and Senator GORDON SMITH to try to address protections for their constituents. They are doing what they have every right to do.

The fact is that California got their power and cannot seem to come up with a structure to pay for it. Make no mistake about it, this particular amendment does give preference under any interpretation to Bonneville, and it may set off other creditors. For example, and I ask my good friends from Oregon, what about the natural gas suppliers that have not been paid? The amendment does not address their particular situation, but it is similar to Bonneville. They have not gotten paid for their power.

What about other electricity that came from out of state? What does that do to those folks? Are they going to come in with an amendment later and say that we took care of Bonneville to ensure Bonneville received 100-percent payment, so why shouldn't the natural gas transmission companies that also have not been paid be taken care of? That is a concern.

I wish we could find another solution. Maybe the Senator from California can enlighten us a little bit about a legitimate way to provide the Senators from Oregon the assurance that their utilities are going to get paid somehow, as well as the other creditors.

The worst possible thing would be to force into bankruptcy the utilities and have the State of California take over. I do not think Government does a very good job of running businesses, whether it is the utility business or any other business.

I stand here as chairman concerned about the implications of this proposal; that it sets a precedent for other creditors who are going to want protection and an unknown. I wish we had spokespersons here from PG&E and Southern California Edison to tell us what the results of this are going to be, not only on the citizens of California, but the ability of Bonneville to get paid so they can receive consideration for what they have provided, and that is consideration in the sense of power.

Mr. WYDEN. Will the Senator yield?

Mr. MURKOWSKI. I yield without losing my right to the floor, and I am happy to respond to a question.

Mr. WYDEN. I respond briefly to the point the Senator is making. It seems to me the Senator makes an interesting point and certainly raises some interesting legal questions.

The scenario just described is what Senator SMITH and I seek to prevent by keeping our amendment narrow, to involve government entities. In other words, if you were to broaden the scope of the amendment to all kinds of other parties, it seems to me the case would be more credible that perhaps you could have a scenario where you were driven into bankruptcy. That is why we kept it narrow. We believed keeping it narrow gave people an incentive to negotiate and increase the prospect that we wouldn't have this calamitous situation that the distinguished chairman of the committee is so correct to say would be bad for all.

Mr. MURKOWSKI. Perhaps we could have some enlightenment. I hope my good friend from California can give an indication of what the two utilities at

issue think of this. The State of California and the ratepayers and/or consumers are prepared to meet this just obligation.

I yield the floor.

Mr. REID. Mr. President, I ask unanimous consent amendment No. 93, that is at the desk and has been filed by Senator DURBIN, and amendment No. 94, filed by Senator BREAUX, be called up and put in the ordinary course of amendments that are already pending.

The PRESIDING OFFICER. Is there objection? The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I would like to check with our leadership at this time. It is not my intention to object, but I would like to have a few moments to consider the request.

Mr. REID. If I may say to my friend from Alaska, if there is a problem with it, let's go ahead and get it done. If there is a problem, I will be happy to join with him to go ahead and rescind the unanimous consent request.

Mr. MURKOWSKI. I am very—I must object.

The PRESIDING OFFICER. Objection is heard.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the distinguished Senator and Chairman of the Committee for his comments. He asked, what do the two utilities at issue think of this? I will respond and I will give the comment of Robert Glynn—the Chairman, President, and CEO of Pacific Gas and Electric. This is his company's position:

PG&E is at a critical point in sensitive negotiations to resolve an energy crisis that is affecting the Western United States. Our creditors have been willing to forbear in the interest of achieving a comprehensive solution that is fair to all parties. This amendment would change the relationship among creditors and could destabilize the fragile cooperation that currently exists. It would be a terrible irony if actions of the United States Government were responsible for tipping this situation over the edge.

That is the response of one of the major investor-owned utilities in the State of California.

I have input from the other, Southern California Edison, and I will read from a letter by John Bryson, CEO of Southern California Edison:

Unfortunately, the Wyden amendment undermines the solution being crafted within the State. The Wyden amendment would require that, in the event of bankruptcy, the power generators who have made significant profits from this crisis receive full payment before small businesses, banks and bond holders. This is not fair to the other creditors.

Furthermore, this amendment could trigger the bankruptcies that everyone is trying to avoid. Other creditors will not stand by and just watch as the amendment takes away their rights.

This is the reason I so strongly oppose this amendment. I don't believe the Senators who support this Wyden amendment have an understanding of what might happen. There is $13 billion of debt out there. It involves banks all over the United States. It involves high-tech companies, it involves cities, it involves generators, it involves natural gas companies, it involves a wide range of debtors and creditors.

Right now, the State of California has made considerable progress toward resolving this crisis. More than anything, the State needs some time to conclude those negotiations. If the State is able to conclude negotiations, this means that the debt could be paid to the utilities, and would help exactly the creditors that Senators WYDEN and SMITH want to help.

At this point, the State doesn't need the Federal Government to step in and destroy the progress they have made. I have checked with bankruptcy attorneys, and I believe I am right. This amendment is unprecedented. Never before without a hearing has the Senate of the United States decided the pecking order of creditors and debtors for a potential bankruptcy of this size. This amendment rewrites the bankruptcy rules in favor of one set of creditors. It creates an enormous incentive, as the Chairman has just said, for other creditors to now push the utilities into bankruptcy before this amendment would be signed into law. It is like a run on the bank. So without a hearing, this amendment seeks to determine winners and losers.

There is not a single debtor or creditor that I know that supports this amendment. Virtually all of them have opposed to this amendment. Even some of the people helped by the amendment are opposed. That includes the California Municipal Utilities Association, the City of Los Angeles, Duke, Enron, Calpine, and Williams who all oppose this amendment.

Let me quote from some of the letters I have received. I begin with the Governor of the State of California.

A critical component of the plan to resolve California's energy challenge is the return of our utilities to financial solvency. Our efforts have taken the form of painstaking negotiations between the State and the utilities to stabilize their financial condition. Any attempt to create a special class of debtor under Federal bankruptcy laws, may have serious repercussions to our efforts. Therefore, I am writing to express my strong opposition to Senator Ron Wyden's amendment to S. 420, the Bankruptcy Reform Act of 2001. Any actions on the part of the United States Senate might very well undermine all the progress we have made to this point in our negotiations with the utilities. This is a very delicate process and we urge the Senate to allow all parties in California to continue their work together to solve this crisis.

Now from the Electric Power Supply Association, which is the electric generating companies together:

This amendment seeks to give certain entities a favorable status in the event that California utilities fall into bankruptcy. Many companies have provided power to California's consumers and EPSA, the Electrical Power Supply Association, believes emphatically that all these entities deserve to be fully and fairly compensated. However, it is inappropriate for the Senate to try and create winners and losers in this desperate situation. Rather than orderly resolution, this legislation could lead to a premature declaration of bankruptcy and the inevitable liquidation of the California electric utilities assets in a legal free-for-all. We urge you to oppose the Wyden amendment.

Let me read from a letter submitted by a big electric generator, Williams—a generator that has profited mightily from this situation:

Williams is strongly opposed to any such proposal. In our judgment, intervention by the Congress in the California market in a way that picks winners and losers among similarly situated parties will only precipitate a deepening of the crisis. It will cripple ongoing efforts within the State to resolve the crisis and trigger an outpouring of litigation and legal maneuvering that would prolong the crisis, not resolve it. Restoring financial solvency to the local utilities is a critical element of any long-term solution to the electricity problem in California. If those utilities are forced into bankruptcy, the immediate result would be to plunge everyone involved in the crisis into protracted, uncertain, court proceedings. In our judgment, this proposed legislation will only serve to precipitate that bankruptcy. I fear the mere possibility that such an amendment might become law will leave those involved little choice but to trigger bankruptcy proceedings in order to protect their own interests.

Let me give you another generator's view, Calpine:

Under Senator Wyden's amendment, many out-of-state power producers, both public and private entities, would be made whole under any eventual utility bankruptcy, while QF's, forced to sell by virtue of contracts rather than a federal emergency order, would likely be left with little or no recourse. Some of the cleanest, most environmentally desirable sources of energy would be severely disadvantaged by this action.

While on fairness grounds alone, we believe the Wyden amendment should be defeated, perhaps more importantly, we think the amendment would only worsen the California energy crisis. Creditors have shown remarkable patience to date, giving California state officials an opportunity to seek a solution that avoids utility bankruptcy. This amendment, however, could trigger an immediate bankruptcy filing in order for the filing to precede enactment of the legislation.

So you see, just by passing this, what we do is, to all the community out there that is owed money, we trigger their urge to move the companies into bankruptcy. That would be a huge mistake.

This letter is signed by the vice president of the company.

Mr. President, I would like to read from a statement by the Edison Electric Institute which, as I understand it, represents most electric utilities with the exception of Pacific Gas and Electric:

I am writing to express our concerns regarding a proposed amendment to S. 420, the ''Bankruptcy Reform Act of 2001'', that may be offered by Senator Wyden for himself and Senators Baucus and Murray. While there appear to have been several iterations of that amendment, the thrust appears to favor public power electricity suppliers in a utility bankruptcy proceeding by providing that debts to them for electricity are not dischargeable. The amendment also applies to debts for wholesale electric power received pursuant to the emergency order issued by

the Secretary of Energy under section 202(c) of the Federal Power Act. This amendment raises large public policy concerns by affecting all utilities as well as those involved in bankruptcy proceedings.

First, it primarily advantages government-owned utilities who already are uniquely able to sell power at rates which are not subject to regulation by FERC. It makes no sense to give a bankruptcy preference to the only generators whose rates are unregulated. . . .

This amendment would undermine efforts underway to address the current electricity situation in California. All parties, including the Governor, the utilities and creditors, are trying to work out an agreement. Passage (as well as concern about the possible passage) of this amendment could disrupt these efforts and lead to immediate initiation of bankruptcy proceedings.

Mr. President, this is not me saying this. These are the major creditors and debtors in this situation, all of whom are saying that once you give preference to one, the others will trigger bankruptcy to protect their rights. And, in protecting their rights, it will push these utilities into bankruptcy because that is the only way they can do it.

If you push these utilities into bankruptcy, I believe it is likely they will go into chapter 7—not 11 or 13, but 7, and, therefore, they will go out of business altogether. So it is a very dangerous thing to do.

The surprising thing is we have this amendment on the floor, in view of the fact that virtually all of the major creditors and debtors oppose it because they know exactly what is going to happen.

We also have unions. I would like to have printed in the RECORD the International Brotherhood of Electrical Workers' letter. They represent over 800,000 electrical workers, who also believe the effect this would have would be to trigger a bankruptcy.

I ask unanimous consent these letters in their entirety be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

CALPINE,
1200 18TH STREET, NW, SUITE 850,
Washington, DC, March 12, 2001.

Hon. DIANNE FEINSTEIN,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing to urge your opposition to an amendment that will be offered by Senator WYDEN to the bankruptcy legislation currently being considered by the full Senate. It is my understanding that Senator WYDEN intends to offer an amendment that would ensure that public power producers and others who sold power to California under the Federal emergency order are made whole in any bankruptcy proceeding, thus allowing these select creditors to be treated preferentially.

As you may know, most of Calpine's power plants in California are ''qualifying facilities,'' commonly referred to as QFs. QFs are cogeneration and renewable energy facilities, all located in the state of California, which provide power to the California utilities under contracts. Despite the contractual obligations of the utilities, the QFs have not been paid for several months and today over $1 billion is owed collectively to these in-state companies.

Under Senator WYDEN's amendment, many out-of-state power producers, both public and private entities, would be made whole under any eventual utility bankruptcy, while QFs, forced to sell by virtue of contracts rather than a Federal emergency order, would likely be left with little or no recourse. Some of the cleanest, most environmentally desirable sources of energy would be severely disadvantaged by this action.

While on fairness grounds alone, we believe the Wyden amendment should be defeated, perhaps more importantly, we think the amendment would only worsen the California energy crisis. Creditors have shown remarkable patience to date, giving California state officials an opportunity to seek a solution that avoids utility bankruptcy. This amendment, however, could trigger an immediate bankruptcy filing in order for the filing to precede enactment of the legislation.

I urge you to do everything possible to help your colleagues understand the very negative consequences of this amendment for clean, renewable sources of energy. Thank you for your assistance and please let me know if I can provide you with any additional information.

Sincerely,

JEANNE CONNELLY,
Vice President—Federal Relations.

EDISON ELECTRIC INSTITUTE,
Washington, DC, March 13, 2001.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing to express our concerns regarding a proposed amendment to S. 420, the ''Bankruptcy Reform Act of 2001'', that may be offered by Senator WYDEN for himself and Senators BAUCUS and MURRAY. While there appear to have been several iterations of that amendment, the thrust appears to favor public power electricity suppliers in a utility bankruptcy proceeding by providing that debts to them for electricity are not dischargeable. The amendment also applies to debts for wholesale electric power received pursuant to the emergency order issued by the Secretary of Energy under section 202(c) of the Federal Power Act. This amendment raises large public policy concerns by affecting all utilities as well as those involved in bankruptcy proceedings.

First, it primarily advantages government-owned utilities who already are uniquely able to sell power at rates which are not subject to regulation by FERC. It makes no sense to give a bankruptcy preference to the only generators whose rates are unregulated.

Second, the amendment appears to have little benefit for generators which are not publicly-owned, even though their rates are fully subject to FERC regulation. Many of these suppliers sold into the California market voluntarily without being compelled to by the DOE order and most of their sales took place both before and after the DOE order was in effect. Thus, most of their sales would not be covered.

Third, the amendment would have long term impacts increasing all utilities' cost of capital by downgrading the protections afforded to lending institutions and investors. Such institutions lent money to California utilities to allow them to continue to provide service to consumers in California despite the retail rate freeze. Legislating reductions in a lender's and an investor's bankruptcy protections may lead investors to increase the cost of capital to all utilities to compensate for the added risk. This would result in higher costs to all consumers. Since significant amounts of new capital are needed to fund necessary expansions of generation and transmission facilities, this would have a negative impact on the entire economy.

Fourth, this amendment would undermine efforts underway to address the current electricity situation in California. All parties, including the Governor, the utilities and creditors, are trying to work out an agreement. Passage (as well as concern about the possible passage) of this amendment could disrupt these efforts and lead to immediate initiation of bankruptcy proceedings.

Finally, this amendment would do nothing to solve the underlying problem that retail rates in California are frozen at a level far below the cost of wholesale power purchases. It does nothing to provide for new supplies of electricity, does nothing to clarify existing provisions of the bankruptcy code which may limit the authority of a bankruptcy judge to increase rates and in effect merely ''reshuffles the deck chairs'' in the California electricity crisis.

We urge you to vote against the amendment.

Sincerely,

THOMAS R. KUHN.

THE WILLIAMS COMPANIES,
ONE WILLIAMS CENTER,
Tulsa, Oklahoma, March 12, 2001.

Hon. DIANNE FEINSTEIN,
U.S. Senate, 331 Hart Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: I understand that Sen. WYDEN may offer an amendment to the bankruptcy legislation before the Senate that would adversely affect the California electricity situation. I understand this amendment would give preferential standing in any bankruptcy proceeding to private or public providers of electricity who were required to sell power pursuant to the Department of Energy orders. That is an illogical outcome when private providers within the state may have provided electricity outside of the DOE order and other creditors may be equally deserving of payment.

Williams is strongly opposed to any such proposal. In our judgement, intervention by Congress in the California market in a way that picks winners and losers among similarly situated parties will only precipitate a deepening of the crisis. It will cripple ongoing efforts within the State to resolve the crisis, and trigger an outpouring of litigation and legal maneuvering that would prolong the crisis, not resolve it.

Williams is a national energy company who has been an active participant in the California market. Williams dispatches as much as 4,000 megawatts of power in the Los Angeles region, although the amount available on any given day may be less, depending on a variety of factors. This represents about 40 percent of the independent generating capacity in the Los Angeles area and about 9 percent of the available in-state generation that is available to the independent system operator.

Restoring financial solvency to the local utilities is a critical element of any long-term solution to the electricity problem in California. If those utilities are forced into bankruptcy the immediate result would be to plunge everyone involved in the crisis into protracted, uncertain court proceedings. In our judgement, this proposed legislation will only serve to precipitate that bankruptcy. I fear the more possibility that such an amendment might become law will leave those involved little choice but to trigger bankruptcy proceedings in order to protect their own interests.

In our view, a far more constructive course is for those involved to work in good faith to find a comprehensive solution to the problem. Congressional encouragement of that

approach would be welcome, but partial solutions, especially those that would increase the probability of litigation, should be rejected.

At the end of the day, if recovery efforts do fail and there is the unfortunate outcome of a bankruptcy of one or more of the California utilities, then leaving the existing provisions of law in place will produce the fairest outcome. Adoption of this amendment would create subsets of rights among similarly situated parties with unpredictable and quite possibly inequitable results.

Sincerely,

KEITH E. BAILEY.

TURN,
THE UTILITY REFORM NETWORK,
San Francisco, CA, March 12, 2001.

Re: Wyden-Baucus Amendments to S. 240—TURN Opposition

SENATOR DIANE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: This letter is written to express TURN's opposition to the Wyden-Baucus Amendment to S. 420. The amendment would give preferential treatment to wholesale power generators, who sold electricity into California's severely dysfunctional market. By making debt incurred by utilities for wholesale purchase of electricity non-dischargeable in the event of utility bankruptcy, the legislation would unfairly favor generators at the expense of ratepayers. During the worst part of the energy crisis, wholesale generators, both public and private, realized windfall profits in California. There is no justification to protect 100 percent of these profits at the expense of ratepayers and other creditors. Even power that was dispatched subject to a federal order was sold at prices way in excess of the just and reasonable rates that are required by federal law. Why should Federal legislators protect windfall profits at the expense of other creditors who were loaning money to the utilities to purchase power during the same emergency?

We are afraid that this kind of legislation will harmfully impact whatever negotiations are happening at the state level to strike a balance that would cause all players to make some sort of sacrifice so that we can all move forward. Let the bankruptcy laws remain status quo ante in order to allow the settlement of all claims going forward. The Senate should not modify laws that were in place during this period in order to choose winners or losers in California's energy debacle. Either there will be a settlement at the state level or the utilities will be forced to bankruptcy. If bankruptcy is the eventual solution, let the federal bankruptcy judge, applying the laws that were in place during the crisis, resolve the equities. Senate intervention at this point influences the negotiating dynamics unfairly. Such intervention could actually hasten bankruptcy if other creditors perceive an advantage to forcing early involuntary bankruptcy. This could happen if bankers or commercial paper holders believe they have more opportunity to recover their losses by filing before the effective date of any legislation that could compromise their claims.

Sincerely,

NETTIE HOGE,
Executive Director.

EDISON INTERNATIONAL,
March 12, 2001.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing to you to express Edison International's opposition to an amendment from Oregon Senator Ron Wyden to the Bankruptcy Reform Act, S. 420.

As you know, California and the western states have been hard hit by an electricity shortage and dramatic price spikes for the last eight months. Edison has incurred an undercollection of nearly $5.5 billion procuring wholesale power at prices that greatly exceed retail rates in California. In mid-January, after we ran out of credit and stopped payment on most of our outstanding debt, the state stepped in to pick up the funding shortfall for daily power purchases. The state has spent an additional $3 billion in electricity purchases so far.

At this moment, California Governor Gray Davis is trying to craft a solution that will get the system working again. Those who hold utility debt, including banks, pension funds, municipalities, retirees and other bondholders, small businesses and electricity generators, have been patient, working with us to avert utility bankruptcy while the state works to resolve these very difficult issues.

Unfortunately, the Wyden amendment undermines the solution being crafted within the state. The Wyden amendment would require that, in the event of bankruptcy, the power generators who have made significant profits from this crisis receive full payment before small businesses, banks and bondholders. This is not fair to the other creditors.

Furthermore, this amendment could trigger the bankruptcies that everyone is trying to avoid. Other creditors will not stand by and just watch as the amendment takes away their rights.

It is Edison's sincerest hope that a comprehensive solution will be crafted that will allow us to make our creditors whole. The state is currently in the midst of delicate negotiations with generators and utilities. The Wyden amendment should not be allowed to disrupt this process, and we thank you for your efforts to oppose it.

Sincerely,

JOHN E. BRYSON,
Chairman of the Board and Chief Executive Officer.

PG&E CORPORATION,
San Francisco, CA, March 8, 2001.

DIANNE FEINSTEIN,
U.S. Senate, 331 Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: This letter addresses the proposed Wyden amendment which would modify the relationship among creditors in some bankruptcies. We are in opposition to this amendment.

PG&E is at a critical point in sensitive negotiations to resolve an energy crisis that is affecting the Western United States. Our creditors have been willing to forbear in the interest of achieving a comprehensive solution that is fair to all parties. This amendment would change the relationship among creditors and could destabilize the fragile cooperation that currently exists.

It would be a terrible irony if actions of the United States Government were responsible for tipping this situation over the edge.

Sincerely,

ROBERT D. GLYNN,
Chairman, Chief Executive Officer and President.

ELECTRIC POWER SUPPLY ASSOCIATION,
Washington, DC, March 12, 2001.

Hon. DIANNE FEINSTEIN,
The Senate Committee on Energy and Natural Resources, Senate Hart Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: The Electric Power Supply Association (EPSA) is the national trade group representing competitive power suppliers, both developers of power projects and marketers of electric energy. Our members are active nationally and include many of the companies that produce and market power for the California wholesale market. Few have a greater stake in the orderly and effective resolution of California's electricity crisis than these companies.

We are writing to express our deep concern and opposition to an amendment that may be offered by Senator Ron Wyden to the bankruptcy legislation now before the Senate. Our fear is that this amendment could precipitate a financial crisis and exacerbate the already precarious situation in the West.

This amendment seeks to give certain entities a favorable status in the event that California utilities fall into bankruptcy. Many companies have provided power to California's consumers and EPSA believes emphatically that all these entities deserve to be fully and fairly compensated. However, it is inappropriate for the Senate to try and create winners and losers in this desperate situation. Rather than orderly resolution, this legislation could lead to a premature declaration of bankruptcy and the inevitable liquidation of the California electric utilities' assets in a legal free-for-all.

We urge you to oppose the Wyden amendment. EPSA is prepared to assist you in structuring a more effective remedy to the energy and financial crisis in western wholesale electric power markets.

Sincerely,

LYNNE H. CHURCH,
President.

GOVERNORS OFFICE,
STATE CAPITOL,
Sacramento, CA, March 13, 2001.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Washington, DC.

DEAR DIANE: I want to express my sincere appreciation for your efforts on behalf of California as we work to solve the electricity challenge we inherited.

We have taken immediate steps to build new power plants. Not one major power plant was built during the 12 years before I was elected. Starting in April, 1999, we have approved 9 plants, with 6 plants under construction, and with 3 plants on-line by this summer. Moreover, under my emergency authority, I acted to accelerate and incentive the development of new generation, including distributed generation and peaking facilities, with an aggressive but attainable goal of putting 5000 MW of new power on-line this summer, and another 5000 MW by the summer of 2002.

Today, I announced a major energy conservation initiative, the 20/20 Rebate Program, which will reward consumers with a 20 percent reduction in their summer 2001 electricity bill if they reduce their use by 20 percent or greater. This program will be the centerpiece of $800 million in energy conservation programs including a $30 million public education program which features conservation messages in 12 media markets throughout California. The state, itself, has initiated electricity conservation programs which have produced an average savings of 8 percent, increasing to over 20 percent of its use during stage 2 and 3 alerts.

A critical component of the plan to resolve California's energy challenge is the return of our utilities to financial solvency. Our efforts have taken the form of painstaking negotiations between the state and the utilities to stabilize their financial condition. Any attempt to create a special class of debtor under federal bankruptcy laws may have serious repercussions to our efforts.

Therefore, I am writing to express my strong opposition to Senator Ron Wyden's amendment to S. 420, the Bankruptcy Reform Act of 2001. Any actions on the part of the United States Senate might very well

undermine all the progress we have made to this point in our negotiations with the utilities. This is a very delicate process and we urge the Senate to allow all parties in California to continue their work together to solve this crisis.

Sincerely,

GRAY DAVIS.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
Washington, DC, March 13, 2001.

Hon. DANIEL K. AKAKA,
U.S. Senate, SH–720 Senate Hart Office Building, Washington, DC.

DEAR SENATOR AKAKA: We understand the Senate will be voting on an amendment to the Bankruptcy Reform Act (S. 240) today, submitted by Oregon Senator RON WYDEN. The International Brotherhood of Electrical Workers (IBEW) has a number of concerns with this amendment and urges your opposition.

The Wyden Amendment would make any debts incurred under a federal order imposed during the power crisis in California non-dischargeable in a bankruptcy proceeding. Inevitably, power suppliers would be given preference above other creditors, pushing workers' interests further down the ladder. This looming threat also adds pressure to bargaining efforts during contract negotiations, putting our members at higher financial risk.

It is understandable that *public* agencies who supplied power during the crisis want guarantees for their ratepayers, and should, at just and reasonable rates that cover the cost of producing the power. However, privately owned suppliers took part in predatory behavior during the spot market price spikes, selling electricity at 1,000–3,000 percent profit margins. Should these suppliers who inflated their power prices be the priority in a bankruptcy proceeding? Should small bondholders, workers, pension trust funds and other creditors be left to pick up the crumbs?

Governor Gray Davis is working tirelessly to resolve the electricity deregulation disaster in California. We are hoping the state's solution will avert utility bankruptcy and protect workers who could lose their jobs if these delicate negotiations are not successful. We believe the Wyden Amendment could disrupt this fragile process.

On behalf of over 800,000 IBEW members and their working families, we urge you to ''OPPOSE'' The Wyden Amendment to S. 420.

Sincerely,

EDWIN D. HILL,
International President.
JERRY J. O'CONNOR,
International Secretary-Treasurer.

Mrs. FEINSTEIN. Mr. President, there is also a consumer organization, one that I am familiar with because while I was Mayor of San Francisco I had occasion to work with them. This group is The Utility Reform Network. In their letter they state:

We are afraid this kind of legislation will harmfully impact whatever negotiations are happening at the State level to strike a balance that would cause all players to make some sort of sacrifice so we can all move forward.

I have offered the testimony of the Governor of the State of California, who states that, yes, Senator WYDEN's amendment would interfere with the negotiations that are going on today. The letter goes on to say:

Let the bankruptcy laws remain status quo ante, in order to allow the settlement of all claims going forward. The Senate should not modify laws that were in place during this period, in order to choose winners or losers in California's energy debacle. Either there will be a settlement at the State level or the utilities will be forced to bankruptcy.

That is certainly correct.

If bankruptcy is the eventual solution, let the Federal bankruptcy judge, applying the laws that were in place during the crisis, resolve the equities.

I could not agree more, Mr. President.

I mentioned that right now the State of California is working diligently to ensure the utilities can make their payments. The State is negotiating to purchase the transmission assets of both of the investor-owned utilities in the State. This will provide an infusion of revenue into the ailing utilities that will enable them to begin to repay their creditors. If this amendment should trigger a run on the bank and generators or banks or other creditors find the only way they can protect their rights is to force a bankruptcy, the State of California will not be able to complete its plan to buy these transmission assets and have the utilities pay their debts.

I am very hopeful this situation will be resolved in short order. The State has already come to preliminary agreements, and these agreements will likely be finalized within the next few months. California's creditors are also hopeful that this process will improve the chances that they will ultimately be repaid for all the debt they have incurred.

I believe the public entities will be repaid. However, let me just say that some in the Northwest have charged that Bonneville Power Administration (BPA) has been forced to drain Federal reservoirs to supply power to California. I want to correct the record because those charges are mistaken.

In December 2000, when the Secretary of Energy, Bill Richardson, issued the emergency order to Western utilities to sell power to California, BPA helped, but it helped in a way that also benefits the Northwest. It was an energy capacity exchange. In other words, they helped California meet their peak loads. And California, by that agreement, sent twice the energy back, using their excess capacity at night. So that helped BPA keep more water in the reservoirs when BPA has stated they really needed it.

I am not critical of Senators WYDEN and SMITH for trying to protect their State. But what I am saying is, I have read almost a dozen letters from debtors and creditors intimately involved in the negotiations, all of whom oppose this. They do so because they believe it may well trigger a bankruptcy.

I have read from the utilities involved—Southern California Edison, Pacific Gas and Electric—who also say, wouldn't it be ironic if the Federal Government were inadvertently to trigger a bankruptcy?

I say to you that to move an amendment such as this at the time of critical negotiations is a huge mistake. I, for one, do not want to be responsible should it truly trigger both of these large investor-owned utilities to go into bankruptcy.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I want to respond just for a few minutes to my colleague from California. I think she knows I admire her enormously. I think the RECORD will show the distinguished Senator from California and I agree on a vast majority of the issues that come before the Senate.

What is troubling about the argument that is advanced before the Senate tonight is that after State officials in California botched the job of deregulation—by the way, this was not Senator FEINSTEIN; Senator FEINSTEIN did not do that, but State officials in California botched the job—now the message is, the public entities and those responsible to taxpayers are just supposed to trust folks in California to hope everything is going to work out. Given the hardship we are facing in the Pacific Northwest, that is just a little much to swallow; it is hard for this Senator to swallow, despite the fact that I have great respect for my colleague from California.

I think tonight we have seen—certainly over the course of the last hour—that there is a sharp difference of opinion between California's two Senators on this matter. Senator BOXER worked with us in close consultation. She is in support of this amendment. She believes it is going to help bring folks together in the West for a comprehensive solution.

I think what she is saying is she does not want her State to be a scofflaw. She does not want her State to, in effect, be a deadbeat in the course of this whole discussion as the State of California asks the distinguished new Senator from Virginia to be part of an effort—and myself and others—to come up with a comprehensive solution to this question.

The distinguished Senator from California started her presentation by reading from some letters from private utilities in California and, in particular, focused on the fact that Southern California Edison is in opposition to this amendment.

The fact is, the Washington Post noted this recently. Southern California Edison actually passed along nearly $5 billion in net income to its parent, Edison International, which used the money to pay dividends to its shareholders and to repurchase its own stock.

So what you have is a private company, Edison International, that my colleague cites tonight as the reason the Senator from Virginia and other colleagues should vote against the bipartisan Smith-Wyden amendment because we are individuals who ought to be concerned about Southern California Edison first.

I want Southern California Edison to get a fair shake. That is why we made very clear in our amendment that no one would get a preference if, in fact, you had the worst case scenario of an actual bankruptcy unfolding in the State of California. I just do not want Southern California Edison and a handful of these private interests to get a free ride. I do not know how it passes the smell test. I think this is why Senator BOXER agrees with us on this matter.

How we can say to the people of the Pacific Northwest, who, in effect, got these glowing thank-you letters from Senator FEINSTEIN, that somehow they are not going to be repaid, even though it involves only a few hundred million dollars, may not be a big deal to California, but it is a huge deal to the ratepayers in our area. We are concerned. We always have to make debt repayment to the Federal Government. These sums make a real difference.

So I am very hopeful, as our colleagues overnight reflect on the debate that is being held on the floor of the Senate, that they will stand with Senator SMITH, SENATOR BOXER, and myself rather than with Southern California Edison, which has been busy sending billions of dollars overseas, when all the rest of us on the west coast have been trying to figure out how to get through a very difficult situation.

Mention was made of the fact that this amendment requires out-of-State generators to be paid in full before other creditors are paid. Our amendment does no such thing. It does no such thing. It only deals with a fraction of the debt that is owed by California utilities. It only requires the debt be repaid at the end of a bankruptcy proceeding when a plan of reorganization is put in place. If the worst case scenario takes place, which we believe our legislation helps to avert, then we will have a measure of fairness in the consideration of how to handle that situation.

Senator FEINSTEIN also quoted from out-of-State generators. These are the companies that the Governor of California has called profiteers. Those are not my words; those are the words of the Governor of California.

So I am sure my colleagues, by this point, are awfully confused about the back and forth. But I do think Senator FEINSTEIN has framed the debate well. On one side are the interests of those directly responsible to taxpayers, those who have no shareholders, nobody who can absorb the cost, nobody who can be involved in some kind of sleight-of-hand arrangement where you can send billions of dollars overseas.

The people who are supporting Senator BOXER, Senator SMITH, and myself, and others, do not have those kinds of shareholders involved in those multibillion-dollar deals that were reported in the Washington Post.

They are standing up for taxpayers. They are the ones who would be helped by this bipartisan amendment. It is very clear, on the basis of the letters that have been read in opposition, that on the other side are the interests of these private utilities.

I ask unanimous consent that the Washington Post article outlining Southern California Edison's program to send $5 billion overseas be printed in the RECORD.

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

[From the Washington Post, Jan. 31, 2001]

CALIFORNIA'S UTILITY SENT PARENT FIRM $4.8 BILLION—AUDIT RESULTS ANGER CONSUMER GROUPS

(By William Booth and Rene Sanchez)

LOS ANGELES, Jan. 30—The first of several audits to be released by the state regulators said that one of California's two nearly bankrupt utilities, Southern California Edison, legally passed along nearly $5 billion in net income to its parent, Edison International, which used the money to pay dividends to its shareholders and to repurchase its own stock.

The audit, released Monday night by the California Public Utilities Commission, also showed that Southern California Edison is now broke and so strapped for cash it cannot keep buying electricity at rates higher than it can pass along to consumers.

the $4.8 billion was, in part, proceeds from the sale of the Southern California Edison's power plants, which the utility was required to sell under California's 1996 deregulation plan. Deregulation here sought to break up the utility monopolies and open the state up to free-market forces.

Consumer advocates—and some elected officials—reacted angrily to the audit, accusing the utilities of pleading poverty and begging for financial assistance from the state to avoid bankruptcy.

''Basically, they took the money and ran,'' John Burton, a Democratic leader of the state Senate from San Francisco, told reporters. ''Had they not done that they would not be in the financial problem they are in. If ratepayers bail them out, ratepayers should get something in return, like power lines or something.''

But officials with the utilities said their critics are playing politics and misinterpreting their books. Tom Higgins, senior vice president at Edison International, said: ''There's been no profit, no windfall. This is the recovery of capital investment.''

The past profits and current solvency of the state's two struggling utilities are central to California's energy crisis. Most experts agree that the state is suffering from soaring prices and its 15th day of emergency energy rationing because of a failed and dysfunctional deregulatory plan, which allowed wholesale energy prices to soar while capping the rates utility companies could charge consumers. In the past six months, the utilities have gone bust, while wholesale power producers have reaped huge profits.

California is fast running out of time to solve its immediate energy crisis. The state already has used up the first $400 million in emergency appropriations for electricity purchases. The Legislature is considering bills to make the state a major buyer of power—and to pass along possible steep increases in costs to consumers. Gov. Gray Davis (D) worked through the weekend trying to hammer out a longer-range plan, but so far the Legislature has passed only emergency measures and decrees—and no long-term solutions.

Higgins, the Edison International executive, said Southern California Edison was required to sell off its plants after deregulation in 1996, and that it did so—mostly to out-of-state companies that are now the wholesale suppliers of California's electricity. The utility sold off its gas and coal-fired plants, but retained its nuclear and hydroelectric facilities.

The money they got from plant sales, Higgins said, went to pay off the banks that loaned them the cash to build the generating stations and to repay investors and shareholders who also put money into plant construction. The transfer of money occurred from 1996 through last November.

''It's like you have a house and mortgage and you sell the house and you recover your initial investment and then pay off the mortgage,'' Higgins said.

Another audit of Pacific Gas and Electric Co., the other struggling utility, will be released within days. That results are expected to be similar.

''The only reason this would be controversial is that the consumer groups are trying to rewrite history,'' said John Nelson, a spokesman for PG&E.

Nelson said his utility did the same thing as Southern California Edison—it sold plants, paid off loans and sent the rest to its holding company, PG&E Corp. He would not disclose exactly how much was transferred, but said it is safe to assume a figure of several billion dollars.

Consumer advocates around California, however, said it did not matter that the utilities were returning investments to their shareholders, a practice that no one has asserted is financially improper or illegal. Today, they began lobbying state lawmakers to scrap an emerging legislative plan that would cover much of the utilities' purported debts with billions of dollars in publicly financed bonds.

''This confirms what we've been saying all along,'' said Matt Freedman, a director of the Utility Reform Network. ''Edison is not being straight with the public or the Legislature about the extent of its debt.''

Freedman also said that the audit shows that in recent months Edison has been selling some of its own generating power back to itself at high prices on the open market, then claiming both profit and debt.

''It's like a laundering scheme,'' he said.

Michael Shames of the Utility Consumers Action Network said the audit could significantly influence the fastmoving legislative debate on the state's energy crisis. He said that while it was not illegal for the utilities to transfer money to their parent companies, ''the question is, 'Was it prudent?' ''

But Paul Hefner, a spokesman for Assembly Speaker Robert Hertzberg (D), said there are no substantive new revelations in the Edison audit and that the Legislature is proceeding with a plan outlined last Friday that would cover much of the utilities' debts in exchange for the state receiving warrants to buy stock in the companies.

''I don't know that it changes the landscape at all,'' Hefner said, referring to the audits. ''All along we've been saying we're not going to do this and get nothing back. We're driving as hard a bargain as we can.''

Mr. WYDEN. On the other side of our amendment are exactly those kinds of interests, those kinds of powerful private interests. Various letters have been read into the RECORD tonight. Yes, those who oppose us are utilities that transferred billions of dollars to the shareholders and parent companies and, frankly, don't seem to think that there is anything wrong with doing that while stiffing Bonneville Power, the western power administration,

itty-bitty municipal utilities, and others.

The reason we have been able to put this bipartisan amendment together is that we have fashioned a narrow approach to ensure that these public entities get a fair shake. We have fashioned an approach that is not going to put in peril a comprehensive effort in the State of California to deal with this power situation. In fact, we believe that it will create incentives to actually bring parties together and to avert the kind of doomsday scenario that all of us in the Senate want to prevent.

The lines are drawn very well. On one side you have Senator Smith and Senator BOXER and myself, and on the other side you have Southern California Edison and those representing a handful of multibillion-dollar private interests that were intimately involved in creating this problem in the first place.

I don't think the Senate ought to be asked, in effect by those who botched the job at the State level several years ago, to just trust them. We ought to take a practical step such as this that is going to bring the parties together.

Senator FEINSTEIN said: Well, this is without precedent. The fact is, the botched job that California did on energy deregulation is what is without precedent. If we are going to talk about setting precedents this evening, what we ought to talk about is the fact that in the State of Virginia they didn't go about the task of deregulating energy this way. Certainly, we didn't do it that way in my State. We believe in markets. We don't believe in saying, well, you can do one thing for wholesale and another thing for retail, but if everything doesn't work out, come to the Senate and if somebody tries to make sure you get a fair shake when you are sending power under Federal order, we will fight it.

We don't say things such as that. We say you have to be fair to all parties. That is why I am particularly pleased to have the support of Senator Smith and Senator BOXER.

Mr. REID. Mr. President, I ask unanimous consent that the votes occur with respect to the Carnahan amendment No. 40 and the Smith of Oregon amendment No. 95, and the Wyden amendment No. 78, as amended, if amended, and the Wellstone amendment No. 36, as modified, at no later than 10:40 a.m. and that at 10:30 a.m. on Wednesday, Senator WELLSTONE be recognized for up to 10 minutes to be followed by the stacked votes as provided in the earlier agreement.

I further ask unanimous consent that Senator BINGAMAN, prior to the vote on the Wyden amendment, be recognized himself for 10 minutes.

Mr. WYDEN. Reserving the right to object for the purpose of asking my colleague a question, I want to make sure I understand my colleague. The first vote on the amendment involving this matter with Pacific Northwest and California would be on the Smith of Oregon perfecting amendment; is that correct?

Mr. REID. The Senator is correct.

Mr. WYDEN. I appreciate that.

Mr. GRASSLEY. Reserving the right to object——

Mr. REID. If I could say to my friend, it was just brought to my attention that there could be some parliamentary move, for example, to table the Smith amendment and that, of course, would not be in keeping with what the Senator just said. The intent is to have a vote on or in relation to the Smith amendment first. That would be the regular order.

Mr. WYDEN. I did not understand the comments of my distinguished colleague.

Mr. REID. In relation to the question asked by the Senator from Oregon, the Smith amendment is the first amendment that will be called up. Someone could move to table that amendment. I am sure the Senator understood that.

Mr. WYDEN. I understand that.

Mr. REID. We will vote on or in relation to the Smith amendment first.

Mr. WYDEN. I thank my colleague.

Mr. GRASSLEY. Reserving the right to object, we have an objection to part of this on our side, that the Wellstone amendment not be taken up because we don't have the modification yet.

Mr. REID. I say to my friend from Iowa, the modification has been prepared. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the votes occur with respect to the Carnahan amendment, No. 40, and the Smith of Oregon amendment, No. 95, and the Wyden amendment, No. 78, as amended, at approximately 10:45 a.m. on Wednesday, and that following the votes, the Senate resume consideration of the Wellstone amendment, No. 36.

I further ask consent that at 10:30 a.m. Senator BINGAMAN be recognized for up to 10 minutes for debate and Senator HAGEL be recognized to speak for up to 5 minutes.

I further ask consent that no second-degree amendments be in order to any of the above-listed amendments, where applicable, and there be up to 5 minutes prior to each vote for explanation.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, this has been a long, arduous task. I appreciate the Senator from Oregon being so patient throughout the day. But there are two Senators who came here, Senators DURBIN and BREAUX, who have filed amendments in a timely fashion. There are 10 other amendments at the desk. Before I agree to this, I want these amendments just to be called up. It doesn't give them a right to vote or anything, except it is in the stack of these amendments.

These two gentlemen were here tonight and waited. I told them I would offer the amendments for them. I ask unanimous consent that I be allowed to call those two amendments up, No. 93 and No. 94.

The PRESIDING OFFICER. Is there objection to the request proposed by the Senator from Nevada?

Without objection, it is so ordered.

AMENDMENTS NOS. 93 AND 94

The PRESIDING OFFICER. The clerk will report the amendments. The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. DURBIN, proposes an amendment numbered 93.

The Senator from Nevada [Mr. REID], for Mr. BREAUX, for himself, Mr. SPECTER, Mrs. LINCOLN, Mr. JOHNSON, Ms. LANDRIEU, Mr. CLELAND, Mrs. Feinstein, and Mr. NELSON of Nebraska, proposes an amendment numbered 94.

The amendments are as follows:

(The text of amendment No. 93 is printed in today's RECORD under ''Amendments Submitted.'')

AMENDMENT NO. 94

(Purpose: To provide for the reissuance of a rule relating to ergonomics)

At the appropriate place, insert the following:

SEC. ___. AUTHORITY TO ISSUE A RULE RELATING TO ERGONOMICS.

(a) FINDINGS.—Congress makes the following findings:

(1) The National Academy of Sciences issued a report entitled ''Musculoskeletal Disorders and the Workplace—Low Back and Upper Extremities'' on January 18, 2001. The report was issued after the Occupational Safety and Health Administration promulgated a final rule relating to ergonomics (published at 65 Fed. Reg. 68261 (2000)).

(2) According to the National Academy of Sciences, musculoskeletal disorders of the low back and upper extremities are an important and costly national health problem. An estimated 1,000,000 workers each year lose time from work as a result of work-related musculoskeletal disorders.

(3) Conservative estimates of the economic burden imposed by work-related musculoskeletal disorders, as measured by compensation costs, lost wages, and lost productivity, are between $45,000,000,000 and $54,000,000,000 annually.

(4) Congress enacted the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) to ''assure so far as possible every working man and woman in the Nation safe and healthful working conditions,'' and charged the Secretary of Labor with implementing the Act to accomplish this purpose.

(5) Promulgation of a standard on workplace ergonomics is needed to address a serious workplace safety and health problem and to protect working men and women from work-related musculoskeletal disorders. Any workplace ergonomics standard should take into account the cost and feasibility of compliance with such requirements and the sound science of the National Academy of Sciences report.

(b) AUTHORITY TO ISSUE RULE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, not later than 2 years after the date of enactment of this Act, the

Secretary of Labor shall, in accordance with section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), issue a final rule relating to ergonomics. The standard under the final rule shall take effect not later than 90 days after the date on which the rule is promulgated. The standard shall—

(A) address work-related musculoskeletal disorders and workplace ergonomic hazards;

(B) not apply to non-work-related musculoskeletal disorders that occur outside the workplace or non-work-related musculoskeletal disorders that are aggravated by work; and

(C) set forth in clear terms—

(i) the circumstances under which an employer is required to take action to address ergonomic hazards;

(ii) the measures required of an employer under the standard; and

(iii) the compliance obligations of an employer under the standard.

(2) AUTHORIZATION.—Paragraph (1) shall be considered a specific authorization by Congress in accordance with section 801(b)(2) of title 5, United States Code, with respect to the issuance of a new ergonomic rule.

(3) PROHIBITION.—In issuing a new rule under this subsection, the Secretary of Labor shall ensure that nothing in the rule expands the application of State workers' compensation laws.

(4) STANDARD SETTING AUTHORITY.—Nothing in this subsection shall be construed to restrict or alter the authority of the Secretary of Labor under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) to adopt health or safety standards (as defined in section 3(8) (29 U.S.C. 652(8)) of such Act) for other hazards pursuant to section 6 (29 U.S.C. 655) of such Act.

(5) INFORMATION AND TRAINING MATERIALS.—The Secretary of Labor shall, prior to the date on which the new rule under this subsection becomes effective, develop information and training materials, and implement an outreach program and other initiatives, to provide compliance assistance to employers and employees concerning the new rule and the requirements under the rule.

AMENDMENT NO. 36, AS MODIFIED

Mr. REID. Mr. President, the majority has received the modified Wellstone amendment. I ask that his amendment be modified at this time.

The PRESIDING OFFICER. The amendment will be so modified.

The amendment (No. 36), as modified, is as follows:

(Purpose: To disallow certain claims and prohibit coercive debt collection practices)

At the end of subtitle A of title II, add the following:

SEC. 204. DISALLOWANCE OF CERTAIN CLAIMS.

IN GENERAL.—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 of the following:

''(10) such claim arises from a transaction—

''(A) that is—

''(i) a consumer credit transaction;

''(ii) a transaction, for a fee—

''(I) in which the deposit of a personal check is deferred; or

''(II) that consists of a credit and a right to a future debit to a personal deposit account; or

''(iii) a transaction secured by a motor vehicle or the title to a motor vehicle; and

''(B) in which the annual percentage rate (as determined in accordance with section 107 of the Truth in Lending Act) exceeds 100 percent.''.

AMENDMENT NO. 78

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, I reclaim my time briefly to make a few additional points on the matter of the California utilities and the Pacific Northwest getting repaid for the funds it sent California during their period of critical blackouts and other problems this winter.

I agree completely with those Senators who have spoken tonight, that it is in everyone's interest to come up with an approach that avoids bankruptcy. I think that is an area of widespread agreement. Senator SMITH and I repeatedly have said to Senator FEINSTEIN and others who have had reservations about our approach that we would be open to a wide variety of avenues in order to make sure our constituents get a fair shake and are repaid.

For example, I would be happy this evening, or at another appropriate time before the vote, to accept a perfecting amendment that would give California a reasonable period of time to perfect this comprehensive approach that they are pursuing in order to make sure everyone is paid off. I think that is very reasonable, and I want to make it clear that Senator SMITH and I have talked about that in discussions with various utilities, and a couple that oppose it. We made it clear we are open to giving California a reasonable period of time to put their agreement together.

But, in effect, what these California utilities have said is that it is basically our way or the highway. That just doesn't pass the smell test in the Pacific Northwest and with these public entities that are having so much difficulty paying their bills. I wish just a few of those thank-you letters we got from California public officials had been accompanied by checks because the fact is that all over the State we are getting and have gotten these letters from California public officials thanking us, and now tonight we are hearing that we will be repaid for our good deeds by being told that we can't even get a fair shake in a bankruptcy proceeding.

So this is unprecedented, Mr. President. There is no question about that. I am happy to yield to my colleague in a second because she has said, correctly so, that this is an unprecedented situation. But what I believe is unprecedented is that after State officials have botched the job, they would have the hutzpah to say to my constituents, just trust us; we hope everything works out.

I am happy to yield to my colleague from California.

Mrs. FEINSTEIN. If I may say to the distinguished Senator from Oregon, the point I don't understand is why you feel you won't be paid, why you feel you have to move ahead with this when everyone involved believes that moving ahead with it precipitates them to take action to force a bankruptcy, and if a bankruptcy is forced, it is chapter 7, where the company is dissolved and no one gets paid. That is my problem with this. This is why I believe it is so counterproductive.

Mr. WYDEN. I say to my colleague that we are being asked to trust the people who essentially botched the job. And I look at Southern California Edison—my distinguished colleague read something from the Southern California Edison, and I opened my Washington Post recently and learned that the Southern California Edison sent $5 billion overseas.

I have great respect for my colleague from California. I don't think she would have put together what California did in the first place. Where we disagree is that I cannot come to the floor of the Senate tonight and say that because I am fond of my colleague from California, California can, in effect, declare bankruptcy and not pay its bills. The Senator's colleague from California, Senator BOXER, said—I think very eloquently—she thought it was just plain fair. That is the way I see it.

I think you are going to have important legislation come before the committee involving rate caps and other approaches. I am going to be working closely with you on those kinds of issues, and Senator SMITH is as well. But if we now get stiffed, and if we are now told we can't even stand in line in a chapter 11 bankruptcy proceeding under a plan, I don't think that passes the basic test of fairness.

