on the same page with the American people.

Mr. President, we are a nation of dreamers. We dream of a better life for all of our people. We dream of a brighter future for all of our children. We are inspired by a challenge—we rise to it, we embrace its promise, we enjoy righting wrongs, breaking new ground, achieving the impossible. When our collective will is engaged, and we agree to put resources behind a challenge, the United States can be an awesome force for remarkable progress and for good in the world. We need leadership to fully galvanize our attention. Yet, when that combination of American determination and drive is motivated by a vision, great things can be achieved. Witness space exploration and putting a man on the moon; witness beating the old Soviet Union in the arms race; witness mapping the human genome for which the distinguished Senator from New Mexico, a member of the Senate Appropriations Committee, Mr. DOMENICI, is to be given great credit. This is something that originated in the brain of a Member of this body to support this research.

Witness the mapping of the human genome and all of the other mind-boggling advances in science and medicine over the last 50 years.

But, where is the leadership and inspiration for this new millennium? I find none in the trumpeting of a tax cut, and this tax cut in particular. I see no call to make the world a better place for our children. I see no appeal to mount a massive effort to beat cancer or aids. I see no drive to make our children the best educated in the world. I hear no determination to make us energy independent.

I hear nothing about a Moon shot to make our Nation energy independent. I hear nothing about a Moon shot to make our children the best educated children. I hear nothing about a Moon shot to conquer cancer. I was here when Sputnik burst forth from the headlines of the Nation's newspapers and the world's newspapers. I heard John F. Kennedy say, ''We are going to put a man on the Moon,'' and we did that. We put a man on the Moon and brought him back safely to Earth again.

Yes. We made the world safer for democracy. We participated in two world wars. We had the dream of the Marshall Plan. We had the dream finally culminating in the breaking down and the tearing down of the Berlin Wall.

We remember the Berlin airlift. President Harry Truman was determined to break that Soviet ring that had Berlin enclosed. We didn't back away from that challenge.

The Interstate Highway System was another dream.

We hear no determination to do great things today. The centerpiece of this administration is not a dream. It is not a great dream. It is not a great call for a Moon shot to beat back the ravages of cancer, tuberculosis, sugar diabetes, and the other diseases that confront our people. We hear only a call for huge tax cuts for the wealthy.

I hear no appeal to American pride to repair our dilapidated system of transportation. Our roads, our bridges, our mass transit systems, our airports, our national parks should be the envy of the world. What has happened to our pride in American know how, American skills, American research, and America as a show place to inspire visitors to our shores with the tangible achievements of this great experiment in representative democracy? Are we to forgot our glory days? Are we to settle for smaller dreams, and more limited horizons.

Is this what we are going to settle for? Do we tell our children that we didn't want to go for bigger things because we gave their parents a tax cut?

I hear no call to greatness in this peddling of massive tax cuts. I hear only a veiled appeal to greed and to distrust of government.

The President is not on the same page with the American people. The American people, according to these polls, are not asking for a refund. They are not asking for a refund. They want their government to lead. They want their government to inspire. They want their government to do the great things for the country, the very things they pay their taxes for. That is what they want. In short, they are not asking for their money back. They want their money's worth. And a king's ransom of a tax cut will be worth nothing to them if it shortchanges our Nation's children and downsizes our dreams.

Mr. President, I yield the floor.

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

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

BANKRUPTCY REFORM ACT OF 2001—Continued

Mr. SESSIONS. Mr. President, we are now proceeding on the bankruptcy bill in the regular order.

I want to say a few general remarks about this process of bankruptcy. It is provided for in the U.S. Constitution. It was not written out in the early days of our founding precisely how bankruptcy law should apply, but it did provide for uniform Federal laws of bankruptcy. So our bankruptcy court system is a Federal court system presided over by Federal bankruptcy judges, and all the clerks are Federal civil servants.

England developed some procedures to deal with persons who owed debts. Basically, they would turn over everything to the Crown, and sometimes they would get thrown in jail. But their assets would be distributed equally to whoever was claiming money from that person in sort of a realistic-priority way.

Over the years, we have provided tremendous protections for the person filing bankruptcy. It does aid them in a lot of different ways. How does it actually work?

Let's say you are in debt and telephone calls start coming from the creditors. You promised to pay certain debts and you are not paying them. I do not know how we can complain too much about somebody calling to ask what your intentions are about paying them. They become burdensome on the family after a while, though—very burdensome. Then people threaten lawsuits. Then they file lawsuits. And lawsuits get carried on to judgment.

The person is being sued. They are being called. Their lives are really being disrupted because they are unable to pay the debts they owe. So under this circumstance, a person is allowed to file bankruptcy. When bankruptcy is filed, that stops everything. You cannot be harassed by phone calls or other claims for debts because all the creditors—people who are claiming money—have to be sent a notice; and when they get the notice that you filed bankruptcy, all they can do is file a claim at the bankruptcy court.

They cannot keep bugging the individual American citizen. They have to leave him or her alone or the bankruptcy judge will slap them with a fine if they do that, because bankruptcy does stay those kinds of activities. It stops the lawsuits. All lawsuits are stopped under the bankruptcy. It is called a stay. A stay is issued, and the legal proceedings stop, so a debtor can take a breather.

Basically, they go into court, if it is an individual. And the individual has two choices. He can file, under current law, under chapter 7. He can say: I am exempting my homestead. You can't take that. And certain of my personal property, you can't take that. This is all the money I have otherwise. This is all the assets I have. You take that and divide it up among all those people I can't pay. It may be 5 cents on the dollar, 10 cents on the dollar, 50 cents on the dollar—usually less than 10 cents on the dollar, or less than 30 cents on the dollar, anyway—when they do that.

Then they wipe out those debts. They are forever gone. They signed a contract. They signed agreements. They got sued. And they got judgments against them. It is all wiped out; a person does not have to pay.

That goes on in America regularly. And it is a healthy thing for people who are in debt so deep that it is not possible for them to get out. And we affirm that.

So over the years bankruptcy law has been amended and improved. We had a Bankruptcy Reform Act in 1978, the last real reform of bankruptcy law in the United States. At that time, there

were fewer than 300,000—I think 270,000—bankruptcies a year.

Since 1978, bankruptcies have increased at a steady pace. Now the filings exceed—well, in 1998 or 1999 it was 1.4 million. It dropped a little last year, but it is projected to go up again significantly this year. So we are talking about nearly 1.5 million filings this year. You may say: That is not too many. We have 250, 260 million people in America. A lot of them are children, and a lot of them are in jail, and so on. You take those numbers down—who is really eligible—and that is getting to be a significant number. We do not think about the fact that it is happening every year. When you add up 5 years, that is 5, 6, 7 million people who have filed bankruptcy in a period of 5 years. That becomes a significant portion of the American population. If they all qualify, then I do not have a problem with it.

But what has occurred in recent years is the proliferation—and I think virtually every city in America has it—of some sort of promotional bankruptcy mill. For years, lawyers could not advertise. Some people can still remember that day. But now they can. So you turn on the TV at 11:30 at night or Saturday afternoon, or pick up the dime store, corner market shopping guide, and there are these advertisements: Wipe out your debts. Don't pay anybody you owe. Call old Joe, your friendly lawyer. He will tell you how to do the deal.

So people call. They are in debt and having trouble managing their money. Some of them are in debt because they could not help it—maybe there were serious injuries, maybe medical causes, maybe bad business deals, bad judgment. Some of them just cannot manage their money. Some of them have drug problems. Some have alcohol problems. Some are just unable to manage and just will not stop spending.

So they go to the lawyer. And this is fundamentally what the lawyer tells them. He says: Now, when you get your paycheck, you save that money, and you bring it straight to me—all that money—and maybe your second check. As soon as I have $1,500 or $1,000, I will file your bankruptcy. Don't pay any of your other debts. Don't pay any more debts. He will say: Use your credit card. Run up everything you want to on your credit card. Live off your credit card. Come down here, and we will file bankruptcy as soon as you get your money together to pay me. That is what has happened. That is the kind of message. They are told this is the right thing to do. These people in debt are in trouble. They are hurting. They are tired of people calling them. It is embarrassing their children and their families. They want it to end. This seems to be the best way out, so they do so. The numbers through this promotional activity have been going through the roof.

A lot of people are troubled by it. People who are regularly involved in bankruptcy and see what is happening are rightly concerned that quite a number of people are filing who don't qualify, who really don't meet our traditional standards of someone who cannot pay all or a part of their debts.