That is why we are here tonight. The Senator has framed the issue on her side—Southern California Edison and several of those significant private parties who were intimately involved in botching this job. On our side: Senator BOXER, Senator SMITH, and a variety of public entities who believe that, coming out of the chapter 11 bankruptcy proceeding, you ought to have something—something—that says you are going to get repaid.

I ask my colleague again tonight, if she were to offer a perfecting amendment to the one we discussed tonight saying we will give you a reasonable period of time to work out your plan, that is yet another olive branch which we have been trying to extend over the last couple of weeks that might allow the Senate to go forward and approve a measure of protection for my constituents while at the same time showing that I and other Westerners are going to bend over backwards to give you all a chance to put together your comprehensive approach.

Mrs. FEINSTEIN. May I respond?

Mr. WYDEN. Of course.

Mrs. FEINSTEIN. I appreciate that. I appreciate the Senator from Oregon saying he may postpone his amendment to give the State of California a chance to go forward with its comprehensive remedies. We do have to wait and see.

Mr. WYDEN. If I may reclaim my time, what I am saying is we will add language to the amendment that says the State of California would get a reasonable period of time to work out this comprehensive approach you have pushed for before any of this kicked in, before anything kicked in that would say the people of the Northwest at some point would get repaid.

Senator SMITH and I will go yet another mile to accommodate the constituents of the Senator from California and say let's pick a reasonable period of time. You all work to put together your agreement. We will work cooperatively with you, and if you accept that change, we can let the Senate go home before breakfast time tomorrow morning and let it get about its business.

Mrs. FEINSTEIN. If I may respond to the offer of the Senator from Oregon, I will be happy to take a look at it. The problem I have with it is that it does not stop what I am concerned about, which is a run on the bank; that as soon as creditors find there is an amendment in the bankruptcy legislation which gives a preference to a certain class of creditors, they then have to exercise their right and ultimately the utility companies will be driven to bankruptcy.

I did not enter this letter into the RECORD. The American Gas Association just put it the way it is. I do not know whether the time solution proposed by the Senator from Oregon solves this, but ''By creating a preferred class of creditors,'' which your amendment does, ''in effect the nonpreferred creditors would initiate involuntary bankruptcy proceedings against the utility. As the preferred creditors''—those are your entities—''would in actuality control the bankruptcy proceedings through their status, in effect chapter 11 reorganization would not be an option. Liquidation of assets through chapter 7 would result.''

That is what I am trying to avoid. No matter what you do, you create this situation of preferred versus nonpreferred so the nonpreferred exert their rights now and throw the situation into bankruptcy.

This is not me saying it, this is the president and CEO of the American Gas Association saying that is what would happen.

I do not know whether a time delay solves that basic problem.

Mr. WYDEN. If my colleague will let me reclaim my time, again, there is absolutely nothing in the four corners of this amendment that would give a preference to Bonneville Power and the other public entities involved. The fact is Bonneville and the other public entities would not get priority over claims of secured creditors, for example, because my colleague has been speaking about creditors and the utilities tonight, and Bonneville gets no preference.

All we are saying is that coming out of bankruptcy, there has to be a plan to pay back government agencies. It does not say there has to be a plan to give the people of the Pacific Northwest first crack. It does not say there has to be a plan making Bonneville, again, a preferred creditor. It just says there must be a piece of paper that makes sure the people to whom you sent that thank-you letter, that really gracious thank-you letter where you thanked them in all capital letters—you said, ''Thank you, Pacific Northwest''—all we are saying is that at some point those people you said thank you to should have something that would indicate they are not going to get stiffed but will eventually get paid back.

I hope overnight our staffs can work together on this point. You are right; we do have a philosophical difference, and it was expressed by Senator BOXER. Senator BOXER said she did not want the people of her State, good and caring people—my colleague knows I went to Stanford, so I know something about her State—she did not want the people of her State to be essentially scofflaws and not pay their bills.

If I may engage my colleague briefly, I want to make clear that overnight we are anxious to work with you on, for example, the idea of giving you a reasonable period of time before this legislation would kick in, and perhaps my colleague has other ideas because over the last couple of weeks we have made it clear that we want to work with her on this.

Senator BOXER made the point, and correctly so, that on the west coast ours is a power system that is interconnected. It is a grid that serves the people of the West. There is a tangible reason for us to work together.

It does not create much confidence, nor build a lot of credibility, for us to come to the floor of the Senate and say: Southern California Edison, which sent $5 billion overseas is against what Senator SMITH, Senator BOXER, and I want to do, and the people of the Pacific Northwest ought to trust them and others who botched the job in the first place to let it all work out.

Mrs. FEINSTEIN. Will the Senator yield for a question?

Mr. WYDEN. Of course.

Mrs. FEINSTEIN. If you put a time date in this, why wouldn't that encourage certain creditors to beat that date and push into bankruptcy ahead of that deadline? This is what every bankruptcy attorney with whom I have talked—and I have it right here:

> The inclusion of an effective date may not reduce the likelihood that non-covered creditors would rush the bankruptcy process, but rather could heighten and accelerate that risk because the affected parties will perceive a need to beat the legislative clock while simultaneously trying to amend the legislation.

Mr. WYDEN. If my colleague will allow me to reclaim my time to respond, that is not my first choice. My first choice was what we did with Senator BOXER. Senator BOXER worked very closely with us to narrow this amendment. In order to make sure we had the best possible response with respect to this threat that there could be a great run on the banks and the institutions of California, we narrowed this so it involves a few hundred million dollars out of $12 billion. In fact, there is a little irony here. The sum of money we are talking about all told is less than the Senator's staff initially indicated they could go along with, but I gather Southern California Edison and some of these other folks do not happen to agree.

Our first choice is to have a very narrow amendment to make sure the people whom California public officials have been thanking get a fair shake. It is only because we are anxious to explore other options with you that we thought giving you a reasonable period of time might be helpful.

We are prepared to take the consequences of an up-or-down vote on the Smith amendment. The choices are clear: Southern California Edison is not with the Smith-Boxer-Wyden amendment. We have established that. It has been read in letters tonight.

Those who are with us are these small public entities—the Western Power Authority, Bonneville Power, small municipal utilities in California. They are with us. It sets a very bad precedent to say those organizations that are responsible to taxpayers can be stiffed through the bankruptcy process.

I admire greatly my colleague from California who is here in this discussion tonight. I make it clear we are prepared to stay until all hours of the night toiling on this matter because one issue we both agree on is this is of enormous interest to our constituents—those you represent in California, those I represent in the Pacific Northwest. We have our door open to work with the Senator on other approaches.

If that doesn't work, the choice is clear for colleagues tomorrow morning at 10:30. Senator SMITH, Senator BOXER, and I have an approach that is narrow and we think will promote negotiations to avoid a bankruptcy proceeding. On the other side is Southern California Edison and a crowd shipping billions of dollars overseas when they ought to do their homework to correct a botched job in energy deregulation on the west coast in California.

If my colleague from California wants to go back and forth some more tonight, we can do that. I have, with Senator BOXER and Senator SMITH, made the principal points on our side, and unless my colleague from California wants to engage in further discussion, we can yield back, but I can't yield my time until we have had a chance to respond to any arguments the Senator has.

Mrs. FEINSTEIN. Mr. President, I will set the record straight. This is not just Southern California Edison or PG&E. There is virtually no creditor or

debtor that is in support of the Wyden amendment. Not even the Bonneville Power Administration has written a letter in support of this amendment. There is a reason why they are not in support of this amendment. Once you create a preferred class of creditors, you prompt the breaking of the dam and other creditors will force an involuntary bankruptcy.

If that happens, it is the wrong chapter. It is chapter 7. It is disillusion. It means the utilities get out of the business of distributing power.

This is why this amendment is so dangerous. If the Senator can show me some of these authorities that think this kind of change of bankruptcy law in the middle of what is an extraordinarily precarious situation is a good thing, I may relent.

I have introduced about a dozen letters, not just from Southern California Edison but from creditors, big and small. One of the rumors on the street is that many of the renewable power generators—the wind and solar generating firms for example—are most concerned and would therefore press bankruptcy should this amendment pass.

To get involved in the State's healing process is extraordinarily dangerous. That is my argument. I am not sure simply extending the time obviates the argument I am making. I have virtually every one of these letters that say in so many words, don't force them to exercise their rights to push these companies into bankruptcy. That is what this amendment does.

I find it very hard when my distinguished colleague says it is just one utility advocating against his amendment. It is not. It is the big generators, the small generators, it is virtually everybody involved in this situation who says, let us try to work it out with the State. Let the State buy these transmission lines. That will inject billions to pay creditors.

If you vitiate or abrogate it by creating a preferred class of creditor, you will encourage other creditors to push for bankruptcy. There are literary hundreds of creditors, huge banks, small banks.

I understand the Senator is trying to do something for his State. I understand that. It is incomprehensible to me to think the Bonneville Power Administration isn't going to get paid back. I believe they will. I believe if you amend bankruptcy law to provide for it, you simply cause a reaction from the other creditors that I think can be devastating.

That is the sum and substance of my argument. I have tried to indicate that with a large number of letters. I regret if anyone thinks this is just one utility advocating against this amendment. It is not. It is virtually the entire creditor community.

Mr. WYDEN. Mr. President, again to set the record straight, when my colleague came to the floor tonight, the first thing she said was, what do the two private utilities affected by this think?

That is clearly what this debate is all about in terms of those who are opposed. Yes, Southern California Edison and PG&E are opposed. The crowd who botched the job of energy deregulation, the State of California, is prepared to oppose something such as this. My colleague from California said this is a dangerous amendment. What is really dangerous is what California has already done to the American people because the fact is, what California has already done to the American people is put in a set of energy decisions that have great implications for the whole country, not just those in the West.

The President of the Senate is from Nevada; I am from Oregon. It will have ripples all the way through our country. That is what California has already done.

The crowd that has botched this and engaged in this conduct, by my calculation, is pretty close to political malpractice if you look at how they went about deregulating energy, deregulating only one part in one way, leaving another part alone. Now they come to the floor of the Senate and they say, trust us even though they have already been dickering about it for months and months; we are going to be able to put together a $12 billion comprehensive settlement. But you in the Pacific Northwest and the public entities that Senator BOXER talked about, despite the fact that these organizations involve just a few hundred million dollars as part of a $12 billion plan, trust us because everything will work out in the end.

That is a bit too much to swallow. Tomorrow when we vote —and we are open to working with our colleague from California this evening—I hope the Senate will stand with Senator SMITH, Senator BOXER, and myself. We are of the view that our amendment is about simple, basic fairness. Nobody is given a preference in bankruptcy under this legislation. In fact, no one in the course of this debate that has gone on now for several hours has once pointed to any language in the amendment that provides a preference to Bonneville or anyone else.

I wrap up by way of saying I will assume my colleague from California misspoke. The Bonneville Power Administration is for this. We have been working with them constantly. The Northwest Power Planning Council is for this. Bonneville Power, for example, is faced with a situation where they will have to make debt repayment before long.

They badly need this money. So this is about the small public entities in California that Senator BOXER spoke about. It is about the municipal energy entities all up and down the west coast. You bet southern California is against us on this. I hope my colleagues will stand with Senator BOXER and Senator SMITH and I at 10:30.

I will again invite my colleague to discuss this further. I will respond to any other arguments. Whenever she finishes, perhaps I can make my closing arguments and we can wrap this up.

Would my colleague like me to yield to her?

Mrs. FEINSTEIN. I would like to respond.

Mr. WYDEN. Would you like me to yield or do you wish your own time?

Mrs. FEINSTEIN. I don't believe there is a time agreement. If the Senator has concluded his remarks, I would like an opportunity to conclude mine.

Mr. WYDEN. I have.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, a lot has been said tonight. Let me express what did happen.

In 1996, the State of California passed a deregulation law. Republicans and Democrats voted for that law. A Republican Governor signed the law. The law was badly flawed. It essentially deregulated the wholesale end of power and kept regulated the retail end. That was a mistake.

Additionally, it provided that 95 percent of the power of California would have to be bought on the spot or day-ahead market. It prevented the bilateral, long-term contracts which are a key part of the solution for California. And the flawed deregulation plan said that California had to buy power through something called a power exchange, which actually guaranteed a higher price for power. And the plan said that the utilities which had generation facilities would have to divest themselves of those generation facilities.

The law was a gamble. It gambled that spot power would be cheaper to buy than the price of bilateral contracts. In fact, that was not the case. There was not enough power supply to meet the demand, so the spot power prices rose dramatically.

I am one who strongly believes that you have to fix the marketplace; that you cannot deregulate on the wholesale end and not also deregulate on the retail end. Possible solutions include establishing a baseline rate, or realtime pricing, or tiered pricing, or something else. These possibilities would create an incentive for conservation and, in the long term, corrects the flawed power market.

The remedies before the State are slightly different than the way I would have gone. It does not mean it is better or worse, but it is a different way. Up to this point, the State has spent $3.9 billion in buying power. The State of California is willing to authorize funds to buy the transmission lines to enable the utilities to then secure their debt.

It is very easy to point fingers. It is very easy to castigate. It is very easy to call the State a lot of names. Nonetheless, I think the State should have the opportunity to work this situation out.

There is the rub. This amendment does not basically allow that because either advertently or inadvertently, it

creates a situation to which others will respond by driving the utility companies to bankruptcy.

Let there be no doubt—in my mind there is no doubt—that others will respond to this situation by pushing these companies into bankruptcy. If they have to go into bankruptcy, they are not going to go into 11 or 13 to repay the debt. They are going to go into 7 to dissolve the debt and simply get out of the business of power distribution. So I am afraid that Senator WYDEN, Senator SMITH, and even my colleague from the State of California, Senator BOXER—I am afraid this is going to be counterproductive and it is going to produce something which can be devastating to everyone.

If it were just me alone who said that, I would be too timid to stand up here and say that. I am joined by virtually all of the debtor and creditor community in saying it. I am even joined by some of the public utilities that Senator WYDEN seeks to protect. The largest city in the State, Los Angeles, which produces its own power, does not support this because the city is worried about the same thing I am worried about.

I say give the State the time. Senator WYDEN and I do appreciate this—says, all right, we will work with you to create a time. I would like an opportunity to see if that is possible without launching the assault on bankruptcy that I am afraid will come out of the passage of the Wyden-Smith amendment.

I represent the sixth largest economic power on Earth. If these utilities go into bankruptcy, as Senator MURKOWSKI pointed out, it impacts hundreds of thousands of investors who have invested in the utilities, public retirement funds, other companies as well. It creates a situation which I think will have a major negative economic impact throughout the rest of the United States.

If the State were not assiduously trying to work out this problem, I wouldn't feel so strongly. If there was nothing being done to solve the problem, I wouldn't feel so strongly. But two utilities have agreed with the State on terms to purchase the transmission lines. Therefore, when the remainder of that purchase is completed, there will be the money available to pay Bonneville, to pay the Western Power Association, to pay the cogenerators, to pay other generators, to pay the natural gas suppliers. And I hope in the securitization of the back debt, the banks, the large New York banks will also feel that the arrangements are in place to see that they will get paid back. Bankruptcy, I do not believe, will solve this problem.

The degree to which this amendment would push these companies into bankruptcy, I think, is a gamble that is very unwise to take at this time.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I will be brief, but I want to just respond to several of the arguments made by my distinguished colleague. My colleague said, for example, that this is going to have real ramifications for the economic well-being of her State. The fact is, what the State of California has already done has already had a major economic impact on my State and on the people of the Pacific Northwest. Under very difficult circumstances we sent additional power to California which generated these glowing thank-you notes from my colleagues and various California public officials.

So my colleague from California envisages some economic trouble in her State. We are already seeing it and it is compounded by the fact that we have been more than a good neighbor. What it is all about on the west coast, as my colleague from Nevada knows, is we have an interconnected power system. We have been more than a good neighbor, and we are suffering economic hardship as a result.

My colleague also said that California is owed the opportunity. Those were her words: The State of California is owed the opportunity to work out this matter.

There is no question in my mind that they should have the opportunity to work it out. But they should not get a free ride. They should have to be part of an effort, as Senator BOXER said this evening, to bring the parties together as we have sought to do with our very narrow amendment we offered this evening.

Finally, my colleague says that somehow the amendment put together by Senator SMITH and Senator BOXER and I, in her words, has launched an assault on the State of California.

That is pretty incendiary oratory, in terms of this whole debate. But, again, I submit if there has been an assault that has been launched, it was what was done in the State of California. It was not something that came about because the Senators from Oregon, working with the Senator from California, tried to figure out a way to make sure there was a modest measure of protection for our constituents. It is not a proposal that moved Bonneville Power to the head of the line, not a proposal that gives our constituents a free ride, the way Southern California Edison seems to want, but something that ensures that we do get a fair shake.

I am very hopeful my colleagues will see that there has been an effort on the part of the sponsors of this particular amendment. The first vote will be on the Smith amendment tomorrow morning at 10:30 or thereabouts. It is an amendment that was perfected by Senator BOXER so as to ensure that this would not create a greater opportunity for bankruptcy to take place.

It was designed to make sure that the parties had a reason to negotiate. I fear that if this particular proposal goes down, this gives a green light to the private interests that are opposing this tonight, to know they basically got the votes on the floor of the Senate to work their will on any of these major issues.

This is going to be a big vote, it seems to me. It is important for us in the Pacific Northwest. But for anybody who reads the Washington Post—and I put the article in the RECORD—the people who are opposing this amendment are folks who are sending billions of dollars overseas rather than trying to take care of business here at home.

The lines are drawn with respect to who is with us and who is not. Those who are responsible to taxpayers and have to make Treasury payments in small California municipal utilities are with us. This is about one proposition, and one proposition only, and that is basic fairness for all concerned in dealing with a difficult issue.

I urge my colleagues to vote in favor of the Smith amendment that will come up in the morning.

Mr. President, I yield the floor.

AMENDMENT NO. 27, AS MODIFIED

Mr. DORGAN. Mr. President, earlier today I voted to table an amendment that had been offered by Senator FEINSTEIN regarding credit cards for young adults. This amendment would have required a $2,500 cap on credit card limits to anyone under the age of 21 unless they have a signature from their parent or can provide financial documents that establish their independent means of repaying their bills. I opposed this amendment because I am concerned that the age limit is arbitrary and could be unfair to many hard working Americans.

I understand the concern that has been raised by many regarding credit card companies that blanket college campuses with brochures and solicitations. I agree that credit card companies have some responsibility in limiting credit to those who have no income. But I believe that the amendment that was offered today was not a good way to solve that problem.

There are many people who are still in school at age 21. But there are many more who are holding down full time jobs, working to start a family, and deserve to have financial tools available to them, including credit cards without artificial credit limits. A 19-year-old North Dakotan can vote, serve in the military, and is considered an adult under state and federal laws. This amendment would create new hoops for that young person to access a credit card with a limit over $2,500. This is not a fair approach and is not an appropriate solution to the problem that the amendment's supporters are trying to solve.

Credit card companies have a role to play as we reform bankruptcy laws. They should be held accountable for offering credit responsibly. But this amendment missed its mark. A person under the age of 21 should be able to have and use credit cards if they are working and have an income. For this reason, I opposed the amendment and supported the motion to table.

Mr. BYRD. Mr. President, today I voted in favor of Mrs. FEINSTEIN's

amendment to the bankruptcy reform bill that would limit the amount of credit that credit card companies can extend to underage consumers. For the benefit of my West Virginia constituents, I offer a brief explanation of my vote.

I supported the Feinstein amendment because I agree with the general philosophy behind it. Credit card companies are far too willing to offer credit cards to young, financially-inexperienced consumers. Many of these young consumers are college students without any income or credit history. Too often these young consumers get in over their head when credit card companies offer unlimited credit to buy whatever they want, whenever they want. The Feinstein amendment is a commonsense approach that would restrict the amount of credit that could be offered to these young consumers, unless they gain parental approval or are able to demonstrate their financial independence.

However, I disagree that $2,500 is an adequate credit limit for protecting underage consumers. My own view is that this amount is too high. I would prefer to see a $500 credit limit. Even with a credit limit of $2,500, young consumers are at risk of accumulating massive credit card debt without the ability to repay it. A smaller credit card limit is more likely to reduce this risk.

My hope is that, even though the Senate rejected this amendment, credit card companies will take it upon themselves to more carefully scrutinize to whom they are extending credit, and reign in their credit offers when necessary.

Mr. INHOFE. Mr. President, this morning the Senate briefly debated and tabled the Feinstein amendment No. 27 to S. 420, the bankruptcy reform bill. I was unable to make that vote this morning, but I did want to make a brief statement for the record to register my opposition to the amendment. Under the Feinstein amendment, credit card companies would be forced to limit the debt a minor can carry on a credit card to $2,500, unless the minor demonstrates a means to pay back the debt or a parent cosigns for the debt. I oppose this amendment as unnecessary government intervention in the marketplace. Washington has no place in limiting or determining the financial needs of students and their ability to repay loans. The government has an abysmal track record when it meddles in the marketplace, and I strongly believe that these decisions should be made by individuals and families, not by the federal government.

FINANCIAL PRIVACY

Mr. LEAHY. Mr. President, I planned to offer an amendment to this bankruptcy bill to protect financial privacy and prevent identity theft in electronic bankruptcy court records. I thank Senators SARBANES, HARKIN, SCHUMER, and ROCKEFELLER for agreeing to cosponsor this amendment.

This amendment addressed just a single area where the Federal Government, here, the Bankruptcy Courts, holds significant amounts of highly personal information, which is freely available for any person for any reason to access and use. The manner in which all three branches of the Federal Government, the Federal agencies, the Congress and the Judiciary, protect the privacy of personal information that Americans are required to divulge to the government, is an important area that needs our attention. I thank the Chairman of the Judiciary Committee for agreeing to work with me on addressing the problem in a more comprehensive manner.

Mr. HATCH. My distinguished colleague makes a good point, and one where we both agree on, and frankly, it is something on which there is bipartisan interest. The issue of privacy, both online and offline, is something that we have discussed together and both agree that the Committee should examine, and will be examining, the current legal framework for privacy protection and determine where improvements can and should be made. This is an important matter on which we have agreed to hold hearings and move forward with legislative proposals, where appropriate.

Mr. LEAHY. While much attention has been focused on online privacy and the use of personally identifiable information by commercial web sites, the Federal Government is a huge repository of personal information in both paper and electronic form. Balancing the important interests of public access to government records with privacy protection for personal information is not always easy to do.

Mr. HATCH. I agree, this is a difficult subject, but one we must tackle and I believe as policy-makers, Congress has an important role to play in making sure this balance is done properly. It is becoming increasingly more important as we see government using technology to become more efficient, more user friendly, and we need to be sure that the new ease of use of government resources do not compromise the citizenry's privacy expectations.

Mr. LEAHY. The federal judiciary is grappling with the issue of how to put additional court filings online while providing appropriate levels of privacy protection and security for the information in those records. Bankruptcy records, for example, contain all kinds of highly sensitive personal and financial information, including social security, bank and credit card account numbers; medical history; and child support and alimony information. This information may pertain to the debtor but also to many other people who are creditors or simply associated or employed by the debtor. These records have traditionally been available to the public for perusal by individuals who went to the court house, requested the records, and physically reviewed the hard copies. This was an open process, but it was cumbersome. The inefficiency of obtaining data provided its own protective shield. For the most part, only those with a legitimate interest in bankruptcy court data took the trouble to collect it.

As courts increasingly go online, however, personal information such as that contained in court filings may be posted on the Internet available for some legitimate uses but also vulnerable to misuse or objectionable re-use. In some cases, personal information of parties with only limited interest in a bankruptcy case can be widely distributed and posted online. Last August, for example, employees of an Internet retailer were shocked to learn that their salaries, bonuses, stock-option information, and home addresses were posted on the Web. Their employer, Living.com, had filed for bankruptcy and submitted all corporate financial data to the courts. Then, at the request of the company's creditors, the trustee in the case posted this highly personal data, information about employees, not about debtors, on the Web. In an unusual twist, the home addresses of 1,000 of Living.com's creditors were also posted on the Internet. The Living.com case demonstrates the risks of automatic electronic disclosure of data, threats that can befall not just debtors, but employees and even creditors.

Federal agencies could also do a better job of protecting the privacy of those who do business with or seek help or information from the government. A recent GAO study reports that while most major federal agency sites post privacy notices, many do not do so on pages that collect personal information and few satisfy the principles of notice, choice, security and access that the Federal Trade Commission believe should be met by commercial sites. Moreover, the Privacy Act has not been seriously examined or updated for over twenty years. It is not doing the job it was originally intended to do of protecting the privacy of personal information provided to and held by the government. I look forward to working with the Chairman on addressing these and other important privacy issues in this Congress.

Mr. HATCH. I certainly share your concerns regarding the privacy implications of government actions. I should note that I understand the Judicial Conference is also looking at this issue, but it is clearly one that we must oversee as it raises important policy issues, as well as important First Amendment and Fourth Amendment concerns. In the bankruptcy context, I should state that I believe it is critical that a delicate balance be established between the privacy interest of the debtor who seeks to take the privilege afforded under our bankruptcy laws, and the need in the case of bankruptcies for creditors whose debts are being extinguished, as well as those who enforce against fraud in our bankruptcy system, to obtain information about the debtor and the bankruptcy case. A fair

balancing of these competing concerns is critical, and one that the Congress, and particularly the Judiciary Committee, must take an active role.

I think that there is no question that making sure the privacy policies and practices of the Federal Government is important. In addition, we should make sure that the privacy laws governing the Federal Government's use of personally identifiable information work effectively. This is an important issue that we can both work together to make happen, and if I remember correctly, it is one that Attorney General Ashcroft has similar concerns about.

MORNING BUSINESS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate now be in a period of morning business with Senators speaking for up to 10 minutes each.

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

THE VISIT OF SOUTH KOREAN PRESIDENT KIM DAE JUNG

Mr. DASCHLE. Mr. President, I want to share with my colleagues a letter that Representatives GEPHARDT, LANTOS, SKELTON, Senators BIDEN and LEVIN, and I recently sent to President Bush. The letter outlines our support for efforts to work with our South Korean friends to address the threats to our security emanating from North Korea.

Like President Bush, we harbor no illusions about the challenges posed by the North Korean government. To say North Korea's actions the past several decades have greatly troubled the United States and the world is an understatement. However, we also recognize that we cannot simply ignore the challenges the current regime poses for the international community; the stakes, which include the proliferation of missile technology, are simply too high.

Last week Secretary Powell publicly recognized that the Clinton Administration made progress in addressing the threats posed by North Korea. We agree with that assessment. We believe the record shows that the Clinton Administration fell just short of reaching a comprehensive agreement with the North Koreans that would have dramatically reduced tensions between the two Koreas and between North Korea and the rest of the world.

Given the urgency of these threats and the fact that a breakthrough appeared imminent just months ago, it is in the U.S. national interest to pursue additional discussions with the North Koreans. Only by allowing our negotiators to sit down with their North Korean counterparts will we be able to determine whether that recent progress contains the seeds of a comprehensive and verifiable agreement with North Korea.

Let us be clear. The burden here is on the North Koreans to prove that they will join the international community. We may find that a deal is not possible. But to walk away from that effort now, without knowing whether a deal is possible, is to pass up an opportunity to address a principal threat to the United States and to our friends in the region, South Korea chief among them.

We urge the President to work with President Kim and our South Korean friends—with our strong support—to test North Korea's commitment to peace through a comprehensive and verifiable agreement on its nuclear and missile activity. The stakes are too high and the issues too urgent to do otherwise.

I ask unanimous consent to have printed in the RECORD a letter dated March 6, 2001.

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

CONGRESS OF THE UNITED STATES,
Washington, DC, March 6, 2001.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: We are writing in regard to your upcoming meeting with Republic of Korea President Kim Dae Jung. Korea is a steadfast ally in a strategic part of the world, and we are pleased you will meet with President Kim early in your administration.

We understand that President Kim's efforts toward rapproachement with North Korea will be a subject of your meeting. In the context of those efforts, late last year North Korea suggested it may be ready to permanently address U.S. and allied concerns regarding its nuclear and missile capability—a major destabilizing force in East Asia and a principal threat to the security of the U.S. and its allies in the region.

Your meeting with President Kim offers an opportunity to stand with our South Korean friends to test whether North Korea is indeed committed to peace. Given North Korea's often far-reaching demands and record of disregarding international norms, we are under no illusions about the difficulty of getting comprehensive and verifiable agreements with North Korea that address our concerns about its current and future nuclear and ballistic missile activities. We believe, however, the stakes are high and the issues involved demand urgent attention, and it is evident to us that the continued engagement of the U.S. Government on this matter could serve to reduce a serious potential threat to our national security.

We therefore hope you thoroughly explore the possibility of reaching agreements that are in our national interest, and ask that you clearly demonstrate to President Kim our government's ongoing commitment to working constructively with the Republic of Korea to confront this major strategic challenge.

Should you choose this path to work with the Republic of Korea to address these critical concerns, we stand ready to support you.

Sincerely,

SEN. TOM DASCHLE,
Senate Democratic Leader.
REP. RICHARD GEPHARDT,
House Democratic Leader.
SEN. JOSEPH R. BIDEN, JR.,
Ranking Member Senate Foreign Relations Committee.
REP. TOM LANTOS,
Ranking Member House International Relations Committee.
SEN. CARL LEVIN,
Ranking Member Senate Armed Services Committee.
REP. IKE SKELTON,
Ranking Member House Armed Services Committee.

SUPPORT FOR VICTIMS OF INDIAN EARTHQUAKE

Mr. JOHNSON. Mr. President, I would like to extend my deepest sympathy to the Indian people for the recent loss of life and property due to the recent earthquake in their country. On January 26, the people of Gujarat in western India were hit with an earthquake the size and devastation of that which hit San Francisco in 1906. The earthquake in Gujarat killed more than 30,000, injured more than 100,000, and displaced more than a half million men, women, and children. My thoughts and prayers, and those of many Americans, are with them at this difficult time.

The people of India have been valuable friends to America, and a number of Indians call this country their home. Unfortunately, tragic events like these show how quickly loved ones and friends can be take from us. However, it is also through despair and tears that people often find humanity and caring.

The damage to the region is expected to exceed $5.5 billion. In the face of such a catastrophe, it is imperative that the global community actively respond. I am heartened to see the outpouring of assistance that nations around the globe, and countless nongovernmental organizations, have offered to India. Our own government will continue to offer our support to the victims of this earthquake, and I encourage President Bush to offer any needed additional assistance as they begin the process of rebuilding shattered homes and lives.

THE DEPARTURE OF A DEAR FRIEND, KRISTINE ''IVO'' IVERSON

Mr. HATCH. Mr. President, one of my very dear staffers is about to leave the Senate, a wonderful woman who has given a great deal of her time and love—indeed, a great deal of her life—to me, my office, the citizens of Utah, the county, and indeed, to this grand and honored institution, the Senate of the United States.

It is almost impossible for me to believe, but, after nearly a quarter of a

century, Kristine Iverson's last working day in my office has now come upon us.

I can still remember that day in 1976, when a young Illinois native—just two years out of DePauw University—when that young lady came to my office, résumé in hand, seeking a position as a legislative correspondent. Kris got that job, and it was one of the best moves I made.

Kris joined my staff in 1977 as a legislative correspondent. But her intelligence, dedication, warm heart and incredible ability to grasp all the intricacies of the legislative process quickly propelled her to a series of top positions in my office and on the Labor Committee.

And for the past 24 years, day in and day out, we have always been able to count on Kris Iverson. Night after night, year after year, she was the first one in and the last one to leave.

In short, we have grown gray together.

Over the years, Kris has worn many hats: Legislative Assistant, Labor Committee Policy Director, Labor Committee Minority Staff Director, and now Legislative Director.

In every position she served admirably and won the utmost respect from her colleagues on both sides of the aisle.

Most recently, Kris has served without peer in one of the most difficult and challenging positions in the office of any Senator—legislative director. In that position, she has served with an unmatchable commitment to the Senate and indeed the very Congress of the United States.

We all know how important it is to have a Legislative Director who we can trust to take our legislative priorities and help us direct them through the Byzantine maze of the legislative process.

Kris has been responsible for shepherding every piece of legislation that I sponsored. Beyond that, she was also responsible for helping to direct the legislative activities of both my personal staff and the Judiciary Committee staff.

Not only has Kris—or ''Ivo'' as we endearingly refer to her—earned my undying respect and admiration, but she is also highly admired by many in this body for her honesty, her work-ethic and her analytical skills.

When I think of many of the great laws in this nation the Child Care and Development Block Grant Act of 1990, the Women in Science Act, the Americans with Disabilities Act, the Job Training Partnership Act or JTPA, the Children's Health Insurance Program or CHIP all of these great laws reflect Kris Iverson's substantial mark.

Kris was there—in fact, Ivo was the lead staffer—on my first law, the National Ski Patrol Federal Charter, signed by Carter in 1980.

We often joke that she has files older than many of our staffers, and I'm sorry to say, it's true!

Unfortunately for us, her reputation has carried all the way to the White House where President George W. Bush has announced his intent to nominate her to one of the highest positions in the Department of Labor.

If all goes as planned—and I know it will—very shortly Kris will become the Assistant Secretary of Labor for Congressional and Intergovernmental Affairs.

Her only obstacle is confirmation by this august body . . . and I am counting on my colleagues to give her their support. Unanimous support!

I know that in that very important office, she will serve Secretary Chao with the same dedication and spirit. Clearly, being appointed by the President of our great nation to such a position is a tremendous honor and a tribute to her.

A great writer once said:

Give us an individual of integrity, on whom we know we can thoroughly depend; who will stand firm when others fail; the friend, faithful and true; the advisor, honest and fearless; the adversary, just and chivalrous: such an one is the fragment of the Rock of Ages.—J.P. Stanley

Ivo has been such a faithful and true ''rock'' of our office. I cannot put into words how much she will be missed, not only by my staff but also by the Senate as a whole.

And of course, she will be greatly missed by me.

I have considered her my right-hand counselor and advisor. I have relied on her on a daily, if not hourly basis.

We have come to count on Kris to do it all. From proper placement of commas . . . to strategy on the most important legislative initiatives . . . Kris does it, and does it well.

Dozens, if not hundreds, of people throughout Washington and the nation were mentored by Kris Iverson, and under her gentle tutelage have gone on to lead successful careers.

When the times were hard or the seas were rough, Kris was there with a steady and unbending hand to guide us on the proper course. She was our captain, our Mother Superior, our eye in the storm, our calm center in a sea of chaos.

I must say that I am very saddened by her departure. But I am very, very happy and proud of her accomplishments and most importantly, of this tremendous appointment to a place where I know that she will continue to honor and serve her country with dignity and respect.

So, I hope my colleagues will join me in wishing Kris well, in expressing our love and gratitude for her service to us.

There is no doubt in our minds that she will move on to even greater heights as she continues to serve our government and our President.

Mr. President, I have had a lot of people serve with me throughout the years, a lot of really good people I love, adore, appreciate, and honor. I have had no one serve with me who did a better job or gave more to this institution and to our country than Kris Iverson. I felt very much like I had to make this statement at this time before Kris leaves. She is sitting right beside me, and I am very, very proud of her.

I yield to my friend from Connecticut.

Mr. DODD. Mr. President, I was happy to yield to my colleague for the purpose of making this statement, although I had no idea what the subject matter was going to be. I feel fortunate to have been on the floor when I discovered it was going to be about Kris Iverson, with whom I have worked now for some 15 or 16 years, going back to the mid-1980s when Senator HATCH and I authored the child care development block grant.

Kris Iverson did the initial work for Senator HATCH on that legislation, working with a fellow from my office who has been at the Department of Health and Human Services over the last number of years. I thank Kris.

Coming from the other side of the aisle here, I didn't have the privilege of working with her every day, but on the days that I did, I came to know her as a highly competent, serious individual of deep convictions, who understands issues very, very well, appreciates the role of government, and that bright and talented people can make a contribution.

We are going to miss you, I say to Kris Iverson, here in the Senate, although we are not going to lose you entirely from public service. So on behalf of those of us on this side of the aisle—we don't want to ruin your reputation in Republican circles—but we thank you as well for a job very well done on behalf of all Americans. We are lucky to have had you serve the Senate and certainly the interests of the American people.

Mr. HATCH. Mr. President, I thank my colleague for his kind remarks because he knows how hard we worked together on the child care development block grant, and a whole raft of other issues. Kris has done such a great job, and I am honored to have her sit beside me for the last time in the Senate. We are very proud of her.

ADDITIONAL STATEMENTS

HONORING JIM O'ROURKE

● Mr. DODD. Mr. President, I rise today to congratulate Connecticut State Representative Jim O'Rourke on being named the Irishman of the Year by the Portland-Middletown Ancient Order of Hibernians, an Irish-American organization with a tradition of service to the community.

Jim O'Rourke, born in Boston, MA, has served the people of Connecticut for most of his adult life. He is a graduate of Manchester High School and earned a Bachelors Degree in Political Science at the University of Connecticut. While at the University of

Connecticut, Jim developed a deep passion for issues affecting the environment, consumer protection, and education, serving as Chairman of the statewide Connecticut Public Interest Research Group and later as Chairman of the Connecticut Environmental Caucus.

For the past 11 years, as a member of the Connecticut State House of Representatives, Representative O'Rourke has been a champion of initiatives aimed at providing cleaner air and water for the people of Cromwell, Portland, and Middletown. Last month, he hosted the Connecticut Coalition for Clean Air, CCCA, a partnership of private, State, and local government officials committed to educating the public while providing solutions to pollution concerns throughout the State. Jim believes that pollution of our air and waterways is more than just an environmental problem, it is a public health concern. Representative O'Rourke's leadership on these vital issues has earned him wide respect among his colleagues. In fact, one indication of the high regard Jim's colleagues have for him is that he was chosen to serve as Assistant Majority Leader of the Connecticut House of Representatives earlier this year.

Jim O'Rourke has made numerous contributions to his community. His tireless work on behalf of children and families there and throughout Connecticut is never-ending. He works as Assistant Development Director of The Connection, a non-profit service and community development organization which provides counsel to low and moderate-income families seeking to purchase their first home. It also provides important treatment services for underprivileged families and persons in need of counseling.

Mr. O'Rourke is an active member of the Portland-Middletown division of the Connecticut Ancient Order of Hibernians, having been granted the third degree prior to his latest achievement. The Order has been an integral part of Irish-American life since its North American branch was founded in 1836 in New York City, it is now the largest of all Irish Social Societies in the United States. Jim O'Rourke is also a member of the Cromwell Kiwanis Club and the DeSoto Council Cromwell Knights of Columbus. He serves as president of the statewide People's Action for Clean Energy, an organization committed to energy conservation and a clean and healthy environment.

As a result of his endeavors, Jim has been the recipient of numerous awards, including being recently named the Legislator of the Year by the Connecticut Council of Small Towns and Champion of Youth by the Connecticut Coalition of Youth Advocates.

As you are aware, this week is a special one for all Irish-Americans, for Saturday we celebrate Saint Patrick's Day. Let us take this opportunity not only to recognize the rich legacy of the Irish in America, but also to honor a man who has worked so hard within his community to preserve this heritage, and to promote the well being of all citizens, as well. I can think of no finer illustration of the contributions that Americans of Irish descent continue to make to our Nation than the good deeds that Jim O'Rourke performs each and every day as an outstanding public servant.●

TRIBUTE TO BLACK MOUNTAIN SKI AREA

● Mr. SMITH of New Hampshire. Mr. President, I rise today to pay tribute to the Black Mountain Ski Area in Jackson, NH, upon the celebration of their 65th year of business.

A pioneer in the ski industry, Black Mountain Ski Area installed the first overhead cable lift in the United States in 1935. Designed and installed by Bartlett, NH, inventor George Morton, the lift consisted of an overhead cable with strands of rope hanging down for skiers to hold onto as they ventured up the mountain.

In 1936, Bill and Betty Whitney purchased the Moody Farm and Ski Area at Black Mountain from Ed and Ada Moody, renaming the business as Whitney's. The Whitney family retrofitted the overhead cable lift in 1937, replacing the strands of rope that hung from the cable with seventy-two shovel handles purchased from Sears Roebuck and Company.

Black Mountain utilized the first snow making system in New Hampshire in December, 1957. A Skyworker Snowmaking System was installed by the William A. Walsh Company of Manchester, NH.

Black Mountain Ski Area has been in continuous operation as a ski facility since 1935, making it one of the oldest ski areas in New Hampshire. The Black Mountain Ski Area is a true friend to the people of New Hampshire and to the tourists who travel to our great state to utilize the facility. Their efforts to serve the needs of the ski industry in New Hampshire are truly commendable. It is an honor to represent them in the United States Senate.●

RETIREMENT OF THE HONORABLE BRETT DORIAN

● Mrs. BOXER. Mr. President, I would like to recognize Judge Brett Dorian as he retires after almost 12 years as a United States Bankruptcy Judge in Fresno, CA.

Brett Dorian's legal career reflects a long and honorable commitment to public service. His dedication spans more than three decades, beginning with his service in the United States Air Force. Upon graduation from Boalt Hall, University of California, Berkeley Mr. Dorian helped and assisted the underprivileged in Central California as a legal aid lawyer. He then went on to a distinguished career in private practice where he specialized in bankruptcy law and served as a bankruptcy trustee for many years.

In 1988, Judge Dorian was appointed to the United States Bankruptcy Court in Fresno. He served as a Bankruptcy Judge for almost 12 years. Judge Dorian served an eight county area in Central California. Judge Dorian has long been known as a thorough, dedicated and compassionate judge. Throughout his judicial career, he was diligent in carefully balancing the law in his cases and protecting the rights of those who appear before him.

Judge Dorian has served the people of California as well as all Americans with great distinction. I am honored to pay tribute to him today and I encourage my fellow colleagues to join me in wishing Judge Brett Dorian continued happiness as he embarks on new endeavors.●

GEORGE W. MILLER'S FIFTY YEARS OF SERVICE

● Mr. SANTORUM. Mr. President, I would like to take a moment today to recognize a Pennsylvanian who has been a tremendous asset to our community. I was recently notified that Mr. George W. Miller of Mount Pleasant will be celebrating 50 years of active service in the Mount Pleasant Volunteer Fire Department.

It is without question that this fine Pennsylvanian has gone above and beyond the call of duty to improve the safety of his community. Mr. Miller has displayed great courage over the years, as he has put himself in danger in order to protect the lives of his neighbors, friends, and community members. Our society will remain forever in debt to Mr. Miller and those like him who spend their own time in volunteer efforts.

The Volunteer Fire Department of Mount Pleasant, PA has been blessed to have had Mr. Miller as part of its team for the last fifty years. I enthusiastically congratulate him on reaching this tremendous milestone, and I am sure that I don't stand alone in hoping that he will be a part of the fire department for many years to come.●

AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGIST: 50TH ANNIVERSARY TRIBUTE

● Mrs. MURRAY. Mr. President, I come to the floor today to pay tribute to the American College of Obstetricians and Gynecologists, ACOG, in celebration of their 50th Anniversary. I would also like to include the letter signed by several of my colleagues who have joined with me in offering congratulations to ACOG and to pay tribute to their efforts on behalf of women's health.

With a membership of over 41,000 physicians specializing in obstetric-gynecologic are, ACOG is the nation's leading group of professionals dedicated to improving women's health care. ACOG is a private, voluntary, nonprofit organization.

Throughout its history, the purpose of ACOG has been to maintain the best standards of health care for women. Today, about 95 percent of American obstetricians and gynecologists are affiliated with ACOG. Over 35 percent of ACOG Fellows are women, and over 63 percent of Junior Fellows are women. ACOG works in four primary areas:

Serving as a strong advocate for quality health care for women.

Increasing awareness among its members and the public of the changing issues facing women's health care.

Maintaining the highest standards of clinical practice and continuing education for its members.

Promoting patient education and stimulating patient understanding of, and involvement in, medical care.

ACOG's reliable and informative communication with us on Capitol Hill has been a valuable asset in guiding our policy debates. Congratulations to ACOG, and thank you for providing a welcome voice to Capitol Hill on women's health policy.

I ask that a letter dated February 21, 2001, be printed in the RECORD.

The letter follows:

U.S. SENATE,
Washington, DC, February 21, 2001.

Hon. TRENT LOTT,
Senate Majority Leader, U.S. Senate, Washington, DC.

Hon. DENNIS HASTERT,
The Speaker, U.S. House of Representatives, Washington, DC.

DEAR SENATOR LOTT/MR. SPEAKER: We would like to take this opportunity to recognize the work of the American College of Obstetricians and Gynecologists (ACOG). We would also like to congratulate ACOG on their 50th Anniversary. With a membership of over 41,000 physicians specializing in obstetric-gynecologic care, ACOG is the nation's leading group of professionals dedicated to improving women's health care. ACOG is a private, voluntary, nonprofit organization.

Throughout its history, the purpose of ACOG has been to maintain the best standards of health care for women. Today, about 95% of American obstetricians and gynecologists are affiliated with ACOG. Over 35% of ACOG Fellows are women, and over 63% of Junior Fellows are women. ACOG works in four primary areas:

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ACOG's reliable and informative communication with us on Capitol Hill has been a valuable asset in guiding our policy debates. Congratulations to ACOG—and thank you for providing a welcome voice to Capitol Hill on women's health policy.

Sincerely,

Patty Murray, Tom Harkin, Mary L. Landrieu, Louise M. Slaughter, Jim Jeffords, Jan Schakowsky, Arlen Specter, Jeff Bingaman, Kay Granger, Nita Lowey, Nancy L. Johnson, Sherrod Brown, Pete Stark, Patrick J. Kennedy, Ron Wyden, Barbara A. Mikulski, Henry A. Waxman, and James Greenwood.●

TRIBUTE TO JAYNE MARCUCCI

● Mr. SMITH of New Hampshire. Mr. President, I rise today to pay tribute to Jayne Marcucci of Hooksett, NH, for being honored the state's first Ronald Reagan ''Gipper'' Award recipient and Young Republican of the Year 2001. Jayne was awarded the Ronald Reagan award on the former President's birthday.

Jayne has served the citizens of New Hampshire selflessly with enthusiasm and loyalty as the former Executive Director of the New Hampshire State Republican Party. A grassroots builder, Jayne has been successful in attracting many young people to become involved in politics.

A graduate of the University of New Hampshire, Jayne received a Bachelor of Arts degree in Political Science and later earned a Master of Business Administration degree, also from the University of New Hampshire.

Jayne served the State of New Hampshire as Deputy Press Secretary for my Senate office in Manchester. She is the President of Marcucci Consulting providing political consulting and public relations services to clients in New Hampshire.

A conscientious and dedicated volunteer, Jayne donates hours of her time to a therapeutic riding program. T.H.E. Farm, located in Tewksbury, MA, provides services to persons with disabilities. Jayne contributes to T.H.E. Farm by promoting the valuable program with communications and public relations assistance.

Jayne has served the citizens of New Hampshire with selfless dedication and hard work. It is an honor to represent her in the United States Senate.●

100 YEAR ANNIVERSARY OF THE JEWISH FEDERATION OF GREATER PHILADELPHIA

● Mr. SANTORUM. Mr. President, I stand before you today to recognize the contributions made by the Jewish Federation of Greater Philadelphia. On March 22, 2001 they will celebrate their 100 year anniversary, and I would like to extend my sincere gratitude for the leadership and guidance they continue to provide to the Philadelphia community.

The mission of the Jewish Federation is to assure that the basic human needs of Jewish populations at risk are met, to maximize Jewish identification and participation in Jewish life. In addition, the hard work of the federation provides leadership and effective outreach efforts to those in the Jewish community.

When the federation celebrates their 100th anniversary, they will sign the Centennial Celebration Charter, just as their ancestors did in 1901, which will reaffirm their commitment to the Jewish community. The Jewish Federation of Greater Philadelphia remains committed to the five counties in Southeastern Pennsylvania, by creating a caring, compassionate, involved Jewish community that encourages members to take an active role in their culture and religion.

I commend the members of the Jewish Federation of Greater Philadelphia as they reach this milestone anniversary. The people of Philadelphia are blessed to have such a caring and involved organization in their community.●

TRIBUTE TO BERNIE STREETER

● Mr. SMITH of New Hampshire. Mr. President, I rise today to honor Bernie Streeter of Nashua, NH, for his thirty years of distinguished service on the New Hampshire Executive Council.

As executive councilor for District 5, Bernie provided exemplary service to over 225,000 residents in an area which covers the southwestern part of New Hampshire from the Connecticut River Valley to Nashua. Over the years he has worked effectively with seven governors and twenty executive councilors.

As an executive councilor, Bernie worked selflessly on state transportation issues. He chaired the Governor's Commission on Highways and was one of the principal architects of the state's ten year highway plan. He also chaired the New Hampshire Department of Transportation Congestion Mitigation/Air Quality and Transportation Enhancement Committee and presided over all executive council public hearings on judicial nominations.

Bernie, who serves as the 54th Mayor of Nashua, has worked tirelessly in his local community. He serves on the board of directors of the Greater Nashua United Way, the Greater Nashua Chamber of Commerce, The PLUS Company and Marguerite's Place.

On the national level, Bernie was appointed to serve a term on the National Health Planning Council by President Ford. He later was appointed by President Reagan to serve on the National Advisory Council of United States Public Health Service.

Bernie received the 1999 ''President's Service Award'' from New Hampshire Community Technical College in Nashua, NH, in recognition of his public service and support of post-secondary vocational and technical education.

A graduate of Keene High School and Boston University, Bernie served his country in the United States Army and United States Air Force Reserve. He and his wife, Jan, have lived in Nashua for over thirty-five years and have three children: Shannon Streeter O'Neil, Christopher B. Streeter and Stephanie Streeter McKenna. They have two grandsons, Spencer J. O'Neil and Cameron W. Streeter and a granddaughter, Abigail Streeter.

Throughout his career Bernie has enthusiastically provided dedicated service to his community. He is a role model for us all and it is truly an honor to represent him in the United States Senate.●

TRIBUTE TO REAR ADMIRAL J. CUTLER DAWSON, JR., USN

• Mr. WARNER. Mr. President, I rise today to recognize an outstanding Naval Officer, Rear Admiral J. Culter Dawson, Jr. as he completes more than two years of distinguished service as the Navy's Chief of Legislative Affairs for the Congress of the United States. It is a privilege for me to honor his many outstanding achievements and commend him for his devotion to the Navy and our great Nation.

Admiral Dawson is a 1970 graduate of the United States Naval Academy and is one of the Navy's ablest Surface Warfare Officers. As Chief of Legislative Affairs, utilizing professional skills and decisive actions, he ''navigated'' the Navy through many Congressional actions. Foremost were the issues for pay, force structure funding, leadership confirmations and quality of life initiatives. Further, he ensured support for a difficult series of high profile issues, including the F/A–18 E/F, CVN–77/CVNX, DD–21 Acquisition Strategy, Virginia Class Submarines, Shipyard maintenance, and the Navy/Marine Corps Intranet (NMCI). That's a very commendable record of achievement.

Admiral Dawson provided outstanding advice and recommendations to the Secretary of the Navy and Chief of Naval Operations that have significantly and positively affected the future size, readiness, and capabilities of the Navy. Working closely with the United States Congress, he has helped maintain the best-trained, best-equipped, and best-prepared Navy in the world.

I am proud to thank him for his service as the Chief of Legislative Affairs and look forward with pride and deepest respect as we continue to work with him once he is confirmed in his new assignment as Commander of the U.S. Fifth Fleet.•

TRIBUTE TO WALTER HAVENSTEIN

• Mr. SMITH of New Hampshire. Mr. President, I rise today to pay tribute to Walter Havenstein of Bedford, NH, for being honored with the Pro Patria Award. The Pro Patria Award is the highest award given to an employer from the National Guard and Reservists of our state.

Walter is the President of BAE Systems-Information and Electronic Warfare Systems of Nashua, NH. BAE Systems allocates time away from work for over seventy-five employees who participate part time in the National Guard and Reserve programs protecting our state and country.

Walter is an extraordinary leader who oversees a defense electronics business workforce in excess of four thousand employees and significant operations at eight major locations in five states.

A graduate of the United States Naval Academy, Walter holds a Bachelor of Science degree in aerospace engineering and a Master of Science degree in electrical engineering from the Naval Postgraduate School.

Walter is a veteran who served in the United States Marine Corps from 1971 to 1983, specializing in tactical communications and systems acquisition management. He is also a member of the Surface Navy Association, Association of Old Crows, Armed Forces Communications and Electronics Association, Navy League and Marine Corps Reserve Officers Association.

A Director for the Business and Industries Association of New Hampshire and TeraConnect, Walter also serves on the Advisory Board for the Journal of Electronic Defense. He has given selflessly of his time and talents to the citizens of New Hampshire.

His hard work, determination and ability to motivate those around him to reach greater heights are truly commendable. It is an honor and a privilege to represent him in the United States Senate.•

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ON THE CONTINUATION OF THE IRAN EMERGENCY—MESSAGE FROM THE PRESIDENT—PM 12

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice, stating that the emergency declared with respect to Iran is to continue in effect beyond March 15, 2001, to the *Federal Register* for publication. The most recent notice continuing this emergency was published in the *Federal Register* on March 14, 2000.

The crisis constituted by the actions and policies of the Government of Iran, including its support for international terrorism, efforts to undermine Middle East peace, and acquisition of weapons of mass destruction and the means to deliver them, that led to the declaration of a national emergency on March 15, 1995, has not been resolved. These actions and policies are contrary to the interests of the United States in the region and threaten vital interests of the national security, foreign policy, and economy of the United States. For these reasons, I have determined that I must continue the declaration of national emergency with respect to Iran necessary to maintain comprehensive sanctions against Iran to respond to this threat.

GEORGE W. BUSH.
THE WHITE HOUSE, *March 13, 2001.*

REPORT ON THE NATIONAL EMERGENCY WITH RESPECT TO IRAN—MESSAGE FROM THE PRESIDENT—PM 13

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Development.

To The Congress of The United States:

As required by section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), and section 505(c) of the International Security and Development Cooperation Act of 1985, 22 U.S.C. 2349aa–9(c), I transmit herewith a 6-month periodic report on the national emergency with respect to Iran that was declared in Executive Order 12957 of March 15, 1995.

GEORGE W. BUSH.
THE WHITE HOUSE, *March 13, 2001.*

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 Mrs. BOXER:

S. 518. A bill to amend the Public Health Service Act to provide for the training of health professions students with respect to the identification and referral of victims of domestic violence; to the Committee on Health, Education, Labor, and Pensions.

By Mr. FRIST:

S. 519. A bill to amend the Internal Revenue Code of 1986 to provide that trusts established for the benefit of individuals with disabilities shall be taxed at the same rate as individual taxpayers; to the Committee on Finance.

By Mr. DEWINE (for himself, Mr. KOHL, Mr. GRASSLEY, and Mr. REID):

S. 520. A bill to amend the Clayton Act, and for other purposes; to the Committee on the Judiciary.

By Mr. SANTORUM:

S. 521. A bill to amend the Internal Revenue Code of 1986 to allow a credit against

income tax for expenses incurred in teleworking; to the Committee on Finance.

By Mr. KERRY (for himself, Mr. DASCHLE, Mr. CLELAND, and Mr. WELLSTONE):

S. 522. A bill to direct the Administrator of the Small Business Administration to conduct a pilot program to raise awareness about telecommuting among small business employers, and to encourage such employers to offer telecommuting options to employees; to the Committee on Small Business.

By Mr. BOND:

S. 523. A bill entitled the ''Building Better Health Centers Act of 2001''; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SCHUMER:

S. 524. A bill to increase the number of interaccount transfers which may be made from business accounts at depository institutions, to authorize the Board of Governors of the Federal Reserve System to pay interest on reserves, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. GRAHAM (for himself, Mr. DEWINE, Mr. HAGEL, Mr. BREAUX, Mr. MCCAIN, Mr. DODD, Mr. THOMPSON, Mr. BIDEN, and Mr. NELSON of Nebraska):

S. 525. A bill to expand trade benefits to certain Andean countries, and for other purposes; to the Committee on Finance.

By Mr. DORGAN (for himself and Mr. ROCKEFELLER):

S. 526. A bill to amend title 49, United States Code, to provide that rail agreements and transactions subject to approval by the Surface Transportation Board are no longer exempt from the application of the antitrust laws, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. HATCH (for himself, Mr. CLELAND, Mr. LOTT, Mr. THURMOND, Mrs. FEINSTEIN, Mr. SMITH of New Hampshire, Mr. BROWNBACK, Mr. ALLARD, Mr. ALLEN, Mr. BAUCUS, Mr. BOND, Mr. BUNNING, Ms. COLLINS, Mr. CRAIG, Mr. CRAPO, Mr. DAYTON, Mr. DEWINE, Mr. DOMENICI, Mr. ENSIGN, Mr. ENZI, Mr. FITZGERALD, Mr. FRIST, Mr. GRAMM, Mr. GRASSLEY, Mr. HAGEL, Mr. HELMS, Mr. HOLLINGS, Mr. HUTCHINSON, Mrs. HUTCHISON, Mr. INHOFE, Mr. JOHNSON, Mrs. LINCOLN, Mr. LUGAR, Mr. MCCAIN, Mr. MILLER, Mr. MURKOWSKI, Mr. REID, Mr. SESSIONS, Mr. ROBERTS, Mr. SANTORUM, Mr. SHELBY, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, Mr. VOINOVICH, and Mr. WARNER):

S.J.Res. 7. A joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. HUTCHISON (for herself, Ms. MIKULSKI, Mrs. BOXER, Ms. CANTWELL, Mrs. CARNAHAN, Mrs. CLINTON, Ms. COLLINS, Mrs. FEINSTEIN, Ms. LANDRIEU, Mrs. LINCOLN, Mrs. MURRAY, Ms. SNOWE, and Ms. STABENOW):

S. Res. 59. A resolution designating the week of March 11 through March 17, 2001, as ''National Girl Scout Week''; considered and agreed to.

By Mrs. FEINSTEIN (for herself, Mr. HELMS, Mr. KENNEDY, Mr. TORRICELLI, Mr. DODD, Mrs. BOXER, Mr. LEAHY, Mr. KYL, Mr. BROWNBACK, Mr. REID, Mr. BAUCUS, Mr. BYRD, and Mrs. CLINTON):

S. Con. Res. 23. A concurrent resolution expressing the sense of Congress with respect to the involvement of the Government in Libya in the terrorist bombing of Pan Am Flight 103, and for other purposes; to the Committee on Foreign Relations.

By Mr. LIEBERMAN:

S. Con. Res. 24. A concurrent resolution expressing support for a National Reflex Sympathetic Dystrophy (RSD) Awareness Month; to the Committee on Health, Education, Labor, and Pensions.

ADDITIONAL COSPONSORS

S. 38

At the request of Mr. INOUYE, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 38, a bill to amend title 10, United States Code, to permit former members of the Armed Forces who have a service-connected disability rated as total to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft.

S. 43

At the request of Mr. INOUYE, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 43, a bill to amend title 10, United States Code, to authorize certain disabled former prisoners of war to use Department of Defense commissary and exchange stores.

S. 44

At the request of Mr. INOUYE, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 44, a bill to amend title 10, United States Code, to increase the grade provided for the heads of the nurse corps of the Armed Forces.

S. 45

At the request of Mr. INOUYE, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 45, a bill to amend title 5, United States Code, to require the issuance of a prisoner-of-war medal to civilian employees of the Federal Government who are forcibly detained or interned by an enemy government or a hostile force under wartime conditions.

S. 124

At the request of Mr. BROWNBACK, the names of the Senator from Oklahoma (Mr. INHOFE) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 124, a bill to exempt agreements relating to voluntary guidelines governing telecast material, movies, video games, Internet content, and music lyrics from the applicability of the antitrust laws, and for other purposes.

S. 128

At the request of Mr. JOHNSON, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 128, a bill to amend the Federal Deposit Insurance Act to require periodic cost of living adjustments to the maximum amount of deposit insurance available under that Act, and for other purposes.

S. 149

At the request of Mr. ENZI, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 149, a bill to provide authority to control exports, and for other purposes.

S. 277

At the request of Mr. KENNEDY, the names of the Senator from Montana (Mr. BAUCUS) and the Senator from North Carolina (Mr. EDWARDS) were added as cosponsors of S. 277, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

S. 278

At the request of Mr. JOHNSON, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 278, a bill to restore health care coverage to retired members of the uniformed services.

S. 281

At the request of Mr. HAGEL, the names of the Senator from Connecticut (Mr. DODD), the Senator from Louisiana (Mr. BREAUX), the Senator from Illinois (Mr. FITZGERALD), the Senator from Illinois (Mr. DURBIN), and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. 281, a bill to authorize the design and construction of a temporary education center at the Vietnam Veterans Memorial.

S. 283

At the request of Mr. MCCAIN, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 283, a bill to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to protect consumers in managed care plans and other health coverage.

S. 284

At the request of Mr. MCCAIN, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 284, a bill to amend the Internal Revenue Code of 1986 to provide incentives to expand health care coverage for individuals.

S. 289

At the request of Mr. SESSIONS, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 289, a bill to amend the Internal Revenue Code of 1986 to provide additional tax incentives for education.

S. 318

At the request of Mr. DASCHLE, the name of the Senator from Minnesota (Mr. WELLSTONE) was added as a cosponsor of S. 318, a bill to prohibit discrimination on the basis of genetic information with respect to health insurance.

S. 326

At the request of Ms. COLLINS, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of

S. 326, a bill to amend title XVIII of the Social Security Act to eliminate the 15 percent reduction in payment rates under the prospective payment system for home health services and to permanently increase payments for such services that are furnished in rural areas.

S. 349

At the request of Mr. HUTCHINSON, the names of the Senator from Minnesota (Mr. WELLSTONE) and the Senator from South Dakota (Mr. DASCHLE) were added as cosponsors of S. 349, a bill to provide funds to the National Center for Rural Law Enforcement, and for other purposes.

S. 365

At the request of Mr. THOMAS, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 365, a bill to provide recreational snowmobile access to certain units of the National Park System, and for other purposes.

S. 367

At the request of Mrs. BOXER, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 367, a bill to prohibit the application of certain restrictive eligibility requirements to foreign nongovernmental organizations with respect to the provision of assistance under part I of the Foreign Assistance Act of 1961.

S. 403

At the request of Mr. COCHRAN, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from Rhode Island (Mr. REED) and the Senator from Virginia (Mr. WARNER) were added as cosponsors of S. 403, a bill to improve the National Writing Project.

S. 414

At the request of Mr. CLELAND, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 414, a bill to amend the National Telecommunications and Information Administration Organization Act to establish a digital network technology program, and for other purposes.

S. 415

At the request of Mr. HOLLINGS, the names of the Senator from Oregon (Mr. WYDEN) and the Senator from Nevada (Mr. REID) were added as cosponsors of S. 415, a bill to amend title 49, United States Code, to require that air carriers meet public convenience and necessity requirements by ensuring competitive access by commercial air carriers to major cities, and for other purposes.

S. 452

At the request of Mr. MURKOWSKI, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 452, a bill to amend title XVIII of the Social Security Act to ensure that the Secretary of Health and Human Services provides appropriate guidance to physicians, providers of services, and ambulance providers that are attempting to properly submit claims under the medicare program to ensure that the Secretary does not target inadvertent billing errors.

S. 488

At the request of Mr. ALLEN, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 488, a bill to amend the Internal Revenue Code of 1986 to provide for a refundable education opportunity tax credit.

S. CON. RES. 7

At the request of Mr. KERRY, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. Con. Res. 7, a concurrent resolution expressing the sense of Congress that the United States should establish an international education policy to enhance national security and significantly further United States foreign policy and global competitiveness.

S. CON. RES. 8

At the request of Ms. SNOWE, the names of the Senator from Louisiana (Ms. LANDRIEU) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of S. Con. Res. 8, a concurrent resolution expressing the sense of Congress regarding subsidized Canadian lumber exports.

S. CON. RES. 14

At the request of Mr. CAMPBELL, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. Con. Res. 14, a concurrent resolution recognizing the social problem of child abuse and neglect, and supporting efforts to enhance public awareness of it.

S. RES. 25

At the request of Mr. CRAIG, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from Alabama (Mr. SHELBY) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of S. Res. 25, a resolution designating the week beginning March 18, 2001 as ''National Safe Place Week''.

AMENDMENT NO. 40

At the request of Mrs. CARNAHAN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of Amendment No. 40 proposed to S. 420, an original bill to amend title II, United States Code, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. BOXER:

S. 518. A bill to amend the Public Health Service Act to provide for the training of health professions students with respect to the identification and referral of victims of domestic violence; to the Committee on Health, Education, Labor, and Pensions.

Mrs. BOXER. Mr. President, domestic violence is a national crisis that shatters the lives of millions of women across this country and tears at the fabric of this society. Despite increased efforts prompted by legislation such as the Violence Against Women Act, domestic violence continues to be the leading cause of injury to women across the country between the ages of 15 to 44. Furthermore, many of our health professionals today—those who are often the first in a position to recognize domestic violence, still do not have the proper training to assist these very vulnerable victims.

Wonderful partnerships currently exist between many hospitals and graduate medical institutions and these partnerships should be encouraged in order to more effectively serve victims of domestic violence and prevent future violent attacks.

For these reasons, I am reintroducing my bill, the Domestic Violence Identification and Referral Act, which would help ensure that medical professionals have the training they need to recognize and treat domestic violence, including spouse abuse, child abuse, and elder abuse. The bill would amend the Public Health Service Act to require the Secretary of Health and Human Services to give preference in awarding grants to institutions that train health professionals in identifying, treating, and referring patients who are victims of domestic violence to appropriate services.

I encourage my colleagues to support this worthwhile legislation that would help in our continued fight to prevent domestic violence across this nation.

By Mr. FRIST:

S. 519. A bill to amend the Internal Revenue Code of 1986 to provide that trusts established for the benefit of individuals with disabilities shall be taxed at the same rate as individual taxpayers, to the Committee on Finance.

Mr. FRIST. Mr. President, today I introduce a bill to address a tax inequity that has existed for some time and was made worse by the large tax increases of 1993. The ''Tax Fairness for Support of the Permanently Disabled Act'' would change the tax rates for the taxable income of a trust fund established solely for the benefit of a person who is permanently and totally disabled. Instead of being taxed at the highest tax rate 39.6 percent for amounts over $7500, the income of this fund would be taxed at the tax rates that would normally apply to regular income of the same amount. In essence, trust fund income would be treated as personal income for a permanently disabled person.

Mr. Nicholas Verbin of Nashville, TN personally called my office about this problem he had encountered. The problem was that he had established an irrevocable trust for his son Nicky, who is completely disabled, unable to work, and totally dependent on his dad to provide for him. Mr. Verbin has spent his whole life building up this trust fund so that his son can live off this lifetime of hard work after Mr. Verbin is gone. Mr. Verbin does not want his son to have to go on welfare or become a ward of the state. Instead, he has

built up this fund so that his son can be self-sufficient after he dies. Apparently, the federal government would rather have Nicky on its welfare roles than have him take care of himself.

Instead of taxing the interest that Nicky's trust accumulates every year as simple income, which it is since Nicky has no other form of income, the IRS taxes the interest at the highest rate allowable, 39.6 percent. Instead of helping this sum grow into a sort of pension fund for Nicky, the IRS has milked it for all its worth. If Nicky's trust earns more than $7500 in interest in a year, the federal government takes $2,125 plus 39.5 percent of the amount above $7500. Meanwhile, even Bill Gates does not pay 39.6 percent on the first $275,000 of his income. We are taxing disabled children at a rate that we don't even tax multimillionaires!

I believe that we should not punish Mr. Verbin for his foresight, nor should we punish Nicky for his disability. While a case could be made that Congress should eliminate the tax on this type of trust altogether, I have simply proposed that the interest income be treated like normal income for those disabled boys and girls, men and women who cannot work for themselves and depend on this interest as their only source of income.

I ask my colleagues to support this bill. 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. 519

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 ''Tax Fairness for Support of the Permanently Disabled Act''.

SEC. 2. MODIFICATION OF TAX RATES FOR TRUSTS FOR INDIVIDUALS WHO ARE DISABLED.

(a) IN GENERAL.—Section 1(e) of the Internal Revenue Code of 1986 (relating to tax imposed on estates and trusts) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(2) by striking ''There'' and inserting:

''(1) IN GENERAL.—Except as provided in paragraph (2), there'', and

(3) by adding at the end the following new paragraph:

''(2) SPECIAL RULE FOR TRUSTS FOR DISABLED INDIVIDUALS.—

''(A) IN GENERAL.—There is hereby imposed on the taxable income of an eligible trust taxable under this subsection a tax determined in the same manner as under subsection (c).

''(B) ELIGIBLE TRUST.—For purposes of subparagraph (A), a trust shall be treated as an eligible trust for any taxable year if, at all times during such year during which the trust is in existence, the exclusive purpose of the trust is to provide reasonable amounts for the support and maintenance of 1 or more beneficiaries each of whom is permanently and totally disabled (within the meaning of section 22(e)(3)). A trust shall not fail to meet the requirements of this subparagraph merely because the corpus of the trust may revert to the grantor or a member of the grantor's family upon the death of the beneficiary.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

By Mr. DEWINE (for himself, Mr. KOHL, Mr. GRASSLEY, and Mr. REID):

S. 520. A bill to amend the Clayton Act, and for other purposes; to the Committee on the Judiciary.

Mr. DEWINE. Mr. President, I rise today to introduce a bill, along with my friend and colleagues Mr. KOHL, Mr. GRASSLEY, and Mr. REID of Nevada, called the ''High-Density Airport Competition Act of 2001.'' We are introducing this legislation in an effort to increase and maintain competition in the domestic aviation industry. If the traveling public is to have access to affordable, quality air service, real competition is essential.

The need for this legislation stems from our belief that the recent surge in proposed mergers among our nation's major airlines is a threat to competition. Let me explain. Less than a year ago, United Airlines and US Airways announced their plans to merge, creating an airline that would be nearly 50 percent larger than its next closest competitor and a network significantly more extensive than other carriers. Most industry observers believed at that time that if the United/US Airways merger were allowed to go forward, those airlines would gain a dominant position at several key airports throughout the country, including airports such as New York LaGuardia and Reagan National airport here in Washington.

At the time the merger was announced, I expressed my concern that this merger would provoke further airline consolidation and potentially could leave the country with as few as three large domestic carriers. I continue to be concerned about additional mergers, and for good reason.

In early January of this year, American Airlines announced that it was joining in the United/US Airways deal by acquiring certain assets from US Airways and also by entering into agreements with United, including an agreement to jointly operate the lucrative Washington/New York/Boston shuttle. So, if the deal is successful, instead of having one dominant carrier, our country would face the prospect of having two airlines that are significantly larger than their competitors.

Quite frankly, American Airlines saw the writing on the wall. Its leaders understood how difficult it would be to compete effectively in an industry where one airline was so much larger and so dominant in certain key business markets. As a result, American decided that, in order to survive, it had to join the deal and grow much bigger, as well.

If these deals are allowed to go forward, I am certain we will see even more consolidations. As policy-makers, we are faced with a daunting question: Will the airline industry remain sufficiently competitive in the wake of the proposed United and American deals? We have concluded that unless action is taken, competition very likely will be harmed.

But we cannot just sit idly by and let competition in this critical industry waste away. It is vital that other airlines have the opportunity to compete, and a big part of that is having access to airports that are essential in a network business, such as the aviation industry. Two of these key airports, Reagan National and LaGuardia, are subject to government slot controls, which limit the number of take-off and landing slots during a day. If the United and American deals are permitted, those two airlines will control roughly 65 percent of the slots at Reagan National and New York LaGuardia. These are key resources that other airlines need reasonable access to if competition is to be maintained.

Simply put, competition is not served if we allow two airlines to dominate these airports. More important, consumer interests are not served if any airline is permitted to gain such a position through mergers. That's why my colleagues and I are introducing the ''High-Density Airport Competition Act.'' This bill represents one way to maintain a competitive environment in the airline industry.

Specifically, our bill would limit the percentage of slots that large national carriers can control at Reagan National and New York LaGuardia airports. The legislation would ensure that no single airline gains an anti-competitive advantage at these slot controlled airports. It would do so by prohibiting any large airline from controlling more than 20 percent of the slots over any 2-hour period. If such an airline did have more than 20 percent of the slots, that airline would be required within 60 days to either return the slots to the Department of Transportation or sell the slots in a blind auction. This procedure would preserve competition by giving all airlines equal opportunity to bid for the slots and gain access to these airports.

Again, our overriding concern is the welfare of the traveling public. We have seen, first-hand, the frustration of many travelers about service, delays, and high air fares. The answer to those and other challenges is not more consolidation. The answer is effective competition. We are concerned the airline industry is moving in the wrong direction, toward a consolidated industry, away from a truly competitive, consumer-friendly environment. That's not good for the industry. And, that's certainly not good for consumers. That is why I hope my colleagues will join us in support of our legislation. We need to move back to real competition in our domestic aviation industry, an industry that we all recognize plays a vital role in our Nation and our economy.

Mr. KOHL. Mr. President, I rise today, with my colleagues Senators DEWINE, GRASSLEY, and REID, to introduce the ''High Density Airport Competition Act of 2001.'' This legislation is a small but important step to promote airline competition during this time of massive consolidation in the airline industry. This legislation will prevent any large national carrier from gaining a dominant share of takeoff and landing slots at either Washington Reagan National or New York LaGuardia airports.

During the last year, we have all witnessed a tremendous consolidation in the airline industry. First, last May, United announced its planned deal to acquire US Airways. More recently, in January, airline consolidation took another great leap forward as American announced its plan to acquire TWA, and also its deal with United to acquire 20 percent of the US Airways assets. If all of these combinations and acquisitions are approved, the result will be that American and United will become the nation's dominant airlines, controlling about half of the national market. And many believe we are not done yet, with press reports that Delta is soon expected to announce an acquisition of its own. That would mean three large national airlines would dominate 75 percent of the market.

The problem of airline consolidation is especially acute at the two of the nation's four slot-controlled airports, Washington Reagan National and New York LaGuardia. At these two vital airports, if all these mergers go through as planned, American, United and their affiliated and partner carriers will together control nearly two-thirds of the slots, leaving little room for competitors.

Gaining access to slots at these airports is essential for smaller and start-up airlines if they are to compete with the giant mega-carriers, especially after these mergers are completed. Without slots, airlines cannot take off or land at these two airports. And access to these key airports in New York and Washington, D.C. is essential for smaller airlines to build national networks to compete with the large carriers. Without that access for smaller airlines, large airlines will dominate the nation, grow larger and larger, and bar effective and robust competition. To show the importance of just one of these airports to the nation's entire air transportation system, the FAA recently reported that more than one quarter of the nation's entire congestion related flight delays resulted from delays at LaGuardia airport alone.

Our legislation is a simple and effective measure to prevent large airlines from gaining a stranglehold on the slots at these two airports. It provides that, for any airline with at least a 15 percent share of the national market, that airline, and its affiliates, cannot control more than 20 percent of the slots at either Washington Reagan National or New York LaGuardia in any two hour period. If an airline exceeds these limits, it must take one of two steps, either return the excess slots to the FAA or sell them in a blind auction to its competitors. This blind auction provision will prevent airlines from disposing of their excess slots by engaging in ''sweetheart'' deals.

Our legislation does not reach the other two-slot controlled airports, Chicago O'Hare or New York JFK. Slot controls are scheduled to be lifted at Chicago O'Hare in June of next year, and are in place at New York JFK only from 3 to 8 p.m.

In sum, our legislation is a carefully crafted and narrowly tailored provision which will break the dominance that the large national carriers will have at two vital slot-controlled airports, particularly if the currently pending mergers are completed as planned. It will enable smaller and new carriers to have a fair shot at gaining access to these airports, and thus help bring real competition both to consumers who travel to and from New York and Washington and to the nation's skies as a whole. I urge my colleagues to support this bill.

By Mr. SANTORUM:

S. 521. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for expenses incurred in teleworking; to the Committee on Finance.

Mr. SANTORUM. Mr. President, today, I rise to introduce legislation that would help people who ''telework'' or work from home, to receive a tax credit. Teleworkers are people who work a few days a week on-line from home by using computers and other information technology tools. Nearly 20 million Americans telework today, and according to experts, 40 percent of the nation's jobs are compatible with telework. At one national telecommunications company, nearly 25 percent of its workforce works from home at least one day a week. The company found positive results in the way of fewer days of sick leave, better retention, and higher productivity.

I am introducing the Telework Tax Incentive Act, along with Representative FRANK WOLF in the House of Representatives, to provide a $500 tax credit for telework. The legislation provides an incentive to encourage more employers to consider telework for their employees. Telework should be a regular part of the 21st century workplace. The best part of telework is that it improves the quality of life for all. Telework also reduces traffic congestion and air pollution. It reduces gas consumption and our dependency on foreign oil. Telework is good for families—working parents have flexibility to meet everyday demands. Telework provides people with disabilities greater job opportunities. Telework helps fill our nation's labor market shortage. It can also be a good option for retirees choosing to work part-time.

A task force on telework initiated by Governor James Gilmore of Virginia made a number of recommendations to increase and promote telework. One recommendation was to establish a tax credit toward the purchase and installation of electronic and computer equipment that allow an employee to telework. For example, the cost of a computer, fax machine, modem, phone, printer, software, copier, and other expenses necessary to enable telework could count toward a tax credit, provided the person worked at home a minimum number of days per year.

My legislation would provide a $500 tax credit ''for expenses paid or incurred under a teleworking arrangement for furnishings and electronic information equipment which are used to enable an individual to telework.'' An employee must telework a minimum of 75 days per year to qualify for the tax credit. Both the employer and employee are eligible for the tax credit, but the tax credit goes to whomever absorbs the expense for setting up the at-home worksite.

A number of groups have previously endorsed the Telework Tax Incentive Act including the International Telework Association and Council, ITAC, Covad Communications, National Town Builders Association, Litton Industries, Orbital Sciences Corporation, Consumer Electronic Association, Capnet, BTG Corporation, Electonic Industries Alliance, Telecommunications Industry Association, American Automobile Association Mid-Atlantic, Dimensions International Inc., Capunet, TManage, Science Applications International Corporation, AT&T, Northern Virginia Technology Council, Computer Associates Incorporated, and Dyn Corp.

On October 9, 1999, legislation which I introduced in coordination with Representative FRANK WOLF from Virginia was signed into law by the President as part of the annual Department of Transportation appropriations bill for Fiscal Year 2000. S. 1521, the National Telecommuting and Air Quality Act, created a pilot program to study the feasibility of providing incentives for companies to allow their employees to telework in five major metropolitan areas including Philadelphia, Washington, D.C., and Los Angeles. Houston and Denver have been added as well. I am pleased that the Philadelphia Area Design Team has been progressing well with its responsibility of examining the application of these incentives to the greater Philadelphia metropolitan area. I am excited that this opportunity continues to help to get the word out about the benefits of telecommuting for many employees and employers.

On July 14, 2000 the President signed legislation which included an additional $2 million to continue efforts in the 5 pilot cities, including Philadelphia, to market, implement, and evaluate strategies for awarding telecommuting, emissions reduction, and pollution credits established through the National Telecommuting and Air Quality Act.

Telecommuting improves air quality by reducing pollutants, provides employees and families flexibility, reduces traffic congestion, and increases productivity and retention rates for businesses while reducing their overhead costs. It's a growing opportunity and option which we should all include in our effort to maintain and improve quality of life issues in Pennsylvania and around the nation. According to statistics available from 1996, the Greater Philadelphia area ranked number 10 in the country for annual person-hours of delay due to traffic congestion. Because of this reality, all options including telecommuting should be pursued to address this challenge.

The 1999 Telework America National Telework Survey, conducted by Joan H. Pratt Associates, found that today's 19.6 million teleworkers typically work 9 days per month at home with an average of 3 hours per week during normal business hours. In this study, teleworkers or telecommuters are defined overall as employees or independent contractors who work at least one day per month at home. These research findings impact the bottom line for employers and employees. Teleworkers seek a blend of job-related and personal benefits to enable them to better handle their work and life responsibilities. For employers, savings just from less absenteeism and increased employee retention may total more than $10,000 per teleworker per year. Thus an organization with 100 employees, 20 of whom telework, could potentially realize a savings of $200,000 annually, or more, when productivity gains are added.

Work is something you do, not someplace you go. There is nothing magical about strapping ourselves into a car and driving sometimes up to an hour and a half, arriving at a workplace and sitting before a computer, when we can access the same information from a computer in our homes. Wouldn't it be great if we could replace the evening rush hour commute with time spent with the family, or coaching little league or other important quality of life matters?

I urge my colleagues to consider cosponsoring this legislation which promotes telework and helps encourage additional employee choices for the workplace.

By Mr. KERRY (for himself, Mr. DASCHLE, Mr. CLELAND, and Mr. WELLSTONE):

S. 522. A bill to direct the Administrator of the Small Business Administration to conduct a pilot program to raise awareness about telecommuting among small business employers, and to encourage such employers to offer telecommuting options to employees; to the Committee on Small Business.

Mr. KERRY. Mr. President, today I am joined by my colleagues, Senator DASCHLE, Senator CLELAND, and Senator WELLSTONE, in introducing legislation, the Small Business Telecommuting Act, to assist our nation's small businesses in establishing successful telecommuting, or telework programs, for their employees. Congressman UDALL will be introducing companion legislation in the House of Representatives.

Across America, numerous employers are responding to the needs of their employees and establishing telecommuting programs. In 2000, there were an estimated 16.5 million teleworkers. By the end of 2004, there will be an estimated 30 million teleworkers, representing an increase of almost 100 percent. Unfortunately, the majority of growth in new teleworkers comes from organizations employing over 1,500 people, while just a few years ago, most teleworkers worked for small- to medium-sized organizations.

By not taking advantage of modern technology and establishing successful telecommuting programs, small businesses are losing out on a host of benefits that will save them money, and make them more competitive. The reported productivity improvement of home-based teleworkers averages 15 percent, translating to an average bottom-line impact of $9,712 per teleworker. Additionally, most experienced teleworkers are determined to continue teleworking, meaning a successful telework program can be an important tool in the recruitment and retention of qualified and skilled employees. By establishing successful telework programs, small business owners would be able to retain these valuable employees by allowing them to work from a remote location, such as their home or a telework center.

In addition to the cost savings realized by businesses that employ teleworkers, there are a number of related benefits to society and the employee. For example, telecommuters help reduce traffic and cut down on air pollution by staying off the roads during rush hour. Fully 80 percent of home-only teleworkers commute to work on days they are not teleworking. Their one-way commute distance averages 19.7 miles, versus 13.3 miles for non-teleworkers, meaning employees that take advantage of telecommuting programs are, more often than not, those with the longest commutes. Teleworking also gives employees more time to spend with their families and reduces stress levels by eliminating the pressure of a long commute.

Our legislation seeks to extend the benefits of successful telecommuting programs to more of our nation's small businesses. Specifically, it establishes a pilot program in the Small Business Administration, SBA, to raise awareness about telecommuting among small business employers and to encourage those small businesses to establish telecommuting programs for their employees.

Additionally, an important provision in our bill directs the SBA Administrator to undertake special efforts for businesses owned by, or employing, persons with disabilities and disabled America veterans. At the end of the day, telecommuting can provide more than just environmental benefits and improved quality of life. It can open the door to people who have been precluded from working in a traditional office setting due to physical disabilities.

Our legislation is also limited in cost and scope. It establishes the pilot program in a maximum of five SBA regions and caps the total cost to five million dollars over two years. It also restricts the SBA to activities specifically proscribed in the legislation: developing educational materials; conducting outreach to small business; and acquiring equipment for demonstration purposes. Finally, it requires the SBA to prepare and submit a report to Congress evaluating the pilot program.

Several hurdles to establishing successful telecommuting programs could be cleared by enacting our legislation. In fact, the number one reported obstacle to implementing a telecommuting program is a lack of know-how. Our bill will go a long way towards educating small business owners on how they can draft guidelines to make a telework program an affordable, manageable reality.

Mr. President, I ask unanimous consent that a copy of the Small Business Telecommuting Act be printed in the RECORD.

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

S. 522

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 ''Small Business Telecommuting Act''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) telecommuting reduces the volume of peak commuter traffic, thereby reducing traffic congestion and air pollution;

(2) the Nation's communities can benefit from telecommuting, which gives workers more time to spend at home with their families;

(3) it is in the national interest to raise awareness within the small business community of telecommuting options for employees;

(4) the small business community can benefit from offering telecommuting options to employees because such options make it easier for small employers to retain valued employees and employees with irreplaceable institutional memory;

(5) companies with telecommuting programs have found that telecommuting can boost employee productivity 5 percent to 20 percent, thereby saving businesses valuable resources and time;

(6) 60 percent of the workforce is involved in information work (an increase of 43 percent since 1990), allowing and encouraging decentralization of paid work to occur; and

(7) individuals with disabilities, including disabled American veterans, who own or are employed by small businesses could benefit from telecommuting to their workplaces.

SEC. 3. SMALL BUSINESS TELECOMMUTING PILOT PROGRAM.

(a) IN GENERAL.—In accordance with this Act, the Administrator shall conduct, in not more than 5 of the Small Business Administration's regions, a pilot program to raise awareness about telecommuting among small business employers and to encourage such employers to offer telecommuting options to employees.

(b) SPECIAL OUTREACH TO INDIVIDUALS WITH DISABILITIES.—In carrying out subsection (a), the Administrator shall make special efforts to do outreach to—

(1) businesses owned by or employing individuals with disabilities, and disabled American veterans in particular;

(2) Federal, State, and local agencies having knowledge and expertise in assisting individuals with disabilities or disabled American veterans; and

(3) any group or organization, the primary purpose of which is to aid individuals with disabilities or disabled American veterans.

(c) PERMISSIBLE ACTIVITIES.—In carrying out the pilot program, the Administrator may only—

(1) produce educational materials and conduct presentations designed to raise awareness in the small business community of the benefits and the ease of telecommuting;

(2) conduct outreach—

(A) to small business concerns that are considering offering telecommuting options; and

(B) as provided in subsection (b); and

(3) acquire telecommuting technologies and equipment to be used for demonstration purposes.

(d) SELECTION OF REGIONS.—In determining which regions will participate in the pilot program, the Administrator shall give priority consideration to regions in which Federal agencies and private-sector employers have demonstrated a strong regional commitment to telecommuting.

SEC. 4. REPORT TO CONGRESS.

Not later than 2 years after the first date on which funds are appropriated to carry out this Act, the Administrator shall transmit to the Committee on Small Business of the House of Representatives and the Committee on Small Business of the Senate a report containing the results of an evaluation of the pilot program and any recommendations as to whether the pilot program, with or without modification, should be extended to include the participation of all Small Business Administration regions.

SEC. 5. DEFINITIONS.

In this Act—

(1) the term ''Administrator'' means the Administrator of the Small Business Administration;

(2) the term ''disability'' has the same meaning as in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102);

(3) the term ''pilot program'' means the program established under section 3; and

(4) the term ''telecommuting'' means the use of telecommunications to perform work functions under circumstances which reduce or eliminate the need to commute.

SEC. 6. TERMINATION.

The pilot program shall terminate 2 years after the first date on which funds are appropriated to carry out this Act.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Small Business Administration $5,000,000 to carry out this Act.

By Mr. BOND:

S. 523. A bill entitled the ''Building Better Health Centers Act of 2001''; to the Committee on Health, Education, Labor, and Pensions.

Mr. BOND. Mr. President, I rise today to introduce an important piece of new legislation to help an essential part of our health care safety net, our nation's health centers, serve the uninsured and medically-underserved.

The Building Better Health Centers Act will promote health centers' mission of providing care to anyone who needs it by getting rid of an artificial distinction existing in current law. Right now, federal grant dollars to health centers can be used for most things a health center needs to do, including salaries, supplies, and basic upkeep. But federal grants to health centers cannot be used for one of the most critical and expensive needs a health center, or any business or nonprofit organization, will ever face—capital improvements.

Unless we correct this silly distinction, many of our health centers are destined to be shackled to slowly deteriorating facilities. Over time, this will sap their ability to provide care. If we are serious about maximizing health centers' ability to deal with our health care access needs, we must allow federal grant dollars to be used to meet our health centers' capital needs.

I've been down here on the Senate floor many times to talk about health centers, but let me cover the basics once again. Health centers, which include community health centers, migrant health centers, homeless health centers, and public housing health centers, address the health care access problem by providing primary care services in thousands of rural and urban medically-underserved communities throughout the United States.

And as we all know, the health care access problem remains a serious issue in our country. Many health care experts believe that Americans' lack of access to basic health services is our single most pressing health care problem. Nearly 50 million Americans do not have access to a primary care provider, whether they are insured or not. In addition, 43 million Americans lack health insurance and have difficulty accessing care due to the inability to pay.

Health centers help fill part of this void. More than 3,000 health center clinics nationwide provide basic health care services to nearly 12 million Americans, almost 8 million minorities, nearly 650,000 farmworkers, and almost 600,000 homeless individuals each year. The care they provide has been repeatedly shown by studies to be high-quality and cost-effective. In fact, health centers are one of the best health care bargains around, the average yearly cost for a health center patient is less than one dollar per day.

I believe that one of the most effective ways to address our health care access problem is by dramatically expanding access to health centers. And I am pleased to report a strong consensus is developing to do exactly that. Last year, the Senate voted in support of a proposal I have made with Sen. HOLLINGS to double access to health centers by doubling funding over a five-year period. In addition, President Bush has proposed that we double the number of people that health centers care for over the next five years.

But over the next few years, as we hopefully see additional resources flow to health centers, we will increasingly encounter problems that stem from an artificial distinction we see in current law. As I mentioned, federal health center grants are currently allowed to be used for most purposes—including salaries for health professionals and administrators, medical supplies, basic upkeep of clinic facilities, even lease payments if the health center rents. But they simply cannot be used for capital improvements.

This means that unless health centers can find some other way to finance their capital needs—and I will talk in a moment about the significant barriers they face in doing this—major projects that could provide substantial benefit to patients will never happen.

It means that an urban community health center that has been slowly expanding staff and services over many years until it's bursting at the seams of its modest two-story building will have to continue to find ways to cope, even if that prevents additionally-needed expansion or even if upkeep costs on the old building begin to spiral out-of-control.

It means that a rural community health center in an area desperately in need of dental services may not be able to expand the facility and purchase dental chairs, X-ray machines and other major dental equipment needed for the desired expansion into dental services.

It means that even if federal government is will to commit grant funds to open a new health center in one of the hundreds of underserved communities nationwide which lacks any health care professionals for miles around, the new center may never come to be due to lack of funding for a facility in which to house it.

This is more than theory, the evidence shows that many existing health centers operate in facilities that desperately need renovation or modernization. Approximately one of every three health centers reside in a building more than 30 years old, and one of every eight operate out of a facility more than half a century old.

Moreover, a recent survey of health centers in 11 states showed that more than two-thirds of health centers had a specifically-identified need to renovate, expand, or replace their current facility. The average cost of a needed capital project was $1.8 million, and the needs ranged from ''small'' projects of $400,000 to major $5 million efforts. The survey demonstrates that there may be as much as $1.2 billion in unmet capital needs in our nation's health centers.

And that is just for existing health centers. As I mentioned, hundreds of

medically-underserved areas lack—and could desperately use—the services of a health center. This further shows the need for new facilities, and more capital, as we expand access to new communities.

So what about other possible sources of capital? There are plenty of ways—in theory—that health centers might be able to get money for capital improvements. Business, large and small, do it all the time. So do other nonprofit organizations like universities and hospitals. They use built-up equity. They take out loans. They float bonds. They raise money through private donations as part of a capital campaign.

But unfortunately, health centers just aren't quite like most other businesses or nonprofits, and many times these options are unrealistic as a way to provide the entire cost of a major project.

Health centers simply don't have loads of cash in the bank. The revenue these clinics are able to cobble together from federal grants, low-income patients, Medicaid, private donations, and other health insurers is typically all put back into patient care.

Heath centers already work hard to maximize the money they can raise through private donations and non-federal grant sources. In fact, an average of 13 percent, one-seventh of their budget, of health care center revenue comes from these sources. Most of this private and public funding is used to meet operating expenses, and it is difficult to go back to the same sources to request further donations for capital needs. In fundraising, health centers also face a huge disadvantage compared to nonprofit organizations like universities and hospitals because health centers lack a natural middle- and upper-class donor base. And raising private funds is particularly hard in isolated rural areas that are often quite poor and which can have the most dire heath care access problems.

Finally, health centers have difficulties obtaining private loans for capital needs for a variety of reasons. The high number of uninsured patients health centers treat and the poor reimbursement rates received from most Medicaid programs mean health centers rarely have significant operating margins. Without these margins, banks are leery about loans because they don't feel assured that a health center will have sufficient cash flow to successfully manage loan payments. Banks are made even more nervous by the high proportion of health center revenue that comes from sometimes-unreliable government sources, such as the health centers' grant funding and Medicare and Medicaid reimbursements.

So what should we do? This isn't exactly rocket science. We have a need, many health centers require significant help to build or maintain adequate facilities because they can't raise the money or obtain the loans themselves. And we have an existing law that prevents the federal government from using health center funding to do exactly that.

We simply need to get rid of the artificial distinction we have right now and allow our health center grant dollars to go to further the health center mission in the best way possible, and that is going to mean at times that we should support some new construction or major renovation projects. If a crumbling building is constantly in need of repair, is soaking up money, and is reducing the number of patients a health center can reach out to, the federal government should help with the major renovation or the new construction needed.

The Building Better Health Centers Act authorizes the federal government to make grants to health centers for facility construction, modernization, replacement, and major equipment purchases. If our goal is to help health centers provide high-quality care to as many uninsured and medically-underserved people as possible, we need to get rid of barriers to doing that, including capital barriers.

Beyond just the possibility of grant funding, the bill goes further and permits the federal government to guarantee loans made by a bank or another private lender to a health center to construct, replace, modernize, or expand a health center facility. This loan guarantee is an additional tool that will help allay the fears of banks and other private lenders by limiting their exposure if a health center defaults on a loan. An additional advantage of loan guarantees is that you can stretch funds farther. When guaranteeing a $1 million loan, the federal government need only set aside a much smaller amount of appropriated money, perhaps only a twelfth to a tenth of the loan total, to insure against that loan's possible default. This multiplier factor means that for every dollar appropriated for this purpose, many dollars worth of loans can be guaranteed.

There is actually tremendous potential for these two new options, the facility grants and the facility loan guarantees, to work together. Sharing in up-front costs through grant funding, and helping further by guaranteeing a loan that covers the remainder of a project's cost may well be the best approach. This will balance the need to make sure specific projects get enough grant funding to make them realistic and the need to spread capital assistance among as many projects as possible.

Let me try to respond in advance to a few potential criticisms of this legislation. First, to those who simply think on principle that the government should stay out of private-sector bricks and mortar projects, I would say we're already at least halfway pregnant. In just about every appropriations bill, we have dozens if not hundreds of specific projects earmarked for major building or renovation projects.

Some might worry that the potential large costs of construction projects could get out of hand and squeeze out funding actually used for patient care. But let me point out that we limit capital assistance to five percent of all health center funding. Based on this year's funding level, this would mean up to $58.5 million for facility grants and loan guarantees. Because the loan guarantee program would allow some of this money to be stretched, this level of support could easily mean help for more than $200 million in health center projects. But the main point is that capital projects are absolutely limited to five-percent of health center funding, which prevents any possible runaway spending.

Finally, we should ask ourselves whether or not federal assistance is going to give a free pass to communities, which really should be expected to help out with public-minded projects like the construction or renovation of a health center. In my bill, local communities are expected to help. No more than 75 percent of the total costs of a major project can come from federal sources—and this is the absolute upper limit. Much more likely are evenly-shared costs or situations in which federal support represents a minority of the capital investment. This bill does not give local areas a free ride.

The quick rationale for this bill is simple. Many health centers are hampered in their efforts to provide health care to the medically-underserved by inadequate facilities. It doesn't make sense to help these vital community clinics only with day-to-day expenses if their building is literally crumbling around them.

I urge my colleagues to join me in supporting this legislation. This year, we are scheduled to reauthorize the Consolidated Health Centers program, along with other vital health care safety net programs like the National Health services Corps. I hope to include this bill—the Building Better Health Centers Act—in this larger safety net reauthorization legislation. I look forward to working with my colleagues in the Senate and on the Health, Education, Labor, and Pensions Committee to aggressively help our nation's health centers meet their dire capital needs by making this bill law.

By Mr. GRAHAM (for himself, Mr. DEWINE, Mr. HAGEL, Mr. BREAUX, Mr. MCCAIN, Mr. DODD, Mr. THOMPSON, Mr. BIDEN, and Mr. NELSON of Nebraska):

S. 525. A bill to expand trade benefits to certain Andean countries, and for other purposes; to the Committee on Finance.

Mr. GRAHAM. Mr. President, today I introduce a bill along with my colleagues Senators DEWINE, HAGEL, BREAUX, MCCAIN, DODD, THOMPSON, BIDEN, and BEN NELSON to introduce the ''Andean Trade Preference Expansion Acts,'' a bill that would provide additional trade benefits to the countries of Bolivia, Colombia, Ecuador, and Peru.

The Andean Trade Preference Act, commonly known as ATPA, was passed in 1991. That legislation is set to expire. If we are serious about halting the flow of drugs into this country, we must not let this happen. If we are committed to stabilizing the situation in Colombia, we must act this year, to both extend and expand those trade benefits.

The office of the United States Trade Representative recently published a report assessing the operation of the Andean trade agreement so far. The report concluded that this agreement is strengthening the legitimate economies of countries in the region and is an important component of our efforts to contain the spread of illicit activities. Export diversification in beneficiary countries is increasing, net coca cultivation has declined slightly. Although there is still progress to be made, these countries are working constructively with the United States on issues of concern including working conditions and intellectual property protection.

Despite this success, renewal of ATPA in its current form is not our goal. The landscape has changed since 1991.

Perhaps the most significant alteration was last year's passage of the ''Trade and Development Act of 2000,'' which provided significant new trade benefits to countries of the Caribbean Basin Initiative. As a result of enhanced trade benefits to these countries, the Andean region stands to lose a substantial number of apparel industry jobs—up to 100,000 jobs in Colombia alone. At least 10 U.S.-based companies that purchase apparel from Colombian garment manufacturers have already indicated their near-term intentions to shift production to Caribbean countries due to the significant cost savings associated with the new trade benefits afforded the region. Some of these U.S. companies have utilized Colombia as a manufacturing base for more than 10 years, providing desperately needed legitimate employment to the Colombian economy.

The immediate reaction of these companies to enhanced Caribbean trade benefits creates a dilemma. Clearly, it does not make sense for Congress to provide foreign aid on the one hand, and implement trade legislation that puts tens of thousands of people out of work on the other. This bill will address that critical, unintended contradiction by harmonizing the trade benefits of the Caribbean and Andean nations.