The discussion went on for a number of years about how to deal with it. A Federal bankruptcy commission dealt with it, others have dealt with it, lawyers groups, experts, and so forth. We have had, in the Senate and in the House of Representatives, hearings that have gone on for over 4 years now. As a result of those hearings and refinements, bankruptcy bills have come forward. One passed this body 2 years ago with about 88 votes. The last one passed with 70 votes. It has passed the House every year with a veto-proof margin, strong bipartisan Republican and Democratic support.

We are dealing with this incredible surge in bankruptcies and trying to do it in a way that allows everybody who previously legitimately wanted to file bankruptcy, that they could file bankruptcy, by trying to identify those who don't qualify and should be contained in their filing. So this is a fundamental change in bankruptcy. We adopted what has come to be called a means test. It says if you have the means to pay some or all of your debt, we ought to set up a plan for you to do so.

In law today, we have two sections. I mentioned chapter 7, where you go in and wipe out all your debts. Basically, the debtor can choose that. He can choose in which chapter he wants to go.

There is a another chapter called chapter 13. In that case, if you file in chapter 13, all of the lawsuits stop; all of the phone calls stop. The court sits down with the debtor and works out a payment arrangement. They prioritize the debts to be paid. Some of them are secured; some are not secured. The right priorities are all set. Then that person basically takes his paycheck in every month. He or she gives it to the court. He or she keeps enough money to live on. They give the money to the court, and they pay out to the debtors every dime.

Under chapter 13, many people work through their debts, people with low incomes and higher incomes. They pay off all their debts.

In my State of Alabama, I am proud to say that in the southern district of Alabama, where I practiced, 50 percent of the people who filed filed under chapter 13. They wanted to pay their debts back. In fact, there are some good incentives to filing under chapter 13, a lot of good things for a creditor that I won't go into here.

They are doing it in Birmingham. In the northern district of Alabama, I understand 60 percent file there. I also understand there are some districts in New York and other places where less than 10 percent, maybe even less than 5 percent use chapter 13. Just routinely, the debtors come in and wipe out all their debts.

How should we deal with that? After much thought, it was decided that we ought to focus this legislation on a relatively small number of people filing for bankruptcy who have income sufficient to pay back some or all of their debts. We thought that was a good approach, and it has been widely received and voted on by most of the Members of this body.

Basically, we drew a bright line. We said: Based on the size of your family and the income of your family, if you make below median income, which in America for a family of four is $50,000, you will be able to file bankruptcy any way you want, 7 or 13, just like today.

There is no change for them in that regard. We believe probably 70, 80, 85 percent of the people who file bankruptcy are below median income, but for that 20, that 10, that 15 percent who make above median income—some make $70, $80, $90, $200,000, $250,000, some are doctors, some are lawyers, some have professional incomes, and so forth—to them we say: We are going to look at your income. We are going to look at your earning possibilities. If you are able to pay back at least 25 percent of that debt over 3 to 5 years, we are going to put you in chapter 13, as half the people in my State do anyway, and we are going to ask you to try to pay those debts over that period of time. You will be monitored by the court.

By the way, this bill says, in a historic step, child support and alimony will be moved up to the top, to the first item that will be paid. For 5 years, you will be under the supervision financially of a Federal bankruptcy judge, and you will pay your alimony. You will pay your child support on time. As a matter of fact, the judge will order a repayment of past due alimony and child support under court supervision.

I thought that ought to greatly please most people in America. It deals only with the abusive cases. It confronts the problem we are seeing in bankruptcy. Maybe somewhat fewer people will file if they don't think they can get away with ripping off the average taxpayer, citizen.

They say: These credit card companies, these are evil companies. They go out and actually lend people money. They are not citizens, they are corporations. They are evil. They are always trying to cheat you, and we don't need to pay them. They care about this bill. Therefore, the bill is no good.

That is silly. That is not right. The first principle of economics, which a lot of people in this body apparently don't know or forgot, is there is no such thing as a free lunch. Somebody is going to pay this debt if you don't pay it. Somebody is going to eat that loss. If it is a bank or a credit card company, they have computers. They figure it out. They start seeing greater losses. What do they do? They have to raise the interest rate on all of us.

Experts have studied this; economists have studied it. They have concluded that the average debt-paying

American citizen who pays his bills is annually imposed a bankruptcy cost of $450. That is about $40 a month they are having to pay every month because other people in this country don't pay their debts.