Specifically, our bill would extend duty-free, quota-free treatment to apparel articles assembled, cut or knit in Andean beneficiary nations using yarns and fabric wholly formed in the United States, and provide benefits to non-apparel items that were previously excluded from the Andean trade preferences package. These new benefits will create parity with the Caribbean Basin Initiative nations as well as expand an important source of economic and employment growth for the U.S. textile and apparel industry.

The United States is at now a critical juncture with its neighbors in the Andean region.

Last year, the United States government responded generously to Colombia's needs by providing a supplemental appropriations package of more than $1.6 billion dollars to help the country in its time of crisis. These funds were in addition to over $4.0 billion being spent by Colombia itself.

Fundamental to Plan Colombia, and to the government's ability to succeed in its efforts to safeguard the country, will be efforts to encourage economic growth and provide jobs to the Colombian people. Today in Colombia more than one million people are displaced, the unemployment rate is nearly 20 percent and Colombia is experiencing the worst recession in 70 years. Without new economic opportunities, more and more Colombians will turn to illicit activities to support their families or seek to join the growing numbers of people who are leaving the country to find a better, safer future for their families.

This ''trade plus aid'' approach to stabilizing the Andean region has been widely embraced. In its March 2000 report. ''First Steps Toward a Constructive U.S. Policy in Colombia,'' a Task Force I co-chair with General Brent Scowcroft recommended the extension of the ATPA, to include the same benefits as those contained under the Caribbean Basin Initiative.

Although this bill provides benefits to all ATPA beneficiaries, it is particularly critical to Colombia, which in 1998 exported 59 percent of all textiles and apparel from the Andean region to the U.S., two-thirds of which were assembled and/or cut from U.S. yarns and fabric. Colombian President Pastrana recognizes this. In his visit to Washington last week he stressed that access to U.S. markets was among the top priorities.

On a more comprehensive scale, passage of this legislation is critical to ensure that all nations in the Western Hemisphere can maintain their long-term competitiveness with Asian nations, particularly in the textile industry. At present, the textile products of most Asian nations are subject to quotas imposed by the Multi-Fiber Agreement, now known as the Agreement on Textiles and Clothing. This restriction on Asian textiles has enabled the nations of the Western Hemisphere to remain competitive, and further, the Andean region—specifically Colombia—has become a significant market for fabric woven in U.S. mills from yarn spun in the U.S. originating from U.S. cotton growers.

However, in 2005, these Asian import quotas will be phased out. At that time, textile production in both the Andean region and the Caribbean basin will be placed at a distinct and growing disadvantage. Disinvestment in the region will occur, reducing the incentive to use any material from U.S. textile mills or cotton grown in the United States.

The Congress must act this year to renew and expand trade benefits for the Andean countries. If we do not move forward, the current benefits will expire and these countries will lose an important means of developing legitimate industries and employment.

Mr. DEWINE. Mr. President, the illicit drug trade in the Andean region of South America is thriving. Lagging economies, weak law enforcement, and corrupt judiciary systems among many countries in the region have created an environment ideal for drug trafficking.

The chaotic situation in Colombia illustrates this. The nation is suffering its worst recession in over 70 years. The unemployment rate is at nearly 20 percent. Not surprisingly, as the Colombian economy has worsened, the country's coca cultivation has skyrocketed, becoming the source of nearly 80 percent of the cocaine consumed in the United States. To make matters worse, as the illicit drug money has poured in, violent insurgent groups in Colombia have used it to fund their guerilla movements, movements creating instability not only within Colombia, but also across the entire Andean Region.

Because of the dangerous and increasingly chaotic situation in the region, my colleagues—Senators GRAHAM, MCCAIN, HAGEL, BREAUX, DODD, and THOMPSON—and I are introducing the ''Andean Trade Preference Expansion Act,'' a bill that will help establish much-needed stability and security in the Andean Region by promoting a strong economic environment for enhanced trade throughout the Western Hemisphere.

This legislation is timely and important. The current Andean Trade Preference Act, which authorizes the President to grant certain unilateral preferential tariff benefits to Bolivia, Colombia, Ecuador, and Peru, is set to expire on December 4, 2001. We need to renew and expand this trade act not only because of its benefits for U.S. companies trading in the region, but also because it encourages economic development in Andean countries and economic alternatives to drug production and trafficking. I fear, Mr. President, that if the Andean Trade Preferences Act is not renewed by the end of this year, the economic and political situation in the Andean Region likely will destabilize further, threatening to expand an already booming illicit drug trade.

The economic situation in the Andean Region is growing worse by the day. The nations within the region have been struggling to pull themselves out of one of the worst economic crises in decades. The recession has been more severe than anticipated, and the Andean Development Corporation recently forecast negative rates of growth for next year in Colombia, Ecuador and

Venezuela. Only Peru and Bolivia will grow at all, and marginally at best.

The Colombian civil war and its spillover effect have further weakened domestic economies. Political instability has deterred foreign investment, and increased capital flight has put pressure on domestic currencies. While there are a few signs of possible recovery—including an increase in oil prices that will be helpful for Ecuador, Colombia and Venezuela—there is concern that the Andean region could experience a destabilizing financial crisis similar to the recent one in Asia.

Last year, Congress and the Clinton Administration tried to address political instability in the Andean region through passage of ''Plan Colombia''—the emergency supplemental plan developed to address the political and social instability in the Andean region. The Plan established programs to strengthen Colombian government institutions and promote alternative crop development programs throughout the region. A key element of Plan Colombia is that it recognizes that if we fight only the Colombian drug problem, we risk creating a ''spillover'' effect, where Colombia's drug trade shifts to adjacent countries in the region.

For Plan Colombia to succeed, it is crucial that we help bolster the faltering economies of the Andean countries—namely Colombia, Peru, Bolivia, and Ecuador—so they don't turn to the drug trade as an means for economic livelihood. The legislation we are introducing today—the Andean Trade Preference Expansion Act—will help embolden Plan Colombia and will help it succeed by increasing trade and economic opportunities within the region. Let me explain.

The recent implementation of the Caribbean Basin Initiative, which provides enhanced trade benefits to nations trading with Caribbean countries, is having the unintended consequence of shifting economic opportunities away from the Andean Region to the Caribbean Basin. Such a shift is further shrinking the economies within the Andean Region. Colombia, for example, stands to lose up to 100,000 jobs in the apparel industry because of the CBI. The simple fact is that companies, including U.S.-based businesses, are moving production to the Caribbean Basin to capitalize on the significant cost savings associated with the new CBI law. Already, at least 10 U.S.-based companies that purchase apparel from Colombian garment manufacturers have indicated their intentions to shift production to the Caribbean.

Our Andean Trade Preference Expansion Act would help correct for this unintended economic displacement by working in tandem with the CBI, so that we don't rob one region in our hemisphere to pay another. Specifically, our bill extends duty-free, quota-free treatment to apparel articles knit, assembled, or cut in an ATPA beneficiary nation that use yarns and fabrics wholly formed in the United States. This creates a measure of parity with Caribbean nations that currently receive trade preferences under the CBI. In addition, goods other than apparel that previously were not eligible for trade preferences under the current Andean Trade Preference Act would receive the NAFTA tariff rate.

Although our bill provides benefits to all ATPA beneficiaries, it is particularly critical to Colombia, which, in 1998, exported to the United States 59 percent of all textiles and apparel from the Andean region. Two-thirds of those exports were assembled and/or cut from U.S. yarns and fabrics. We cannot allow Colombia's economy to take this kind of hit. Plan Colombia simply cannot be effective unless Colombia can improve its economy and create and maintain job opportunities. I believe that our new legislation will help prevent further economic destabilization and stands to promote future economic growth.

Ultimately, we—as a nation—stand to lose or gain, depending on the economic health of our hemispheric neighbors. A more aggressive trade policy in the hemisphere is not only important for increasing markets for U.S. companies, but it also enhances stability and promotes security in the hemisphere. It is important to remember that a strong, and free, and prosperous hemisphere means a strong, and free, and prosperous United States. It is in our national interest to pursue an aggressive trade agenda in the Western Hemisphere to combat growing threats and promote prosperity.

I urge my colleagues to join us in support of the Andean Trade Preference Expansion Act. It is the right thing to do for our neighbors and for our businesses here at home.

Mr. MCCAIN. Mr. President, I would like to join with Senators GRAHAM, HAGEL, DEWINE, DODD, BIDEN, BREAUX, and THOMPSON today in introducing this important legislation to reauthorize the Andean Trade Preference Act. This legislation will renew and expand duty-free tariff treatment to our important trade partners: Bolivia, Colombia, Ecuador, and Peru. I would like to emphasize to my colleagues the importance of acting on this legislation, because the existing Andean Trade Preference Act will expire on December 4.

Having recently visited the region, I would like to assure my colleagues that this program plays an important role in aiding the economic development of our Andean allies, and stabilizing fragile democracies in the region. The existing Andean Trade Preference Act has helped two-way trade between the United States and the region to nearly double in the 1990s. During this time, U.S. exports grew 65 percent and U.S. imports increased 98 percent. In addition, the program is responsible for an increase in industrial and agricultural imports from the Andean beneficiary countries. This economic diversification is beneficial for economic growth in the Andean region, and will reduce pressure for the citizens of the region to become involved in the drug trade.

However, this program must be expanded to be truly effective. According to a recent study by the Congressional Research Service, only 10 percent of the imports from the Andean region enter the United States exclusively under the provisions of the existing Andean Trade Preference Act. I join with my colleagues in supporting Senator GRAHAM's legislation, because it plays an important first step in the reauthorization process by extending to the Andean region similar trade benefits to what the Congress voted to give the Caribbean region last year. During his confirmation hearing earlier this year, Ambassador Zoellick called for a ''renewed and robust Andean Trade Preference Act.'' I hope that my colleagues in the Senate will consider the United States Trade Representative's recommendations, and those of our allies in the Andean region, who have proven that they need expanded duty and quota-free treatment for their imports.

Many of us have had the benefit of traveling to Colombia over the past few months to observe the American-funded drug eradication efforts there, and to discuss Plan Colombia with the region's leaders. During my visit to Colombia in February, President Andres Pastrana made clear that liberalized trade with the United States, in the form of renewal and expansion of the Andean Trade Preference Act, was a critical pillar of his strategy to promote alternatives to the drug trade in his country. Plan Colombia is premised upon reducing the power and allure of the narco-traffickers and their rebel supporters who threaten America's interest in a democratic, prosperous, and stable Western Hemisphere. While the military component of America's assistance package remains controversial at home, expanding our trade relationship with Colombia, a nation of industrious people and vast natural resources, is a logical extension of our compelling interest in strengthening the Colombian state and providing its people with rewarding economic opportunities in the legitimate economy.

It is also important to view renewal and expansion of the Andean Trade Preference Act in terms of our larger trade agenda with our Latin American neighbors. Early reauthorization of this program will show our trade partners that the United States is seriously engaged in strengthening our trade relations and promoting interdependence in the region. It is my belief that the United States should pursue four policies this year in order to accomplish our mutually beneficial trade objectives with our Latin American partners:

1. Early renewal of the Andean Trade Preference Act;

2. Passage of trade promotion authority for the President;

3. Completion of negotiations on a free trade agreement with Chile; and

4. Accomplishment of serious progress on the Free Trade Area of the Americas negotiations in order to meet an early conclusion of these negotiations in 2003.

I look forward to working with the President and my colleagues in the Senate to pass this legislation in a timely manner before the December expiration. It is in our nation's economic and national security interests to reauthorize and expand trade benefits for the Andean region.

By Mr. DORGAN (for himself and Mr. ROCKEFELLER):

S. 526. A bill to amend title 49, United States Code, to provide that rail agreements and transactions subject to approval by the Surface Transportation Board are no longer exempt from the application of the antitrust laws, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. DORGAN. Mr. President, I would like to raise an issue that is of great concern to many of my constituents and to me. That is the issue of unchecked monopoly power of the nation's freight railroad industry.

Since the supposed deregulation of the rail industry in 1980, the number of major Class I railroads has declined from approximately 42 to only four major U.S. railroads today. Rather than achieving the competitive framework intended by deregulation, today's freight railroad industry can be best described as a handful of regional monopolies that rely on bottlenecks to exert maximum market power. Four mega-railroads overwhelmingly dominate railroad traffic, generating 95 percent of the gross ton-miles and 94 percent of the revenues, controlling 90 percent of all U.S. coal movement; 70 percent of all grain movement and 88 percent of all originated chemical movement.

This drastic level of consolidation has left rail customers with only two major carriers operating in the East and two in the West, and has far exceeded the industry's need to minimize unit operating costs. But consolidation alone has not produced these regional monopolies. Over the years, regulators have systematically adopted policies that so narrowly interpret the procompetitive provisions of the 1980 statute that railroads are essentially protected from ever having to compete with each other.

In my state, it costs $2,300 to move one rail car of wheat from North Dakota to Minneapolis, approx. 400 miles. Yet for a similar 400 mile move, between Minneapolis and Chicago, it costs only $238 to deliver that car. Move that same car another 600 miles to St. Louis, Missouri and it costs only $356 per car.

Since the deregulation of the railroad industry, the Interstate Commerce Commission, now the Surface Transportation Board, has been charged with the responsibility to make sure that the pro-competitive intent of that law was being carried out, so that those rail users without access to true market based competition would be protected by ''regulated competition.''

That clearly hasn't happened. Competition among rail carriers is virtually nonexistent in part because the ICC and the STB have consistently chosen to protect railroads from such competition, and have done little to protect rail customers that have no alternatives.

It is time for Congress to make it very clear that true market competition among railroads is what we originally intended then and what we require now. This is the same approach we have taken with telecommunications and natural gas pipelines, and it is the center of our deliberations regarding the future of the airline industry. Competition among railroads is critical for large sectors of our national economy.

That is why today, along with Senator JAY ROCKEFELLER, I am introducing the Rail Competition Enforcement Act to reinstate the Justice Department's review of proposed railroad mergers under antitrust laws. The bill would require both the Surface Transportation Board and the Justice Department to approve new mergers.

I look forward to working with my colleagues on this most important matter. 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. 526

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 ''Rail Competition Enforcement Act of 2001''.

SEC. 2. TERMINATION OF EXEMPTION.

(a) IN GENERAL.—Section 10706 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2)(A), by striking '', and the Sherman Act (15 U.S.C. 1, et seq.),'' and all that follows through ''or carrying out the agreement'' in the third sentence;

(B) in paragraph (4)—

(i) by striking the second sentence; and

(ii) by striking ''However, the'' in the third sentence and inserting ''The''; and

(C) in paragraph (5)(A), by striking '', and the antitrust laws set forth in paragraph (2) of this subsection do not apply to parties and other persons with respect to making or carrying out the agreement''; and

(2) by striking subsection (e) and inserting the following:

''(e) APPLICATION OF ANTITRUST LAWS.—

''(1) IN GENERAL.—Nothing in this section exempts a proposed agreement described in subsection (a) from the application of the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12, 14 et seq.), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), section 73 or 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), or the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a).

''(2) ANTITRUST ANALYSIS TO CONSIDER IMPACT.—In reviewing any such proposed agreement for the purpose of any provision of law described in paragraph (1), the Board and any other reviewing agency shall take into account, among any other considerations, the impact of the proposed agreement on shippers and on affected communities.''.

(b) COMBINATIONS.—Section 11321 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''The authority'' in the first sentence and inserting ''Except as provided in section 11 of the Clayton Act (15 U.S.C. 21(a)), the authority''; and

(B) by striking ''is exempt from the antitrust laws and from all other law,'' in the third sentence and inserting ''is exempt from all other law (except the antitrust laws referred to in subsection (c)),''; and

(2) by adding at the end the following:

''(c) APPLICATION OF ANTITRUST LAWS.—

''(1) IN GENERAL.—Nothing in this section exempts a transaction described in subsection (a) from the application of the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12, 14 et seq.), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), section 73 or 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), or the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a).

''(2) ANTITRUST ANALYSIS TO CONSIDER IMPACT.—In reviewing any such transaction for the purpose of any provision of law described in paragraph (1), the Board and any other reviewing agency shall take into account, among any other considerations, the impact of the transaction on shippers and on affected communities.''.

(c) CLAYTON ACT.—

(1) APPLICATION OF ACT.—Section 7 of the Clayton Act (15 U.S.C. 18) is amended by striking ''Surface Transportation Board,'' in the last paragraph of that section.

(2) FTC ENFORCEMENT.—Section 11(a) of the Clayton Act (15 U.S.C. 21(a)) is amended by striking ''subject to jurisdiction'' and all that follows through the first semicolon and inserting ''subject to jurisdiction under subtitle IV of title 49, United States Code (except for agreements described in section 10706 of that title and transactions described in section 11321 of that title);''.

(d) CONFORMING AMENDMENTS.—

(1) The heading for section 10706 of title 49, United States Code, is amended to read as follows:

''§ 10706. Rate agreements''.

(2) The item relating to such section in the chapter analysis at the beginning of chapter 107 of such title is amended to read as follows:

''10706. Rate agreements.''.

SEC. 3. EFFECTIVE DATE.

The amendments made by section 2 shall apply to any agreement or transaction referred to in section 10706 or 11321, respectively, of title 49, United States Code, that is submitted to the Surface Transportation Board after December 31, 2001.

By Mr. HATCH (for himself, Mr. CLELAND, Mr. LOTT, Mr. THURMOND, Mrs. FEINSTEIN, Mr. SMITH of New Hampshire, Mr. BROWNBACK, Mr. ALLARD, Mr. ALLEN, Mr. BAUCUS, Mr. BOND, Mr. BUNNING, Ms. COLLINS, Mr. CRAIG, Mr. CRAPO, Mr. DAYTON, Mr. DEWINE, Mr. DOMENICI, Mr. ENSIGN, Mr. ENZI, Mr. FITZGERALD, Mr. FRIST, Mr. GRAMM, Mr. GRASSLEY, Mr. HAGEL, Mr. HELMS, Mr. HOLLINGS, Mr. HUTCHINSON, Mrs. HUTCHISON, Mr. INHOFE, Mr. JOHNSON, Mrs. LINCOLN, Mr. LUGAR, Mr. MCCAIN, Mr. MILLER, Mr. MURKOWSKI, Mr. REID, Mr. SESSIONS,

Mr. ROBERTS, Mr. SANTORUM, Mr. SHELBY, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, Mr. VOINOVICH and, Mr. WARNER):

S.J. Res. 7. A joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, it is with profound honor and reverence that I, together with my friend and colleague, Senator CLELAND, introduce a bi-partisan constitutional amendment to permit Congress to prohibit the physical desecration of the American flag.

The American flag serves as a symbol of our great nation. The flag represents in a way nothing else can, the common bond shared by an otherwise diverse people. Whatever our differences of party, race, religion, or socio-economic status, the flag reminds us that we are very much one people, united in a shared destiny, bonded in a common faith in our nation.

Nearly a decade ago, Supreme Court Justice John Paul Stevens reminded us of the significance of our unique emblem when he wrote:

A country's flag is a symbol of more than nationhood and national unity. It also signifies the ideas that characterize the society that has chosen that emblem as well as the special history that has animated the growth and power of those ideas. . . . So it is with the American flag. It is more than a proud symbol of the courage, the determination, and the gifts of a nation that transformed 13 fledgling colonies into a world power. It is a symbol of freedom, of equal opportunity, of religious tolerance, and of goodwill for other peoples who share our aspirations.

Throughout our history, the flag has captured the hearts and minds of all types of people, ranging from school teachers to union workers, traffic cops, grandmothers, and combat veterans. In 1861, President Abraham Lincoln called our young men to put their lives on the line to preserve the Union. When Union troops were beaten and demoralized, General Ulysses Grant ordered a detachment of men to make an early morning attack on Lookout Mountain in Tennessee. When the fog lifted from Lookout Mountain, the rest of the Union troops saw the American flag flying and cheered with a newfound courage. This courage eventually led to a nation of free men; not half-free and half-slave.

In 1941, President Franklin Roosevelt called on all Americans to fight the aggression of the Axis powers. After suffering numerous early defeats, the free world watched in awe as five Marines and one sailor raised the American flag on Iwo Jima. Their undaunted, courageous act, for which three of the six men died, inspired the allied troops to attain victory over fascism.

In 1990, President Bush called on our young men and women to go to the Mideast for Operations Desert Shield and Desert storm. After an unprovoked attack by the terrorist dictator Saadam Hussein on the Kingdom of Kuwait, American troops, wearing arm patches with the American flag on their shoulders, led the way to victory. General Norman Schwarzkopf addressed a joint session of Congress describing the American men and women who fought for the ideals symbolized by the American flag:

[W]e were Protestants and Catholics and Jews and Moslems and Buddhists, and many other religions, fighting for a common and just cause. Because that's what your military is. And we were black and white and yellow and brown and red. And we noticed that when our blood was shed in the desert, it didn't separate by race. It flowed together.

General Schwarzkopf then thanked the American people for their support, stating:

The prophets of doom, the naysayers, the protesters and the flag-burners all said that you wouldn't stick by us, but we knew better. We knew you'd never let us down. By golly, you didn't.

The pages of our history show that when this country has called our young men and women to serve under the American flag from Lookout Mountain to Iwo Jima to Kuwait, they have given their blood and lives. The crosses at Arlington, the Iwo Jima memorial, and the Vietnam Memorial honor those sacrifices. But there were those who did not.

In 1984, Greg Johnson led a group of radicals in a protest march in which he doused an American flag with kerosene and set it on fire as his fellow protestors chanted: ''America, the red, white, and blue, we spit on you.'' Sadly, the radical extremists, most of whom have given nothing, suffered nothing, and who respect nothing, would rather burn and spit on the American flag than honor it.

Contrast this image with the deeds of Roy Benavidez, an Army Sergeant from Texas, who led a helicopter extraction force to rescue a reconnaissance team in Vietnam. Despite being wounded in the leg, face, back, head, and abdomen by small arms fire, grenades, and hand-to-hand combat with vicious North Vietnamese soldiers, Benavidez held off the enemy and carried several wounded to the helicopters, until finally collapsing from a loss of blood. Benavidez earned the Medal of Honor. When Benavidez was buried in Arlington National Cemetery, the honor guard placed an American flag on his coffin and then folded it and gave it to his widow. The purpose of Roy Benavidez' heroic sacrifice—and the purpose of the American people's ratification of the First Amendment—was not to protect the right of radicals like Greg Johnson to burn and spit on the American flag.

The American people have long distinguished between the First Amendment right to speak and write one's political opinions and the disrespectful, and often violent, physical destruction of the flag. For many years, the people's elected representatives in Congress and 49 state legislatures passed statutes prohibiting the physical desecration of the flag. Our founding fathers, Chief Justice Earl Warren, and Justice Hugo Black believed these laws to be completely consistent with the First Amendment's protection of the spoken and written word and not disrespectful, extremist conduct.

In 1989, however, the Supreme Court abandoned the history and intent of the First Amendment to embrace a philosophy that made no distinction between oral and written speech about the flag and extremist, disrespectful of the flag. In Texas v. Johnson, five members of the Court, for the first time ever, struck down a flag protection statute. The majority argued that the First Amendment had somehow changed and now prevented a state from protecting the American flag from radical, disrespectful, and violent actions. When Congress responded with a federal flag protection statute, the Supreme Court, in United States v. Eichman, used its new and changed interpretation of the First Amendment to strike it down by another five-to-four vote.

Under this new interpretation of the First Amendment, it is assumed that the people, their elected legislators, and the courts can no longer distinguish between expressions concerning the flag that are more akin to spoken and written expression and expressions that constitute the disrespectful physical desecration of the flag. Because of this assumed inability to make such distinctions, it is argued that all of our freedoms to speak and write political ideas are wholly dependent on Greg Johnson's newly created ''right'' to burn and spit on the American flag.

This ill-advised and radical philosophy fails because its basic premise—that laws and judges cannot distinguish between political expression and disrespectful physical desecration—is so obviously false. It is precisely this distinction that laws and judges did in fact make for over 200 years. Just as judges have distinguished which laws and actions comply with the constitutional command to provide ''equal protection of the laws'' and ''due process of law,'' so to have judges been able to distinguish between free expression and disrespectful destruction.

Certainly, extremist conduct such as smashing in the doors of the State Department may be a way of expressing one's dissatisfaction with the nation's foreign policy objectives. And one may even consider such behavior speech. Laws, however, can be enacted preventing such actions in large part because there are peaceful alternatives that can be equally powerful. After all, right here in the United States Senate, we prohibit speeches or demonstrations of any kind, even the silent display of signs or banners, in the public galleries.

Moreover, it was not this radical philosophy of protecting disrespectful destruction that the people elevated to the status of constitutional law. Such an extremist philosophy was never ratified. Such a philosophy is not found in the original and historic intent of

the First Amendment. Thus, in this Senator's view, the Supreme Court erred in Texas v. Johnson and in United States v. Eichman.

Since Johnson and Eichman, constitutional scholars have opined that an attempt by Congress to protect the flag with another statute would fail in light of the new interpretation currently embraced by the Supreme Court. Thus, an amendment is the only legal means to protect the flag.

This amendment affects only the most radical forms of conduct and will leave untouched the current constitutional protections for Americans to speak their sentiments in a rally, to write their sentiments to their newspaper, and to vote their sentiments at the ballot box. The amendment simply restores the traditional and historic power of the people's elected representatives to prohibit the radical and extremist physical desecration of the flag.

Nor would restoring legal protection to the American flag place us on a slippery slope to limit other freedoms. No other symbol of our bi-partisan national ideals has flown over the battlefields, cemeteries, football fields, and school yards of America. No other symbol has lifted the hearts of ordinary men and women seeking liberty around the world. No other symbol has been paid for with so much blood of our countrymen. The American people have paid for their flag, and it is our duty to let them protect it.

In recent weeks, my colleagues on both sides of the political aisle have called for a new bipartisan spirit in Congress. This amendment offers these senators the chance to honor their words.

Restoring legal protection to the American flag is not, nor should it be, a partisan issue. Approximately sixty senators, both Republicans and Democrats, have joined with Senator CLELAND and myself as original cosponsors of this amendment.

Polls have shown that over 70 percent of the American people want the opportunity to vote to protect their flag. Numerous organizations from the American Legion to the Women's War Veterans to the African-American Women's clergy all support the flag protection amendment. Forty-nine state legislatures have passed resolutions calling for constitutional protection for the flag.

I am therefore proud to rise today to introduce a constitutional amendment that would restore to the people's elected representatives the right to protect our unique national symbol, the American flag, from acts of physical desecration.

Mr. President, I ask unanimous consent that the text of the proposed amendment be included in the RECORD.

Mr. President, I am very honored to be a cosponsor with my dear friend from Georgia, Senator CLELAND. I appreciate the efforts he has put forth in this battle, and having served in the military as he has done with distinction, courage and heroism, he has a great deal of insight on this issue. I am proud and privileged to be able to work with him.

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

S.J. RES. 7

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within 7 years after the date of its submission for ratification:

''ARTICLE—

''The Congress shall have power to prohibit the physical desecration of the flag of the United States.''.

Mr. DAYTON. Mr. President, today I cosponsor this legislation, introduced by the distinguished Senator from Utah and the distinguished Senator from Georgia, which would empower Congress to prohibit the burning or other desecration of the American Flag. I do so out of my conviction that the American Flag should be placed, preeminent and transcendent, as the inviolable representation of our great country, our greatest principles, and our highest ideals.

Our democratically elected leaders and our representative government do not always live up to these principles and ideals. However, they have sustained and inspired our governance for over 200 years. They are the principles and ideals for which, throughout our history, so many brave men and women have given their lives. They are the principles and ideals, embodied in the American Flag, which have been consecrated with their blood.

I came to this realization several years ago, when I visited the American Cemetery just off Normandy Beach in France. There stand almost 10,000 simple, white crosses in long, silent rows. Each one marks the grave of an American soldier, who gave his or her life on behalf of our country, on behalf of our principles and ideals, and on behalf of their preservation throughout the world.

These brave and mostly young soldiers did not necessarily agree with every decision made by their government and its leaders at the time. Nor did the brave men and women who gave their lives in wars before or afterward. Yet they made their supreme sacrifices on each of our, and all of our, behalfs. They gave up the rest of their lives, their families, their hopes, and their dreams, so that we might live under the American Flag and enjoy all of its freedoms, privileges, and opportunities.

Surely, that supreme sacrifice should be sanctified, honored, respected and forever made inviolate.

Many of my friends and trusted advisers have told me I am wrong to cosponsor this Constitutional Amendment. They say it violates the very first principle for which these courageous Americans gave their lives. They say that such an amendment will weaken our First Amendment rights for future protests, disagreements, and expressions of personal and political conscience.

I fully agree with their goals; yet, in this single instance, I disagree with their conclusions. No one supporting this amendment wants to compromise the essential freedoms of our First Amendment. In fact, by our seeking a Constitutional Amendment to protect the American Flag, its sponsors and supporters are acknowledging the sanctity of the United States Supreme Court's decision, which includes the burning or desecration of the American Flag as a Constitutionally protected form of ''Free Speech.'' In other words, virtually all expressions of political protest, disagreement, disrespect, and discontent are permitted.

They should be. And after this Amendment is adopted, they will be. That protection of our essential freedoms, first granted and forever guaranteed by the First Amendment of the United States Constitution, remain inviolable. By this Amendment, we acknowledge them, respect them, and would place above them only the one ultimate symbol of our country, our freedoms, and our great democracy: the American Flag.

Mr. President, I respect all of my colleagues and fellow citizens who disagree with our purpose through this legislation. However, I hope that they will not misunderstand our intent. Contrary to what some contend, this Constitutional amendment will not weaken either the First Amendment or the United States of America. In fact, it will strengthen both. It will remind all of us that there is something greater than ourselves, something greater than our individual opinions, something greater than our individual prerogatives. That something is greater than all of us, because it is all of us; it is the Flag of the United States of America.

Mr. HUTCHINSON. Mr. President, I am proud to be an original cosponsor of Senator HATCH's joint resolution which would amend the United States Constitution to prohibit the desecration of our flag. Opponents to this measure contend that the right to desecrate the flag is the ultimate expression of speech and freedom. I reject that proposition as I believe that the desecration of our flag is a reprehensible act which should be prohibited. It is an affront to the brave and terrible sacrifices made by millions of American men and women who willingly left their limbs, lives, and loved ones on battlefields around the world.

It is an affront to these Americans who have given the greatest sacrifices because of what the flag symbolizes. To explain what our flag represents, former United States Supreme Court Chief Justice Charles Evans Hughes in his work, ''National Symbol,'' said:

The flag is the symbol of our national unity, our national endeavor, our national aspiration.

The flag tells of the struggle for independence, of union preserved, of liberty and union one and inseparable, of the sacrifices of brave men and women to whom the ideals and honor of this nation have been dearer than life.

It means America first; it means an undivided allegiance.

It means America united, strong and efficient, equal to her tasks.

It means that you cannot be saved by the valor and devotion of your ancestors, that to each generation comes its patriotic duty; and that upon your willingness to sacrifice and endure as those before you have sacrificed and endured rests the national hope.

It speaks of equal rights, of the inspiration of free institutions exemplified and vindicated, of liberty under law intelligently conceived and impartially administered. There is not a thread in it but scorns self-indulgence, weakness, and rapacity.

It is eloquent of our community interests, outweighing all divergencies of opinion, and of our common destiny.

Former President Calvin Coolidge, echoed Chief Justice Hughes in ''Rights and Duties:''

We do honor to the stars and stripes as the emblem of our country and the symbol of all that our patriotism means.

We identify the flag with almost everything we hold dear on earth.

It represents our peace and security, our civil and political liberty, our freedom of religious worship, our family, our friends, our home.

We see it in the great multitude of blessings, of rights and privileges that make up our country.

But when we look at our flag and behold it emblazoned with all our rights, we must remember that it is equally a symbol of our duties.

Every glory that we associate with it is the result of duty done. A yearly contemplation of our flag strengthens and purifies the national conscience.

Given what our flag symbolizes, I find it incomprehensible that anyone would desecrate the flag and inexplicable that our Supreme Court would hold that burning a flag is protected speech rather than conduct which may be prohibited. I find it odd that one can be imprisoned for destroying a bald eagle's egg, but may freely burn our nation's greatest symbol. Accordingly, I urge my colleagues to pass this resolution so that our flag and all that it symbolizes may be forever protected.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 59—DESIGNATING THE WEEK OF MARCH 11 THROUGH MARCH 17, 2001, AS ''NATIONAL GIRL SCOUT WEEK''

Mrs. HUTCHISON (for herself, Ms. MIKULSKI, Mrs. BOXER, Ms. CANTWELL, Mrs. CARNAHAN, Mrs. CLINTON, Ms. COLLINS, Mrs. FEINSTEIN, Ms. LANDRIEU, Mrs. LINCOLN, Mrs. MURRAY, Ms. SNOWE, and Ms. STABENOW) submitted the following resolution; which was considered and agreed to:

S. RES. 59

Whereas March 12, 2001, is the 89th anniversary of the founding of the Girl Scouts of the United States of America;

Whereas on March 16, 1950, the Girl Scouts became the first national organization for girls to be granted a Federal charter by Congress;

Whereas through annual reports required to be submitted to Congress by its charter, the Girl Scouts regularly informs Congress of its progress and program initiatives;

Whereas the Girl Scouts is dedicated to inspiring girls and young women with the highest ideals of character, conduct, and service to others so that they may become model citizens in their communities;

Whereas the Girl Scouts offers girls aged 5 through 17 years a variety of opportunities to develop strong values and life skills and provides a wide range of activities to meet girls' interests and needs;

Whereas the Girl Scouts has a membership of nearly 3,000,000 girls and over 900,000 adult volunteers, and is one of the preeminent organizations in the United States committed to assisting girls to grow strong in mind, body, and spirit; and

Whereas by fostering in girls and young women the qualities on which the strength of the United States depends, the Girl Scouts, for 89 years, has significantly contributed to the advancement of the United States: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of March 11 through March 17, 2001, as ''National Girl Scout Week''; and

(2) requests the President to issue a proclamation designating the week of March 11 through March 17, 2001, as ''National Girl Scout Week'' and calling on the people of the United States to observe the 89th anniversary of the Girl Scouts of the United States of America with appropriate ceremonies and activities.

SENATE CONCURRENT RESOLUTION 24—EXPRESSING SUPPORT FOR A NATIONAL REFLEX SYMPATHETIC DYSTROPHY (RSD) AWARENESS MONTH

Mr. LIEBERMAN submitted the following concurrent resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. CON. RES. 24

Whereas reflex sympathetic dystrophy (referred to in this resolution as ''RSD'') is an extremely painful progressive disease of the nervous system resulting from a simple trauma, infection, or surgery that can lead to chronic inflammation, spasms, burning pain, stiffness, and discoloration of the skin, muscles, blood vessels, and bones;

Whereas RSD can strike at any time, and currently afflicts an estimated 7,000,000 children and adults, the majority of whom are women;

Whereas RSD is a complex and little-known disease, inhibiting the early diagnosis and treatment needed for recovery and contributing to dismissals of patients' pain and suffering;

Whereas there is no known cure for RSD and treatment involves multiple medications and therapies with costs that can be prohibitive;

Whereas Betsy Herman established the RSDHope Teen Corner in 1998 and she and countless others advocates have worked tirelessly to provide information and support to RSD sufferers and their families and friends and to bring national attention to this crippling disease; and

Whereas each May is Reflex Sympathetic Dystrophy Awareness Month, the goal of which is to educate the public about the nature and effects of this terrible disease: Now, therefore,be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of Congress that—

(1) all Americans should take an active role in combatting reflex sympathetic dystrophy (RSD) by recognizing its symptoms (which often follow an injury or surgery), such as constant burning pain, skin irritation, inflammation, muscle spasms, fatigue, and insomnia;

(2) national and community organizations should be recognized and applauded for their work in promoting awareness about RSD and for providing information and support to its sufferers;

(3) health care providers should continue to increase their efforts to diagnose the disease in its earliest possible stages to increase the likelihood of remission; and

(4) the Federal Government has a responsibility to—

(A) endeavor to raise awareness about the importance of the early detection and proper treatment RSD;

(B) work to increase research funding so that the causes of, and improved treatment and cure for, RSD may be discovered; and

(C) continue to consider ways to improve access to, and the quality of, health care services for detecting and treating RSD.

SENATE CONCURRENT RESOLUTION 23—EXPRESSING THE SENSE OF CONGRESS WITH RESPECT TO THE INVOLVEMENT OF THE GOVERNMENT IN LIBYA IN THE TERRORIST BOMBING OF PAN AM FLIGHT 103, AND FOR OTHER PURPOSES

Mrs. FEINSTEIN (for herself, Mr. HELMS, Mr. KENNEDY, Mr. TORRICELLI, Mr. DODD, Mrs. BOXER, Mr. LEAHY, Mr. KYL, Mr. BROWNBACK, Mr. REID, Mr. BAUCUS, Mr. BYRD, and Mrs. CLINTON) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 23

Whereas 270 people, including 189 Americans, were killed in the terrorist bombing of Pan Am Flight 103 over Lockerbie, Scotland, on December 21, 1988;

Whereas, on January 31, 2001, the 3 judges of the Scottish court meeting in the Netherlands to try the 2 Libyan suspects in the bombing of Pan Am 103 found that ''the conception, planning, and execution of the plot which led to the planting of the explosive device was of Libyan origin'';

Whereas the Court found conclusively that Abdel Basset al Megrahi ''caused an explosive device to detonate on board Pan Am 103'' and sentenced him to a life term in prison;

Whereas the Court accepted the evidence that Abdel Basset al Megrahi was a member of the Jamahiriyah Security Organization, one of the main Libyan intelligence services;

Whereas the United Nations Security Council Resolutions 731, 748, 883, and 1192 demanded that the Government of Libya provide appropriate compensation to the families of the victims, accept responsibility for the actions of Libyan officials in the bombing of Pan Am 103, provide a full accounting of its involvement in this terrorist act, and cease all support for terrorism; and

Whereas, contrary to previous declarations by the Government of Libya and its representatives, in the wake of the conviction of Abdel Basset al Megrahi, Colonel Muammar

Qadhafi refuses to accept the judgment of the Scottish court or to comply with the requirements of the Security Council under existing resolutions: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. SHORT TITLE.

This concurrent resolution may be cited as the ''Justice for the Victims of Pan Am 103 Resolution of 2001''.

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the entire international community should condemn, in the strongest possible terms, the Government of Libya and its leader, Colonel Muammar Qadhafi, for support of international terrorism, including the bombing of Pan Am 103;

(2) the Government of Libya should immediately—

(A) make a full and complete accounting of its involvement in the bombing of Pan Am 103;

(B) accept responsibility for the actions of Libyan officials;

(C) provide appropriate compensation to the families of the victims of Pan Am 103; and

(D) demonstrate in word and deed a full renunciation of support for international terrorism;

(3) the President should instruct the United States Permanent Representative to the United Nations to use the voice, and, if necessary, the vote of the United States, to maintain United Nations sanctions against Libya until all conditions laid out or referred to in the applicable Security Council resolutions are met; and

(4) the President should instruct the United States Permanent Representative to the United Nations to seek the reimposition of sanctions against Libya currently suspended in the event that Libya fails to comply with those United Nations Security Council resolutions.

SEC. 3. POLICY OF THE UNITED STATES TOWARD LIBYA.

It should be the policy of the United States to—

(1) oppose the removal of United Nations sanctions until the Government of Libya has—

(A) made a full and complete accounting of its involvement in the bombing of Pan Am 103;

(B) accepted responsibility for the actions of Libyan officials;

(C) provided appropriate compensation to the families of the victims of Pan Am 103; and

(D) demonstrated in word and deed a full renunciation of support for international terrorism; and

(2) maintain United States sanctions on Libya, including those sanctions on all forms of assistance and all other United States restrictions on trade and travel to Libya, until—

(A) the Government of Libya has fulfilled the requirements of United Nations Security Council Resolutions 731, 748, 883, and 1192;

(B) the President—

(i) certifies under section 620A(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(c)) that Libya no longer provides support for international terrorism; and

(ii) has provided to Congress an explanation of the steps taken by the Government of Libya to resolve any outstanding claims against that government by United States persons relating to international terrorism; and

(C) the Government of Libya is not pursuing weapons of mass destruction or the means to deliver them in contravention of United States law.

SEC. 4. TRANSMITTAL OF CONCURRENT RESOLUTION.

The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President.

AMENDMENTS SUBMITTED AND PROPOSED

SA 42. Mrs. BOXER (for herself and Mrs. CLINTON) submitted an amendment intended to be proposed by her to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table.

SA 43. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 44. Mr. WYDEN (for himself, Mr. BAUCUS, Mrs. MURRAY, and Mr. SMITH of Oregon) submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 45. Mr. BOND submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 46. Mr. DURBIN (for himself, Mrs. CLINTON, and Mr. SARBANES) submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 47. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 48. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 49. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 50. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 51. Mr. FEINGOLD (for himself, and Mr. THOMPSON) submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 52. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 53. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 54. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 55. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 56. Mr. LEAHY (for himself and Mr.. FEINGOLD) submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 57. Mr. LOTT submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 58. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 59. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 60. Mr. GRAMM submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 61. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 62. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 63. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 64. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 65. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 66. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 67. Mr. KOHL (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by them to the bill S. 420, supra; which was ordered to lie on the table.

SA 68. Mr. KOHL (for himself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by them to the bill S. 420, supra; which was ordered to lie on the table.

SA 69. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 70. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 71. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 72. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 73. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 74. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 75. Mr. DODD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by them to the bill S. 420, supra; which was ordered to lie on the table.

SA 76. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 77. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 78. Mr. WYDEN (for himself, Mr. BAUCUS, and Mrs. MURRAY) submitted an amendment intended to be proposed

by them to the bill S. 420, supra; which was ordered to lie on the table.

SA 79. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 80. Mr. BREAUX (for himself, Mr. SPECTER, Mrs. LINCOLN, Mr. JOHNSON, Ms. LANDRIEU, Mr. NELSON of Nebraska, Mr. CLELAND, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by them to the bill S. 420, supra; which was ordered to lie on the table.

SA 81. Mr. REED submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 82. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 83. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 84. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 85. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 86. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 87. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 88. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 89. Mr. LOTT submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 90. Mr. REED submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 91. Mr. LEVIN (for himself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 92. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 93. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 94. Mr. BREAUX (for himself, Mr. SPECTER, and Mrs. LINCOLN, Mr. JOHNSON, Ms. LANDRIEU, Mrs. FEINSTEIN, Mr. CLELAND, and Mr. NELSON of Nebraska) submitted an amendment intended to be proposed by them to the bill S. 420, supra; which was ordered to lie on the table.

SA 95. Mr. SMITH of Oregon (for himself and Mr. WYDEN) proposed an amendment to amendment SA 78 proposed by Mr. WYDEN to the bill S. 420, supra.

TEXT OF AMENDMENTS

SA 42. Mrs. BOXER (for herself and Mrs. CLINTON) submitted an amendment intended to be proposed by her to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

Strike Section 310.

SA 43. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes, which was ordered to lie on the table; as follows:

On page 173, line 11, strike ''discharge a debtor'' and insert ''discharge an individual debtor''.

On page 244, line 8, strike ''described in section 523(a)(2)'' and insert ''described in subparagraph (A) or (B) of section 523(a)(2) that is owed to a domestic governmental unit or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31, United States Code, or any similar State statute,''.

SA 44. Mr. WYDEN (for himself, Mr. BAUCUS, Mrs. MURRAY, and Mr. SMITH of Oregon) submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes, which was ordered to lie on the table; as follows:

After section 419, insert the following:

SEC. 420. NONDISCHARGEABILITY OF DEBTS ARISING FROM THE EXCHANGE OF ELECTRIC ENERGY.

(a) IN GENERAL.—Section 1141(d) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(6) The confirmation of a plan does not discharge a debtor—

''(A) in the case of a debtor that is a corporation, from any debt for wholesale electric power received that is incurred by that debtor under an order issued by the Secretary of Energy (or any amendment of or attachment to that order) under section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)) and requested by the California Independent System Operator; or

''(B) in the case of debt owed to a Federal, State, or local government agency named in an order referred to in subparagraph (A) for wholesale electric power received by the debtor.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by this Act, is amended—

(1) in paragraph (28), as added by section 907(d) of this Act, by striking ''or'' at the end;

(2) in paragraph (29), as added by section 1106 of this Act, by striking the period at the end and inserting ''; or''; and

(3) by inserting after that paragraph (29) the following:

''(30) under subsection (a), of the commencement or continuation, and conclusion to the entry of final judgment or order, of a judicial, administrative, or other action or proceeding for debts that are nondischargeable under section 1141(d)(6).''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—Section 1141(a) of title 11, United States Code, is amended by striking ''subsections (d)(2) and (d)(3) of this section'' and inserting ''paragraphs (2), (3), and (6) of subsection (d)''.

(d) APPLICABILITY.—This section and the amendments made by this section shall apply with respect to any petition for bankruptcy filed under title 11, United States Code, on or after March 1, 2001.

SA 45. Mr. BOND submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 202, strike line 9 and all that follows through page 203, line 14, and insert the following:

''(e) In a small business case—

''(1) not later than 45 days after the date of the order for relief, the court shall conduct a status conference pursuant to section 105(d) and, after consideration of relevant facts and circumstances, shall fix a deadline for the filing of a plan and disclosure statement; and

''(2) the deadline established by the court in the status conference referred to in paragraph (1) may be extended only if—

''(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates a reasonable likelihood 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.''.

On page 208, line 10, insert '', absent unusual circumstances specifically identified by the court,'' after ''shall''.

On page 208, line 15, insert '', absent unusual circumstances specifically identified by the court,'' after ''granted''.

On page 208, line 16, strike ''establishes'' and all that follows through ''filed'' on line 19 and insert the following: ''establishes that—

''(A) there is a reasonable likelihood that a plan will be confirmed''.

Redesignate sections 439 through 445 as sections 438 through 444, respectively.

Amend the table of contents accordingly.

SA 46. Mr. DURBIN (for himself, Mrs. CLINTON, and Mr. SARBANES) submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title XIII, add the following:

SEC. 1311. ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.

(a) AMENDMENTS TO THE TRUTH IN LENDING ACT.—

(1) ENHANCED DISCLOSURE OF REPAYMENT TERMS.—

(A) IN GENERAL.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

''(11)(A) In a clear and conspicuous manner, repayment information that would apply to the outstanding balance of the consumer under the credit plan, including—

''(i) the required minimum monthly payment on that balance, represented as both a dollar figure and a percentage of that balance;

''(ii) the number of months (rounded to the nearest month) that it would take to pay the entire amount of that current balance if the consumer pays only the required minimum monthly payments and if no further advances are made;

''(iii) the total cost to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays only the required minimum monthly

payments and if no further advances are made; and

''(iv) the following statement: 'If your current rate is a temporary introductory rate, your total costs may be higher.'.

''(B) In making the disclosures under subparagraph (A) the creditor shall apply the annual interest rate that applies to that balance with respect to the current billing cycle for that consumer in effect on the date on which the disclosure is made.''.

(B) PUBLICATION OF MODEL FORMS.—Not later than 180 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall publish model disclosure forms in accordance with section 105 of the Truth in Lending Act (15 U.S.C. 1604) for the purpose of compliance with section 127(b)(11) of the Truth in Lending Act, as added by this paragraph.

(C) CIVIL LIABILITY.—Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended, in the undesignated paragraph following paragraph (4), by striking the second sentence and inserting the following: ''In connection with the disclosures referred to in subsections (a) and (b) of section 127, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 125, 127(a), or of paragraph (4), (5), (6), (7), (8), (9), (10), or (11) of section 127(b), or for failing to comply with disclosure requirements under State law for any term or item that the Board has determined to be substantially the same in meaning under section 111(a)(2) as any of the terms or items referred to in section 127(a) or paragraph (4), (5), (6), (7), (8), (9), (10), or (11) of section 127(b).''.

(2) DISCLOSURES IN CONNECTION WITH SOLICITATIONS.—

(A) IN GENERAL.—Section 127(c)(1)(B) of the Truth in Lending Act (15 U.S.C. 1637(c)(1)(B)) is amended by adding at the end the following:

''(iv) CREDIT WORKSHEET.—An easily understandable credit worksheet designed to aid consumers in determining their ability to assume more debt, including consideration of the personal expenses of the consumer and a simple formula for the consumer to determine whether the assumption of additional debt is advisable.

''(v) BASIS OF PREAPPROVAL.—In any case in which the application or solicitation states that the consumer has been preapproved for an account under an open end consumer credit plan, the following statement must appear in a clear and conspicuous manner: 'Your preapproval for this credit card does not mean that we have reviewed your individual financial circumstances. You should review your own budget before accepting this offer of credit.'.

''(vi) AVAILABILITY OF CREDIT REPORT.—That the consumer is entitled to a copy of his or her credit report in accordance with the Fair Credit Reporting Act.''.

(B) PUBLICATION OF MODEL FORMS.—Not later than 180 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall publish model disclosure forms in accordance with section 105 of the Truth in Lending Act (15 U.S.C. 1604) for the purpose of compliance with section 127(c)(1)(B) of the Truth in Lending Act, as amended by this paragraph.

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective on January 1, 2002.

Amend the table of contents accordingly.

SA. 47. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title II, add the following:

SEC. 204. DISCOURAGING PREDATORY LENDING PRACTICES.

Section 502(b) of title 11, United States Code, is amended as follows—

(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) the claim is based on a secured debt, if the creditor has materially failed to comply with any applicable requirement under subsection (c), (d), (e), (f), (g), (h), or (i) of section 129 of the Truth in Lending Act (15 U.S.C. 1639).''.

SA. 48. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 306 and insert the following:

SEC. 306. RESTORING THE FOUNDATION FOR SECURED CREDIT.

Section 506 of title 11, United States Code, is amended by adding at the end the following:

''(e) In an individual case under chapter 13—

''(1) except for the purpose of applying paragraph (3) of this subsection, subsection (a) shall not apply to an allowed claim that is attributable to the purchase price of personal property if—

''(A) the holder of the claim has a security interest in that property; and

''(B) the property was purchased by the debtor within 180 days before the date of filing of the petition;

''(2) if an allowed claim referred to in paragraph (1) is secured only by the personal property acquired, the value of the personal property described in that paragraph and the amount of the allowed secured claim shall be the sum of—

''(A) the unpaid principal balance of the purchase price; and

''(B) the accrued and unpaid interest and charges at the applicable contract rate attributable to such property;

''(3) if an allowed claim referred to in paragraph (1) is secured by the personal property described in that paragraph and other property, the value of the security may be determined under subsection (a), except that the value of the security and the amount of the allowed secured claim shall not be less than—

''(A) the unpaid principal balance of the purchase price of the personal property described in paragraph (1); and

''(B) any unpaid interest and charges at the contract rate attributable to the property acquired; and

''(4) in any case under this title that is filed subsequently by or against the debtor in the original case, the value of the personal property described in paragraph (1) and the amount of the allowed secured claim with respect to that property shall be deemed to be not less than an amount determined in the same manner as the original under paragraph (2) or (3).''.

Amend the table of contents accordingly.

SA 49. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, 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. ___. FEDERAL ELECTION LAW FINES AND PENALTIES AS NONDISCHARGEABLE DEBT.

Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14A) (as added by this Act) the following:

''(14B) incurred to pay fines or penalties imposed under Federal election law;''.

Amend the table of contents accordingly.

SA 50. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, 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. ___. NO BANKRUPTCY FOR INSOLVENT POLITICAL COMMITTEES.

Section 105 of title 11, United States Code, is amended by adding at the end the following:

''(e) A political committee subject to the jurisdiction of the Federal Election Commission under Federal election laws may not file for bankruptcy under this title.''.

Amend the table of contents accordingly.

SA 51. Mr. FEINGOLD (for himself and Mr. THOMPSON) submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 439, strike line 19 and all that follows through page 440, line 12.

Amend the table of contents accordingly.

SA 52. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 152, strike line 9 and all that follows through page 153, line 20, and insert the following:

''(4) For purposes of paragraph (1)(B), the term 'household goods' includes tangible personal property normally found in or around a home, but does not include motorized vehicles used for transportation purposes.''.

SA 53. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title II, add the following:

SEC. 233. PROHIBITION ON ASSERTING CLAIMS IN CASES OF VIOLATIONS OF THE PRIVACY PROTECTIONS OF THE GRAMM-LEACH-BLILEY ACT.

A creditor that fails to comply with the financial privacy requirements of subtitle A of title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.), may not assert any claim under this Act or title 11, United States Code, as amended by this Act, against any debtor for the amount of a debt that the debtor accrues on a credit card that is issued in violation of any such financial privacy requirements.

SA 54. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 151, strike line 23 and all that follows through page 152, line 3, and insert the following:

''(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for by the plan or disallowed under section 502, if the debtor has received a discharge in a case filed under chapter 7 of this title during the one-year period preceding the date of the order for relief under this chapter.''.

SA. 55. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 318 and insert the following:

SEC. 318. CHAPTER 13 PLAN 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) Except as provided in paragraph (2), the plan may not provide for payments over a period that is longer than 3 years.

''(2) The plan may provide for payments over a period that is longer than 3 years, if—

''(A) the plan is for a case that was converted to a case under this chapter from a case under chapter 7, or the plan is for a debtor who has been dismissed from chapter 7 by reason of section 707(b), in which case, the plan shall provide for payments over a period of not longer than 5 years; or

''(B) the plan is for a case that is not described in subparagraph (A), and the court, for cause, approves a period that is longer than 3 years, but not longer than 5 years.''.

Amend the table of contents accordingly.

SA 56. Mr. LEAHY (for himself, and Mr. FEINGOLD) submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 23, strike line 6 and all that follows through page 25, line 6.

On page 25, line 7, strike ''(i)'' and insert ''(h)''.

SA 57. Mr. LOTT submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1224.

SA 58. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1235 and insert the following:

SEC. 1235. EXPEDITED APPEALS OF BANKRUPTCY CASES TO COURTS OF APPEALS.

(a) APPEALS.—Section 158 of title 28, United States Code, is amended—

(1) in subsection (c)(1), by striking ''Subject to subsection (b),'' and inserting ''Subject to subsections (b) and (d)(2),''; and

(2) in subsection (d)—

(A) by inserting ''(1)'' after ''(d)''; and

(B) by adding at the end the following:

''(2)(A) A court of appeals that would have jurisdiction of a subsequent appeal under paragraph (1) or other law may authorize an immediate appeal of an order or decree, not otherwise appealable, that is entered in a case or proceeding pending under section 157 or is entered by the district court or bankruptcy appellate panel exercising jurisdiction under subsection (a) or (b), if the bankruptcy court, district court, bankruptcy appellate panel, or the parties acting jointly certify that—

''(i) the order or decree involves—

''(I) a substantial question of law;

''(II) a question of law requiring resolution of conflicting decisions; or

''(III) a matter of public importance; and

''(ii) an immediate appeal from the order or decree may materially advance the progress of the case or proceeding.

''(B) An appeal under this paragraph does not stay proceedings in the court from which the order or decree originated, unless the originating court or the court of appeals orders such a stay.''.

(b) PROCEDURAL RULES.—

(1) TEMPORARY APPLICATION.—A provision of this subsection shall apply to appeals under section 158(d)(2) of title 28, United States Code, as added by subsection (a) of this section, until a rule of practice and procedure relating to such provision and appeal is promulgated or amended under chapter 131 of such title.

(2) CERTIFICATION.—A district court, bankruptcy court, or bankruptcy appellate panel may enter a certification as described in section 158(d)(2) of title 28, United States Code, during proceedings pending before that court or panel.

(3) PROCEDURE.—Subject to the other provisions of this subsection, an appeal by permission under section 158(d)(2) of title 28, United States Code, shall be taken in the manner prescribed in rule 5 of the Federal Rules of Appellate Procedure.

(4) FILING PETITION.—When permission to appeal is requested on the basis of a certification of the parties, a district court, bankruptcy court, or bankruptcy appellate panel, the petition shall be filed within 10 days after the certification is entered or filed.

(5) ATTACHMENT.—When permission to appeal is requested on the basis of a certification of a district court, bankruptcy court, or bankruptcy appellate panel, a copy of the certification shall be attached to the petition.

(6) PANEL AND CLERK.—In a case pending before a bankruptcy appellate panel in which permission to appeal is requested, the terms ''district court'' and ''district clerk'', as used in rule 5 of the Federal Rules of Appellate Procedure, mean ''bankruptcy appellate panel'' and ''clerk of the bankruptcy appellate panel'', respectively.

(7) APPLICATION OF RULES.—In a case pending before a district court, bankruptcy court, or bankruptcy appellate panel in which a court of appeals grants permission to appeal, the Federal Rules of Appellate Procedure apply to the proceedings in the court of appeals, to the extent relevant, as if the appeal were taken from a final judgment, order, or decree of a district court, bankruptcy court, or bankruptcy appellate panel exercising appellate jurisdiction under subsection (a) or (b) of section 158 of title 28, United States Code.

SA 59. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 148, line 4, strike ''(a) IN GENERAL.—''.

On page 148, strike line 8 and all that follows through page 151, line 15, and insert the following:

''(22) under subsection (a), of the commencement or continuation of any eviction, unlawful detainer, or similar proceeding by a lessor against a debtor involving residential property, except in a case in which a tenant of such residential property has a written lease with an unexpired specified term, and can demonstrate the ability to pay the rent then due and to become due during the unexpired term of the lease, in which case—

''(A) the debtor shall have the right, by ex parte application (on a preprinted form developed by the court and provided on request by the clerk of the court to the debtor), to obtain an order temporarily staying any eviction, unlawful detainer, or similar proceeding pending a hearing, if the debtor submits with the application a copy of an unexpired written lease of the subject residential property, signed by the lessor of the property; and

''(B) upon issuance of an order under subparagraph (A), the clerk of the court shall set a hearing on a date that is not later than 10 days after the date of filing of the application under subparagraph (A), and give the lessor of the property notice thereof; and

''(C) at the conclusion of the hearing referred to in subparagraph (B)—

''(i) a temporary stay ordered under subparagraph (A) shall be deemed effective and ordered until the earlier of the expiration of the lease or the termination of the stay otherwise under this section, if the debtor can demonstrate to the satisfaction of the court—

''(I) a written lease of the residential property with an unexpired term;

''(II) an ability to pay the rent as it comes due under the lease for the unexpired term; and

''(III) the ability to pay any past due rent on a schedule to be set by the court; or

''(ii) the temporary stay ordered under subparagraph (A) shall be lifted, if the debtor cannot meet the terms of clause (i).

SA 60. Mr. GRAMM submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 294, line 10, delete the comma after ''mortgage'';

On page 295, line 15, insert ''mortgage'' before ''loan'';

On page 296, line 25, strike ''or'' and insert ''including'';

On page 299, line 17, strike ''or'' and insert ''including'';

On page 301, line 18, strike ''or any'' and insert ''including any'';

On page 302, line 23, insert ''mortgage'' before ''loans'';

On page 303, line 3, insert ''mortgage'' before ''loans'';

On page 304, line 16, strike ''or'' after ''(V)'' and insert ''including'';

On page 306, line 10, insert ''is of a type'' after ''clause and'';

On page 308, line 5, strike ''or any'' and insert ''including any'';

On page 308, line 23, strike ''the Gramm-Leach-Bliley Act,'' and insert ''the Gramm-Leach-Bliley Act, and'';

On page 308, line 25, strike all after ''2000'' and insert a period following ''2000'';

On page 309, strike lines 1 through 3;

On page 320, line 10, strike ''and'';

On page 321, line 4, strike the period at the end of the line and insert ''; and''

On page 321, insert after line 4 the following:

''(3) by including at the end of section 11(e) the following new paragraph:

''( ) SAVINGS CLAUSE.—The meaning of terms used in this subsection (e) are applicable for purposes of this subsection (e) only,

and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities law (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.''

On page 327, line 7, strike ''408'' and insert ''407A'';

On page 327, line 20, strike ''or'' the second time it appears;

On page 328, line 3, strike all following ''receiver'' through ''agency'' on line 4;

On page 328, line 7, strike all following ''receiver'' through ''bank'' on line 9;

On page 328, line 12, strike the comma after ''Act'';

On page 328, line 18, strike all following ''conservator'' through ''agency'' on line 20;

On page 328, line 23, strike all following ''conservator'' through ''bank'' on line 25;

On page 329, line 25, insert ''in the case of an uninsured national bank or uninsured Federal branch or agency'' after ''Currency'';

On page 330, line 1, insert ''in the case of a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank that operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Act,'';

On page 330, line 3, insert ''solely'' before ''to implement'';

On page 330, line 5, strike ''to implement this section,'' and insert '', limited solely to implementing paragraphs (8), (9), (10) and (11) of section 11(e) of the Federal Deposit Insurance Act,'';

On page 330, line 7, insert ''each'' before ''shall ensure'';

On page 330, line 8, strike ''that the'' and insert ''that their'';

On page 332, line 4, strike ''(D), or'' and insert ''(D) including'';

On page 333, line 14, insert ''mortgage'' before ''loans'';

On page 333, line 18, insert ''mortgage'' before ''loans'';

On page 334, line 21, strike ''(iv), or'' and insert ''(iv) including'';

On page 336, line 5 strike ''or an'' and insert ''or'';

On page 336, line 8, strike ''or a'' and insert ''or'';

On page 336, line 10, strike ''credit spread, total return, or a'' and insert ''total return, credit spread or'';

On page 336, line 22, insert after ''(I)'' the following: ''is of a type that'';

On page 338, line 13, strike ''(v), or'' and insert ''(v) including'';

On page 338, line 18, strike ''do'';

On page 339, line 9, insert ''and'' after ''Act,'';

On page 339, line 10, strike all after ''2000'' through ''Commission'' on line 13 and insert a period after ''2000'';

On page 340, line 20, insert ''mortgage'' before ''loan'';

On page 342, line 2, strike ''or any'' and insert ''including any'';

On page 343, line 21, strike ''or any'' and insert ''including any'';

On page 346, line 7, strike ''or'' the first time it appears;

On page 346, line 25, insert '', including any guarantee or reimbursement obligation related to 1 or more of the foregoing'' following ''foregoing'';

On page 352, line 24, insert ''a securities clearing agency,'' after ''association,'';

On page 353, line 25, insert ''a securities clearing agency,'' before ''a contract market'';

On page 355, line 5, insert ''a securities clearing agency,'' after ''association,'';

On page 355, line 6, strike the end parenthesis after ''Act'';

On page 358, line 13, strike ''5(c)'' and insert ''5c(c)'';

On page 358, line 24, strike ''a national securities exchange'';

On page 359, line 4, insert ''a securities clearing agency,'' after ''association,'';

On page 363, line 13, insert ''a securities clearing agency,'' after ''association,'';

On page 365, strike lines 18 through 22, and on page 366, strike lines 1 through 2, and insert in lieu thereof the following:

''(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may by regulation require more detailed recordkeeping by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured financial institution is in a troubled condition (as such term is defined by the Corporation pursuant to 12 USC 1831i).'';

On page 372, line 18, insert ''governmental unit, limited liability company (including a single member limited liability company),'' after ''partnership,'';

On page 373, line 22, insert ''on or'' after ''State law'';

On page 374, line 10, insert ''and'' before ''the Commodity'' and strike all after ''Act'' through line 12 and insert a period after ''Act''.

SA 61. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 184, strike line 20 and all that follows through page 186, line 22 and insert the following:

SEC. 329. NONDISCHARGEABILITY OF DEBTS INCURRED THROUGH THE COMMISSION OF VIOLENCE AT CLINICS.

Section 523(a) of title 11, United States Code, as amended by this Act, is amended—

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), as added by this Act, by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(19) that results from any judgment, order, consent order, or decree entered in any Federal or State court, or contained in any settlement agreement entered into by the debtor, including any damages, fine, penalty, citation, or attorney fee or cost owed by the debtor, arising from—

''(A) an actual or potential action under section 248 of title 18;

''(B) an actual or potential action under any Federal, State, or local law, the purpose of which is to protect—

''(i) access to a health care facility, including a facility providing reproductive health services, as defined in section 248(e) of title 18 (referred to in this paragraph as a 'health care facility'); or

''(ii) the provision of health services, including reproductive health services (referred to in this paragraph as 'health services');

''(C) an actual or potential action alleging the violation of any Federal, State, or local statutory or common law, including chapter 96 of title 18 and the Federal civil rights laws (including sections 1977 through 1980 of the Revised Statutes) that results from the debtor's actual, attempted, or alleged—

''(i) harassment of, intimidation of, interference with, obstruction of, injury to, threat to, or violence against any person—

''(I) because that person provides or has provided health services;

''(II) because that person is or has been obtaining health services; or

''(III) to deter that person, any other person, or a class of persons from obtaining or providing health services; or

''(ii) damage or destruction of property of a health care facility; or

''(D) an actual or alleged violation of a court order or injunction that protects access to a health care facility or the provision of health services.''.

SA 62. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 186, beginning on line 6, strike ''provides or has provided lawful goods or services;'' and insert ''seeks to exercise, exercises, or has exercised constitutionally protected rights;''.

On page 186, strike lines 9 through 15 and insert the following:

'' ''(II) to deter any person from exercising constitutionally protected rights, or from assisting any other person in the exercise of such rights; or

'' ''(III) because that person assists any person in the exercise of constitutionally protected rights, or provides or assists in the provision of constitutionally protected goods or services; or''.

On page 186, beginning on line 17, strike ''providing lawful goods or services;'' and insert ''or of a person because that facility or person provides, assists in providing, uses, or seeks constitutionally protected goods or services;''.

SA 63. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 10, between lines 17 and 18, insert the following:

''(V) In addition, the debtor's monthly expenses shall include the actual, reasonable expenses for operation of transportation and for public transportation, including costs for fuel, maintenance, automobile insurance, and public transportation, to the extent that the actual costs exceed the Local Standards issued by the Internal Revenue Service for operating and public transportation costs.

''(VI) In addition, if a debtor owns a home, the debtor's monthly expenses shall include the actual, reasonable expenses for utilities and home maintenance, including costs for repairs, maintenance, taxes, and home insurance. In the case of a debtor who does not own a home, such expenses shall be included to the extent that such expenses cause the debtor's housing expenses to exceed the amounts permitted under the Local Standards issued by the Internal Revenue Service for housing and utilities.

''(VII) In addition, if the debtor owns a motor vehicle for which no secured debt payments are scheduled, or for which secured debt payments are scheduled for less than 60 months, the debtor's monthly expenses shall include the monthly ownership costs permitted by the Internal Revenue Service for the number of months in which no secured debt payment on the vehicle is scheduled, divided by 60. Such additional ownership costs shall be included for each vehicle for which the debtor would be permitted ownership costs under the Internal Revenue Service National Standards.

SA 64. Mr. SCHUMER submitted an amendment intended to be proposed by

him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title II, add the following:

SEC. 204. AWARD OF FEES AND DAMAGES AUTHORIZED.

(a) SECTION 502.—Section 502 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(l)(1) The court may award the debtor reasonable attorneys' fees and costs if, after an objection is filed by a debtor, the court—

''(A)(i) disallows the claim; or

''(ii) reduces the claim by an amount greater than 20 percent of the amount of the initial claim filed by a party in interest, or $500, whichever is less; and

''(B) finds that the position of the party filing the claim is not substantially justified.

''(2) If the court finds that the position of a claimant under this section is not substantially justified, the court may, in addition to awarding a debtor reasonable attorneys' fees and costs under paragraph (1), award such damages as may be required by the equities of the case.''.

(b) SECTION 523.—Section 523 of title 11, United States Code, is amended—

(1) in subsection (a)(2)(A), by striking ''a false representation'' and inserting ''a material false representation upon which the defrauded person justifiably relied''; and

(2) by striking subsection (d) and inserting the following:

''(d)(1) Subject to paragraph (3), if a creditor requests a determination of dischargeability of a consumer debt under this section and that debt is discharged, the court shall award the debtor reasonable attorneys' fees and costs.

''(2) In addition to making an award to a debtor under paragraph (1), if the court finds that the position of a creditor in a proceeding covered under this section is not substantially justified, the court may award reasonable attorneys' fees and costs under paragraph (1) and such damages as may be required by the equities of the case.

''(3)(A) A creditor may not request a determination of dischargeability of a consumer debt under subsection (a)(2) if—

''(i) before the filing of the petition, the debtor made a good faith effort to negotiate a reasonable alternative repayment schedule (including making an offer of a reasonable alternative repayment schedule); and

''(ii) that creditor refused to negotiate an alternative payment schedule, and that refusal was not reasonable.

''(B) For purposes of this paragraph, the debtor shall have the burden of proof of establishing that—

''(i) an offer made by that debtor under subparagraph (A)(i) was reasonable; and

''(ii) the refusal to negotiate by the creditor involved was not reasonable.''.

(c) SECTION 524.—Section 524 of title 11, United States Code, as otherwise amended by this Act, is amended by adding at the end the following:

''(l) The willful failure of a creditor to credit payments received under a plan confirmed under this title (including a plan of reorganization confirmed under chapter 11 of this title) in the manner required by the plan (including crediting the amounts required under the plan) shall constitute a violation of an injunction under subsection (a)(2).

''(m) An individual who is injured by the failure of a creditor to comply with the requirements for a reaffirmation agreement under subsections (c) and (d), or by any willful violation of the injunction under subsection (a)(2), shall be entitled to recover—

''(1) the greater of—

''(A)(i) the amount of actual damages; multiplied by—

''(ii) 3; or

''(B) $5,000; and

''(2) costs and attorneys' fees.''.

(d) SECTION 362.—Section 362(h) of title 11, United States Code, is amended to read as follows:

''(h)(1) An individual who is injured by any willful violation of a stay provided in this section shall be entitled to recover—

''(A) actual damages; and

''(B) reasonable costs, including attorneys' fees.

''(2) In addition to recovering actual damages, costs, and attorneys' fees under paragraph (1), an individual described in paragraph (1) may recover punitive damages in appropriate circumstances.''.

SEC. 205. DISCHARGE.

(e) SECTION 727.—Section 727 of title 11, United States Code, is amended—

(1) in subsection (c), by adding at the end the following:

''(3)(A) A creditor may not request a determination of dischargeability of a consumer debt under subsection (a) if—

''(i) before the filing of the petition, the debtor made a good faith effort to negotiate a reasonable alternative repayment schedule (including making an offer of a reasonable alternative repayment schedule); and

''(ii) that creditor refused to negotiate an alternative payment schedule, and that refusal was not reasonable.

''(B) For purposes of this paragraph, the debtor shall have the burden of proof of establishing that—

''(i) an offer made by that debtor under subparagraph (A)(i) was reasonable; and

''(ii) the refusal to negotiate by the creditor involved was not reasonable.''; and

(2) by adding at the end the following:

''(f)(1) The court may award the debtor reasonable attorneys' fees and costs in any case in which a creditor files a motion to deny relief to a debtor under this section and that motion—

''(A) is denied; or

''(B) is withdrawn after the debtor has replied.

''(2) If the court finds that the position of a party filing a motion under this section is not substantially justified, the court may assess against the creditor such damages as may be required by the equities of the case.''.

Amend the table of contents accordingly.

SA 65. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 16, lines 18 and 23, insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)'' after ''Census'' each place it appears.

On page 17, lines 3, 14, 19, and 24, insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)'' after ''Census'' each place it appears.

On page 20, lines 4, 9, 20, and 25, insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)'' after ''Census'' each place it appears.

On page 24, lines 20 and 25, insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)'' after ''Census'' each place it appears.

On page 25, line 5, insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)'' after ''Census''.

On page 159, lines 14, 19, and 24, insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)'' after ''Census'' each place it appears.

On page 165, line 25, insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)'' after ''Census''.

On page 166, lines 5, 10, 20, and 25 insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)'' after ''Census'' each place it appears.

On page 167, line 5, insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)'' after ''Census''.

On page 168, lines 8 and 14 insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)'' after ''Census'' each place it appears.

SA 66. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 160, line 22, insert '', to the extent ordered by the court for reasonable cause shown,'' after ''court''.

SA 67. Mr. KOHL (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title III, add the following:

SEC. 330. CLARIFICATION OF POSTPETITION WAGES AND BENEFITS.

Section 503(b)(1)(A) of title II, United States Code, is amended to read as follows:

''(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case, and wages and benefits awarded pursuant to an action brought in a court of law or the National Labor Relations Board as back

pay attributable to any period of time after commencement of the case as a result of the debtor's violation of Federal or State law, without regard to when the original unlawful act occurred or to whether any services were rendered if the court determines that the award will not substantially increase the probability of layoff or termination of current employees or of nonpayment of domestic support obligations during the case;''

SA 68. Mr. KOHL (for himself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 140, strike line 14 and all that follows through page 176, line 19 and insert the following:

SEC. 308. LIMITATION.

Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)(3)(A), as so designated by this Act, by inserting ''subject to subsection (o),'' before ''any property''; and

(2) by adding at the end the following new subsection:

''(o)(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that exceeds, in the aggregate, $125,000 in value in—

''(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

''(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

''(C) a burial plot for the debtor or a dependent of the debtor.

''(2) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of that farmer.''.

SEC. 309. PROTECTING SECURED CREDITORS IN CHAPTER 13 CASES.

(a) STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.—Section 348(f)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking ''and'' at the end;

(2) in subparagraph (B)—

(A) by striking ''in the converted case, with allowed secured claims'' and inserting ''only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12''; and

(B) by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(C) with respect to cases converted from chapter 13—

''(i) the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the chapter 13 proceeding; and

''(ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.''.

(b) GIVING DEBTORS THE ABILITY TO KEEP LEASED PERSONAL PROPERTY BY ASSUMPTION.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p)(1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.

''(2)(A) In the case of an individual under chapter 7, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

''(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

''(C) The stay under section 362 and the injunction under section 524(a)(2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.

''(3) In a case under chapter 11 in which the debtor is an individual and in a case under chapter 13, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.''.

(c) ADEQUATE PROTECTION OF LESSORS AND PURCHASE MONEY SECURED CREDITORS.—

(1) CONFIRMATION OF PLAN.—Section 1325(a)(5)(B) of title 11, United States Code, is amended—

(A) in clause (i), by striking ''and'' at the end;

(B) in clause (ii), by striking ''or'' at the end and inserting ''and''; and

(C) by adding at the end the following:

''(iii) if—

''(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

''(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or''.

(2) PAYMENTS.—Section 1326(a) of title 11, United States Code, is amended to read as follows:

''(a)(1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount—

''(A) proposed by the plan to the trustee;

''(B) scheduled in a lease of personal property directly to the lessor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment; and

''(C) that provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment.

''(2) A payment made under paragraph (1)(A) shall be retained by the trustee until confirmation or denial of confirmation. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable. If a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors pursuant to paragraph (3) to the debtor, after deducting any unpaid claim allowed under section 503(b).

''(3) Subject to section 363, the court may, upon notice and a hearing, modify, increase, or reduce the payments required under this subsection pending confirmation of a plan.

''(4) Not later than 60 days after the date of filing of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in part to the purchase price of such property shall provide the lessor or secured creditor reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property and continue to do so for so long as the debtor retains possession of such property.''.

SEC. 310. LIMITATION ON LUXURY GOODS.

Section 523(a)(2)(C) of title 11, United States Code, is amended to read as follows:

''(C)(i) for purposes of subparagraph (A)—

''(I) consumer debts owed to a single creditor and aggregating more than $250 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 $750 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

''(ii) for purposes of this subparagraph—

''(I) the term 'extension of credit under an open end credit plan' means an extension of credit under an open end credit plan, within the meaning of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.);

''(II) the term 'open end credit plan' has the meaning given that term under section 103 of the Consumer Credit Protection Act (15 U.S.C. 1602); and

''(III) the term 'luxury goods or services' does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor.''.

SEC. 311. AUTOMATIC STAY.

(a) IN GENERAL.—Section 362(b) of title 11, United States Code, is amended—

(1) by inserting after paragraph (21), as added by this Act, the following:

''(23) under subsection (a)(3), of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor seeking possession of residential real property—

''(A) on which the debtor resides as a tenant; and

''(B) with respect to which—

''(i) the debtor fails to make a rental payment that initially becomes due under applicable nonbankruptcy law after the date of filing of the petition or during the 10-day period preceding the date of filing of the petition, if the lessor files with the court a certification that the debtor has not made a payment for rent and serves a copy of the certification upon the debtor; or

''(ii) the debtor's lease has expired according to its terms, and—

''(I) a member of the lessor's immediate family intends to personally occupy that property; or

''(II) the lessor has entered into an enforceable lease agreement with another tenant prior to the filing of the petition, if the lessor files with the court a certification of such facts and serves a copy of the certification to the debtor;

''(24) under subsection (a)(3), of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor seeking possession of residential real property, if during the 1-year period preceding the date of filing of the petition, the debtor or another occupant of the leased premises—

''(A) commenced another case under this title; and

''(B) failed to make a rental payment that initially became due under applicable nonbankruptcy law after the date of filing of the petition for that other case;

''(25) under subsection (a)(3), of an eviction action, to the extent that it seeks possession based on endangerment of property or the illegal use of controlled substances on the property, if the lessor files with the court a certification that such an eviction has been filed or the debtor has endangered property or illegally used or allowed to be used a controlled substance on the property during the 30-day period preceding the date of filing of the certification, and serves a copy of the certification upon the debtor;''; and

(2) by adding at the end of the flush material at the end of the subsection the following; ''With respect to the applicability of paragraph (23) or (25) to a debtor with respect to the commencement or continuation of a proceeding described in any such paragraph, the exception to the automatic stay shall become effective on the 15th day after the lessor meets the filing and notification requirements under any such paragraph, unless—

''(A) the debtor files a certification and serves a copy of that certification upon the lessor, that—

''(i) contests the truth or legal sufficiency of the lessor's certification; or

''(ii) states that the tenant has taken such action as may be necessary to remedy the subject of the certification under paragraph (23), except that no tenant may take advantage of such remedy more than once; or

''(B) the court orders that the exception to the automatic stay shall not become effective, or provides for a later date of applicability.''.

(b) FORMS.—The Judicial Conference of the United States shall promulgate forms for the certifications required under paragraphs (23) and (25) of section 362(b) of title 11, United States Code, as added by this section, that are suitable for use by lessors and debtors who are not represented by attorneys.

SEC. 312. EXTENSION OF PERIOD BETWEEN BANKRUPTCY DISCHARGES.

Title 11, United States Code, is amended—

(1) in section 727(a)(8), by striking ''six'' and inserting ''8''; and

(2) in section 1328, by inserting after subsection (e) the following:

''(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for by the plan or disallowed under section 502 if the debtor has received a discharge in any case filed under this title within 5 years before the order for relief under this chapter.''.

SEC. 313. DEFINITION OF HOUSEHOLD GOODS AND ANTIQUES.

(a) DEFINITION.—Section 522(f) of title 11, United States Code, is amended by adding at the end the following:

''(4)(A) Subject to subparagraph (B), for purposes of paragraph (1)(B), the term 'household goods' means—

''(i) clothing;

''(ii) furniture;

''(iii) appliances;

''(iv) 1 radio;

''(v) 1 television;

''(vi) 1 VCR;

''(vii) linens;

''(viii) china;

''(ix) crockery;

''(x) kitchenware;

''(xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor, but only 1 personal computer only if used primarily for the education or entertainment of such minor children;

''(xii) medical equipment and supplies;

''(xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor; and

''(xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor.

''(B) The term 'household goods' does not include—

''(i) works of art (unless by or of the debtor or the dependents of the debtor);

''(ii) electronic entertainment equipment (except 1 television, 1 radio, and 1 VCR);

''(iii) items acquired as antiques;

''(iv) jewelry (except wedding rings); and

''(v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.''.

(b) STUDY.—Not later than 2 years after the date of enactment of this Act, the Director of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing its findings regarding utilization of the definition of household goods, as defined in section 522(f)(4) of title 11, United States Code, as added by this section, with respect to the avoidance of nonpossessory, nonpurchase money security interests in household goods under section 522(f)(1)(B) of title 11, United States Code, and the impact that section 522(f)(4) of that title, as added by this section, has had on debtors and on the bankruptcy courts. Such report may include recommendations for amendments to section 522(f)(4) of title 11, United States Code, consistent with the Director's findings.

SEC. 314. DEBT INCURRED TO PAY NONDISCHARGEABLE DEBTS.

(a) IN GENERAL.—Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14) the following:

''(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);''.

(b) DISCHARGE UNDER CHAPTER 13.—Section 1328(a) of title 11, United States Code, is amended by striking paragraphs (1) through (3) and inserting the following:

''(1) provided for under section 1322(b)(5);

''(2) of the kind specified in paragraph (2), (3), (4), (5), (8), or (9) of section 523(a);

''(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

''(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.''.

SEC. 315. GIVING CREDITORS FAIR NOTICE IN CHAPTERS 7 AND 13 CASES.

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

(1) in subsection (c)—

(A) by inserting ''(1)'' after ''(c)'';

(B) by striking '', but the failure of such notice to contain such information shall not invalidate the legal effect of such notice''; and

(C) by adding at the end the following:

''(2) If, within the 90 days prior to the date of the filing of a petition in a voluntary case, the creditor supplied the debtor in at least 2 communications sent to the debtor with the current account number of the debtor and the address at which the creditor wishes to receive correspondence, then the debtor shall send any notice required under this title to the address provided by the creditor and such notice shall include the account number. In the event the creditor would be in violation of applicable nonbankruptcy law by sending any such communication within such 90-day period and if the creditor supplied the debtor in the last 2 communications with the current account number of the debtor and the address at which the creditor wishes to receive correspondence, then the debtor shall send any notice required under this title to the address provided by the creditor and such notice shall include the account number.''; and

(2) by adding at the end the following:

''(e) At any time, a creditor, in a case of an individual debtor under chapter 7 or 13, may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case. Five days after receipt of such notice, if the court or the debtor is required to give the creditor notice, such notice shall be given at that address.

''(f) An entity may file with the court a notice stating its address for notice in cases under chapters 7 and 13. After 30 days following the filing of such notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (e) with respect to a particular case.

''(g)(1) Notice given to a creditor other than as provided in this section shall not be effective notice 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 and establishes reasonable procedures so that bankruptcy notices received by the creditor are to be delivered to such department or person, notice shall not be considered to have been brought to the attention of the creditor until received by such person or department.

''(2) No sanction under section 362(k) or any other sanction that a court may impose on account of violations of the stay under section 362(a) or failure to comply with section 542 or 543 may be imposed on any action of the creditor unless the action takes place after the creditor has received notice of the commencement of the case effective under this section.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (a), as so designated by this Act, by striking paragraph (1) and inserting the following:

''(1) file—

''(A) a list of creditors; and

''(B) unless the court orders otherwise—

''(i) a schedule of assets and liabilities;

''(ii) a schedule of current income and current expenditures;

''(iii) a statement of the debtor's financial affairs and, if applicable, a certificate—

''(I) of an attorney whose name is on the petition as the attorney for the debtor or any bankruptcy petition preparer signing the petition under section 110(b)(1) indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b); or

''(II) if no attorney for the debtor is indicated and no bankruptcy petition preparer signed the petition, of the debtor that such notice was obtained and read by the debtor;

''(iv) copies of all payment advices or other evidence of payment, if any, received by the

debtor from any employer of the debtor in the period 60 days before the filing of the petition;

''(v) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and

''(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of filing;''; and

(2) by adding at the end the following:

''(e)(1) At any time, a creditor, in the case of an individual under chapter 7 or 13, may file with the court notice that the creditor requests the petition, schedules, and a statement of affairs filed by the debtor in the case, and the court shall make those documents available to the creditor who requests those documents.

''(2)(A) The debtor shall provide either a tax return or transcript at the election of the debtor, for the latest taxable period prior to filing for which a tax return has been or should have been filed, to the trustee, not later than 7 days before the date first set for the first meeting of creditors, or the case shall be dismissed, unless the debtor demonstrates that the failure to file a return as required is due to circumstances beyond the control of the debtor.

''(B) If a creditor has requested a tax return or transcript referred to in subparagraph (A), the debtor shall provide such tax return or transcript to the requesting creditor at the time the debtor provides the tax return or transcript to the trustee, or the case shall be dismissed, unless the debtor demonstrates that the debtor is unable to provide such information due to circumstances beyond the control of the debtor.

''(3)(A) At any time, a creditor in a case under chapter 13 may file with the court notice that the creditor requests the plan filed by the debtor in the case.

''(B) The court shall make such plan available to the creditor who requests such plan—

''(i) at a reasonable cost; and

''(ii) not later than 5 days after such request.

''(f) An individual debtor in a case under chapter 7, 11, or 13 shall file with the court at the request of any party in interest—

''(1) at the time filed with the taxing authority, all tax returns required under applicable law, including any schedules or attachments, with respect to the period from the commencement of the case until such time as the case is closed;

''(2) at the time filed with the taxing authority, all tax returns required under applicable law, including any schedules or attachments, that were not filed with the taxing authority when the schedules under subsection (a)(1) were filed with respect to the period that is 3 years before the order of relief;

''(3) any amendments to any of the tax returns, including schedules or attachments, described in paragraph (1) or (2); and

''(4) in a case under chapter 13, a statement subject to the penalties of perjury by the debtor of the debtor's income and expenditures in the preceding tax year and monthly income, that shows how the amounts are calculated—

''(A) beginning on the date that is the later of 90 days after the close of the debtor's tax year or 1 year after the order for relief, unless a plan has been confirmed; and

''(B) thereafter, on or before the date that is 45 days before each anniversary of the confirmation of the plan until the case is closed.

''(g)(1) A statement referred to in subsection (f)(4) shall disclose—

''(A) the amount and sources of income of the debtor;

''(B) the identity of any person responsible with the debtor for the support of any dependent of the debtor; and

''(C) the identity of any person who contributed, and the amount contributed, to the household in which the debtor resides.

''(2) The tax returns, amendments, and statement of income and expenditures described in subsection (e)(2)(A) and subsection (f) shall be available to the United States trustee, any bankruptcy administrator, any trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (h).

''(h)(1) Not later than 180 days after the date of enactment of the Bankruptcy Reform Act of 2001, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.

''(2) The procedures under paragraph (1) shall include restrictions on creditor access to tax information that is required to be provided under this section.

''(3) Not later than 1 year and 180 days after the date of enactment of the Bankruptcy Reform Act of 2001, the Director of the Administrative Office of the United States Courts shall prepare and submit to Congress a report that—

''(A) assesses the effectiveness of the procedures under paragraph (1); and

''(B) if appropriate, includes proposed legislation to—

''(i) further protect the confidentiality of tax information; and

''(ii) provide penalties for the improper use by any person of the tax information required to be provided under this section.

''(i) If requested by the United States trustee or a trustee serving in the case, the debtor shall provide—

''(1) a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor; and

''(2) such other personal identifying information relating to the debtor that establishes the identity of the debtor.''.

SEC. 316. DISMISSAL FOR FAILURE TO TIMELY FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION.

Section 521 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(j)(1) Notwithstanding section 707(a), and subject to paragraph (2), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the filing of the petition commencing the case, the case shall be automatically dismissed effective on the 46th day after the filing of the petition.

''(2) With respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 5 days after such request.

''(3) Upon request of the debtor made within 45 days after the filing of the petition commencing a case described in paragraph (1), the court may allow the debtor an additional period of not to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.''.

SEC. 317. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.

Section 1324 of title 11, United States Code, is amended—

(1) by striking ''After'' and inserting the following:

''(a) Except as provided in subsection (b) and after''; and

(2) by adding at the end the following:

''(b) The hearing on confirmation of the plan may be held not earlier than 20 days and not later than 45 days after the date of the meeting of creditors under section 341(a).''.

SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.

Title 11, United States Code, is amended—

(1) by amending section 1322(d) 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 last reported by the Bureau of the Census;

''(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 last reported by the Bureau of the Census; 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 last reported by the Bureau of the Census, 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 5 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 last reported by the Bureau of the Census;

''(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 last reported by the Bureau of the Census; 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 last reported by the Bureau of the Census, 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, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.'';

(2) in section 1325(b)(1)(B), by striking ''three-year period'' and inserting ''applicable commitment period''; and

(3) in section 1325(b), as amended by this Act, by adding at the end the following:

''(4) For purposes of this subsection, the 'applicable commitment period'—

''(A) subject to subparagraph (B), shall be—

''(i) 3 years; or

''(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less 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 last reported by the Bureau of the Census;

''(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 last reported by the Bureau of the Census; 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 last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4; and

''(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.''; and

(4) in section 1329(c), by striking ''three years'' and inserting ''the applicable commitment period under section 1325(b)(1)(B)''.

SEC. 319. SENSE OF CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.

It is the sense of Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App.) should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to the court or to a trustee by debtors who represent themselves and debtors who are represented by an attorney be submitted only after the debtor or the debtor's attorney has made reasonable inquiry to verify that the information contained in such documents is—

(1) well grounded in fact; and

(2) warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.

SEC. 320. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.

Section 362(e) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(e)''; and

(2) by adding at the end the following:

''(2) Notwithstanding paragraph (1), in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

''(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

''(B) that 60-day period is extended—

''(i) by agreement of all parties in interest; or

''(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.''.

SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.

(a) PROPERTY OF THE ESTATE.—

(1) IN GENERAL.—Subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following:

''§ 1115. Property of the estate

''(a) In a case concerning an individual debtor, property of the estate includes, in addition to the property specified in section 541—

''(1) all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first; and

''(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first.''.

''(b) Except as provided in section 1104 or a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, United States Code, is amended by adding at the end of the matter relating to subchapter I the following:

''1115. Property of the estate.''.

(b) CONTENTS OF PLAN.—Section 1123(a) of title 11, United States Code, is amended—

(1) in paragraph (6), by striking ''and'' at the end;

(2) in paragraph (7), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(8) in a case concerning an individual, provide for the payment to creditors through the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.''.

(c) CONFIRMATION OF PLAN.—

(1) REQUIREMENTS RELATING TO VALUE OF PROPERTY.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

''(15) In a case concerning an individual in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

''(A) the value of the property to be distributed under the plan on account of such claim is, as of the effective date of the plan, not less than the amount of such claim; or

''(B) the value of the property to be distributed under the plan is not less than the debtor's projected disposable income (as that term is defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the term of the plan, whichever is longer.''.

(2) REQUIREMENT RELATING TO INTERESTS IN PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11, United States Code, is amended by inserting before the period at the end the following: '', except that in a case concerning an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14)''.

(d) EFFECT OF CONFIRMATION.—Section 1141(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking ''The confirmation of a plan does not discharge an individual debtor'' and inserting ''A discharge under this chapter does not discharge a debtor''; and

(2) by adding at the end the following:

''(5) In a case concerning an individual—

''(A) except as otherwise ordered for cause shown, the discharge is not effective until completion of all payments under the plan; and

''(B) at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

''(i) for each allowed unsecured claim, the value, as of the effective date of the plan, of property actually distributed under the plan on account of that claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

''(ii) modification of the plan under 1127 of this title is not practicable.''.

(e) MODIFICATION OF PLAN.—Section 1127 of title 11, United States Code, is amended by adding at the end the following:

''(e) In a case concerning an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—

''(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

''(2) extend or reduce the time period for such payments; or

''(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

''(f)(1) Sections 1121 through 1128 of this title and the requirements of section 1129 of this title apply to any modification under subsection (a).

''(2) The plan, as modified, shall become the plan only after there has been disclosure under section 1125, as the court may direct, notice and a hearing, and such modification is approved.''.

SA 69. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 243, line 23, strike ''(1)(B),''.

SA 70. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 18, line 9, strike ''6'' and insert ''2''.

SA 71. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 151, strike line 18 and all that follows through page 152, line 3, and insert the following:

Section 727(a)(8) of title II, United States Code, is amended by striking ''six'' and inserting ''8''.

SA 72. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 912 (relating to asset-backed securitizations).

SA 73. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 441, after line 2, add the following:

(c) EXEMPTIONS.—

(1) CERTAIN UNEMPLOYED WORKERS.—This Act and the amendments made by this Act do not apply to any debtor that can demonstrate to the satisfaction of the court that the reason for filing is due to the debtor having become unemployed and the debtor is part of a group of workers certified by the Secretary of Labor as being eligible for trade adjustment assistance under title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.), unless the debtor elects to make a provision of this Act or an amendment made by this Act applicable to that debtor.

(2) APPLICABILITY.—Title 11, United States Code, as in effect on the day before the effective date of this Act and the amendments made by this Act, shall apply to persons referred to in paragraph (1) on and after the date of enactment of this Act, unless the debtor elects otherwise in accordance with paragraph (1).

SA 74. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 441, after line 2, add the following:

(c) EXEMPTIONS.—

(1) IN GENERAL.—This Act and the amendments made by this Act do not apply to any debtor that can demonstrate to the satisfaction of the court that the household income of the debtor at the time of filing is equal to or below 200 percent of the Federal 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)), unless the debtor elects to make a provision of this Act or an amendment made by this Act applicable to that debtor.

(2) APPLICABILITY.—Title 11, United States Code, as in effect on the day before the effective date of this Act and the amendments made by this Act, shall apply to persons referred to in paragraph (1) on and after the date of enactment of this Act, unless the debtor elects otherwise in accordance with paragraph (1).

SA 75. Mr. DODD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by them to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table.

At the end of Title XIII, add the following:

SEC. 1311. EXTENSIONS OF CREDIT TO UNDERAGE CONSUMERS.

(a) IN GENERAL.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

''(8) APPLICATIONS FROM UNDERAGE CONSUMERS.—

''(A) PROHIBITION ON ISSUANCE.—No credit card may be issued to, or open end credit plan established on behalf of, a consumer who has not attained the age of 21, unless the consumer has submitted a written application to the card issuer that meets the requirements of subparagraph (B).

''(B) APPLICATION REQUIREMENTS.—An application to open a credit card account by an individual who has not attained the age of 21 as of the date of submission of the application shall require—

''(i) the signature of the parent, legal guardian, or spouse of the consumer, or any other individual having a means to repay debts incurred by the consumer in connection with the account, indicating joint liability for debts incurred by the consumer in connection with the account before the consumer has attained the age of 21;

''(ii) submission by the consumer of financial information indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account; or

''(iii) proof by the consumer that the consumer has completed a credit counseling course of instruction by an approved nonprofit budget and credit counseling agency that meets the requirements of section 111 of title 11, United States Code.''.

(b) REGULATORY AUTHORITY.—The Board of Governors of the Federal Reserve System may issue such rules or publish such model forms as it considers necessary to carry out section 127(c)(8) of the Truth in Lending Act, as amended by this section.

Amend the table of contents accordingly.

SA 76. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 420, to amend title 11, United States Code, and of other purposes, which was ordered to lie on the table; as follows:

On page 152, strike line 4 and all that follows through page 154, line 11.

SA 77. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 420, to amend title 11, United States Code, and for other purposes, which was ordered to lie on the table; as follows:

At the appropriate place, insert:

SEC. 204. PRESERVATION OF CLAIMS AND DEFENSES UPON SALE OF PREDATORY LOANS.

Section 363 of title 11, US Code, is amended by adding at the end the following:

''(p) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is subject to the Truth in Lending Act (15 U.S. Code 1601 et. seq.), or any interest in a consumer credit contract as defined by the Federal Trade Commission Preservation of Claims Trade Regulation, and that interest is purchased through a sale under this section, then that person shall remain subject to all claims and defenses that are related to the consumer credit transaction or contract, to the same extent as that person would be subject to such claims and defenses of the consumer had the sale taken place other than under title 11.''

SA 78. Mr. WYDEN (for himself, Mr. BAUCUS, and Mrs. MURRAY) submitted an amendment intended to be proposed by them to the bill S. 420, to amend title 11, United States Code, and for other purposes; which was ordered to lie on the table.

After section 419, insert the following:

SEC. 420. NONDISCHARGEABILITY OF DEBTS ARISING FROM THE EXCHANGE OF ELECTRIC ENERGY.

(a) IN GENERAL.—Section 1141(d) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(6) The confirmation of a plan does not discharge a debtor—

''(A) in the case of a debtor that is a corporation, from any debt for wholesale electric power received that is incurred by that debtor under an order issued by the Secretary of Energy (or any amendment of or attachment to that order) under section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)) and requested by the California Independent System Operator; or

''(B) in the case of debt owed to a Federal, State, or local government agency named in an order referred to in subparagraph (A) for wholesale electric power received by the debtor except to the extent the rate charged for power traded by the California Power Exchange or delivered to the California Independent System Operator is determined by the Federal Energy Regulatory Commission to be unjust and unreasonable, in which case this subparagraph should only apply to debt for the actual cost of production and distribution of energy.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by this Act, is amended—

(1) in paragraph (28), as added by section 907(d) of this Act, by striking ''or'' at the end;

(2) in paragraph (29), as added by section 1106 of this Act, by striking the period at the end and inserting ''; or''; and

(3) by inserting after that paragraph (29) the following:

''(30) under subsection (a), of the commencement or continuation, and conclusion to the entry of final judgment or order, of a judicial, administrative, or other action or proceeding for debts that are nondischargeable under section 1141(d)(6).''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—Section 1141(a) of title 11, United States Code, is amended by striking ''subsections (d)(2) and (d)(3) of this section'' and inserting ''paragraphs (2), (3), and (6) of subsection (d)''.

(d) APPLICABILITY.—This section and the amendments made by this section shall apply with respect to any petition for bankruptcy filed under title 11, United States Code, on or after March 1, 2001.

SA 79. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title II, add the following:

SEC. 204. AWARD OF FEES AND DAMAGES AUTHORIZED.

(a) SECTION 502.—Section 502 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(l)(1) The court may award the debtor reasonable attorneys' fees and costs if, after an objection is filed by a debtor, the court—

''(A)(i) disallows the claim; or

''(ii) reduces the claim by an amount greater than 20 percent of the amount of the initial claim filed by a party in interest, or $500, whichever is less; and

''(B) finds that the position of the party filing the claim is not substantially justified.

''(2) If the court finds that the position of a claimant under this section is not substantially justified, the court may, in addition to awarding a debtor reasonable attorneys' fees and costs under paragraph (1), award such damages as may be required by the equities of the case.''.

(b) SECTION 523.—Section 523 of title 11, United States Code, is amended—

(1) in subsection (a)(2)(A), by striking ''a false representation'' and inserting ''a material false representation upon which the defrauded person justifiably relied''; and

(2) by striking subsection (d) and inserting the following:

''(d)(1) Subject to paragraph (3), if a creditor requests a determination of dischargeability of a consumer debt under this section and that debt is discharged, the court shall award the debtor reasonable attorneys' fees and costs.

''(2) In addition to making an award to a debtor under paragraph (1), if the court finds that the position of a creditor in a proceeding covered under this section is not substantially justified, the court may award reasonable attorneys' fees and costs under paragraph (1) and such damages as may be required by the equities of the case.