They say: Well, maybe it was because they had a high medical bill. Therefore, we don't want them to pay their hospital bill. Heaven knows, they should not pay the doctor and the hospital who treated them and helped them get well. This bill is oppressive because it would suggest that people ought to pay their hospital bill if they can.

Basically, that is what the argument is. If you are making below median income, lower than median income in America, then you can file, just as you always did, and you can wipe out your bills to the hospital, to any other people that you owe, including your bookie, I guess—wipe that all out. But if you are making above median income, and the judge finds you are able, only if he finds you are able to pay 25 percent of what you owe to the hospital over a period of 3 to 5 years, he can order a payment plan that requires you to pay that 25 percent. And he will allow you every month to have sufficient funds to live on, in the court's judgment.

Well, I don't think this is oppressive. This is a reform. This is a piece of legislation that deals with a fundamental question. I was asked by a young reporter yesterday afternoon, while doing a piece for one of the TV shows, ''Do you think this is a moral question?'' I said, ''I absolutely think it is a moral question.''

What we do here when we establish law, as our Founding Fathers always knew, and I think we are forgetting, is that we are setting public policy that guides and shapes American values. What we say you must do and what we say you don't have to do shapes opinions and values.

So I think it is a bad suggestion, an unhealthy value to promote, that a person who can pay a substantial portion of his or her debt can just walk away from it—not pay the hospital, for example.

I have visited 20 hospitals in my home State this year. They have a bad debt section that they write off regularly. They are not expecting any great, huge surge of benefits from this bill. But why should you not pay the hospital if you can pay a portion of it? What is bad about them? Is that not a good institution that ought to be valued? Who else is going to pay for the hospital if the person who is using it doesn't pay?

Well, they say: Maybe you didn't have health care insurance. If you make above the median income, you ought to have health care insurance. Maybe somebody who is struggling to get by every day, who would be below median income, is not able to take out health care insurance. If you are making above median income, you need to have some health insurance. Why should a person who is not responsible, making above median income, who didn't have health insurance—why should they be able to stiff the hospital when the ''honest Joe'' and his family, who are making below median income, takes out his health insurance every month and pays it and makes sure his hospital is paid if he and his family go there?

I think it is a moral question. I think we need to set a public policy that says, yes, we validate the great privilege of American law—and that has really been increased in recent years—that allows a person to wipe out their debts and start over again. We validate that. We do not object to that. We have tried to create a bill that does just that. But we also say that if you have a higher than average income and you can pay some of those debts, we want to set up a system where you pay them.

I believe this is a fair approach, a balanced approach, a generous approach. And the legislation has quite a number of factors in it that cut down on fraud and abuse. We raise up the protections for women and children, as I said. We have tightened up the language on the bill to reaffirm a debt from a person who maybe wants to keep his car, or a washing machine, and they can come in and negotiate with them. We can put extra protections in before they can reaffirm a debt after bankruptcy and want to keep something, so that the creditors are protected.

We put in another amendment that people have asked for. I think, in general, I will challenge people to tell me what it is about this bill that is precisely unfair to anybody. If we want to talk about the means test, we will talk about that. That is the real change, the only thing that really happens here of significance.

We have made a number of other improvements to reduce abuses and problems with the bill and the processing of cases in bankruptcy, which I think everybody would support.

We have had a lot of amendments. If anybody listens carefully, they will find they are not focusing primarily on the improvement of bankruptcy law and the administration of assets in a bankruptcy court. They are focused on rules for credit cards or bank lending rules, all of which are not in the jurisdiction of the Judiciary Committee. They are in the jurisdiction of the Banking Committee. Periodically, that kind of legislation comes forward. We will have amendments that touch on issues outside the bill, but, for the most part, we are right on.

We had a vote on homestead. The homestead law in this bill eliminated quite a number of abuses. The homestead law basically said that States could set their own standard for how much you could protect in your home. If you file bankruptcy, each State has a homestead limit—some as low as $5,000; some are unlimited. So in certain States you can buy a home and put $2 million into your home, and when you file bankruptcy, you get to keep your home.

I never thought that was a good idea. I voted to eliminate that. Some State laws have unlimited assets, and some Senators wanted to keep that. They fought us and fought us and fought us. Frankly, after being a cosponsor with Senator KOHL on a limit of $100,000, which we passed, we went along with a compromise that we reached that restricted homesteads, but not as much as I would like.