''(3)(A) A creditor may not request a determination of dischargeability of a consumer debt under subsection (a)(2) if—

''(i) before the filing of the petition, the debtor made a good faith effort to negotiate a reasonable alternative repayment schedule (including making an offer of a reasonable alternative repayment schedule); and

''(ii) that creditor refused to negotiate an alternative payment schedule, and that refusal was not reasonable.

''(B) For purposes of this paragraph, the debtor shall have the burden of proof of establishing that—

''(i) an offer made by that debtor under subparagraph (A)(i) was reasonable; and

''(ii) the refusal to negotiate by the creditor involved was not reasonable.''.

(c) SECTION 524.—Section 524 of title 11, United States Code, as otherwise amended by this Act, is amended by adding at the end the following:

''(l) The willful failure of a creditor to credit payments received under a plan confirmed under this title (including a plan of

reorganization confirmed under chapter 11 of this title) in the manner required by the plan (including crediting the amounts required under the plan) shall constitute a violation of an injunction under subsection (a)(2).

''(m) An individual who is injured by the failure of a creditor to comply with the requirements for a reaffirmation agreement under subsections (c) and (d), or by any willful violation of the injunction under subsection (a)(2), shall be entitled to recover—

''(1) the greater of—

''(A)(i) the amount of actual damages; multiplied by—

''(ii) 3; or

''(B) $5,000; and

''(2) costs and attorneys' fees.''.

(d) SECTION 362.—Section 362(h) of title 11, United States Code, is amended to read as follows:

''(h)(1) An individual who is injured by any willful violation of a stay provided in this section shall be entitled to recover—

''(A) actual damages; and

''(B) reasonable costs, including attorneys' fees.

''(2) In addition to recovering actual damages, costs, and attorneys' fees under paragraph (1), an individual described in paragraph (1) may recover punitive damages in appropriate circumstances.''.

SEC. 205. DISCHARGE.

(e) SECTION 727.—Section 727 of title 11, United States Code, is amended—

(1) in subsection (c), by adding at the end the following:

''(3)(A) A creditor may not request a determination of dischargeability of a consumer debt under subsection (a) if—

''(i) before the filing of the petition, the debtor made a good faith effort to negotiate a reasonable alternative repayment schedule (including making an offer of a reasonable alternative repayment schedule); and

''(ii) that creditor refused to negotiate an alternative payment schedule, and that refusal was not reasonable.

''(B) For purposes of this paragraph, the debtor shall have the burden of proof of establishing that—

''(i) an offer made by that debtor under subparagraph (A)(i) was reasonable; and

''(ii) the refusal to negotiate by the creditor involved was not reasonable.''; and

(2) by adding at the end the following:

''(f)(1) The court may award the debtor reasonable attorneys' fees and costs in any case in which a creditor files a motion to deny relief to a debtor under this section and that motion—

''(A) is denied; or

''(B) is withdrawn after the debtor has replied.

''(2) If the court finds that the position of a party filing a motion under this section is not substantially justified, the court may assess against the creditor such damages as may be required by the equities of the case.''.

SA 80. Mr. BREAUX (for himself, Mr. SPECTER, Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, 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. ___. AUTHORITY TO ISSUE A RULE RELATING TO ERGONOMICS.

(a) FINDINGS.—Congress makes the following findings:

(1) The National Academy of Sciences issued a report entitled ''Musculoskeletal Disorders and the Workplace—Low Back and Upper Extremities'' on January 18, 2001. The report was issued after the Occupational Safety and Health Administration promulgated a final rule relating to ergonomics (published at 65 Fed. Reg. 68261 (2000)).

(2) According to the National Academy of Sciences, musculoskeletal disorders of the low back and upper extremities are an important and costly national health problem. An estimated 1,000,000 workers each year lose time from work as a result of work-related musculoskeletal disorders.

(3) Conservative estimates of the economic burden imposed by work-related musculoskeletal disorders, as measured by compensation costs, lost wages, and lost productivity, are between $45,000,000,000 and $54,000,000,000 annually.

(4) Congress enacted the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) to ''assure so far as possible every working man and woman in the Nation safe and healthful working conditions,'' and charged the Secretary of Labor with implementing the Act to accomplish this purpose.

(5) Promulgation of a standard on workplace ergonomics is needed to address a serious workplace safety and health problem and to protect working men and women from work-related musculoskeletal disorders. Any workplace ergonomics standard should take into account the cost and feasibility of compliance with such requirements and the sound science of the National Academy of Sciences report.

(b) AUTHORITY TO ISSUE RULE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, not later than 2 years after the date of enactment of this Act, the Secretary of Labor shall, in accordance with section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), issue a final rule relating to ergonomics. The standard under the final rule shall take effect not later than 90 days after the date on which the rule is promulgated. The standard shall—

(A) address work-related musculoskeletal disorders and workplace ergonomic hazards;

(B) not apply to non-work-related musculoskeletal disorders that occur outside the workplace or non-work-related musculoskeletal disorders that are aggravated by work; and

(C) set forth in clear terms—

(i) the circumstances under which an employer is required to take action to address ergonomic hazards;

(ii) the measures required of an employer under the standard; and

(iii) the compliance obligations of an employer under the standard.

(2) AUTHORIZATION.—Paragraph (1) shall be considered a specific authorization by Congress in accordance with section 801(b)(2) of title 5, United States Code, with respect to the issuance of a new ergonomic rule.

(3) PROHIBITION.—In issuing a new rule under this subsection, the Secretary of Labor shall ensure that nothing in the rule expands the application of State workers' compensation laws.

(4) STANDARD SETTING AUTHORITY.—Nothing in this subsection shall be construed to restrict or alter the authority of the Secretary of Labor under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) to adopt health or safety standards (as defined in section 3(8) (29 U.S.C. 652(8)) of such Act) for other hazards pursuant to section 6 (29 U.S.C. 655) of such Act.

(5) INFORMATION AND TRAINING MATERIALS.—The Secretary of Labor shall, prior to the date on which the new rule under this subsection becomes effective, develop information and training materials, and implement an outreach program and other initiatives, to provide compliance assistance to employers and employees concerning the new rule and the requirements under the rule.

SA 81. Mr. REED submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title II, add the following:

SEC. 204. GAO STUDY ON REAFFIRMATION PROCESS.

(a) STUDY.—The General Accounting Office (in this section referred to as the ''GAO'') shall conduct a study of the reaffirmation process under title 11, United States Code, to determine the overall treatment of consumers within the context of that process, including consideration of—

(1) the policies and activities of creditors with respect to reaffirmation; and

(2) whether there is abuse or coercion of consumers inherent in the process.

(b) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the GAO shall submit a report to the Congress on the results of the study conducted under subsection (a), together with any recommendations for legislation to address any abusive or coercive tactics found within the reaffirmation process.

SA 82. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 42, between lines 3 and 4, insert the following:

SEC. 108. TREASURY DEPARTMENT STUDY ON THE OPERATION OF THE MEANS TEST SAFE HARBOR.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of the Treasury (in this section referred to as the ''Secretary'') shall conduct a study of those debtors who, based on the information provided in the schedules filed with the bankruptcy court, would be subject to the presumption under section 707(b)(2) of title 11, United States Code, as added by this Act, but are not subject to that presumption because the current monthly income of those debtors is under the applicable median income required under section 707(b)(7) of that title, as added by this Act, to determine the ability of those debtors excluded from the operation of the means test by the exemption provided in section 707(b)(2) of that title, to pay.

(2) DETERMINATIONS.—The study required by this subsection shall cover the 1-year period beginning on the date of enactment of this Act, and shall include—

(A) the average amount that a debtor with the ability to pay would be able to pay a nonpriority unsecured creditor, as determined by the net income of that debtor under section 707(b)(2) of title 11, United States Code, as added by this Act, and projecting that amount over the applicable commitment period under section 1325(b) of that title; and

(B) the aggregate amount that all debtors referred to in subparagraph (A) would be able to pay during the period of the study.

(b) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit a report to Congress on the results of the study conducted under subsection (a), together with any recommendations for legislation to address the abusive use of any chapter of title 11, United States Code.

SA 83. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 17, line 5, insert ''creditor, or other party in interest, and only the'' after ''No''.

On page 17, line 5, after ''panel trustee,'' insert ''or''.

On page 17, line 6, strike ''or other party in interest''.

On page 17, line 9, after ''relief'' insert the following: ''(except if the debtor and the spouse of the debtor are not in a joint case, and are either legally separated or the court determines, after notice and hearing, that the debtor and the spouse of the debtor are living separate and apart, and the spouse is not providing any support to the debtor or the dependents of the debtor, then only the current monthly income of the debtor as of the date of the order for relief)''.

SA 84. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title II, add the following:

SEC. 204. TREASURY STUDY ON REAFFIRMATION PROCESS.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of the Treasury (in this section referred to as the ''Secretary'') shall conduct a study of the effect on consumers of the provisions in title 11, United States Code, relating to reaffirmation of consumer debt which has been discharged in a proceeding commenced under that title.

(2) CONSIDERATIONS.—The study required by this subsection shall include analysis of—

(A) the policies and activities of creditors representative in their class with respect to reaffirmation;

(B) the role of debtors' counsel in the reaffirmation process;

(C) the economic and personal benefits accruing to consumers who reaffirm debt; and

(D) the effectiveness of applicable consumer protection provisions.

(b) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit a report to the Congress on the results of the study conducted under subsection (a), together with any recommendations for legislation to address any policy concerns resulting from the study.

SA 85. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 62, after the material between lines 3 and 4, insert the following:

SEC. 204. SPECIAL AUDITS.

(a) IN GENERAL.—If a debt relief agency has provided bankruptcy assistance to more than 10 assisted persons—

(1) whose cases have been dismissed or converted under section 707(b) of title 11, United States Code;

(2) in whose cases the stay under section 362(a) of title 11, United States Code, has terminated under section 362(c)(3)(A) of that title, or was not in effect under section 362(c)(4)(A)(i) of that title; or

(3) with respect to which, the court entered an order under section 362(d)(4) of title 11, United States Code,

the Attorney General shall order an audit to be conducted of all cases filed in the 1-year period preceding the date of such order in which the debt relief agency provided bankruptcy assistance.

(b) AUDIT.—The audit required by subsection (a) shall be conducted by auditors selected under section 603 of this Act, and such audit shall be conducted as though each case was a file selected for audit under that section.

(c) REPORT.—The Attorney General shall report the results of the audit required by this section to the judge of each bankruptcy court in which any case subject to audit was filed.

SA. 86. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 17, line 4, strike ''of 4.'' and all that follows through line 25, and insert the following ''of 4.'.''.

SA 87. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 23, line 10, insert '', nonpriority'' before ''creditors''.

SA 88. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 17, strike lines 5 through 10, and insert the following:

''(7) No creditor or other party in interest, and only the judge, United States trustee, panel trustee, or bankruptcy administrator, may bring a motion under paragraph (2), if the current monthly income of the debtor and the spouse of the debtor, combined, as of the date of the order for relief (except if the debtor and the spouse of the debtor are not in a joint case and are either legally separated, or the court determines, after notice and hearing, that the debtor and the spouse of the debtor are living separate and apart, and the spouse is not providing any support to the debtor or the dependents of the debtor, then only the current monthly income of the debtor as of the date of the order for relief), when multiplied by 12, is equal to or less than—''.

SA 89. Mr. LOTT submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 29, line 21, strike ''received'' and all that follows through page 30, line 2 and insert the following: ''participated in a credit counseling program (including over the telephone or on the Internet) that includes a budget analysis and development of a payment plan, and provides the debtor with counseling concerning how the debtor attained his or her present financial status, and any related appropriate counseling, unless the bankruptcy court, after notice and hearing, determines for cause that the debtor is unable to participate in such activities, or that in light of the debtor's circumstances, there is no benefit to the debtor in participating in such program, in which case the debtor shall have received, during the 180-day period preceding the date of filing of the petition of that individual from such an approved nonprofit budget and credit counseling agency an individual or group briefing (including a briefing conducted by telephone or over the Internet) that outlined the opportunities for available credit counseling, and assisted that individual in performing a related budget analysis.''.

SA 90. Mr. REED submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle C of title II, add the following:

SEC. 230. GAO STUDY.

(c) STUDY.—The General Accounting Office (in this section referred to as the ''GAO'') shall conduct a study of the reaffirmation process under title 11, United States Code, to determine the overall treatment of consumers within the context of that process, including consideration of—

(1) the policies and activities of creditors with respect to reaffirmation; and

(2) whether there is abuse or coercion of consumers inherent in the process.

(d) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the GAO shall submit a report to the Congress on the results of the study conducted under subsection (a), together with any recommendations for legislation to address any abusive or coercive tactics found within the reaffirmation process.

SA 91. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title II, add the following:

SEC. 233. PROHIBITION ON FINANCE CHARGES FOR ON-TIME PAYMENTS.

Section 27 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

''(h) PROHIBITION ON CERTAIN FINANCE CHARGES FOR ON-TIME PAYMENTS.—In the case of any credit card account under an open end consumer 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.''.

SA 92. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 186, strike lines 6 through 22 and insert the following:

(I) because that person seeks to exercise, exercises or has exercised constitutionally protected rights; or

(II) to deter any person from exercising constitutionally protected rights or from assisting any other person in the exercise of such rights; or

(III) because that person assists any person in the exercise of constitutionally protected rights, or provides or assists in the provision of constitutionally protected good or services; or

(ii) damage or destruction of property of a facility or of a person because that facility

or person provides, assists in providing, uses, or seeks constitutionally protected goods or services; or

''(B) a violation of a court order or injunction that protects access to a facility that provides constitutionally protected goods or services or that protects persons who seek, provide, or assist in providing constitutionally protected goods or services.''

SA 93. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table.

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Consumer Bankruptcy Reform Act of 1998''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—NEEDS-BASED BANKRUPTCY

SEC. 101. CONVERSION.

Section 706(c) of title 11, United States Code, is amended by inserting ''or consents to'' after ''requests''.

SEC. 102. DISMISSAL OR CONVERSION.

(a) IN GENERAL.—Section 707 of title 11, United States Code, is amended—

(1) by striking the section heading and inserting the following:

''§ 707. Dismissal of a case or conversion to a case under chapter 13'';

and

(2) in subsection (b)—

(A) by inserting ''(1)'' after ''(b)''; and

(B) in paragraph (1), as redesignated by subparagraph (A) of this paragraph—

(i) in the first sentence—

(I) by striking ''but not'' and inserting ''or'';

(II) by inserting '', or, with the debtor's consent, convert such a case to a case under chapter 13 of this title,'' after ''consumer debts''; and

(III) by striking ''substantial abuse'' and inserting ''abuse''; and

(ii) by striking the last sentence and inserting the following:

''(2) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall consider whether—

''(A) under section 1325(b)(1), on the basis of the current income of the debtor, the debtor could pay an amount greater than or equal to 30 percent of unsecured claims that are not considered to be priority claims (as determined under subchapter I of chapter 5); or

''(B) the debtor filed a petition for the relief in bad faith.

''(3)(A) If a panel trustee appointed under section 586(a)(1) of title 28 brings a motion for dismissal or conversion under this subsection and the court grants that motion and finds that the action of the counsel for the debtor in filing under this chapter was not substantially justified, the court shall order

the counsel for the debtor to reimburse the trustee for all reasonable costs in prosecuting the motion, including reasonable attorneys' fees.

''(B) If the court finds that the attorney for the debtor violated Rule 9011, at a minimum, the court shall order—

''(i) the assessment of an appropriate civil penalty against the counsel for the debtor; and

''(ii) the payment of the civil penalty to the panel trustee or the United States trustee.

''(C) In the case of a petition referred to in subparagraph (B), the signature of an attorney shall constitute a certificate that the attorney has—

''(i) performed a reasonable investigation into the circumstances that gave rise to the petition; and

''(ii) determined that the petition—

''(I) is well grounded in fact; and

''(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1) of this subsection.

''(4)(A) Except as provided in subparagraph (B), the court may award a debtor all reasonable costs in contesting a motion brought by a party in interest (other than a panel trustee or United States trustee) under this subsection (including reasonable attorneys' fees) if—

''(i) the court does not grant the motion; and

''(ii) the court finds that—

''(I) the position of the party that brought the motion was not substantially justified; or

''(II) the party brought the motion solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

''(B) A party in interest that has a claim of an aggregate amount less than $1,000 shall not be subject to subparagraph (A).

''(5) However, only the judge, United States trustee, bankruptcy administrator or panel trustee may bring a motion under this section if the debtor and the debtor's spouse combined, as of the date of the order for relief, have current monthly total income equal to or less than the national median household monthly income calculated on a monthly basis for a household of equal size. However, for a household of more than 4 individuals, the median income shall be that of a household of 4 individuals plus $583 for each additional member of that household.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 7 of title 11, United States Code, is amended by striking the item relating to section 707 and inserting the following:

''707. Dismissal of a case or conversion to a case under chapter 13.''.

TITLE II—ENHANCED PROCEDURAL PROTECTIONS FOR CONSUMERS

SEC. 201. ALLOWANCE OF CLAIMS OR INTERESTS.

Section 502 of title 11, United States Code, is amended by adding at the end the following:

''(k)(1) The court may award the debtor reasonable attorneys' fees and costs if, after an objection is filed by a debtor, the court—

''(A)(i) disallows the claim; or

''(ii) reduces the claim by an amount greater than 20 percent of the amount of the initial claim filed by a party in interest; and

''(B) finds the position of the party filing the claim is not substantially justified.

''(2) If the court finds that the position of a claimant under this section is not substantially justified, the court may, in addition to awarding a debtor reasonable attorneys' fees and costs under paragraph (1), award such damages as may be required by the equities of the case.''.

SEC. 202. EXCEPTIONS TO DISCHARGE.

Section 523 of title 11, United States Code, is amended—

(1) in subsection (a)(2)(A), by striking ''a false representation'' and inserting ''a material false representation upon which the defrauded person justifiably relied''; and

(2) by striking subsection (d) and inserting the following:

''(d)(1) Subject to paragraph (3), if a creditor requests a determination of dischargeability of a consumer debt under this section and that debt is discharged, the court shall award the debtor reasonable attorneys' fees and costs.

''(2) In addition to making an award to a debtor under paragraph (1), if the court finds that the position of a creditor in a proceeding covered under this section is not substantially justified, the court may award reasonable attorneys' fees and costs under paragraph (1) and such damages as may be required by the equities of the case.

''(3)(A) A creditor may not request a determination of dischargeability of a consumer debt under subsection (a)(2) if—

''(i) before the filing of the petition, the debtor made a good faith effort to negotiate a reasonable alternative repayment schedule (including making an offer of a reasonable alternative repayment schedule); and

''(ii) that creditor refused to negotiate an alternative payment schedule, and that refusal was not reasonable.

''(B) For purposes of this paragraph, the debtor shall have the burden of proof of establishing that—

''(i) an offer made by that debtor under subparagraph (A)(i) was reasonable; and

''(ii) the refusal to negotiate by the creditor involved to was not reasonable.''.

SEC. 203. EFFECT OF DISCHARGE.

Section 524 of title 11, United States Code, is amended by adding at the end the following:

''(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title (including a plan of reorganization confirmed under chapter 11 of this title) in the manner required by the plan (including crediting the amounts required under the plan) shall constitute a violation of an injunction under subsection (a)(2).

''(j) An individual who is injured by the failure of a creditor to comply with the requirements for a reaffirmation agreement under subsections (c) and (d), or by any willful violation of the injunction under subsection (a)(2), shall be entitled to recover—

''(1) the greater of—

''(A)(i) the amount of actual damages; multiplied by

''(ii) 3; or

''(B) $5,000; and

''(2) costs and attorneys' fees.''.

SEC. 204. AUTOMATIC STAY.

Section 362(h) of title 11, United States Code, is amended to read as follows:

''(h)(1) An individual who is injured by any willful violation of a stay provided in this section shall be entitled to recover—

''(A) actual damages; and

''(B) reasonable costs, including attorneys' fees.

''(2) In addition to recovering actual damages, costs, and attorneys' fees under paragraph (1), an individual described in paragraph (1) may recover punitive damages in appropriate circumstances.''.

SEC. 205. DISCHARGE.

Section 727 of title 11, United States Code, is amended—

(1) in subsection (c), by adding at the end the following:

''(3)(A) A creditor may not request a determination of dischargeability of a consumer debt under subsection (a) if—

''(i) before the filing of the petition, the debtor made a good faith effort to negotiate a reasonable alternative repayment schedule (including making an offer of a reasonable alternative repayment schedule); and

''(ii) that creditor refused to negotiate an alternative payment schedule, and that refusal was not reasonable.

''(B) For purposes of this paragraph, the debtor shall have the burden of proof of establishing that—

''(i) an offer made by that debtor under subparagraph (A)(i) was reasonable; and

''(ii) the refusal to negotiate by the creditor involved to was not reasonable.''; and

(2) by adding at the end the following:

''(f)(1) The court may award the debtor reasonable attorneys' fees and costs in any case in which a creditor files a motion to deny relief to a debtor under this section and that motion—

''(A) is denied; or

''(B) is withdrawn after the debtor has replied.

''(2) If the court finds that the position of a party filing a motion under this section is not substantially justified, the court may assess against the creditor such damages as may be required by the equities of the case.''.

SEC. 206. DISCOURAGING PREDATORY LENDING PRACTICES.

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) the claim is based on a secured debt if the creditor has failed to comply with the requirements of subsection (a), (b), (c), (d), (e), (f), (g), (h), or (i) of section 129 of the Truth in Lending Act (15 U.S.C. 1639).''.

SEC. 207. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY DWELLING.

(a) OPEN-END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 127A(a)(13) of the Truth in Lending Act (15 U.S.C. 1637a(a)(13)) is amended—

(A) by striking ''CONSULTATION OF TAX ADVISOR.—A statement that the'' and inserting the following: ''TAX DEDUCTIBILITY.—A statement that—

''(A) the''; and

(B) by striking the period at the end and inserting the following: ''; and

''(B) in any case in which the extension of credit exceeds the fair market value of the dwelling, the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.''.

(2) CREDIT ADVERTISEMENTS.—Section 147(b) of the Truth in Lending Act (15 U.S.C. 1665b(b)) is amended—

(A) by striking ''If any'' and inserting the following:

''(1) IN GENERAL.—If any''; and

(B) by adding at the end the following:

''(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling shall include a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer may want to consult a tax advisor for further information regarding the deductibility of interest and charges.''.

(b) NON-OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended—

(A) in subsection (a), by adding at the end the following:

''(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer should consult a tax advisor for further information regarding the deductibility of interest and charges.''; and

(B) in subsection (b), by adding at the end the following:

''(3) In the case of a credit transaction described in paragraph (15) of subsection (a), disclosures required by that paragraph shall be made to the consumer at the time of application for such extension of credit.''.

(2) CREDIT ADVERTISEMENTS.—Section 144 of the Truth in Lending Act (15 U.S.C. 1664) is amended by adding at the end the following:

''(e) Each advertisement to which this section applies that relates to a consumer credit transaction that is secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling shall clearly and conspicuously state that—

''(1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(2) the consumer may want to consult a tax advisor for further information regarding the deductibility of interest and charges.''.

(c) EFFECTIVE DATE.—This section shall become effective one year after the date of enactment of this Act.

SEC. 208. DUAL-USE DEBIT CARD.

(a) CONSUMER LIABILITY.—

(1) IN GENERAL.—Section 909 of the Electronic Fund Transfer Act (15 U.S.C. 1693g) is amended—

(A) by redesignating subsections (b) through (e) as subsections (d) through (g), respectively;

(B) in subsection (a)—

(i) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting appropriately;

(ii) by inserting ''CARDS NECESSITATING UNIQUE IDENTIFIER.—

''(1) IN GENERAL.—'' after ''(a)'';

(iii) by striking ''other means of access can be identified as the person authorized to use it, such as by signature, photograph,'' and inserting ''other means of access can be identified as the person authorized to use it by a unique identifier, such as a photograph, retina scan,''; and

(iv) by striking ''Notwithstanding the foregoing,'' and inserting the following:

''(2) NOTIFICATION.—Notwithstanding paragraph (1),''; and

(C) by inserting before subsection (d), as so designated by this section, the following new subsections:

''(b) CARDS NOT NECESSITATING UNIQUE IDENTIFIER.—A consumer shall be liable for an unauthorized electronic fund transfer only if—

''(1) the liability is not in excess of $50;

''(2) the unauthorized electronic fund transfer is initiated by the use of a card that has been properly issued to a consumer other than the person making the unauthorized transfer as a means of access to the account of that consumer for the purpose of initiating an electronic fund transfer;

''(3) the unauthorized electronic fund transfer occurs before the card issuer has been notified that an unauthorized use of the card has occurred or may occur as the result of loss, theft, or otherwise; and

''(4) such unauthorized electronic fund transfer did not require the use of a code or other unique identifier (other than a signature), such as a photograph, fingerprint, or retina scan.

''(c) NOTICE OF LIABILITY AND RESPONSIBILITY TO REPORT LOSS OF CARD, CODE, OR OTHER MEANS OF ACCESS.—No consumer shall be liable under this title for any unauthorized electronic fund transfer unless the consumer has received in a timely manner the notice required under section 905(a)(1), and any subsequent notice required under section 905(b) with regard to any change in the information which is the subject of the notice required under section 905(a)(1).''.

(2) CONFORMING AMENDMENT.—Section 905(a)(1) of the Electronic Fund Transfer Act (15 U.S.C. 1693c(a)(1)) is amended to read as follows:

''(1) the liability of the consumer for any unauthorized electronic fund transfer and the requirement for promptly reporting any loss, theft, or unauthorized use of a card, code, or other means of access in order to limit the liability of the consumer for any such unauthorized transfer;''.

(b) VALIDATION REQUIREMENT FOR DUAL-USE DEBIT CARDS.—

(1) IN GENERAL.—Section 911 of the Electronic Fund Transfer Act (15 U.S.C. 1693i) is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following new subsection:

''(c) VALIDATION REQUIREMENT.—No person may issue a card described in subsection (a), the use of which to initiate an electronic fund transfer does not require the use of a code or other unique identifier other than a signature (such as a fingerprint or retina scan), unless—

''(1) the requirements of paragraphs (1) through (4) of subsection (b) are met; and

''(2) the issuer has provided to the consumer a clear and conspicuous disclosure that use of the card may not require the use of such code or other unique identifier.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 911(d) of the Electronic Fund Transfer Act (15 U.S.C. 1993i(d)) (as redesignated by subsection (a)(1) of this section) is amended by striking ''For the purpose of subsection (b)'' and inserting ''For purposes of subsections (b) and (c)''.

SEC. 209. ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.

(a) AMENDMENTS TO THE TRUTH IN LENDING ACT.—

(1) ENHANCED DISCLOSURE OF REPAYMENT TERMS.—

(A) IN GENERAL.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

''(11)(A) In a clear and conspicuous manner, repayment information that would apply to the outstanding balance of the consumer under the credit plan, including—

''(i) the required minimum monthly payment on that balance, represented as both a dollar figure and a percentage of that balance;

''(ii) the number of months (rounded to the nearest month) that it would take to pay the entire amount of that current balance if the consumer pays only the required minimum monthly payments and if no further advances are made;

''(iii) the total cost to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays only the required minimum monthly payments and if no further advances are made; and

''(iv) the following statement: 'If your current rate is a temporary introductory rate, your total costs may be higher.'.

''(B) In making the disclosures under subparagraph (A) the creditor shall apply the annual interest rate that applies to that balance with respect to the current billing cycle for that consumer in effect on the date on which the disclosure is made.''.

(B) PUBLICATION OF MODEL FORMS.—Not later than 180 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall publish model disclosure forms in accordance with section 195 of the Truth in Lending Act for the purpose of compliance with section 127(b)(11) of the Truth in Lending Act, as added by this paragraph.

(C) CIVIL LIABILITY.—Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended, in the undesignated paragraph following paragraph (4), by striking the second sentence and inserting the following: ''In connection with the disclosures referred to in subsections (a) and (b) of section 1637 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635, 1637(a), or of paragraph (4), (5), (6), (7), (8), (9), (10), or (11) of section 1637(b) or for failing to comply with disclosure requirements under State law for any term or item that the Board has determined to be substantially the same in meaning under section 1610(a)(2) as any of the terms or items referred to in section 1637(a), paragraph (4), (5), (6), (7), (8), (9), (10), or (11) of section 1637(b) of this title.''.

(2) DISCLOSURES IN CONNECTION WITH SOLICITATIONS.—

(A) IN GENERAL.—Section 127(c)(1)(B) of the Truth in Lending Act (15 U.S.C. 1637(c)(1)(B)) is amended by adding the following:

''(iv) CREDIT WORKSHEET.—An easily understandable credit worksheet designed to aid consumers in determining their ability to assume more debt, including consideration of the personal expenses of the consumer and a simple formula for the consumer to determine whether the assumption of additional debt is advisable.

''(v) BASIS OF PREAPPROVAL.—In any case in which the application or solicitation states that the consumer has been preapproved for an account under an open end consumer credit plan, the following statement must appear in a clear and conspicuous manner: 'Your preapproval for this credit card does not mean that we have reviewed your individual financial circumstances. You should review your own budget before accepting this offer of credit.'.

''(vi) AVAILABILITY OF CREDIT REPORT.—That the consumer is entitled to a copy of his or her credit report in accordance with the Fair Credit Reporting Act.''.

(B) PUBLICATION OF MODEL FORMS.—Not later than 180 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall publish model disclosure forms in accordance with section 195 of the Truth in Lending Act for the purpose of compliance with section 127(c)(1)(B) of the Truth in Lending Act, as amended by this paragraph.

(b) EFFECTIVE DATE.—The provisions of this section shall become effective on January 1, 2001.

SEC. 210. VIOLATIONS OF THE AUTOMATIC STAY.

(a) Section 362(a) is amended by adding after paragraph (8) the following:

''(9) any communication threatening a debtor, at any time after the commencement and before the granting of a discharge in a case under this title, an intention to file a motion to determine the dischargeability of a debt, or to file a motion under section

707(b) of title 11, United States Code, to dismiss or convert a case, or to repossess collateral from the debtor to which the stay applies.''.

SEC. 211. DISCOURAGING ABUSIVE REAFFIRMATION PRACTICES.

Section 524 of title 11, United States Code, is amended—

(1) in subsection (c)(2)(B) by adding at the end the following:

''(C) such agreement contains a clear and conspicuous statement which advises the debtor what portion of the debt to be reaffirmed is attributable to principal, interest, late fees, creditor's attorneys fees, expenses or other costs relating to the collection of the debt.''.

(2)(A) in subsection (c)(6)(B), by inserting after ''real property'' the following: ''or is a debt described in subsection (c)(7)''; and

(B) by adding at the end of subsection (c) the following:

''(7) in a case concerning an individual, if the consideration for such agreement is based in whole or in part on an unsecured consumer debt, or is based in whole or in part upon a debt for an item of personalty the value of which at point of purchase was $250 or less, and in which the creditor asserts a purchase money security interest, the court, approves such agreement as—

''(A) in the best interest of the debtor in light of the debtor's income and expenses;

''(B) not imposing an undue hardship on the debtor's future ability of the debtor to pay for the needs of children and other dependents (including court ordered support);

''(C) not requiring the debtor to pay the creditor's attorney's fees, expenses or other costs relating to the collection of the debt;

''(D) not entered into to protect property that is necessary for the care and maintenance of children or other dependents that would have nominal value on repossession;

''(E) not entered into after coercive threats or actions by the creditor in the creditor's course of dealings with the debtor.

''(F) not unfair because excessive in amount based upon the value of the collateral.''.

(3) in subsection (d)(2) by striking ''subsections (c)(6)'' and inserting ''subsections (c)(6) and (c)(7)'', and after ''of this section,'' by striking ''if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor'' and adding at the end: ''as applicable''.

SEC. 212. SENSE OF THE SENATE REGARDING THE HOMESTEAD EXEMPTION.

(a) FINDINGS.—The Senate finds that—

(1) one of the most flagrant abuses of the bankruptcy system involves misuse of the homestead exemption, which allows a debtor to exempt his or her home, up to a certain value, as established by State law, from being sold off to satisfy debts;

(2) while the vast majority of States responsibly cap the exemption at not more than $40,000, 5 States exempt homes regardless of their value;

(3) in the few States with unlimited homestead exemptions, debtors can shield their assets in luxury homes while legitimate creditors get little or nothing;

(4) beneficiaries of the homestead exemption include convicted insider traders and savings and loan criminals, while short-changed creditors include children, spouses, governments, and banks; and

(5) the homestead exemption should be capped at $100,000 to prevent such high-profile abuses.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) meaningful bankruptcy reform cannot be achieved without capping the homestead exemption; and

(2) bankruptcy reform legislation should include a cap of $100,000 on the homestead exemption to the bankruptcy laws.

SEC. 213. ENCOURAGING CREDITWORTHINESS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) certain lenders may sometimes offer credit to consumers indiscriminately, without taking steps to ensure that consumers are capable of repaying the resulting debt, and in a manner which may encourage certain consumers to accumulate additional debt; and

(2) resulting consumer debt may increasingly be a major contributing factor to consumer insolvency.

(b) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System (hereafter in this section referred to as the ''Board'') shall conduct a study of—

(1) consumer credit industry practices of soliciting and extending credit—

(A) indiscriminately;

(B) without taking steps to ensure that consumers are capable of repaying the resulting debt; and

(C) in a manner that encourages consumers to accumulate additional debt; and

(2) the effects of such practices on consumer debt and insolvency.

(c) REPORT AND REGULATIONS.—Not later than 24 months after the date of enactment of this Act, the Board—

(1) shall make public a report on its findings with respect to the credit industry's indiscriminate solicitation and extension of credit;

(2) may issue regulations that would require additional disclosures to consumers; and

(3) may take any other actions, consistent with its existing statutory authority, that the Board finds necessary to ensure responsible industrywide practices and to prevent resulting consumer debt and insolvency.

SEC. 214. TREASURY DEPARTMENT STUDY REGARDING SECURITY INTERESTS UNDER AN OPEN END CREDIT PLAN.

(a) STUDY.—Within 180 days of the enactment of this Act, the Federal Reserve Board in consultation with the Treasury Department, the general credit industry, and consumer groups, shall prepare a study regarding the adequacy of information received by consumers regarding the creation of security interests under open end credit plans.

(b) FINDINGS.—This study shall include the Board's findings regarding—

(1) whether consumers understand at the time of purchase of property under an open end credit plan that such property may serve as collateral under that credit plan;

(2) whether consumers understand at the time of purchase the legal consequences of disposing of property that is purchased under an open end credit plan and is subject to a security interest under that plan; and

(3) whether creditors holding security interests in property purchased under an open end credit plan use such security interests to coerce reaffirmations of existing debts under section 524 of the United States Bankruptcy Code.

In formulating these findings, the Board shall consider, among other factors it deems relevant, prevailing industry practices in this area.

(c) DISCLOSURE RECOMMENDATIONS.—This study shall also include the Board's recommendations regarding the utility and practicality of additional disclosures by credit card issuers at the time of purchase regarding security interests under open end credit plans, including, but not limited to—

(1) disclosures of the specific property in which the creditor will receive a security interest;

(2) disclosures of the consequences of nonpayment of the card balance, including how the security interest may be enforced; and

(3) disclosures of the process by which payments made on the card will be credited with respect to the lien created by the security contract and other debts on the card.

(d) SUBMISSION OF REPORT.—The Board shall submit this report to the Senate Committee on the Judiciary, the Senate Committee on Banking, Housing, and Urban Affairs, the House Committee on the Judiciary, and the House Committee on Banking and Financial Services within the time allotted by this section.

TITLE III—IMPROVED PROCEDURES FOR EFFICIENT ADMINISTRATION OF THE BANKRUPTCY SYSTEM

SEC. 301. NOTICE OF ALTERNATIVES.

(a) IN GENERAL.—Section 342 of title 11, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, that individual shall be given or obtain (as required in section 521(a)(1), as part of the certification process under subchapter 1 of chapter 5) a written notice prescribed by the United States trustee for the district in which the petition is filed pursuant to section 586 of title 28. The notice shall contain the following:

''(1) A brief description of chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters.

''(2) A brief description of services that may be available to that individual from a credit counseling service that is approved by the United States trustee or the bankruptcy administrator for that district.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''The debtor shall—'';

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

''(1) file—

''(A) a list of creditors; and

''(B) unless the court orders otherwise—

''(i) a schedule of assets and liabilities;

''(ii) a schedule of current income and current expenditures;

''(iii) a statement of the debtor's financial affairs and, if applicable, a certificate—

''(I) of an attorney whose name is on the petition as the attorney for the debtor or any bankruptcy petition preparer signing the petition pursuant to section 110(b)(1) indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b); or

''(II) if no attorney for the debtor is indicated and no bankruptcy petition preparer signed the petition, of the debtor that such notice was obtained and read by the debtor;

''(iv) copies of any Federal tax returns, including any schedules or attachments, filed by the debtor for the 3-year period preceding the order for relief;

''(v) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days prior to the filing of the petition;

''(vi) a statement of the amount of projected monthly net income, itemized to show how calculated; and

''(vii) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of filing;''; and

(3) by adding at the end the following:

''(b)(1) At any time, a creditor, in the case of an individual under chapter 7 or 13, may file with the court notice that the creditor

requests the petition, schedules, and a statement of affairs filed by the debtor in the case and the court shall make those documents available to the creditor who requests those documents.

''(2) At any time, a creditor, in a case under chapter 13, may file with the court notice that the creditor requests the plan filed by the debtor in the case and the court shall make that plan available to the creditor who requests that plan.

''(c) An individual debtor in a case under chapter 7 or 13 shall file with the court—

''(1) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, with respect to the period from the commencement of the case until such time as the case is closed;

''(2) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, that were not filed with the taxing authority when the schedules under subsection (a)(1) were filed with respect to the period that is 3 years before the order for relief;

''(3) any amendments to any of the tax returns, including schedules or attachments, described in paragraph (1) or (2); and

''(4) in a case under chapter 13, a statement subject to the penalties of perjury by the debtor of the debtor's income and expenditures in the preceding tax year and monthly income, that shows how the amounts are calculated—

''(A) beginning on the date that is the later of 90 days after the close of the debtor's tax year or 1 year after the order for relief, unless a plan has been confirmed; and

''(B) thereafter, on or before the date that is 45 days before each anniversary of the confirmation of the plan until the case is closed.

''(d)(1) A statement referred to in subsection (c)(4) shall disclose—

''(A) the amount and sources of income of the debtor;

''(B) the identity of any persons responsible with the debtor for the support of any dependents of the debtor; and

''(C) the identity of any persons who contributed, and the amount contributed, to the household in which the debtor resides.

''(2) The tax returns, amendments, and statement of income and expenditures described in paragraph (1) shall be available to the United States trustee, any bankruptcy administrator, any trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (e).

''(e)(1) Not later than 30 days after the date of enactment of the Consumer Bankruptcy Reform Act of 1998, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.

''(2) The procedures under paragraph (1) shall include restrictions on creditor access to tax information that is required to be provided under this section.

''(3) Not later than 1 year after the date of enactment of the Consumer Bankruptcy Reform Act of 1998, the Director of the Administrative Office of the United States Courts shall prepare, and submit to Congress a report that—

''(A) assesses the effectiveness of the procedures under paragraph (1); and

''(B) if appropriate, includes proposed legislation—

''(i) to further protect the confidentiality of tax information; and

''(ii) to provide penalties for the improper use by any person of the tax information required to be provided under this section.

''(f) If requested by the United States trustee or a trustee serving in the case, the debtor provide a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor and such other personal identifying information relating to the debtor that establishes the identity of the debtor.''.

(c) TITLE 28.—Section 586(a) of title 28, United States Code, is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(7) on or before January 1 of each calendar year, and also not later than 30 days after any change in the nonprofit debt counseling services registered with the bankruptcy court, prescribe and make available on request the notice described in section 342(b)(3) of title 11 for each district included in the region.''.

SEC. 302. FAIR TREATMENT OF SECURED CREDITORS UNDER CHAPTER 13.

(a) RESTORING THE FOUNDATION FOR SECURED CREDIT.—Section 1325(a) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking the matter preceding subparagraph (A) and inserting the following:

''(5) with respect to an allowed claim provided for by the plan that is secured under applicable nonbankruptcy law by reason of a lien on property in which the estate has an interest or is subject to a setoff under section 553—''; and

(2) by adding at the end of the subsection the following flush sentence:

''For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph.''.

(b) PAYMENT OF HOLDERS OF CLAIMS SECURED BY LIENS.—Section 1325(a)(5)(B)(i) of title 11, United States Code, is amended to read as follows:

''(B)(i) the plan provides that the holder of such claim retain the lien securing such claim until the debt that is the subject of the claim is fully paid for, as provided under the plan; and''.

(c) DETERMINATION OF SECURED STATUS.—Section 506 of title 11, United States Code, is amended by adding at the end the following:

''(e) Subsection (a) shall not apply to an allowed claim to the extent attributable in whole or in part to the purchase price of personal property acquired by the debtor during the 90-day period preceding the date of filing of the petition.''.

SEC. 303. DISCOURAGEMENT OF BAD FAITH REPEAT FILINGS.

Section 362(c) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' before ''Except as'';

(2) by striking ''(1) the stay'' and inserting ''(A) the stay'';

(3) by striking ''(2) the stay'' and inserting ''(B) the stay'';

(4) by striking ''(A) the time'' and inserting ''(i) the time'';

(5) by striking ''(B) the time'' and inserting ''(ii) the time''; and

(6) by adding at the end the following:

''(2) Except as provided in subsections (d) through (f), the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case if—

''(A) a single or joint case is filed by or against an individual debtor under chapter 7, 11, or 13; and

''(B) a single or joint case of that debtor (other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)) was pending during the preceding year but was dismissed.

''(3) If a party in interest so requests, the court may extend the stay in a particular case with respect to 1 or more creditors (subject to such conditions or limitations as the court may impose) after providing notice and a hearing completed before the expiration of the 30-day period described in paragraph (2) only if the party in interest demonstrates that the filing of the later case is in good faith with respect to the creditors to be stayed.

''(4) A case shall be presumed to have not been filed in good faith (except that such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(A) with respect to the creditors involved, if—

''(i) more than 1 previous case under any of chapters 7, 11, or 13 in which the individual was a debtor was pending during the 1-year period described in paragraph (1);

''(ii) a previous case under any of chapters 7, 11, or 13 in which the individual was a debtor was dismissed within the period specified in paragraph (2) after—

''(I) the debtor, after having received from the court a request to do so, failed to file or amend the petition or other documents as required by this title; or

''(II) the debtor, without substantial excuse, failed to perform the terms of a plan that was confirmed by the court; or

''(iii)(I) during the period commencing with the dismissal of the next most previous case under chapter 7, 11, or 13 there has not been a substantial change in the financial or personal affairs of the debtor;

''(II) if the case is a chapter 7 case, there is no other reason to conclude that the later case will be concluded with a discharge; or

''(III) if the case is a chapter 11 or 13 case, there is not a confirmed plan that will be fully performed; and

''(B) with respect to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor, if, as of the date of dismissal of that case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay with respect to actions of that creditor.

''(5)(A) If a request is made for relief from the stay under subsection (a) with respect to real or personal property of any kind, and the request is granted in whole or in part, the court may, in addition to making any other order under this subsection, order that the relief so granted shall be in rem either—

''(i) for a definite period of not less than 1 year; or

''(ii) indefinitely.

''(B)(i) After an order is issued under subparagraph (A), the stay under subsection (a) shall not apply to any property subject to such an in rem order in any case of the debtor.

''(ii) If an in rem order issued under subparagraph (A) so provides, the stay shall, in addition to being inapplicable to the debtor involved, not apply with respect to an entity under this title if—

''(I) the entity had reason to know of the order at the time that the entity obtained an interest in the property affected; or

''(II) the entity was notified of the commencement of the proceeding for relief from the stay, and at the time of the notification, no case in which the entity was a debtor was pending.

''(6) For purposes of this section, a case is pending during the period beginning with the issuance of the order for relief and ending at such time as the case involved is closed.''.

SEC. 304. TIMELY FILING AND CONFIRMATION OF PLANS UNDER CHAPTER 13.

(a) FILING OF PLAN.—Section 1321 of title 11, United States Code, is amended to read as follows:

"§ 1321. Filing of plan

''The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.''.

(b) CONFIRMATION OF HEARING.—Section 1324 of title 11, United States Code, is amended by adding at the end the following: ''That hearing shall be held not later than 45 days after the filing of the plan, unless the court, after providing notice and a hearing, orders otherwise.''.

SEC. 305. APPLICATION OF THE CODEBTOR STAY ONLY WHEN THE STAY PROTECTS THE DEBTOR.

Section 1301(b) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)''; and

(2) by adding at the end the following:

''(2)(A) Notwithstanding subsection (c) and except as provided in subparagraph (B), in any case in which the debtor did not receive the consideration for the claim held by a creditor, the stay provided by subsection (a) shall apply to that creditor for a period not to exceed 30 days beginning on the date of the order for relief, to the extent the creditor proceeds against—

''(i) the individual that received that consideration; or

''(ii) property not in the possession of the debtor that secures that claim.

''(B) Notwithstanding subparagraph (A), the stay provided by subsection (a) shall apply in any case in which the debtor is primarily obligated to pay the creditor in whole or in part with respect to a claim described in subparagraph (A) under a legally binding separation or property settlement agreement or divorce or dissolution decree with respect to—

''(i) an individual described in subparagraph (A)(i); or

''(ii) property described in subparagraph (A)(ii).

''(3) Notwithstanding subsection (c), the stay provided by subsection (a) shall terminate as of the date of confirmation of the plan, in any case in which the plan of the debtor provides that the debtor's interest in personal property subject to a lease with respect to which the debtor is the lessee will be surrendered or abandoned or no payments will be made under the plan on account of the debtor's obligations under the lease.''.

SEC. 306. IMPROVED BANKRUPTCY STATISTICS.

(a) AMENDMENT.—Chapter 6 of part I of title 28, United States Code, is amended by adding at the end the following:

"§ 159. Bankruptcy statistics

''(a) The clerk of each district shall compile statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a form prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the 'Office').

''(b) The Director shall—

''(1) compile the statistics referred to in subsection (a);

''(2) make the statistics available to the public; and

''(3) not later than October 31, 1998, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.

''(c) The compilation required under subsection (b) shall—

''(1) be itemized, by chapter, with respect to title 11;

''(2) be presented in the aggregate and for each district; and

''(3) include information concerning—

''(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by those debtors;

''(B) the current total monthly income, projected monthly net income, and average income and average expenses of those debtors as reported on the schedules and statements that each such debtor files under sections 111, 521, and 1322 of title 11;

''(C) the aggregate amount of debt discharged in the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;

''(D) the average period of time between the filing of the petition and the closing of the case;

''(E) for the reporting period—

''(i) the number of cases in which a reaffirmation was filed; and

''(ii)(I) the total number of reaffirmations filed;

''(II) of those cases in which a reaffirmation was filed, the number in which the debtor was not represented by an attorney; and

''(III) of those cases, the number of cases in which the reaffirmation was approved by the court;

''(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

''(i)(I) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and

''(II) the number of final orders determining the value of property securing a claim issued;

''(ii) the number of cases dismissed for failure to make payments under the plan; and

''(iii) the number of cases in which the debtor filed another case within the 6 years previous to the filing; and

''(G) the extent of creditor misconduct and any amount of punitive damages awarded by the court for creditor misconduct.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 6 of title 28, United States Code, is amended by adding at the end the following:

''159. Bankruptcy statistics.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 307. AUDIT PROCEDURES.

(a) AMENDMENTS.—Section 586 of title 28, United States Code, is amended—

(1) in subsection (a), as amended by section 301 of this Act, by striking paragraph (6) and inserting the following:

''(6) make such reports as the Attorney General directs, including the results of audits performed under subsection (f); and''; and

(2) by adding at the end the following:

''(f)(1)(A) The Attorney General shall establish procedures to determine the accuracy and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11, and, if applicable, section 111 of title 11, in individual cases filed under chapter 7 or 13 of such title.

''(B) Those procedures shall—

''(i) establish a method of selecting appropriate qualified persons to contract to perform those audits;

''(ii) establish a method of randomly selecting cases to be audited, except that not less than 1 out of every 500 cases in each Federal judicial district shall be selected for audit;

''(iii) require audits for schedules of income and expenses which reflect greater than average variances from the statistical norm of the district in which the schedules were filed; and

''(iv) establish procedures for providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

''(2) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee according to the procedures established under paragraph (1).

''(3)(A) The report of each audit conducted under this subsection shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case where a material misstatement of income or expenditures or of assets has been reported, the clerk of the bankruptcy court shall give notice of the misstatement to the creditors in the case.

''(B) If a material misstatement of income or expenditures or of assets is reported the United States trustee shall—

''(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18, United States Code; and

''(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's discharge pursuant to section 727(d) of title 11, United States Code.''.

(b) AMENDMENTS TO SECTION 521 OF TITLE 11, U.S.C.—Section 521 of title 11, United States Code, is amended in paragraphs (3) and (4) by adding ''or an auditor appointed pursuant to section 586 of title 28, United States Code'' after ''serving in the case''.

(c) AMENDMENTS TO SECTION 727 OF TITLE 11, U.S.C.—Section 727(d) of title 11, United States Code, is amended—

(1) by deleting ''or'' at the end of paragraph (2);

(2) by substituting ''; or'' for the period at the end of paragraph (3); and

(3) adding the following at the end of paragraph (3)—

''(4) the debtor has failed to explain satisfactorily—

''(A) a material misstatement in an audit performed pursuant to section 586(f) of title 28, United States Code; or

''(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files and all other papers, things, or property belonging to the debtor that are requested for an audit conducted pursuant to section 586(f) of title 28, United States Code.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 308. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.

Section 341(c) of title 11, United States Code, is amended by inserting after the first sentence the following: ''Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than one creditor) shall be permitted to appear at and participate in the meeting of

creditors in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.''.

SEC. 309. FAIR NOTICE FOR CREDITORS IN CHAPTER 7 AND 13 CASES.

Section 342 of title 11, United States Code, is amended—

(1) in subsection (c), by striking '', but the failure of such notice to contain such information shall not invalidate the legal effect of such notice''; and

(2) by adding at the end the following:

''(d)(1) If the credit agreement between the debtor and the creditor or the last communication before the filing of the petition in a voluntary case from the creditor to a debtor who is an individual states an account number of the debtor that is the current account number of the debtor with respect to any debt held by the creditor against the debtor, the debtor shall include that account number in any notice to the creditor required to be given under this title.

''(2) If the creditor has specified to the debtor, in the last communication before the filing of the petition, an address at which the creditor wishes to receive correspondence regarding the debtor's account, any notice to the creditor required to be given by the debtor under this title shall be given at such address.

''(3) For purposes of this section, the term 'notice' shall include—

''(A) any correspondence from the debtor to the creditor after the commencement of the case;

''(B) any statement of the debtor's intention under section 521(a)(2);

''(C) notice of the commencement of any proceeding in the case to which the creditor is a party; and

''(D) any notice of a hearing under section 1324.

''(e)(1) At any time, a creditor, in a case of an individual under chapter 7 or 13, may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case.

''(2) If the court or the debtor is required to give the creditor notice, not later than 5 days after receipt of the notice under paragraph (1), that notice shall be given at that address.

''(f) An entity may file with the court a notice stating its address for notice in cases under chapter 7 or 13. After the date that is 30 days following the filing of that notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (e) with respect to a particular case.

''(g)(1) Notice given to a creditor other than as provided in this section shall not be effective notice until that notice has been brought to the attention of the creditor.

''(2) If the creditor has designated a person or department to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that bankruptcy notices received by the creditor will be delivered to that department or person, notice shall not be brought to the attention of the creditor until that notice is received by that person or department.''.

SEC. 310. STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.

Section 348(f)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking ''and'' at the end;

(2) in subparagraph (B)—

(A) by striking ''in the converted case, with allowed secured claims'' and inserting ''only in a case converted to chapter 11 or 12 but not in a case converted to chapter 7, with allowed secured claims in cases under chapters 11 and 12''; and

(B) by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(C) with respect to cases converted from chapter 13, the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of that claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the chapter 13 proceeding.''.

SEC. 311. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.

Section 362(e) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(e)''; and

(2) by adding at the end the following:

''(2) Notwithstanding paragraph (1), in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

''(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

''(B) that 60-day period is extended—

''(i) by agreement of all parties in interest; or

''(ii) by the court for such specific period of time as the court finds is required for good cause.''.

SEC. 312. DISMISSAL FOR FAILURE TO TIMELY FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION.

Section 707 of title 11, United States Code, as amended by section 102 of this Act, is amended by adding at the end the following:

''(c)(1) Notwithstanding subsection (a), and subject to paragraph (2), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under section 521(a)(1) within 45 days after the filing of the petition commencing the case, the case shall be automatically dismissed effective on the 46th day after the filing of the petition.

''(2) With respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. The court shall, if so requested, enter an order of dismissal not later than 5 days after that request.

''(3) Upon request of the debtor made within 45 days after the filing of the petition commencing a case described in paragraph (1), the court may allow the debtor an additional period of not to exceed 50 days to file the information required under section 521(a)(1) if the court finds justification for extending the period for the filing.''.

SEC. 313. ADEQUATE TIME FOR PREPARATION FOR A HEARING ON CONFIRMATION OF THE PLAN.

Section 1324 of title 11, United States Code, as amended by section 304 of this Act, is amended—

(1) by striking ''After'' and inserting the following:

''(a) Except as provided in subsection (b) and after''; and

(2) by adding at the end the following:

''(b) If not later than 5 days after receiving notice of a hearing on confirmation of the plan, a creditor objects to the confirmation of the plan, the hearing on confirmation of the plan may be held no earlier than 20 days after the first meeting of creditors under section 341(a).''.

SEC. 314. DISCHARGE UNDER CHAPTER 13.

Section 1328(a) of title 11, United States Code, is amended by striking paragraphs (1) through (3) and inserting the following:

''(1) provided for under section 1322(b)(5);

''(2) of the kind specified in paragraph (2), (4), (5), (8), or (9) of section 523(a);

''(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

''(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.''.

SEC. 315. NONDISCHARGEABLE DEBTS.

Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14) the following:

''(14A) incurred to pay a debt that is nondischargeable by reason of section 727, 1141, 1228 (a) or (b), or 1328(b), or any other provision of this subsection, where the debtor incurred the debt to pay such a nondischargeable debt with the intent to discharge in bankruptcy the newly-created debt.''.

SEC. 316. CREDIT EXTENSIONS ON THE EVE OF BANKRUPTCY PRESUMED NONDISCHARGEABLE.

Section 523(a)(2) of title 11, United States Code, as amended by section 202 of this Act, is amended—

(1) in subparagraph (A), by striking the semicolon at the end and inserting the following: ''(and, for purposes of this subparagraph, consumer debts owed in an aggregate amount greater than or equal to $400 incurred for goods or services not reasonably necessary for the maintenance or support of the debtor or a dependent child of the debtor to a single creditor that are incurred during the 90-day period preceding the date of the order for relief shall be presumed to be nondischargeable under this subparagraph); or'';

(2) in subparagraph (B), by striking ''or'' at the end; and

(3) by striking subparagraph (C).

SEC. 317. DEFINITION OF HOUSEHOLD GOODS AND ANTIQUES.

Not later than 180 days after the date of enactment of this Act, the Federal Trade Commission shall promulgate regulations defining ''household goods'' under section 522(c)(3) in a manner suitable and appropriate for cases under title 11 of the United States Code. If new regulations are not effective within 180 days of enactment of this Act, then ''household goods'' under section 522(c)(3) shall have the meaning given that term in section 444.1(i) of title 16, of the Code of Federal Regulations, except that the term shall also include any tangible personal property reasonably necessary for the maintenance or support of a dependent child.

SEC. 318. RELIEF FROM STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.

(a) AUTOMATIC STAY.—Section 362 of title 11, United States Code, as amended by section 303, is amended—

(1) in subsection (c)(1), in the matter preceding subparagraph (A), by striking ''(e) and (f)'' and inserting ''(e), (f), and (h)'';

(2) by redesignating subsection (h) as subsection (i); and

(3) by inserting after subsection (g) the following:

''(h) In an individual case under chapter 7, 11, or 13 the stay provided by subsection (a) is terminated with respect to property of the estate securing in whole or in part a claim that is in an amount greater than $3,000, or subject to an unexpired lease with a remaining term of at least 1 year (in any case in which the debtor owes at least $3,000 for a 1-year period), if within 30 days after the expiration of the applicable period under section 521(a)(2)—

''(1)(A) the debtor fails to timely file a statement of intention to surrender or retain the property; or

''(B) if the debtor indicates in the filing that the debtor will retain the property, the debtor fails to meet an applicable requirement to—

''(i) either—

''(I) redeem the property pursuant to section 722; or

''(II) reaffirm the debt the property secures pursuant to section 524(c); or

''(ii) assume the unexpired lease pursuant to section 365(d) if the trustee does not do so; or

''(2) the debtor fails to timely take the action specified in a statement of intention referred to in paragraph (1)(A) (as amended, if that statement is amended before expiration of the period for taking action), unless—

''(A) the statement of intention specifies reaffirmation; and

''(B) the creditor refuses to reaffirm the debt on the original contract terms for the debt.''.

(b) DEBTOR'S DUTIES.—Section 521(a)(2) of title 11, United States Code, as redesignated by section 301(b) of this Act, is amended—

(1) in the matter preceding subparagraph (A), by striking ''consumer'';

(2) in subparagraph (B)—

(A) by striking ''forty-five days after the filing of a notice of intent under this section'' and inserting ''30 days after the first meeting of creditors under section 341(a)''; and

(B) by striking ''forty-five-day period'' and inserting ''30-day period''; and

(3) in subparagraph (C), by inserting '', except as provided in section 362(h)'' before the semicolon.

SEC. 319. ADEQUATE PROTECTION OF LESSORS AND PURCHASE MONEY SECURED CREDITORS.

(a) IN GENERAL.—Chapter 13 of title 11, United States Code, is amended by adding after section 1307 the following:

''§ 1307A. Adequate protection in chapter 13 cases

''(a)(1)(A) On or before the date that is 30 days after the filing of a case under this chapter, the debtor shall make cash payments in an amount determined under paragraph (2)(A), to—

''(i) any lessor of personal property; and

''(ii) any creditor holding a claim secured by personal property to the extent that the claim is attributable to the purchase of that property by the debtor.

''(B) The debtor or the plan shall continue making the adequate protection payments until the earlier of the date on which—

''(i) the creditor begins to receive actual payments under the plan; or

''(ii) the debtor relinquishes possession of the property referred to in subparagraph (A) to—

''(I) the lessor or creditor; or

''(II) any third party acting under claim of right, as applicable.

''(2) The payments referred to in paragraph (1)(A) shall be determined by the court.

''(b)(1) Subject to the limitations under paragraph (2), the court may, after notice and hearing, change the amount and timing of the dates of payment of payments made under subsection (a).

''(2)(A) The payments referred to in paragraph (1) shall be payable not less frequently than monthly.

''(B) The amount of a payment referred to in paragraph (1) shall not be less than the reasonable depreciation of the personal property described in subsection (a)(1), determined on a month-to-month basis.

''(c) Notwithstanding section 1326(b), the payments referred to in subsection (a)(1)(A) shall be continued in addition to plan payments under a confirmed plan until actual payments to the creditor begin under that plan, if the confirmed plan provides—

''(1) for payments to a creditor or lessor described in subsection (a)(1); and

''(2) for the deferral of payments to such creditor or lessor under the plan until the payment of amounts described in section 1326(b).

''(d) Notwithstanding sections 362, 542, and 543, a lessor or creditor described in subsection (a) may retain possession of property described in that subsection that was obtained in accordance with applicable law before the date of filing of the petition until the first payment under subsection (a)(1)(A) is received by the lessor or creditor.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 13 of title 11, United States Code, is amended by inserting after the item relating to section 1307 the following:

''1307A. Adequate protection in chapter 13 cases.''.

SEC. 320. LIMITATION.

Section 522 of title 11, United States Code, as amended by section 207(a), is amended—

(1) in subsection (b)(3)(A), by inserting ''subject to subsection (n),'' before ''any property''; and

(2) by adding at the end the following new subsection:

''(n)(1) Except as provided in paragraph (2), as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that exceeds in the aggregate $100,000 in value in—

''(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

''(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

''(C) a burial plot for the debtor or a dependent of the debtor.

''(2) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(2)(A) by a family farmer for the principal residence of that farmer.''.

SEC. 321. MISCELLANEOUS IMPROVEMENTS.

(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 that individual has, during the 90-day period preceding the date of filing of the petition of that individual, received credit counseling, including, at a minimum, participation in an individual or group briefing that outlined the opportunities for available credit counseling and assisted that individual in performing an initial budget analysis, through a credit counseling program (offered through an approved credit counseling service described in section 111(a)) that has been approved by—

''(A) the United States trustee; or

''(B) the bankruptcy administrator for the district in which the petition is filed.''.

''(2)(A) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved credit counseling services for that district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from those programs by reason of the requirements of paragraph (1).

''(B) Each United States trustee or bankruptcy administrator that makes a determination described in subparagraph (A) shall review that determination not later than one year after the date of that determination, and not less frequently than every year thereafter.

''(3)(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that—

''(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

''(ii) states that the debtor requested credit counseling services from an approved credit counseling service, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and

''(iii) is satisfactory to the court.

''(B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case may the exemption apply to that debtor after the date that is 30 days after the debtor files a petition.''.

(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 the filing of the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111 that was administered or approved by—

''(A) the United States trustee; or

''(B) the bankruptcy administrator for the district in which the petition is filed.''.

(c) CHAPTER 13 DISCHARGE.—Section 1328 of title 11, United States Code, is amended by adding at the end the following:

''(f) 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 that was administered or approved by—

''(1) the United States trustee; or

''(2) the bankruptcy administrator for the district in which the petition is filed.''.

(d) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 301(b) and 318(b) of this Act, is amended by adding at the end the following:

''(e) In addition to the requirements under subsection (a), an individual debtor shall file with the court—

''(1) a certificate from the credit counseling service that provided the debtor services under section 109(h); and

''(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the credit counseling service referred to in paragraph (1).''.

(e) EXCEPTIONS TO DISCHARGE.—Section 523(d) of title 11, United States Code, as amended by section 202 of this Act, is amended by striking paragraph (3)(A)(i) and inserting the following:

''(i) within the applicable period of time prescribed under section 109(h), the debtor received credit counseling through a credit counseling program in accordance with section 109(h); and''.

(f) GENERAL PROVISIONS.—

(1) IN GENERAL.—Chapter 1 of title 11, United States Code, is amended by adding at the end the following:

''§ 111. Credit counseling services; financial management instructional courses

''(a) The clerk of each district shall maintain a list of credit counseling services that provide 1 or more programs described in section 109(h) and that have been approved by—

''(1) the United States trustee; or

''(2) the bankruptcy administrator for the district.

''(b) The United States trustee or each bankruptcy administrator referred to in subsection (a)(1) shall—

''(1) make available to debtors who are individuals an instructional course concerning personal financial management, under the direction of the bankruptcy court; and

''(2) maintain a list of instructional courses concerning personal financial management that are operated by a private entity and that have been approved by the United States trustee or that bankruptcy administrator.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of title 11, United States Code, is amended by adding at the end the following:

''111. Credit counseling services; financial management instructional courses.''.

(g) DEFINITIONS.—Section 101 of title 11, United States Code, as amended by section 317 of this Act, is amended—

(1) by inserting after paragraph (13) the following:

''(13A) 'debtor's principal residence'—

''(A) means a residential structure, including incidental property, without regard to whether that structure is attached to real property; and

''(B) includes an individual condominium or co-operative unit;''; and

(2) by inserting after paragraph (27A), as added by section 318 of this Act, the following:

''(27B) 'incidental property' means, with respect to a debtor's principal residence—

''(A) property commonly conveyed with a principal residence in the area where the real estate is located;

''(B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance proceeds; and

''(C) all replacements or additions;''.

SEC. 322. BANKRUPTCY JUDGESHIPS.

(a) SHORT TITLE.—This section may be cited as the ''Bankruptcy Judgeship Act of 1998''.

(b) TEMPORARY JUDGESHIPS.—

(1) APPOINTMENTS.—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 eastern district of California.

(B) Four additional bankruptcy judgeships for the central district of California.

(C) One additional bankruptcy judgeship for the southern district of Florida.

(D) Two additional bankruptcy judgeships for the district of Maryland.

(E) One additional bankruptcy judgeship for the eastern district of Michigan.

(F) One additional bankruptcy judgeship for the southern district of Mississippi.

(G) One additional bankruptcy judgeship for the district of New Jersey.

(H) One additional bankruptcy judgeship for the eastern district of New York.

(I) One additional bankruptcy judgeship for the northern district of New York.

(J) One additional bankruptcy judgeship for the southern district of New York.

(K) One additional bankruptcy judgeship for the eastern district of Pennsylvania.

(L) One additional bankruptcy judgeship for the middle district of Pennsylvania.

(M) One additional bankruptcy judgeship for the western district of Tennessee.

(N) One additional bankruptcy judgeship for the eastern district of Virginia.

(2) VACANCIES.—The first vacancy occurring in the office of a bankruptcy judge in each of the judicial districts set forth in paragraph (1) that—

(A) results from the death, retirement, resignation, or removal of a bankruptcy judge; and

(B) occurs 5 years or more after the appointment date of a bankruptcy judge appointed under paragraph (1);

shall not be filled.

(c) EXTENSIONS.—

(1) IN GENERAL.—The temporary bankruptcy judgeship positions authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, the district of South Carolina, and the eastern district of Tennessee under section 3(a) (1), (3), (7), (8), and (9) 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—

(A) 8 years or more after November 8, 1993, with respect to the northern district of Alabama;

(B) 10 years or more after October 28, 1993, with respect to the district of Delaware;

(C) 8 years or more after August 29, 1994, with respect to the district of Puerto Rico;

(D) 8 years or more after June 27, 1994, with respect to the district of South Carolina; and

(E) 8 years or more after November 23, 1993, with respect to the eastern district of Tennessee.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 remain applicable to such temporary judgeship position.

(d) TECHNICAL AMENDMENT.—The first sentence of section 152(a)(1) of title 28, United States Code, is amended to read as follows: ''Each bankruptcy judge to be appointed for a judicial district as provided in paragraph (2) shall be appointed by the United States court of appeals for the circuit in which such district is located.''.

(e) TRAVEL EXPENSES OF BANKRUPTCY JUDGES.—Section 156 of title 28, United States Code, is amended by adding at the end the following new subsection:

''(g)(1) In this subsection, the term 'travel expenses'—

''(A) means the expenses incurred by a bankruptcy judge for travel that is not directly related to any case assigned to such bankruptcy judge; and

''(B) shall not include the travel expenses of a bankruptcy judge if—

''(i) the payment for the travel expenses is paid by such bankruptcy judge from the personal funds of such bankruptcy judge; and

''(ii) such bankruptcy judge does not receive funds (including reimbursement) from the United States or any other person or entity for the payment of such travel expenses.

''(2) Each bankruptcy judge shall annually submit the information required under paragraph (3) to the chief bankruptcy judge for the district in which the bankruptcy judge is assigned.

''(3)(A) Each chief bankruptcy judge shall submit an annual report to the Director of the Administrative Office of the United States Courts on the travel expenses of each bankruptcy judge assigned to the applicable district (including the travel expenses of the chief bankruptcy judge of such district).

''(B) The annual report under this paragraph shall include—

''(i) the travel expenses of each bankruptcy judge, with the name of the bankruptcy judge to whom the travel expenses apply;

''(ii) a description of the subject matter and purpose of the travel relating to each travel expense identified under clause (i), with the name of the bankruptcy judge to whom the travel applies; and

''(iii) the number of days of each travel described under clause (ii), with the name of the bankruptcy judge to whom the travel applies.

''(4)(A) The Director of the Administrative Office of the United States Courts shall—

''(i) consolidate the reports submitted under paragraph (3) into a single report; and

''(ii) annually submit such consolidated report to Congress.

''(B) The consolidated report submitted under this paragraph shall include the specific information required under paragraph (3)(B), including the name of each bankruptcy judge with respect to clauses (i), (ii), and (iii) of paragraph (3)(B).''.

SEC. 323. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.

Section 101 of title 11, United States Code, as amended by section 321(g) of this Act, is amended—

(1) by striking paragraph (12A); and

(2) by inserting after paragraph (14) the following:

''(14A) 'domestic support obligation' means a debt that accrues before or after the entry of an order for relief under this title that is—

''(A) owed to or recoverable by—

''(i) a spouse, former spouse, or child of the debtor or that child's legal guardian; or

''(ii) a governmental unit;

''(B) in the nature of alimony, maintenance, or support (including assistance provided by a govermental unit) of such spouse, former spouse, or child, without regard to whether such debt is expressly so designated;

''(C) established or subject to establishment before or after entry of an order for relief under this title, by reason of applicable provisions of—

''(i) a separation agreement, divorce decree, or property settlement agreement;

''(ii) an order of a court of record; or

''(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

''(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child, or parent solely for the purpose of collecting the debt.''.

SEC. 324. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.

Section 507(a) of title 11, United States Code, is amended—

(1) by striking paragraph (7);

(2) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively;

(3) in paragraph (2), as redesignated, by striking ''First'' and inserting ''Second'';

(4) in paragraph (3), as redesignated, by striking ''Second'' and inserting ''Third'';

(5) in paragraph (4), as redesignated, by striking ''Third'' and inserting ''Fourth'';

(6) in paragraph (5), as redesignated, by striking ''Fourth'' and inserting ''Fifth'';

(7) in paragraph (6), as redesignated, by striking ''Fifth'' and inserting ''Sixth'';

(8) in paragraph (7), as redesignated, by striking ''Sixth'' and inserting ''Seventh''; and

(9) by inserting before paragraph (2), as redesignated, the following:

''(1) First, allowed claims for domestic support obligations to be paid in the following order on the condition that funds received under this paragraph by a governmental unit in a case under this title be applied:

''(A) Claims that, as of the date of entry of the order for relief, are owed directly to a spouse, former spouse, or child of the debtor, or the parent of such child, without regard to whether the claim is filed by the spouse, former spouse, child, or parent, or is filed by a governmental unit on behalf of that person.

''(B) Claims that, as of the date of entry of the order for relief, are assigned by a spouse, former spouse, child of the debtor, or the parent of that child to a governmental unit or are owed directly to a governmental unit under applicable nonbankruptcy law.''.

SEC. 325. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.

Title 11, United States Code, is amended—

(1) in section 1129(a), by adding at the end the following:

''(14) If the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order or statute for such obligation that become payable after the date on which the petition is filed.'';

(2) in section 1325(a)—

(A) in paragraph (5), by striking ''and'' at the end;

(B) in paragraph (6), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(7) if the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order for such obligation that become payable after the date on which the petition is filed.''; and

(3) in section 1328(a), as amended by section 314 of this Act, in the matter preceding paragraph (1), by inserting '', and with respect to a debtor who is required by a judicial or administrative order to pay a domestic support obligation, certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before or after the petition was filed) have been paid'' after ''completion by the debtor of all payments under the plan''.

SEC. 326. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.

Section 362(b) of title 11, United States Code, is amended—

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

''(2) under subsection (a)—

''(A) of the commencement or continuation of an action or proceeding for—

''(i) the establishment of paternity as a part of an effort to collect domestic support obligations; or

''(ii) the establishment or modification of an order for domestic support obligations; or

''(B) the collection of a domestic support obligation from property that is not property of the estate;'';

(2) in paragraph (17), by striking ''or'' at the end;

(3) in paragraph (18), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(19) under subsection (a) with respect to the withholding of income pursuant to an order as specified in section 466(b) of the Social Security Act (42 U.S.C. 666(b)); or

''(20) under subsection (a) with respect to—

''(A) the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses pursuant to State law, as specified in section 466(a)(16) of the Social Security Act (42 U.S.C. 666(a)(16)) or with respect to the reporting of overdue support owed by an absent parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act (42 U.S.C. 666(a)(7));

''(B) the interception of tax refunds, as specified in sections 464 and 466(a)(3) of the Social Security Act (42 U.S.C. 664 and 666(a)(3)); or

''(C) the enforcement of medical obligations as specified under title IV of the Social Security Act (42 U.S.C. 601 et seq.).''.

SEC. 327. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

Section 523 of title 11, United States Code, as amended by section 202 of this Act, is amended—

(1) in subsection (a), by striking paragraph (5) and inserting the following:

''(5) for a domestic support obligation;'';

(2) in subsection (c), by striking ''(6), or (15)'' and inserting ''or (6)''; and

(3) in paragraph (15), by striking ''governmental unit'' and all through the end of the paragraph and inserting a semicolon.

SEC. 328. CONTINUED LIABILITY OF PROPERTY.

Section 522 of title 11, United States Code, is amended—

(1) in subsection (c), by striking paragraph (1) and inserting the following:

''(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in section 523(a)(5);''; and

(2) in subsection (f)(1)(A), by striking the dash and all that follows through the end of the subparagraph and inserting ''of a kind that is specified in section 523(a)(5); or''.

SEC. 329. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.

Section 547(c)(7) of title 11, United States Code, is amended to read as follows:

''(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation; or''.

SEC. 330. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY.

(a) IN GENERAL.—Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2)—

(i) by striking ''(2)(A) any property'' and inserting:

''(3) Property listed in this paragraph is—

''(A) any property'';

(ii) in subparagraph (A), by striking ''and'' at the end;

(iii) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(iv) by adding at the end the following:

''(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986 and which has not been pledged or promised to any person in connection with any extension of credit.'';

(B) by striking paragraph (1) and inserting:

''(2) Property listed in this paragraph is property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (3)(A) of this subsection specifically does not so authorize.'';

(C) in the matter preceding paragraph (2)—

(i) by striking ''(b)'' and inserting ''(b)(1)'';

(ii) by striking ''paragraph (2)'' both places it appears and inserting ''paragraph (3)'';

(iii) by striking ''paragraph (1)'' each place it appears and inserting ''paragraph (2)''; and

(iv) by striking ''Such property is—''; and

(D) by adding at the end of the subsection the following:

''(4) For purposes of paragraph (3)(C), the following shall apply:

''(A) If the retirement funds are in a retirement fund that has received a favorable determination pursuant to section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the commencement of the case under section 301, 302, or 303, those funds shall be presumed to be exempt from the estate.

''(B) If the retirement funds are in a retirement fund that has not received a favorable determination pursuant to such section 7805, those funds are exempt from the estate if the debtor demonstrates that—

''(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

''(ii)(I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

''(II) the retirement fund fails to be in substantial compliance with such applicable requirements, the debtor is not materially responsible for that failure.

''(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, pursuant to section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) by reason of that direct transfer.

''(D)(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) by reason of that distribution.

''(ii) A distribution described in this clause is an amount that—

''(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

''(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of that amount.''; and

(2) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking ''subsection (b)(1)'' and inserting ''subsection (b)(2)''; and

(B) by adding at the end the following:

''(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period and inserting ''; or'';

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, pursuant to the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986 that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

''(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan that satisfies the requirements of section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)); or

''(B) in the case of a loan from a thrift savings plan described in subchapter III of title 5, that satisfies the requirements of section 8433(g) of that title.''; and

(4) by adding at the end of the flush material following paragraph (19) the following: ''Paragraph (19) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year period preceding the filing of a petition. Nothing in paragraph (19)

may be construed to provide that any loan made under a governmental plan under section 414(d) of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.''.

(c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of title 11, United States Code, as amended by section 202, is amended—

(1) by striking ''or'' at the end of paragraph (17);

(2) by striking the period at the end of paragraph (18) and inserting ''; or''; and

(3) by adding at the end the following:

''(19) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, pursuant to—

''(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)); or

''(B) a loan from the thrift savings plan described in subchapter III of title 5, that satisfies the requirements of section 8433(g) of that title.

Paragraph (19) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year period preceding the filing of a petition. Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d) of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.''.

(d) PLAN CONTENTS.—Section 1322 of title 11, United States Code, is amended by adding at the end the following:

''(f) A plan may not materially alter the terms of a loan described in section 362(b)(19).''.

SEC. 331. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED STATES CODE.

(a) Section 507(a) of title 11, United States Code, is amended by inserting after paragraph (9) the following:

''(10) Tenth, allowed claims for death or personal injuries resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug or another substance.''.

(b) Section 523(a)(9) of title 11, United States Code, is amended by inserting ''or vessel'' after ''vehicle''.

SEC. 332. DEBT LIMIT INCREASE.

Section 104(b) of title 11, United States Code, is amended by adding at the end the following:

''(4) The dollar amount in section 101(18) shall be adjusted at the same times and in the same manner as the dollar amounts in paragraph (1) of this subsection, beginning with the adjustment to be made on April 1, 2001.''.

SEC. 333. ELIMINATION OF REQUIREMENT THAT FAMILY FARMER AND SPOUSE RECEIVE OVER 50 PERCENT OF INCOME FROM FARMING OPERATION IN YEAR PRIOR TO BANKRUPTCY.

Section 101(18)(A) of title 11, United States Code, is amended by striking ''the taxable year preceding the taxable year'' and inserting ''at least one of the three calendar years preceding the year''.

SEC. 334. PROHIBITION OF RETROACTIVE ASSESSMENT OF DISPOSABLE INCOME.

(a) Section 1225(b) of title 11, United States Code, is amended by adding at the end the following:

''(3) If the plan provides for specific amounts of property to be distributed on account of allowed unsecured claims as required by paragraph (1)(B) of this subsection, those amounts equal or exceed the debtor's projected disposable income for that period, and the plan meets the requirements for confirmation other than those of this subsection, the plan shall be confirmed.

(b) Section 1229 of title 11, United States Code, is amended by adding at the end the following:

''(d)(1) A modification of the plan under this section may not increase the amount of payments that were due prior to the date of the order modifying the plan.

''(2) A modification of the plan under this section to increase payments based on an increase in the debtor's disposable income may not require payments to unsecured creditors in any particular month greater than the debtor's disposable income for that month unless the debtor proposes such a modification.

''(3) A modification of the plan in the last year of the plan shall not require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed unless the debtor proposes such a modification.''.

SEC. 335. AMENDMENT TO SECTION 1325 OF TITLE 11, UNITED STATES CODE.

Section 1325(b)(2) of title 11, United States Code, is amended by inserting after ''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 and which is reasonably necessary to be expended)''.

SEC. 336. PROTECTION OF SAVINGS EARMARKED FOR THE POSTSECONDARY EDUCATION OF CHILDREN

Section 541(b) of title 11, United States Code, as amended by section 404 of this Act, is amended—

(1) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(2) by inserting after paragraph (6) the following:

''(7) except as otherwise provided under applicable State law, any funds placed in a qualified State tuition program (as described in section 529(b) of the Internal Revenue Code of 1986) at least 180 days before the date of entry of the order for relief; or

''(8) any funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) at least 180 days before the date of entry of the order for relief.''.

TITLE IV—FINANCIAL INSTRUMENTS

SEC. 401. BANKRUPTCY CODE AMENDMENTS.

(a) DEFINITIONS OF SWAP AGREEMENT, SECURITIES CONTRACT, FORWARD CONTRACT, COMMODITY CONTRACT, AND REPURCHASE AGREEMENT.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(i) by striking ''means a contract'' and inserting ''means—

''(A) a contract'';

(ii) by striking '', or any combination thereof or option thereon;'' and inserting '', or any other similar agreement;''; and

(iii) by adding at the end the following new subparagraphs:

''(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

''(C) any option to enter into any agreement or transaction referred to in subparagraph (A) or (B);

''(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B) or (C), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that the master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B) or (C); or

''(E) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C) or (D);'';

(B) by amending paragraph (47) to read as follows:

''(47) the term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(A) means—

''(i) an agreement, including related terms, which provides for the transfer of 1 or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds; or any other similar agreement; and

''(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

''(iii) any option to enter into any agreement or transaction referred to in clause (i) or (ii);

''(iv) a master agreement that provides for an agreement or transaction referred to in clauses (i), (ii) or (iii), together with all supplements, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this subparagraph, except that the master agreement shall be considered to be a repurchase agreement under this subparagraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii) or (iii); or

''(v) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clauses (i), (ii), (iii) or (iv); and

''(B) does not include any repurchase obligation under a participation in a commercial mortgage loan,

and, for purposes of this paragraph, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development.''; and

(C) by amending paragraph (53B) to read as follows:

''(53B) the term 'swap agreement'—

''(A) means—

''(i) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement;

''(ii) any agreement similar to any other agreement or transaction referred to in this subparagraph that—

''(I) is presently, or in the future becomes, regularly entered into in the swap agreement market (including terms and conditions incorporated by reference therein); and

''(II) is a forward, swap, future, or option on 1 or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value;

''(iii) any combination of agreements or transactions referred to in this subparagraph;

''(iv) any option to enter into any agreement or transaction referred to in this subparagraph;

''(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is described in any of such clause, except that the master agreement shall be considered to be a swap agreement only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

''(C) is applicable for purposes of this title only and shall not be construed or applied to challenge or affect the characterization, definition, or treatment of any swap agreement or any instrument defined as a swap agreement herein, under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations prescribed by the Securities and Exchange Commission or the Commodity Futures Trading Commission.'';

(2) by amending section 741(7) to read as follows:

''(7) the term 'securities contract'—

''(A) means—

''(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, or a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index or option;

''(ii) any option entered into on a national securities exchange relating to foreign currencies;

''(iii) the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interest therein, or group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index or option;

''(iv) any margin loan;

''(v) any other agreement or transaction that is similar to any agreement or transaction referred to in this subparagraph;

''(vi) any combination of the agreements or transactions referred to in this subparagraph;

''(vii) any option to enter into any agreement or transaction referred to in this subparagraph;

''(viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that the master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); and

''(ix) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this subparagraph; and

''(B) does not include any purchase, sale, or repurchase obligation under a participation in or servicing agreement for a commercial mortgage loan.''; and

(3) in section 761(4)—

(A) by striking ''or'' at the end of subparagraph (D); and

(B) by adding at the end the following new subparagraphs:

''(F) any other agreement or transaction that is similar to any agreement or transaction referred to in this paragraph;

''(G) any combination of the agreements or transactions referred to in this paragraph;

''(H) any option to enter into any agreement or transaction referred to in this paragraph;

''(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G) or (H), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G) or (H); or

''(J) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph;''.

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, AND FORWARD CONTRACT MERCHANT.—Section 101 of title 11, United States Code, is amended—

(1) by amending paragraph (22) to read as follows:

''(22) the term 'financial institution' means a Federal reserve bank, or a person that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such person and, when any such Federal reserve bank, receiver, or conservator or person acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741(7) of this title, such customer;'';

(2) by inserting after paragraph (22) the following new paragraph:

''(22A) the term 'financial participant' means any entity that, at the time it enters into a securities contract, commodity contract or forward contract, or at the time of the filing of the petition, has 1 or more agreements or transactions that is described in section 561(a)(2) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of at least $1,000,000,000 in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of at least $100,000,000 (aggregated across counterparties) in 1 or more such agreements or transactions with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period;''; and

(3) by amending paragraph (26) to read as follows:

''(26) the term 'forward contract merchant' means a Federal reserve bank, or a person whose business consists in whole or in part of entering into forward contracts as or with merchants or in a commodity, as defined or in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing or in the forward contract trade;''.

(c) DEFINITION OF MASTER NETTING AGREEMENT AND MASTER NETTING AGREEMENT PARTICIPANT.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

''(38A) the term 'master netting agreement' means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or closeout, under or in connection with 1 or more contracts that are described in any 1 or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to 1 or more of the foregoing. If a master netting agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), the master netting agreement shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any 1 or more of the paragraphs (1) through (5) of section 561(a);

''(38B) the term 'master netting agreement participant' means an entity that, at any time before the filing of the petition, is a party to an outstanding master netting agreement with the debtor;''.

(d) SWAP AGREEMENTS, SECURITIES CONTRACTS, COMMODITY CONTRACTS, FORWARD CONTRACTS, REPURCHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS UNDER THE AUTOMATIC-STAY.—

(1) IN GENERAL.—Section 362(b) of title 11, United States Code, is amended—

(A) in paragraph (6), by inserting '', pledged to, and under the control of,'' after ''held by'';

(B) in paragraph (7), by inserting '', pledged to, and under the control of,'' after ''held by'';

(C) by amending paragraph (17) to read as follows:

''(17) under subsection (a), of the setoff by a swap participant of any mutual debt and claim under or in connection with 1 or more swap agreements that constitute the setoff of a claim against the debtor for any payment due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property of the debtor held by, pledged to, and under the control of, or due from such swap participant to guarantee, secure, or settle any swap agreement;'';

(D) in paragraph (20), by striking ''or'' at the end;

(E) in paragraph (21), by striking the period and inserting ''; or''; and

(F) by inserting after paragraph (18) the following new paragraph:

''(22) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with 1 or more master netting agreements to the extent such participant could offset the claim under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue.''.

(2) LIMITATION.—Section 362 of title 11, United States Code, is amended by adding at the end the following new subsection:

''(i) LIMITATION.—The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (22) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.''.

(e) LIMITATION OF AVOIDANCE POWERS UNDER MASTER NETTING AGREEMENT.—Section 546 of title 11, United States Code, is amended—

(1) in subsection (g) (as added by section 103 of Public Law 101–311)—

(A) by striking ''under a swap agreement'';

(B) by striking ''in connection with a swap agreement'' and inserting ''under or in connection with any swap agreement'';

(2) by redesignating subsection (g) (as added by section 222(a) of Public Law 103–394) as subsection (i); and

(3) by inserting before subsection (i) (as redesignated) the following new subsection:

''(h) Notwithstanding sections 544, 545, 547, 548(a)(2), and 548(b) of this title, to the extent that under subsection (e), (f), or (g), the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with each individual contract covered by any master netting agreement that is made before the commencement of the case, the trustee may not avoid a transfer made by or to such master netting agreement participant under or in connection with the master netting agreement in issue, except under section 548(a)(1) of this title.''.

(f) FRAUDULENT TRANSFERS OF MASTER NETTING AGREEMENTS.—Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (C), by striking ''and'';

(2) in subparagraph (D), by striking the period and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement takes for value to the extent of such transfer, but only to the extent that such participant would take for value under paragraph (B), (C), or (D) for each individual contract covered by the master netting agreement in issue.''.

(g) TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.—Section 555 of title 11, United States Code, is amended—

(1) by amending the section heading to read ''**Contractual right to liquidate, terminate, or accelerate a securities contract**''; and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(h) TERMINATION OR ACCELERATION OF COMMODITIES OR FORWARD CONTRACTS.—Section 556 of title 11, United States Code, is amended—

(1) by amending the section heading to read ''**Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract**''; and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(i) TERMINATION OR ACCELERATION OF REPURCHASE AGREEMENTS.—Section 559 of title 11, United States Code, is amended—

(1) by amending the section heading to read ''**Contractual right to liquidate, terminate, or accelerate a repurchase agreement**''; and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(j) LIQUIDATION, TERMINATION, OR ACCELERATION OF SWAP AGREEMENTS.—Section 560 of title 11, United States Code, is amended—

(1) by amending the section heading to read ''**Contractual right to liquidate, terminate, or accelerate a swap agreement**''; and

(2) in the first sentence, by striking ''termination of a swap agreement'' and inserting ''liquidation, termination, or acceleration of 1 or more swap agreements''; and

(3) by striking ''in connection with any swap agreement'' and inserting ''in connection with the termination, liquidation, or acceleration of 1 or more swap agreements''.

(k) LIQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT AND ACROSS CONTRACTS.—Title 11, United States Code, is amended by inserting after section 560 the following new section:

''§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts

''(a) IN GENERAL.—Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset, or net termination values, payment amounts or other transfer obligations arising under or in connection with the termination, liquidation, or acceleration of 1 or more—

''(1) securities contracts, as defined in section 741(7);

''(2) commodity contracts, as defined in section 761(4);

''(3) forward contracts;

''(4) repurchase agreements;

''(5) swap agreements; or

''(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

''(b) EXCEPTION.—

''(1) A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.

''(2)(A) A party may not exercise a contractual right described in subsection (a) to offset or to net obligations arising under, or in connection with, a commodity contract against obligations arising under, or in connection with, any instrument listed in subsection (a) if the obligations are not mutual.

''(B) If a debtor is a commodity broker subject to subchapter IV of chapter 7 of this title, a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract against any claim arising under, or in connection with, other instruments listed in subsection (a) if the party has no positive net equity in the commodity account at the debtor, as calculated under subchapter IV.

''(c) DEFINITION.—As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right whether or not evidenced in writing arising under common law, under law merchant, or by reason of normal business practice.''.

(l) MUNICIPAL BANKRUPTCIES.—Section 901 of title 11, United States Code, is amended—

(1) by inserting '', 555, 556'' after ''553''; and

(2) by inserting '', 559, 560, 561, 562'' after ''557''.

(m) ANCILLARY PROCEEDINGS.—Section 304 of title 11, United States Code, is amended by adding at the end the following new subsection:

''(d) Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case ancillary to a foreign proceeding under this section or any other section of this title so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any proceeding under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).''.

(n) COMMODITY BROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 766 the following new section:

''§ 767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights or affect the provisions of this subchapter IV regarding customer property or distributions.''.

(o) STOCKBROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 752 the following new section:

''§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of rights or affect the provisions of this subchapter regarding customer property or distributions.''.

(p) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(3)(C), by inserting ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 555, 556, 559, 560, or 561 of this title)'' before the period; and

(2) in subsection (b)(1), by striking ''362(b)(14),'' and inserting ''362(b)(17), 555, 556, 559, 560, 561''.

(q) SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.—Title 11, United States Code, is amended—

(1) in section 362(b)(6), by striking ''financial institutions,'' each place such term appears and inserting ''financial institution, financial participant'';

(2) in section 546(e), by inserting ''financial participant'' after ''financial institution,'';

(3) in section 548(d)(2)(B), by inserting ''financial participant'' after ''financial institution,'';

(4) in section 555—

(A) by inserting ''financial participant'' after ''financial institution,''; and

(B) by inserting before the period '', a right set forth in a bylaw of a clearing organization or contract market or in a resolution of

the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice''; and

(5) in section 556, by inserting '', financial participant'' after ''commodity broker''.

(r) TECHNICAL AND CONFORMING AMENDMENT.—Section 104 of title 11, United States Code, is amended by adding at the end the following new subsection:

''(c) EXCEPTION FOR CERTAIN DEFINED TERMS.—No adjustments shall be made under this section to the dollar amounts set forth in the definition of the term 'financial participant' in section 101(22A).''.

SEC. 402. RECORDKEEPING REQUIREMENTS.

Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended by adding at the end the following new subparagraph:

SEC. 403. DAMAGE MEASURE.

(a) Title 11, United States Code, is amended by inserting after section 561 (as added by section 7(k)) the following new section:

''§ 561. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements

''If the trustee rejects a swap agreement, securities contract as defined in section 741 of this title, forward contract, repurchase agreement, or master netting agreement pursuant to section 365(a) of this title, or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates any such contract or agreement, damages shall be measured as of the earlier of—

''(1) the date of such rejection; or

''(2) the date of such liquidation, termination, or acceleration.''.

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by designating the existing text as paragraph (1); and

(2) by adding at the end the following new paragraph:

''(2) A claim for damages calculated in accordance with section 562 of this title shall be allowed under subsection (a),(b), or (c) of this section or disallowed under subsection (d) or (e) of this section as if such claim had arisen before the date of the filing of the petition.''.

SEC. 404. ASSET-BACKED SECURITIZATIONS.

Section 541 of title 11, United States Code, is amended—

(1) in subsection (b), by striking ''or'' at the end of paragraph (4);

(2) by redesignating paragraph (5) of subsection (b) as paragraph (6);

(3) by inserting after paragraph (4) of subsection (b) the following new paragraph:

''(5) any eligible asset (or proceeds thereof), to the extent that such eligible asset was transferred by the debtor, before the date of commencement of the case, to an eligible entity in connection with an asset-backed securitization, except to the extent such asset (or proceeds or value thereof) may be recovered by the trustee under section 550 by virtue of avoidance under section 548(a); or''; and

(4) by adding at the end the following new subsection:

''(e) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) ASSET-BACKED SECURITIZATION.—The term 'asset-backed securitization' means a transaction in which eligible assets transferred to an eligible entity are used as the source of payment on securities, the most senior of which are rated investment grade by 1 or more nationally recognized securities rating organizations, issued by an issuer;

''(2) ELIGIBLE ASSET.—The term 'eligible asset' means—

''(A) financial assets (including interests therein and proceeds thereof), either fixed or revolving, including residential and commercial mortgage loans, consumer receivables, trade receivables, and lease receivables, that, by their terms, convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;

''(B) cash; and

''(C) securities.

''(3) ELIGIBLE ENTITY.—The term 'eligible entity' means—

''(A) an issuer; or

''(B) a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and transferring eligible assets directly or indirectly to an issuer and taking actions ancillary thereto;

''(4) ISSUER.—The term 'issuer' means a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and holding eligible assets, issuing securities backed by eligible assets, and taking actions ancillary thereto.

''(5) TRANSFERRED.—The term 'transferred' means the debtor, pursuant to a written agreement, represented and warranted that eligible assets were sold, contributed, or otherwise conveyed with the intention of removing them from the estate of the debtor pursuant to subsection (b)(5), irrespective, without limitation of—

''(A) whether the debtor directly or indirectly obtained or held an interest in the issuer or in any securities issued by the issuer;

''(B) whether the debtor had an obligation to repurchase or to service or supervise the servicing of all or any portion of such eligible assets; or

''(C) the characterization of such sale, contribution, or other conveyance for tax, accounting, regulatory reporting, or other purposes.''.

SEC. 405. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.

Section 106 of the Truth in Lending Act (15 U.S.C. 1605) is amended by adding at the end the following:

''(g) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor may not, solely because a consumer has not incurred finance charges in connection with an extension of credit—

''(1) refuse to renew or continue to offer the extension of credit to that consumer; or

''(2) charge a fee to that consumer in lieu of a finance charge.''.

SEC. 406. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.

Section 523(a)(16) of title 11, United States Code, is amended—

(1) by striking ''dwelling'' the first place it appears;

(2) by striking ''ownership or'' and inserting ''ownership,'';

(3) by striking ''housing'' the first place it appears; and

(4) by striking ''but only'' and all that follows through ''such period,'', and inserting ''or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot,''.

SEC. 407. BANKRUPTCY FEES.

Section 1930 of title 28, United States Code, is amended—

(1) in subsection (a), by striking ''Notwithstanding section 1915 of this title, the parties'' and inserting ''Subject to subsection (f), the parties''; and

(2) by adding at the end the following:

''(f)(1) The Judicial Conference of the United States shall prescribe procedures for waiving fees under this subsection.

''(2) Under the procedures described in paragraph (1), the district court or the bankruptcy court may waive a filing fee described in paragraph (3) for a case commenced under chapter 7 of title 11 if the court determines that an individual debtor is unable to pay that fee in installments.

''(3) A filing fee referred to in paragraph (2) is—

''(A) a filing fee under subsection (a)(1); or

''(B) any other fee prescribed by the Judicial Conference of the United States under subsection (b) that is payable to the clerk of the district court or the clerk of the bankruptcy court upon the commencement of a case under chapter 7 of title 11.

''(4) In addition to waiving a fee described in paragraph (3) under paragraph (2), the district court or the bankruptcy court may waive any other fee prescribed under subsection (b) or (c) if the court determines that the individual is unable to pay that fee in installments.''.

SEC. 408. APPLICABILITY.

The amendments made by this title shall apply with respect to cases commenced or appointments made under any Federal or State law after the date of enactment of this Act.

TITLE V—ANCILLARY AND OTHER CROSS-BORDER CASES

SEC. 501. AMENDMENT TO ADD A CHAPTER 6 TO TITLE 11, UNITED STATES CODE.

(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 5 the following:

''CHAPTER 6—ANCILLARY AND OTHER CROSS-BORDER CASES

''§ 601. Purpose and scope of application

''(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

''(1) cooperation between—

''(A) United States courts, United States Trustees, trustees, examiners, debtors, and debtors in possession; and

''(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

''(2) greater legal certainty for trade and investment;

''(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

''(4) protection and maximization of the value of the debtor's assets; and

''(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

''(b) This chapter applies where—

''(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

''(2) assistance is sought in a foreign country in connection with a case under this title;

''(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or

''(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

''(c) This chapter does not apply to—

''(1) a proceeding concerning an entity identified by exclusion in subsection 109(b); or

''(2) a natural person or a natural person and that person's spouse who have debts within the limits specified in under section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States.

''SUBCHAPTER I—GENERAL PROVISIONS

''§ 602. Definitions

''For the purposes of this chapter, the term—

''(1) 'debtor' means an entity that is the subject of a foreign proceeding;

''(2) 'establishment' means any place of operations where the debtor carries out a nontransitory economic activity;

''(3) 'foreign court' means a judicial or other authority competent to control or supervise a foreign proceeding;

''(4) 'foreign main proceeding' means a foreign proceeding taking place in the country where the debtor has the center of its main interests;

''(5) 'foreign nonmain proceeding' means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

''(6) 'trustee' includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapters 9 or 13 of this title; and

''(7) 'within the territorial jurisdiction of the United States' when used with reference to property of a debtor refers to tangible property located within the territory of the United States and intangible property deemed to be located within that territory, including any property that may properly be seized or garnished by an action in a Federal or State court in the United States.

''§ 603. International obligations of the United States

''To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with 1 or more other countries, the requirements of the treaty or agreement prevail.

''§ 604. Commencement of ancillary case

''A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 615.

''§ 605. Authorization to act in a foreign country

''A trustee or another entity designated by the court may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

''§ 606. Public policy exception

''Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

''§ 607. Additional assistance

''(a) Nothing in this chapter limits the power of the court, upon recognition of a foreign proceeding, to provide additional assistance to a foreign representative under this title or under other laws of the United States.

''(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

''(1) just treatment of all holders of claims against or interests in the debtor's property;

''(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

''(3) prevention of preferential or fraudulent dispositions of property of the debtor;

''(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

''(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

''§ 608. Interpretation

''In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

''§ 609. Right of direct access

''(a) A foreign representative is entitled to commence a case under section 604 by filing a petition for recognition under section 615, and upon recognition, to apply directly to other Federal and State courts for appropriate relief in those courts.

''(b) Upon recognition, and subject to section 610, a foreign representative has the capacity to sue and be sued.