We just voted this morning to go back to the $100,000 limit. The vote was here. I voted, as I agreed to last time, for the compromise. But I certainly am happy with that public policy. I hope the Senators who lost on that vote will see just how strong this body cares about it and will realize they are not really benefiting, and the citizens of their States are not benefiting by allowing a millionaire to keep a million dollars in his home and not pay the gas station or local hospital or bank.

So those are the kinds of things that have occurred. The complaints here are either about issues outside of the reform of bankruptcy court law or it is a matter in which we have it go.

I think we have done well. I salute Senator HATCH, the chairman of the Judiciary Committee, for his steadfast leadership, and Senator GRASSLEY, who formerly chaired the Courts and Administration Subcommittee, which I am honored now to chair, when this bill came out of his subcommittee. He battled steadfastly to bring this bill up for a vote. I believe we will be able to do that today.

I am quite confident we will have an overwhelming vote for one of the most historic reforms that we can imagine. It will improve the operation of bankruptcy courts, I am confident. If we made any errors in it, I am willing to listen to that and make further amendments, if needed.

I thank the Chair and yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. 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. SESSIONS. Mr. President, on the Leahy amendment, I will make a few comments. It includes the spouse's income in a bankruptcy.

The PRESIDING OFFICER. The Chair notifies the Senator there is an order for a vote to occur at this time.

Mr. LEAHY. I ask unanimous consent the Senator from Alabama be allowed to proceed for 1 minute and then I be allowed to proceed for 1 minute.

The PRESIDING OFFICER. Is there objection?

Mr. REID. I have no objection, but reserving the right to object, it is my

understanding that, regarding the previous order entered, we are going to change the order in which the votes take place; is that right?

Mr. SESSIONS. I was going to make a change in the order according to the agreement that has been reached.

Mr. REID. I withdraw my objection.

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

The Senator from Alabama.

Mr. SESSIONS. I believe the Senator from Delaware has a request.

Mr. CARPER. I ask unanimous consent to speak for 1 minute to engage in a colloquy with Mr. LEAHY and Mr. SESSIONS.

Mr. LEAHY. Reserving the right to object, and I will not object, if the Senator from Delaware amends that to also add 1 minute for the Senator from Vermont.

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

The Senator from Alabama.

Mr. SESSIONS. Mr. President, this would be an amendment on the surface that appears to be good. However, I am of the firm opinion that it would be unwise and cause a very difficult problem with filing for bankruptcy. Under the present law, the median income is determined by household size which includes a spouse when married and living together. Yet a debtor filing singly will be tested based on his or her income only and not based on the income of the spouse as well.

Under the current bill, for a debtor who is married but has been abandoned by her spouse, that will be corrected. She will be tested under the means test from her income. If she is abandoned, her expenses will exceed her income and she will not be prevented from filing under chapter 7.

However, the ability of couples to maneuver income——

The PRESIDING OFFICER. The Senator from Alabama has used his 1 minute.

Mr. SESSIONS. I thank the Chair.

Mr. LEAHY. Mr. President, I believe we are dealing with a bill with a drafting error and I am trying to correct it. For example, in the bill before the Senate, a battered spouse who flees the home with children can be denied bankruptcy relief regardless of circumstances because the bill would count her husband's income, as well, even though she did not receive any money from him.

Without the Leahy amendment, it is hard to imagine a more antiwoman, antichild, or antifamily result. My amendment would not allow separated spouses to somehow shield assets when they file for bankruptcy because the bill already counts income of the debtor from all sources. That is why my amendment is supported by virtually every group in the country that has advocated for battered women and battered spouses. They say, we support this effort to correct this oversight which ''if left unrepaired would create a severe injustice to many women, children, and families across the country.''

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. The amendment offered by Senator LEAHY is a good amendment and he has pointed to a problem with the bill, I think unintentional.

This is the situation we face: We have a husband and a wife and they are living separately, maybe at the end of their marriage, and the wife wants to file for bankruptcy. The income of her spouse will be imputed, regardless of whether or not that spouse is providing any kind of support at all.

As a result, in most cases the wife would not be able to file chapter 7 and enjoy the benefit of safe harbor. Mr. LEAHY would have us fix that. That is a good thing.