''(c) Recognition under this chapter is prerequisite to the granting of comity or cooperation to a foreign proceeding in any State or Federal court in the United States. Any request for comity or cooperation in any court shall be accompanied by a sworn statement setting forth whether recognition under section 615 has been sought and the status of any such petition.

''(d) Upon denial of recognition under this chapter, the court may issue appropriate orders necessary to prevent an attempt to obtain comity or cooperation from courts in the United States without such recognition.

''§ 610. Limited jurisdiction

''The sole fact that a foreign representative files a petition under sections 604 and 615 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

''§ 611. Commencement of bankruptcy case under section 301 or 303

''(a) Upon filing a petition for recognition, a foreign representative may commence—

''(1) an involuntary case under section 303; or

''(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

''(b) The petition commencing a case under subsection (a) of this section must be accompanied by a statement describing the petition for recognition and its current status. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) of this section prior to such commencement.

''(c) A case under subsection (a) shall be dismissed unless recognition is granted.

''§ 612. Participation of a foreign representative in a case under this title

''Upon recognition of a foreign proceeding, the foreign representative in that proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

''§ 613. Access of foreign creditors to a case under this title

''(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

''(b)(1) Subsection (a) of this section does not change or codify law in effect on the date of enactment of this chapter as to the priority of claims under section 507 or 726, except that the claim of a foreign creditor under those sections shall not be given a lower priority than the class of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

''(2)(A) Subsection (a) of this section and paragraph (1) of this subsection do not change or codify law in effect on the date of enactment of this chapter as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

''(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

''§ 614. Notification to foreign creditors concerning a case under this title

''(a) Whenever in a case under this title, notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

''(b) The notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other similar formality is required.

''(c) When a notification of commencement of a case is to be given to foreign creditors, the notification shall—

''(1) indicate the time period for filing proofs of claim and specify the place for their filing;

''(2) indicate whether secured creditors need to file their proofs of claim; and

''(3) contain any other information required to be included in such a notification to creditors pursuant to this title and the orders of the court.

''(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

''§ 615. Application for recognition of a foreign proceeding

''(a) A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

''(b) A petition for recognition shall be accompanied by—

''(1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

''(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

''(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

''(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

''(d) The documents referred to in paragraphs (1) and (2) of subsection (b) must be translated into English. The court may require a translation into English of additional documents.

''§ 616. Presumptions concerning recognition

''(a) If the decision or certificate referred to in section 615(b) indicates that the foreign proceeding is a foreign proceeding within the meaning of section 101(23) and that the person or body is a foreign representative within the meaning of section 101(24), the court is entitled to so presume.

''(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether the documents have been subjected to legal processing under applicable law.

''(c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

''§ 617. Order recognizing a foreign proceeding

''(a) Subject to section 606, an order recognizing a foreign proceeding shall be entered if—

''(1) the foreign proceeding is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 602 and is a foreign proceeding within the meaning of section 101(23);

''(2) the person or body applying for recognition is a foreign representative within the meaning of section 101(24); and

''(3) the petition meets the requirements of section 615.

''(b) The foreign proceeding shall be recognized—

''(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or

''(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 602 in the foreign country where the proceeding is pending.

''(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding shall constitute recognition under this chapter.

''(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the granting of recognition. The foreign proceeding may be closed in the manner prescribed for a case under section 350.

''§ 618. Subsequent information

''From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

''(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and

''(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

''§ 619. Relief that may be granted upon petition for recognition of a foreign proceeding

''(a) From the time of filing a petition for recognition until the petition is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

''(1) staying execution against the debtor's assets;

''(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person designated by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

''(3) any relief referred to in paragraph (3), (4), or (7) of section 621(a).

''(b) Unless extended under section 621(a)(6), the relief granted under this section terminates when the petition for recognition is decided upon.

''(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

''§ 620. Effects of recognition of a foreign main proceeding

''(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

''(1) section 362 applies with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States; and

''(2) transfer, encumbrance, or any other disposition of an interest of the debtor in property within the territorial jurisdiction of the United States is restrained as and to the extent that is provided for property of an estate under sections 363, 549, and 552.

Unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the powers of a trustee under section 549, subject to sections 363 and 552.

''(b) The scope, and the modification or termination, of the stay and restraints referred to in subsection (a) of this section are subject to the exceptions and limitations provided in subsections (b), (c), and (d) of section 362, subsections (b) and (c) of section 363, and sections 552, 555 through 557, 559, and 560.

''(c) Subsection (a) of this section does not affect the right to commence individual actions or proceedings in a foreign country to the extent necessary to preserve a claim against the debtor.

''(d) Subsection (a) of this section does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

''§ 621. Relief that may be granted upon recognition of a foreign proceeding

''(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

''(1) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 620(a);

''(2) staying execution against the debtor's assets to the extent it has not been stayed under section 620(a);

''(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 620(a);

''(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

''(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, designated by the court;

''(6) extending relief granted under section 619(a); and

''(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

''(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court

may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, designated by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

''(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''§ 622. Protection of creditors and other interested persons

''(a) In granting or denying relief under section 619 or 621, or in modifying or terminating relief under subsection (c) of this section, the court must find that the interests of the creditors and other interested persons or entities, including the debtor, are sufficiently protected.

''(b) The court may subject relief granted under section 619 or 621 to conditions it considers appropriate.

''(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 619 or 621, or at its own motion, modify or terminate such relief.

''§ 623. Actions to avoid acts detrimental to creditors

''(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a pending case under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, and 724(a).

''(b) When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) of this section relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

''§ 624. Intervention by a foreign representative

''Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

''§ 625. Cooperation and direct communication between the court and foreign courts or foreign representatives

''(a) In all matters included within section 601, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.

''(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.

''§ 626. Cooperation and direct communication between the trustee and foreign courts or foreign representatives

''(a) In all matters included in section 601, the trustee or other person, including an examiner, designated by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

''(b) The trustee or other person, including an examiner, designated by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

''(c) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322(a).

''§ 627. Forms of cooperation

''Cooperation referred to in sections 625 and 626 may be implemented by any appropriate means, including—

''(1) appointment of a person or body, including an examiner, to act at the direction of the court;

''(2) communication of information by any means considered appropriate by the court;

''(3) coordination of the administration and supervision of the debtor's assets and affairs;

''(4) approval or implementation of agreements concerning the coordination of proceedings; and

''(5) coordination of concurrent proceedings regarding the same debtor.

''SUBCHAPTER V—CONCURRENT PROCEEDINGS

''§ 628. Commencement of a case under this title after recognition of a foreign main proceeding

''After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of that case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 625, 626, and 627, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) and 1334(e), to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

''§ 629. Coordination of a case under this title and a foreign proceeding

''Where a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 625, 626, and 627, and the following shall apply:

''(1) When the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—

''(A) any relief granted under sections 619 or 621 must be consistent with the case in the United States; and

''(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 620 does not apply.

''(2) When a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—

''(A) any relief in effect under sections 619 or 621 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

''(B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 620(a) shall be modified or terminated if inconsistent with the case in the United States.

''(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(4) In achieving cooperation and coordination under sections 628 and 629, the court may grant any of the relief authorized under section 305.

''§ 630. Coordination of more than 1 foreign proceeding

''In matters referred to in section 601, with respect to more than one foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 625, 626, and 627, and the following shall apply:

''(1) Any relief granted under section 619 or 621 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

''(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 619 or 621 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

''(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

''§ 631. Presumption of insolvency based on recognition of a foreign main proceeding

''In the absence of evidence to the contrary, recognition of a foreign main proceeding is for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts.

''§ 632. Rule of payment in concurrent proceedings

''Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.''.

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

''6. Ancillary and Other Cross-Border Cases ..... 601''.

SEC. 502. AMENDMENTS TO OTHER CHAPTERS IN TITLE 11, UNITED STATES CODE.

(a) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: ''and this chapter, sections 307, 555 through 557, 559, and 560 apply in a case under chapter 6''; and

(2) by adding at the end the following:

''(j) Chapter 6 applies only in a case under that chapter, except that section 605 applies to trustees and to any other entity designated by the court, including an examiner, under chapters 7, 11, and 12, to debtors in possession under chapters 11 and 12, and to debtors or trustees under chapters 9 and 13 who are authorized to act under section 605.''.

(b) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraphs (23) and (24) and inserting the following:

''(23) 'foreign proceeding' means a collective judicial or administrative proceeding in a foreign state, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

''(24) 'foreign representative' means a person or body, including 1 appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or

the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;''.

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking ''and'' at the end;

(B) in subparagraph (O), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(P) recognition of foreign proceedings and other matters under chapter 6.''.

(2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1334(c) of title 28, United States Code, is amended by striking ''Nothing in'' and inserting ''Except with respect to a case under chapter 6 of title 11, nothing in''.

(3) DUTIES OF TRUSTEES.—Section 586(a)(3) of title 28, United States Code, is amended by inserting ''6,'' after ''chapter''.

TITLE VI—MISCELLANEOUS

SEC. 601. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

Section 365(d)(4) of title 11, United States Code, is amended to read as follows:

''(4)(A) Subject to subparagraph (B), in any case under any chapter of this title, an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected and the trustee shall immediately surrender that nonresidential real property to the lessor if the trustee does not assume or reject the unexpired lease by the earlier of—

''(i) the date that is 120 days after the date of the order for relief; or

''(ii) the date of the entry of an order confirming a plan.

''(B) The court may extend the period determined under subparagraph (A) only upon a motion of the lessor.''.

SEC. 602. EXPEDITED APPEALS OF BANKRUPTCY CASES TO COURTS OF APPEALS.

(a) IN GENERAL.—Section 158 of title 28, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e);

(2) by inserting after subsection (c) the following new subsection:

''(d)(1) Any final judgment, decision, order, or decree of a bankruptcy judge entered for a case in accordance with section 157 may be appealed by any party in such case to the appropriate court of appeals if—

''(A) an appeal from such judgment, decision, order, or decree is first filed with the appropriate district court of the United States; and

''(B) the decision on the appeal described under subparagraph (A) is not filed by a district court judge within 30 days after the date such appeal is filed with the district court.

''(2) On the date that an appeal is filed with a court of appeals under paragraph (1), the chief judge for such court of appeals shall issue an order to the clerk for the district court from which the appeal is filed. Such order shall direct the clerk to enter the final judgment, decision, order, or decree of the bankruptcy judge as the final judgment, decision, order, or decree of the district court.''; and

(3) in subsection (e), (as redesignated by paragraph (1) of this section) by striking ''subsections (a) and (b)'' and inserting ''subsections (a), (b), and (d)''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 305(c) of title 11, United States Code, is amended by striking ''section 158(d)'' and inserting ''section 158(e)''.

(2) Section 1334(d) of title 28, United States Code, is amended by striking ''section 158(d)'' and inserting ''section 158(e)''.

(3) Section 1452(b) of title 28, United States Code, is amended by striking ''section 158(d)'' and inserting ''section 158(e)''.

SEC. 603. CREDITORS AND EQUITY SECURITY HOLDERS COMMITTEES.

Section 1102(a)(2) of title 11, United States Code, is amended by inserting before the first sentence the following: ''On its own motion or on request of a party in interest, and after notice and hearing, the court may order a change in the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders.''.

SEC. 604. REPEAL OF SUNSET PROVISION.

Section 302 of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended by striking subsection (f).

SEC. 605. CASES ANCILLARY TO FOREIGN PROCEEDINGS.

Section 304 of title 11, United States Code, as amended by section 410 of this Act, is amended by adding at the end the following:

''(e)(1) In this subsection—

''(A) the term 'domestic insurance company' means a domestic insurance company, as that term is used in section 109(b)(2);

''(B) the term 'foreign insurance company' means a foreign insurance company, as that term is used in section 109(b)(3);

''(C) the term 'United States claimant' means a beneficiary of any deposit referred to in paragraph (2)(A) or any multibeneficiary trust referred to in subparagraph (B) or (C) of paragraph (2);

''(D) the term 'United States creditor' means, with respect to a foreign insurance company—

''(i) a United States claimant; or

''(ii) any business entity that operates in the United States and that is a creditor; and

''(E) the term 'United States policyholder' means a holder of an insurance policy issued in the United States.

''(2) Notwithstanding subsections (b) and (c), the court may not grant relief under subsection (b) to a foreign insurance company that is not engaged in the business of insurance or reinsurance in the United States with respect to any claim made by a United States creditor against—

''(A) a deposit required by an applicable State insurance law;

''(B) a multibeneficiary trust required by an applicable State insurance law to protect United States policyholders or claimants against a foreign insurance company; or

''(C) a multibeneficiary trust authorized under an applicable State insurance law to allow a domestic insurance company that cedes reinsurance to the debtor to reflect the reinsurance as an asset or deduction from liability in the ceding insurer's financial statements.''.

SEC. 606. LIMITATION.

Section 546(c)(1)(B) of title 11, United States Code, is amended by striking ''20'' and inserting ''45''.

SEC. 607. AMENDMENT TO SECTION 546 OF TITLE 11, UNITED STATES CODE.

Section 546 of title 11, United States Code, is amended by inserting at the end thereof:

''(I) Notwithstanding section 545 (2) and (3) of this title, the trustee may not avoid a warehouseman's lien for storage, transportation or other costs incidental to the storage and handling of goods, as provided by section 7–209 of the Uniform Commercial Code.''.

SEC. 608. AMENDMENT TO SECTION 330(a) OF TITLE 11, UNITED STATES CODE.

Section 330(a) of title 11, United States Code, is amended—

(1) in subsection (3)(A) after the word ''awarded'', by inserting ''to an examiner, chapter 11 trustee, or professional person''; and

(2) by adding at the end of subsection (3)(A) the following:

''(3)(B) In determining the amount of reasonable compensation to be awarded a trustee, the court shall treat such compensation as a commission based on the results achieved.''.

TITLE VII—TECHNICAL CORRECTIONS

SEC. 701. DEFINITIONS.

Section 101 of title 11, United States Code, as amended by section 317, is amended—

(1) by striking ''In this title—'' and inserting ''In this title:'';

(2) in each paragraph, by inserting ''The term'' after the paragraph designation;

(3) in paragraph (35)(B), by striking ''paragraphs (21B) and (33)(A)'' and inserting ''paragraphs (23) and (35)'';

(4) in each of paragraphs (35A) and (38), by striking ''; and'' at the end and inserting a period;

(5) in paragraph (51B)—

(A) by inserting ''who is not a family farmer'' after ''debtor'' the first place it appears; and

(B) by striking ''thereto having aggregate'' and all that follows through the end of the paragraph;

(6) by amending paragraph (54) to read as follows:

''(54) The term 'transfer' means—

''(A) the creation of a lien;

''(B) the retention of title as a security interest;

''(C) the foreclosure of a debtor's equity of redemption; or

''(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

''(i) property; or

''(ii) an interest in property;'';

(7) in each of paragraphs (1) through (35), in each of paragraphs (36) and (37), and in each of paragraphs (40) through (56A) (including paragraph (54), as amended by paragraph (6) of this section), by striking the semicolon at the end and inserting a period; and

(8) by redesignating paragraphs (4) through (56A) in entirely numerical sequence, so as to result in numerical paragraph designations of (4) through (77), respectively.

SEC. 702. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104 of title 11, United States Code, is amended by inserting ''522(f)(3), 707(b)(5),'' after ''522(d),'' each place it appears.

SEC. 703. EXTENSION OF TIME.

Section 108(c)(2) of title 11, United States Code, is amended by striking ''922'' and all that follows through ''or'', and inserting ''922, 1201, or''.

SEC. 704. WHO MAY BE A DEBTOR.

Section 109(b)(2) of title 11, United States Code, is amended by striking ''subsection (c) or (d) of''.

SEC. 705. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.

Section 110(j)(3) of title 11, United States Code, is amended by striking ''attorney's'' and inserting ''attorneys' ''.

SEC. 706. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS.

Section 328(a) of title 11, United States Code, is amended by inserting ''on a fixed or percentage fee basis,'' after ''hourly basis,''.

SEC. 707. SPECIAL TAX PROVISIONS.

Section 346(g)(1)(C) of title 11, United States Code, is amended by striking '', except'' and all that follows through ''1986''.

SEC. 708. EFFECT OF CONVERSION.

Section 348(f)(2) of title 11, United States Code, is amended by inserting ''of the estate'' after ''property'' the first place it appears.

SEC. 709. AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, as amended by sections 326 and 401 of this Act, is amended—

(1) in paragraph (21), by striking ''or'' at the end;

(2) in paragraph (22), by striking the period at the end and inserting a semicolon; and

(3) by inserting after paragraph (22) the following:

''(23) under subsection (a) of this section of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;

''(24) under subsection (a)(3) of this section, of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement and the debtor has not paid rent to the lessor pursuant to the terms of the lease agreement or applicable State law after the commencement and during the course of the case;

''(25) under subsection (a)(3) of this section, of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement that has terminated pursuant to the lease agreement or applicable State law;

''(26) under subsection (a)(3) of this section, of any eviction, unlawful detainer action, or similiar proceeding, if the debtor has previously filed within the last year and failed to pay post-petition rent during the course of that case; or

''(27) under subsection (a)(3) of this section, of eviction actions based on endangerment to property or person or the use of illegal drugs.''.

SEC. 710. AMENDMENT TO TABLE OF SECTIONS.

The table of sections for chapter 5 of title 11, United States Code, is amended by striking the item relating to section 556 and inserting the following:

''556. Contractual right to liquidate a commodities contract or forward contract.''.

SEC. 711. ALLOWANCE OF ADMINISTRATIVE EXPENSES.

Section 503(b)(4) of title 11, United States Code, is amended by inserting ''subparagraph (A), (B), (C), (D), or (E) of'' before ''paragraph (3)''.

SEC. 712. PRIORITIES.

Section 507(a) of title 11, United States Code, as amended by section 323 of this Act, is amended—

(1) in paragraph (3)(B), by striking the semicolon at the end and inserting a period; and

(2) in paragraph (7), by inserting ''unsecured'' after ''allowed''.

SEC. 713. EXEMPTIONS.

Section 522 of title 11, United States Code, as amended by section 320 of this Act, is amended—

(1) in subsection (f)(1)(A)(ii)(II)—

(A) by striking ''includes a liability designated as'' and inserting ''is for a liability that is designated as, and is actually in the nature of,''; and

(B) by striking '', unless'' and all that follows through ''support''; and

(2) in subsection (g)(2), by striking ''subsection (f)(2)'' and inserting ''subsection (f)(1)(B)''.

SEC. 714. EXCEPTIONS TO DISCHARGE.

Section 523 of title 11, United States Code, is amended—

(1) in subsection (a)(3), by striking ''or (6)'' each place it appears and inserting ''(6), or (15)'';

(2) as amended by section 304(e) of Public Law 103–394 (108 Stat. 4133), in paragraph (15), by transferring such paragraph so as to insert it after paragraph (14) of subsection (a);

(3) in subsection (a)(9), by inserting '', watercraft, or aircraft'' after ''motor vehicle'';

(4) in subsection (a)(15), as so redesignated by paragraph (2) of this subsection, by inserting ''to a spouse, former spouse, or child of the debtor and'' after ''(15)'';

(5) in subsection (a)(17)—

(A) by striking ''by a court'' and inserting ''on a prisoner by any court'';

(B) by striking ''section 1915 (b) or (f)'' and inserting ''subsection (b) or (f)(2) of section 1915''; and

(C) by inserting ''(or a similar non-Federal law)'' after ''title 28'' each place it appears; and

(6) in subsection (e), by striking ''a insured'' and inserting ''an insured''.

SEC. 715. EFFECT OF DISCHARGE.

Section 524(a)(3) of title 11, United States Code, is amended by striking ''section 523'' and all that follows through ''or that'' and inserting ''section 523, 1228(a)(1), or 1328(a)(1) of this title, or that''.

SEC. 716. PROTECTION AGAINST DISCRIMINATORY TREATMENT.

Section 525(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by inserting ''student'' before ''grant'' the second place it appears; and

(2) in paragraph (2), by striking ''the program operated under part B, D, or E of'' and inserting ''any program operated under''.

SEC. 717. PROPERTY OF THE ESTATE.

Section 541(b)(4)(B)(ii) of title 11, United States Code, is amended by inserting ''365 or'' before ''542''.

SEC. 718. PREFERENCES.

Section 547 of title 11, United States Code, is amended—

(1) in subsection (b), by striking ''subsection (c)'' and inserting ''subsections (c) and (h)''; and

(2) by adding at the end the following:

''(h) If the trustee avoids under subsection (b) a security interest given between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such security interest shall be considered to be avoided under this section only with respect to the creditor that is an insider.''.

SEC. 719. POSTPETITION TRANSACTIONS.

Section 549(c) of title 11, United States Code, is amended—

(1) by inserting ''an interest in'' after ''transfer of'';

(2) by striking ''such property'' and inserting ''such real property''; and

(3) by striking ''the interest'' and inserting ''such interest''.

SEC. 720. TECHNICAL AMENDMENT.

Section 552(b)(1) of title 11, United States Code, is amended by striking ''product'' each place it appears and inserting ''products''.

SEC. 721. DISPOSITION OF PROPERTY OF THE ESTATE.

Section 726(b) of title 11, United States Code, is amended by striking ''1009,''.

SEC. 722. GENERAL PROVISIONS.

Section 901(a) of title 11, United States Code, as amended by section 408, is amended by inserting ''1123(d),'' after ''1123(b),''.

SEC. 723. APPOINTMENT OF ELECTED TRUSTEE.

Section 1104(b) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)''; and

(2) by adding at the end the following:

''(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election. Upon the filing of a report under the preceding sentence—

''(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and

''(ii) the service of any trustee appointed under subsection (d) shall terminate.

''(B) In the case of any dispute arising out of an election under subparagraph (A), the court shall resolve the dispute.''.

SEC. 724. ABANDONMENT OF RAILROAD LINE.

Section 1170(e)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

SEC. 725. CONTENTS OF PLAN.

Section 1172(c)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

SEC. 726. DISCHARGE UNDER CHAPTER 12.

Subsections (a) and (c) of section 1228 of title 11, United States Code, are amended by striking ''1222(b)(10)'' each place it appears and inserting ''1222(b)(9)''.

SEC. 727. EXTENSIONS.

Section 302(d)(3) of the Bankruptcy, Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended—

(1) in subparagraph (A), in the matter following clause (ii), by striking ''or October 1, 2002, whichever occurs first''; and

(2) in subparagraph (F)—

(A) in clause (i)—

(i) in subclause (II), by striking ''or October 1, 2002, whichever occurs first''; and

(ii) in the matter following subclause (II), by striking ''October 1, 2003, or''; and

(B) in clause (ii), in the matter following subclause (II)—

(i) by striking ''before October 1, 2003, or''; and

(ii) by striking '', whichever occurs first''.

SEC. 728. BANKRUPTCY CASES AND PROCEEDINGS.

Section 1334(d) of title 28, United States Code, is amended—

(1) by striking ''made under this subsection'' and inserting ''made under subsection (c)''; and

(2) by striking ''This subsection'' and inserting ''Subsection (c) and this subsection''.

SEC. 729. KNOWING DISREGARD OF BANKRUPTCY LAW OR RULE.

Section 156(a) of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by inserting ''(1) the term'' before ''bankruptcy''; and

(B) by striking the period at the end and inserting ''; and''; and

(2) in the second undesignated paragraph—

(A) by inserting ''(2) the term'' before ''document''; and

(B) by striking ''this title'' and inserting ''title 11''.

SEC. 730. ROLLING STOCK EQUIPMENT.

(a) IN GENERAL.—Section 1168 of title 11, United States Code, is amended to read as follows:

''§ 1168. Rolling stock equipment.

''(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court, except that that right to take possession and enforce those other rights and remedies shall be subject to section 362, if—

''(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and

''(B) any default, other than a default of a kind described in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

''(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period;

''(ii) that occurs or becomes an event of default after the date of commencement of the case and before the expiration of such 60-day period is cured before the later of—

''(I) the date that is 30 days after the date of the default or event of the default; or

''(II) the expiration of such 60-day period; and

''(iii) that occurs on or after the expiration of such 60-day period is cured in accordance with the terms of such security agreement, lease, or conditional sale contract, if cure is permitted under that agreement, lease, or conditional sale contract.

''(2) The equipment described in this paragraph—

''(A) is rolling stock equipment or accessories used on rolling stock equipment, including superstructures or racks, that is subject to a security interest granted by, leased to, or conditionally sold to a debtor; and

''(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, that is to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.

''(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

''(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

''(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(2), if at any time after the date of commencement of the case under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession of the trustee.

''(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(2), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.

''(d) With respect to equipment first placed in service on or prior to October 22, 1994, for purposes of this section—

''(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

''(2) the term 'security interest' means a purchase-money equipment security interest.

''(e) With respect to equipment first placed in service after October 22, 1994, for purposes of this section, the term 'rolling stock equipment' includes rolling stock equipment that is substantially rebuilt and accessories used on such equipment.''.

(b) AIRCRAFT EQUIPMENT AND VESSELS.—Section 1110 of title 11, United States Code, is amended to read as follows:

''§ 1110. Aircraft equipment and vessels

''(a)(1) Except as provided in paragraph (2) and subject to subsection (b), the right of a secured party with a security interest in equipment described in paragraph (3), or of a lessor or conditional vendor of such equipment, to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies, under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court.

''(2) The right to take possession and to enforce the other rights and remedies described in paragraph (1) shall be subject to section 362 if—

''(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the approval of the court, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and

''(B) any default, other than a default of a kind specified in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

''(i) that occurs before the date of the order is cured before the expiration of such 60-day period;

''(ii) that occurs after the date of the order and before the expiration of such 60-day period is cured before the later of—

''(I) the date that is 30 days after the date of the default; or

''(II) the expiration of such 60-day period; and

''(iii) that occurs on or after the expiration of such 60-day period is cured in compliance with the terms of such security agreement, lease, or conditional sale contract, if a cure is permitted under that agreement, lease, or contract.

''(3) The equipment described in this paragraph—

''(A) is—

''(i) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 40102 of title 49) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that, at the time such transaction is entered into, holds an air carrier operating certificate issued pursuant to chapter 447 of title 49 for aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo; or

''(ii) a documented vessel (as defined in section 30101(1) of title 46) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that, at the time such transaction is entered into, holds a certificate of public convenience and necessity or permit issued by the Department of Transportation; and

''(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.

''(4) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

''(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the approval of the court, to extend the 60-day period specified in subsection (a)(1).

''(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(3), if at any time after the date of the order for relief under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession to the trustee.

''(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(3), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.

''(d) With respect to equipment first placed in service on or before October 22, 1994, for purposes of this section—

''(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

''(2) the term 'security interest' means a purchase-money equipment security interest.''.

SEC. 731. CURBING ABUSIVE FILINGS.

(a) IN GENERAL.—Section 362(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' at the end;

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

(3) by adding at the end the following:

''(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real estate, if the court finds that the filing of the bankruptcy petition was part of a scheme to delay, hinder, and defraud creditors that involved either—

''(A) transfer of all or part ownership of, or other interest in, the real property without the consent of the secured creditor or court approval; or

''(B) multiple bankruptcy filings affecting the real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered pursuant to this subsection shall be binding in any other case under this title purporting to affect the real property filed not later than 2 years after that recording, except that a debtor in a subsequent case may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 709, is amended—

(1) in paragraph (24), by striking ''or'' at the end;

(2) in paragraph (25) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(26) under subsection (a) of this section, of any act to enforce any lien against or security interest in real property following the entry of an order under section 362(d)(4) as to that property in any prior bankruptcy case for a period of 2 years after entry of such an order. The debtor in a subsequent case, however, may move the court for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing; or

''(27) under subsection (a) of this section, of any act to enforce any lien against or security interest in real property—

''(A) if the debtor is ineligible under section 109(g) to be a debtor in a bankruptcy case; or

''(B) if the bankruptcy case was filed in violation of a bankruptcy court order in a prior bankruptcy case prohibiting the debtor from being a debtor in another bankruptcy case.''.

SEC. 732. STUDY OF OPERATION OF TITLE 11 OF THE UNITED STATES CODE WITH RESPECT TO SMALL BUSINESSES.

Not later than 2 years after the date of the enactment of this Act, the Administrator of the Small Business Administration, in consultation with the Attorney General, the Director of the Administrative Office of United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—

(1) conduct a study to determine—

(A) the internal and external factors that cause small businesses, especially sole proprietorships, to become debtors in cases under title 11 of the United States Code and that cause certain small businesses to successfully complete cases under chapter 11 of such title; and

(B) how Federal laws relating to bankruptcy may be made more effective and efficient in assisting small businesses to remain viable; and

(2) submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report summarizing that study.

SEC. 733. TRANSFERS MADE BY NONPROFIT CHARITABLE CORPORATIONS.

(a) SALE OF PROPERTY OF ESTATE.—Section 363(d) of title 11, United States Code, is amended—

(1) by striking ''only'' and all that follows through the end of the subsection and inserting ''only—

''(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and

''(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362''.

(b) CONFIRMATION OF PLAN FOR REORGANIZATION.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

''(14) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.''.

(c) TRANSFER OF PROPERTY.—Section 541 of title 11, United States Code, is amended by adding at the end the following:

''(e) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.''.

(d) APPLICABILITY.—The amendments made by this section shall apply to a case pending under title 11, United States Code, on the date of enactment of this Act, except that the court shall not confirm a plan under chapter 11 of this title without considering whether this section would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the petition. The parties who may appear and be heard in a proceeding under this section include the attorney general of the State in which the debtor is incorporated, was formed, or does business.

SEC. 734. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect on the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this title shall apply only with respect to cases commenced under title 11, United States Code, on or after the date of enactment of this Act.

SA 94. Mr. BREAUX (for himself, Mr. SPECTER, Mrs. LINCOLN, Mr. JOHNSON, Ms. LANDRIEU, Mrs. FEINSTEIN, Mr. CLELAND, and Mr. NELSON of Nebraska) submitted an amendment intended to be proposed by them to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table.

At the appropriate place, insert the following:

SEC. ___. AUTHORITY TO ISSUE A RULE RELATING TO ERGONOMICS.

(a) FINDINGS.—Congress makes the following findings:

(1) The National Academy of Sciences issued a report entitled ''Musculoskeletal Disorders and the Workplace—Low Back and Upper Extremities'' on January 18, 2001. The report was issued after the Occupational Safety and Health Administration promulgated a final rule relating to ergonomics (published at 65 Fed. Reg. 68261 (2000)).

(2) According to the National Academy of Sciences, musculoskeletal disorders of the low back and upper extremities are an important and costly national health problem. An estimated 1,000,000 workers each year lose time from work as a result of work-related musculoskeletal disorders.

(3) Conservative estimates of the economic burden imposed by work-related musculoskeletal disorders, as measured by compensation costs, lost wages, and lost productivity, are between $45,000,000,000 and $54,000,000,000 annually.

(4) Congress enacted the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) to ''assure so far as possible every working man and woman in the Nation safe and healthful working conditions,'' and charged the Secretary of Labor with implementing the Act to accomplish this purpose.

(5) Promulgation of a standard on workplace ergonomics is needed to address a serious workplace safety and health problem and to protect working men and women from work-related musculoskeletal disorders. Any workplace ergonomics standard should take into account the cost and feasibility of compliance with such requirements and the sound science of the National Academy of Sciences report.

(b) AUTHORITY TO ISSUE RULE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, not later than 2 years after the date of enactment of this Act, the Secretary of Labor shall, in accordance with section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), issue a final rule relating to ergonomics. The standard under the final rule shall take effect not later than 90 days after the date on which the rule is promulgated. The standard shall—

(A) address work-related musculoskeletal disorders and workplace ergonomic hazards;

(B) not apply to non-work-related musculoskeletal disorders that occur outside the workplace or non-work-related musculoskeletal disorders that are aggravated by work; and

(C) set forth in clear terms—

(i) the circumstances under which an employer is required to take action to address ergonomic hazards;

(ii) the measures required of an employer under the standard; and

(iii) the compliance obligations of an employer under the standard.

(2) AUTHORIZATION.—Paragraph (1) shall be considered a specific authorization by Congress in accordance with section 801(b)(2) of title 5, United States Code, with respect to the issuance of a new ergonomic rule.

(3) PROHIBITION.—In issuing a new rule under this subsection, the Secretary of Labor shall ensure that nothing in the rule expands the application of State workers' compensation laws.

(4) STANDARD SETTING AUTHORITY.—Nothing in this subsection shall be construed to restrict or alter the authority of the Secretary of Labor under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) to adopt health or safety standards (as defined in section 3(8) (29 U.S.C. 652(8)) of such Act) for other hazards pursuant to section 6 (29 U.S.C. 655) of such Act.

(5) INFORMATION AND TRAINING MATERIALS.—The Secretary of Labor shall, prior to the date on which the new rule under this subsection becomes effective, develop information and training materials, and implement an outreach program and other initiatives, to provide compliance assistance to employers and employees concerning the new rule and the requirements under the rule.

SA 95. Mr. SMITH of Oregon (for himself and Mr. WYDEN) proposed an amendment to amendment SA 78 proposed by Mr. WYDEN to the bill (S. 420) to amend title II, United States Code, and for other purposes; as follows:

Strike all after the first word and insert the following:

420. NONDISCHARGEABILITY OF DEBTS ARISING FROM THE EXCHANGE OF ELECTRIC ENERGY.

(a) IN GENERAL.—Section 1141(d) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(6) The confirmation of a plan does not discharge a debtor—

''(A) in the case of a debtor that is a corporation, from any debt for wholesale electric power received that is incurred by that debtor under an order issued by the Secretary of Energy (or any amendment of or attachment to that order) under section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)) and requested by the California Independent System Operator; or

''(B) in the case of debt owed to a Federal, State, or local government agency named in an order referred to in subparagraph (A) for wholesale electric power received by the debtor except to the extent the rate charged for power traded by the California Power Exchange delivered to the California Independent System Operator is determined by the Federal Energy Regulatory Commission (Commission) to be unjust and unreasonable in which case this subparagraph shall only apply to debt determined by the Commission to be just and reasonable.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by this Act, is amended—

(1) in paragraph (28), as added by section 907(d) of this Act, by striking ''or'' at the end;

(2) in paragraph (29), as added by section 1106 of this Act, by striking the period at the end and inserting ''; or''; and

(3) by inserting after that paragraph (29) the following:

''(30) under subsection (a), of the commencement or continuation, and conclusion to the entry of final judgment or order, of a judicial, administrative, or other action or proceeding for debts that are nondischargeable under section 1141(d)(6).''.

(c) APPLICABILITY.—This section and the amendments made by this section shall apply with respect to any petition for bankruptcy filed under title 11 United States Code, as amended by this bill, on or after March 7, 2001.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, march 14, 2001 at 9:30 a.m. in room 485 of the Russell Senate Office Building to conduct a business meeting to consider the committee's views and estimates on the President's FY 2002 Budget Request for Indian Programs to be followed immediately by a hearing on S. 211, the Native American Education Improvement Act of 2001.

Those wishing additional information may contact Committee staff at 202/224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, March 13, 2001, at 9:30 a.m. on S. 415—Aviation Competition Restoration Act.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, March 13, 2001, at 2 p.m. on S. 361—Age 60 Rule.

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

COMMITTEE ON FINANCE

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Tuesday, March 13, 2001, to consider the Affordable Education Act of 2001.

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Tuesday, March 13, 2001, to hear testimony regarding Living Without Health Insurance: Who's Uninsured and Why?

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

COMMITTEE ON THE JUDICIARY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Tuesday, March 13, 2001, at 10 a.m., in Dirksen 226.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet to hold a hearing on the Administration's proposed budget for veterans' programs for fiscal year 2002. The hearing will be held on Tuesday, March 13, 2001, at 9:30 a.m., in room 418 of the Russell Senate Office Building.

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

APPOINTMENT

The PRESIDING OFFICER. The Chair announces, on behalf of the Democratic Leader, pursuant to Public Law 101–509, the reappointment of Elizabeth Scott of South Dakota to the Advisory Committee on the Records of Congress.

NATIONAL GIRL SCOUT WEEK

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration S. Res. 59 submitted earlier by Senator HUTCHISON of Texas for herself and others.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 59) designating the week of March 11 through March 17, 2001, as ''National Girl Scout Week.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. GRASSLEY. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and, finally, any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 59) was agreed to.

The preamble was agreed to.

(The text of S. Res. 59 is located in today's RECORD under ''Submitted Resolutions.'')

ORDERS FOR WEDNESDAY, MARCH 14, 2001

Mr. GRASSLEY. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 9:30 a.m. on Wednesday, March 14. I further ask consent that on Wednesday, immediately following the prayer, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business until 10:30 a.m., with Senators speaking for up to 5 minutes each, with the following exceptions: Senator THOMAS or his designee, 9:30 to 10 o'clock; Senator FEINGOLD or his designee, 10 o'clock to 10:30.

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

PROGRAM

Mr. GRASSLEY. For the information of all Senators, the Senate will be in a period of morning business until 10:30 a.m. Following morning business, the Senate will resume consideration of the bankruptcy reform legislation. Votes will occur on the following amendments in a stacked sequence at approximately 10:45 a.m.: the Carnahan amendment No. 40, the Smith of Oregon amendment No. 95, and the Wyden amendment No. 78. Following the votes, debate on the Wellstone amendment regarding debt collection will resume. Further amendments are expected to be offered, debated, and also voted on.

By previous consent, the cloture vote will occur at 4 p.m. Therefore, pursuant to rule XXII, second-degree amendments must be filed by 3 p.m.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. GRASSLEY. If there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:35 p.m., adjourned until March 14, 2001, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate March 13, 2001:

DEPARTMENT OF DEFENSE

DOV S. ZAKHEIM, OF MARYLAND, TO BE UNDER SECRETARY OF DEFENSE (COMPTROLLER), VICE WILLIAM J. LYNN, III.

DEPARTMENT OF JUSTICE

THEODORE BEVRY OLSON, OF THE DISTRICT OF COLUMBIA, TO BE SOLICITOR GENERAL OF THE UNITED STATES, VICE SETH WAXMAN, RESIGNED.

FOREIGN SERVICE

THE FOLLOWING-NAMED PERSONS OF THE AGENCIES INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASS STATED, AND ALSO FOR THE OTHER APPOINTMENTS INDICATED HEREWITH:

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS ONE, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

AGENCY FOR INTERNATIONAL DEVELOPMENT

E. CECILE ADAMS, OF TEXAS
WILLIAM HAMMINK, OF FLORIDA

DEPARTMENT OF STATE

FRANK J. MANGANIELLO, OF VIRGINIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS TWO, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

AGENCY FOR INTERNATIONAL DEVELOPMENT

MATTHEW PHILIP RATHGEBER, OF TEXAS

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS THREE, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

AGENCY FOR INTERNATIONAL DEVELOPMENT

CHARISSE A. ADAMSON, OF MARYLAND
KENNETH L. BARBERI, OF NEVADA
KOJO O.F. BUSIA, OF VIRGINIA
KURT ALDWIN CLARK, OF NORTH CAROLINA
CELESTE FULGHAM, OF ILLINOIS
SCOTT HOWARD KLEINBERG, OF FLORIDA
JOHN MICHAEL TINCOFF, OF TEXAS
ROSLYN M. WATERS-JENSEN, OF THE DISTRICT OF COLUMBIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS FOUR, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

ANDREA BROUILLETTE-RODRIGUEZ, OF FLORIDA
MARK B. BURNETT, OF CALIFORNIA
GERARD CHEYNE, OF CONNECTICUT
CHRISTOPHER JAMES DEL CORSO, OF NEW YORK
STEWART TRAVIS DEVINE, OF FLORIDA
ALISON ELIZABETH DILWORTH, OF VIRGINIA
ELLEN MICHELE DUNLAP, OF FLORIDA
DERECK JAMAL HOGAN, OF NEW JERSEY
C. WAKEFIELD MARTIN, OF TEXAS
DAVID J. MICO, OF INDIANA
CHRISTOPHER STEPHEN MISCIAGNO, OF FLORIDA
STEPHEN P. NEWHOUSE, OF CALIFORNIA
KAREN CHOE REIDER, OF NEW YORK
JONATHAN A. SCHOOLS, OF TEXAS
KEENAN J. SMITH, OF PENNSYLVANIA
HOWARD T. SOLOMON, OF VIRGINIA
ANTHONY KENNETH STAPLETON, OF FLORIDA
FREDRIC W. STERN, OF CALIFORNIA
PETER M. THOMPSON, OF CONNECTICUT
SONYA ANJALI ENGSTROM WATTS, OF IOWA
MARK E. WILSON, OF TEXAS

THE FOLLOWING-NAMED MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENTS OF COMMERCE AND STATE TO BE CONSULAR OFFICERS AND OR SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA, AS INDICATED:

CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

ALICIA P. ALLISON, OF THE DISTRICT OF COLUMBIA
EUGENE JOSEPH ARNOLD, OF MISSOURI
CHARLES A. ATKINSON, OF VIRGINIA
JEFFREY J. BAKER, OF VIRGINIA
JULIANA KINAL BALLARD, OF THE DISTRICT OF COLUMBIA
SANDILLO BANERJEE, OF CALIFORNIA
DOROTHY B. BARDZELL, OF VIRGINIA
WANDA E. BARQUIN, OF CALIFORNIA
MARIETTA LOUISE BARTOLETTI, OF CALIFORNIA
ROIS MEGHAN BEAL, OF GEORGIA
RUTH BENNETT, OF OREGON
CYRUS V. BHARUCHA, OF VIRGINIA
TANYA MARIE BIETH, OF VIRGINIA
J. GREGORY BRISCOE, OF TENNESSEE
JAMES M. BROOKS, OF VIRGINIA
BRIAN BENJAMIN BROWN, OF MARYLAND
RACHEL K. BROWNE, OF VIRGINIA
JENNIFER A. BUCALO, OF VIRGINIA
PAUL MATTHEW CAMPIONE, OF VIRGINIA
STEVEN CHAN, OF HAWAII
CARLA M. CHILDRESS, OF VIRGINIA
KATELYN CHOE, OF VIRGINIA
CARYN R. CIESLIK, OF VIRGINIA
KENNETH CLARKE, OF VIRGINIA
IREAS C. COOK, OF TEXAS
JANAE ELIZABETH COOLEY, OF MICHIGAN
KEVIN COSTANZI, OF VIRGINIA
JOHN REID CROSBY, OF TEXAS
MARY EILEEN DASCHBACH, OF NEW HAMPSHIRE
ARTINA M. DAVIS, OF MARYLAND
JAMES R. DAYRINGER, OF VIRGINIA
DAVID S. DOUCETTE, OF VIRGINIA
BRADLEY RICHARD EVANS, OF TEXAS
DAVID M. FORAN, OF CONNECTICUT
CLARK N. FOULKE JR., OF VIRGINIA
MARY H. GAUGHAN, OF VIRGINIA
DAVID LINDGREN GEHRENBECK, OF RHODE ISLAND
KARL A. GINYARD, OF MARYLAND
REBECCA S. GRAHAM, OF THE DISTRICT OF COLUMBIA
SHIRENE HANSOTIA, OF VIRGINIA
BRADLEY A. HARKER, OF NEVADA
MARGARET REIKO HARTLEY, OF CALIFORNIA
KRISTINE A. HELSTROM, OF VIRGINIA
MARCO HENRY, OF VIRGINIA
JANELLE SUZANNE HIRONIMUS, OF CALIFORNIA
KELLIE L. HOLLOWAY, OF ARIZONA
CATHERINE E. HOLT, OF NEBRASKA
JOEY R. HOOD, OF NEW HAMPSHIRE
STEPHEN R. JACQUES, OF VIRGINIA
MICHELLE M. JONES, OF VIRGINIA
DENNIS T.P. KEENE, OF FLORIDA
ROBERT L. KINGMAN, OF WASHINGTON
KERESA M. KIPP, OF VIRGINIA
LAURA HOPE KIRKPATRICK, OF VIRGINIA
STEPHEN P. KNODE, OF FLORIDA
JOAN C. KOZAR, OF VIRGINIA
KAMAL IMHOTEP LATHAM, OF NEW YORK
PAIGE SARGENT LEGENHAUSEN, OF VIRGINIA
ELLEN LENNY-PESSAGNO, OF COLORADO
KELLY RENE LIZARRAGA, OF CALIFORNIA
CARLOS A. MACIAS, OF VIRGINIA
JASON ROSS MACK, OF NEW YORK
EDWARD F. MALINOWSKI, OF ILLINOIS
BETTINA ANNE MALONE, OF VIRGINIA
TYLER L. MASON, OF NEW YORK
GREGORY CHARLES MAY, OF MARYLAND
JAMES W. MAYFIELD JR., OF MARYLAND
KARA C. MCDONALD, OF THE DISTRICT OF COLUMBIA
DAVID J. MCGUIRE, OF TENNESSEE
JEFFREY G. MILLER, OF MARYLAND
SCOTT MODELL, OF VIRGINIA
BRIAN MOORE, OF PENNSYLVANIA
SHANTE JERMAINE MOORE, OF VIRGINIA
KENNETH R. MOURADIAN, OF NEW HAMPSHIRE
NORMAN D. NELSON, OF VIRGINIA
ROBERT F. O'SABEN, OF VIRGINIA
DONALD L. PARNELL, OF VIRGINIA
SUSAN M. PARNELL, OF VIRGINIA
ROBERT A. PEASLEE, OF COLORADO
ERIC L. PERRYMAN, OF MARYLAND
GABRIELLE M. PRICE, OF PENNSYLVANIA
KATHARINE C. RICE, OF VIRGINIA
ALYCE CAMILLE RICHARDSON, OF FLORIDA
TODD C. ROBERTS, OF VIRGINIA
EARL S. ROBINSON III, OF THE DISTRICT OF COLUMBIA
JOHN GREEN ROBINSON, OF MISSISSIPPI
LARRY E. ROBINSON, OF VIRGINIA
RYAN DEAN ROWLAND, OF CALIFORNIA
ANTJE M. SCHMIDT, OF VIRGINIA
FIONA CLARE SCHOLAND, OF CONNECTICUT
PETER ALBAN SCHROEDER, OF WASHINGTON
MARC LONDON SHAW, OF MISSOURI
JEFFREY W. SHEPARD, OF VIRGINIA
ANDREW K. SHERR, OF COLORADO
KEITH L. SILVER, OF NEW HAMPSHIRE
JEFFERSON D. SMITH, OF TEXAS
PAMELA J. SMITH, OF TEXAS
JOHN M. SPIWAK JR., OF VIRGINIA
TIMOTHY MICHAEL STANDAERT, OF NEW YORK
MONA P. SWEATT, OF THE DISTRICT OF COLUMBIA
DANIEL ALEXANDER STEWART, OF VIRGINIA
LINDA S. STIRLING, OF CALIFORNIA
TOM S. TARGOS, OF WISCONSIN
ERIN YVONNE TARIOT, OF MASSACHUSETTS
TIMOTHY P. TRENKLE, OF KANSAS
JOSEPH FINCH TRIMBLE JR., OF TEXAS
RAYMOND E. VANOVER, OF VIRGINIA
ABISAI VEGA, OF CALIFORNIA
ANITA V. VENDITTI, OF THE DISTRICT OF COLUMBIA
CAROL L. WASHINGTON, OF MARYLAND
HARVEY A. WECHSLER, OF ILLINOIS
TIMOTHY A. WEST, OF VIRGINIA
TODD R. WHATLEY, OF OKLAHOMA
WILLIAM S. WILKINSON, OF VIRGINIA
WILEY J. WILLIAMS III, OF TENNESSEE
JOSEPH W. WIPPL, OF VIRGINIA
MARK E. WOOD, OF FLORIDA
EBONI YORK, OF MICHIGAN
KAREN R. ZIPPRICH, OF VIRGINIA
LARRY RUSSEL ZIPPRICH, OF VIRGINIA

THE FOLLOWING-NAMED PERSON OF THE AGENCY INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF THE CLASS STATED AND ALSO FOR THE OTHER APPOINTMENTS INDICATED, EFFECTIVE NOVEMBER 25, 1997:

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS FOUR, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA, RETROACTIVE TO NOVEMBER 25, 1997

DEPARTMENT OF STATE

HAROLD EDWARD ZAPPIA, OF VIRGINIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS THREE, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA, EFFECTIVE JANUARY 14, 2001:

DEPARTMENT OF STATE

LINDA ELISA DAETWYLER, OF CALIFORNIA
REBECCA ANN PASINI, OF INDIANA

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE FOR PROMOTION IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED: CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF CAREER MINISTER:

DEPARTMENT OF STATE

DONNA JEAN HRINAK, OF PENNSYLVANIA

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF CAREER MINISTER, EFFECTIVE JANUARY 14, 2001:

DEPARTMENT OF STATE

DANIEL CHARLES KURTZER, OF FLORIDA

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER COUNSELOR, EFFECTIVE NOVEMBER 21, 1999:

DEPARTMENT OF STATE

RICHARD T. MILLER, OF TEXAS

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR, EFFECTIVE JANUARY 14, 2001:

DEPARTMENT OF STATE

FRANCIS JOSEPH RICCIARDONE JR., OF NEW HAMPSHIRE
ALBERT A. THIBAULT JR., OF PENNSYLVANIA

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR, EFFECTIVE JANUARY 14, 2001:

DEPARTMENT OF STATE

PETER K. AUGUSTINE, OF TEXAS
JULIA CARDOZO ROUSE, OF THE DISTRICT OF COLUMBIA
MARK A. TOKOLA, OF WASHINGTON

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR, AND CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE EFFECTIVE JANUARY 14, 2001:

DEPARTMENT OF STATE

WILLIAM G. L. GASKILL, OF VIRGINIA