Unfortunately, the problem that flows out of the amendment is that in some cases that husband really is providing support for that spouse. It is important we find that out; that we not create a situation, unwittingly, where fraud could prevail and where that husband, in most cases, is supporting the wife and supporting the family and does not acknowledge as much. There is a simple way to fix it, and I hope in conference Senator LEAHY and others will find that appropriate fix.

Mr. LEAHY. Mr. President, I thank my friend from Delaware, but I note my amendment does not allow a separated spouse to somehow shield assets because the bill already counts income of the debtors from all sources.

The definition of ''current monthly income'' on page 18, lines 4 to 21, of the bill includes income from all sources. So if a battered spouse or anybody else conceal income on a bankruptcy schedule, that is a Federal crime.

What I do not want is a battered wife who is getting no income from a separated spouse to suddenly, if she is out there trying to put her financial situation in order, to have to consider the income of a spouse from whom she is getting no income.

I ask unanimous consent a letter from the American Academy of Matrimonial Lawyers, on behalf of a number of organizations, be printed in the RECORD.

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

AMERICAN ACADEMY OF MATRIMONIAL LAWYERS,
Chicago, IL, March 15, 2001.

Hon. PATRICK LEAHY,
Ranking Minority Member, Committee on the Judiciary, Russell Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: I write in strong support of your ''separated spouse'' amendment to the pending means test provisions of the bankruptcy bill not being considered by the Senate.

I assume the current language in the bill is the result of an unintentional drafting error. If left uncorrected, the existing language will be draconian in its application to all single parents with children who do not have the benefit of any spousal income. It will particularly jeopardize a battered spouse who flees her home with her children. This debtor could be denied bankruptcy relief regardless of her circumstances because the bill would count her husband's income as well, even if she did not receive any money from him.

The current language would impute to a single parent debtor, for purposes of a means test, the income of a separated spouse irrespective of whether the absentee spouse actually contributes any income to the household.

There can be no justification that single parents with children should suffer unduly in the bankruptcy process because false and inflated income of an absentee spouse is credited to debtor spouse. I support your laudable effort to correct this oversight, which if left unrepaired, would create a severe injustice to many women, children and families across the country.

Respectfully yours,
CHARLES C. SHAINBERG.

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

Mr. LEAHY. I don't think I have time left.

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

The Senator from Alabama.

Mr. SESSIONS. Mr. President, I think we can fix this.

I ask unanimous consent the votes now commence under the previous order, with the vote relative to the Boxer amendment being postponed, to occur at the end of the voting sequence, and the Leahy amendment being first in the sequence.

Mr. REID. No objection.

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

Mr. SESSIONS. I thank the Chair.

VOTE ON AMENDMENT NO. 19

The PRESIDING OFFICER. The question is on agreeing to amendment No. 19.

Mr. LEAHY. Have the yeas and nays been ordered, Mr. President?

The PRESIDING OFFICER. 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.

The result was announced—yeas 56, nays 43, as follows:

[Rollcall Vote No. 32 Leg.]

YEAS—56

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	Snowe
Cleland	Johnson	Specter
Clinton	Kennedy	Stabenow
Collins	Kerry	Stevens
Conrad	Kohl	Torricelli
Corzine	Landrieu	Wellstone
Daschle	Leahy	Wyden
Dayton	Levin	

NAYS—43

Allard	Bennett	Brownback
Allen	Bond	Bunning

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

ANSWERED ''PRESENT''—1

Fitzgerald

The amendment (No. 19) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENTS NOS. 70, 71, AND 73

The PRESIDING OFFICER. The question is on agreeing to amendment No. 70 offered by Mr. WELLSTONE of Minnesota.

The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I have 1 minute; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. WELLSTONE. Would it be helpful, I say to the Senator from Utah and the Senator from Vermont, if I did a quick summary of each one of the amendments right now, one right after the other?

Mr. LEAHY. Mr. President, there is so much noise. I know the Senator from Minnesota is addressing us. I couldn't hear him.

Mr. WELLSTONE. I asked my colleagues, if they want me to, I could do quick summaries of each one of these amendments. They can respond and then we can vote one after another, if that would expedite the process.

Mr. HATCH. That is fine with me.

The PRESIDING OFFICER. The Senator may proceed for 3 minutes.

Mr. WELLSTONE. Amendment No. 70, the first amendment, fixes the means test so that it looks at present and future income, not over the past 6 months. If someone has been laid off work just yesterday and you look at their income over the past 6 months, that is not a very accurate way of determining whether or not they can file for chapter 7 or how they can rebuild their lives. So this means test now in the bill is unfair. This is a very important correction.

Amendment No. 71 strikes the 5-year waiting period for a new chapter 13 filing. I thought colleagues wanted people to go chapter 13. You have an elderly person, a major medical bill puts them under. They file for chapter 13 under existing law. If it happens a year from now, they can file for chapter 13 again. With this bill, they can't file chapter 13 for 5 more years. This is especially discriminatory against elderly people who are struggling with medical illness.

Finally, amendment No. 73, a safe harbor for folks who file because of job losses as a result of unfair foreign trade. What I am saying is, there are many egregious loopholes that will make it hard for people to get the relief they need. At the very minimum, if you have people in your State who have lost their jobs because of unfair competition, because of unfair trade competition, at the very minimum, they ought to be exempt from these very harsh provisions. Many of us come from States where there are industrial workers. At the very minimum, we ought to be there for them.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. How much time do we have?

The PRESIDING OFFICER. The Senator has 3 minutes.

Mr. HATCH. How much time remains? Did the Senator from Minnesota use all his time?

Mr. WELLSTONE. Do I have time remaining?

The PRESIDING OFFICER. One minute 4 seconds.

Mr. WELLSTONE. Did my colleague from New Mexico need this minute and a half?

Mr. DOMENICI. I would like to use half of it, if the Senator would give it to me, and I would ask the permission of the Senate to use the time for something else.

Mr. WELLSTONE. That would be fine.

Mr. DOMENICI. I so request.

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

(The remarks of Mr. DOMENICI pertaining to the introduction of S. 543 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. HATCH. Has the time of the Senator from Minnesota expired?

The PRESIDING OFFICER. Yes.

Mr. HATCH. Mr. President, I will be short. I know these amendments are well intentioned, but they are terrible amendments.

The first amendment allows dishonest debtors to shield legitimate income from the court. The amendment creates a significant new loophole for debtors to exploit. The amendment would create an inaccurate picture of even an honest debtor's income by limiting the time period over which the income was measured. The legislation already allows the court to make adjustments to a debtor's income if necessary and, if necessary, to do justice. That amendment should be defeated.

The second amendment will allow debtors to game the bankruptcy system by repeatedly filing in chapter 13. By striking the 5-year waiting period, the amendment encourages abusive repeat filings one right after the other. I hope our colleagues will vote that down.

The third amendment would jeopardize bankruptcy reform by completely exempting debtors who lose their jobs because of trade imports from the provisions of the bill. Under the bill's means test, an unemployed worker would still be able to discharge all of his or her debts under chapter 7. This amendment, however, would exempt debtors from the alimony, child support, and other important protections provided by this bill. I worked long and hard for that, and I think almost everybody in this body wants it. I can't imagine anybody voting for that amendment, but I know it is well intentioned. We will leave it at that.

I yield back the remainder of my time.

VOTE ON AMENDMENT NO. 70

The PRESIDING OFFICER. The question is on agreeing to amendment No. 70.

Mr. HATCH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be. 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 22, nays 77, as follows:

[Rollcall Vote No. 33 Leg.]

YEAS—22

Akaka	Durbin	Murray
Boxer	Feingold	Nelson (FL)
Carnahan	Feinstein	Reed
Clinton	Inouye	Rockefeller
Corzine	Kennedy	Sarbanes
Daschle	Kerry	Wellstone
Dayton	Leahy	
Dodd	Levin	

NAYS—77

Allard	Edwards	McConnell
Allen	Ensign	Mikulski
Baucus	Enzi	Miller
Bayh	Frist	Murkowski
Bennett	Graham	Nelson (NE)
Biden	Gramm	Nickles
Bingaman	Grassley	Reid
Bond	Gregg	Roberts
Breaux	Hagel	Santorum
Brownback	Harkin	Schumer
Bunning	Hatch	Sessions
Burns	Helms	Shelby
Byrd	Hollings	Smith (NH)
Campbell	Hutchinson	Smith (OR)
Cantwell	Hutchison	Snowe
Carper	Inhofe	Specter
Chafee	Jeffords	Stabenow
Cleland	Johnson	Stevens
Cochran	Kohl	Thomas
Collins	Kyl	Thompson
Conrad	Landrieu	Thurmond
Craig	Lieberman	Torricelli
Crapo	Lincoln	Voinovich
DeWine	Lott	Warner
Domenici	Lugar	Wyden
Dorgan	McCain	

ANSWERED ''PRESENT''—1

Fitzgerald

The amendment (No. 70) was rejected.

Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 71

The PRESIDING OFFICER. The question is on agreeing to the amendment numbered 71 offered by Mr. WELLSTONE.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced—yeas 36, nays 63, as follows:

[Rollcall Vote No. 34 Leg.]

YEAS—36

Akaka	Edwards	Levin
Bayh	Feingold	Lieberman
Boxer	Graham	Lincoln
Cantwell	Harkin	Mikulski
Clinton	Hollings	Murray
Conrad	Inouye	Reed
Corzine	Jeffords	Reid
Daschle	Kennedy	Rockefeller
Dayton	Kerry	Sarbanes
Dodd	Kohl	Schumer
Dorgan	Landrieu	Wellstone
Durbin	Leahy	Wyden

NAYS—63

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

ANSWERED ''PRESENT''—1

Fitzgerald

The amendment (No. 71) was rejected.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 73, WITHDRAWN

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the next amendment be withdrawn. I will be back with this amendment, but I want to move things along for a little while.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 73) was withdrawn.

Mr. REID. 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.

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

The PRESIDING OFFICER (Mr. SMITH of Oregon). Without objection, it is so ordered.

AMENDMENT NO. 42, AS MODIFIED

Mrs. BOXER. Mr. President, I ask unanimous consent to modify my amendment No. 42. It has been cleared on all sides. I send the modification to the desk at this time.

The PRESIDING OFFICER. Is there objection to the modification?

Without objection, it is so ordered.

Mr. HATCH. Reserving the right to object, do we have a copy of that?

Mrs. BOXER. We showed it to the Senator's staff.

Mr. HATCH. I don't think we will object. It is OK. I withdraw my reservation.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

On page 147, line 3, strike ''$250'' and insert ''750''.

Mrs. BOXER. Mr. President, I thank Senator BIDEN, Senator HATCH, and Senator CLINTON, who worked so hard with me on this issue. I thank Senator PHIL GRAMM as well. What we do is simply say that the definition of a luxury item will be raised from $250 cumulative to $750. Frankly, I don't think that is high enough, but it certainly moves us in the right direction. I hate to think that people who accumulate $250 on a credit card 90 days before bankruptcy will be assumed to be a bad person and committing fraud. I think this is a step in the right direction. I appreciate it.

I also thank Senator HATCH and Senator LEAHY on the other issue that they have agreed to place into the managers' amendment: My amendment to ensure that public education expenses are protected in bankruptcy as well as private education expenses. I am very pleased that would be in the managers' amendment.

I will not ask for a rollcall vote but a voice vote on my amendment, as modified.

The PRESIDING OFFICER. Does the Senator from Utah yield back time?

Mr. HATCH. I am happy to accept this amendment and modification. I yield back whatever time we have.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 42, as modified.

The amendment (No. 42), as modified, was agreed to.

Mrs. BOXER. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 105

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, a number of Senators have been discussing the issue of, for want of a better word, the cramdown issue. I ask unanimous consent that it be in order, notwithstanding cloture, to send to the desk an amendment related to the so-called cramdown issue, and that it be considered.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY] proposes an amendment numbered 105.

Mr. LEAHY. 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 change the period for no cramdown of debt secured by an automobile from 5 years to 3 years)

On page 138, line 19, strike ''5-year'', and insert ''3-year''.

Mr. LEAHY. Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? The question is agreeing to amendment No. 105.

The amendment (No. 105) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. REID. 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. REID. 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. REID. I further ask unanimous consent that the Senator from New Jersey be recognized for up to 15 minutes.

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

Mr. TORRICELLI. Mr. President, I thank the distinguished Senator from Nevada for yielding the time.

For more than 4 years, this body has considered the need for comprehensive bankruptcy reform. I have been very proud in each of those years to work with Senator HATCH and Senator GRASSLEY in accommodating the needs of individual Senators in fashioning what I think is a fair and balanced approach.

I am certainly grateful to each of them, as well as Senator BIDEN, Senator SESSIONS, and Senator LEAHY, for what I think has been an extraordinary and a very balanced approach on incredibly complicated legislation that has accommodated so many individual Senators.

We are now approaching the end of this very long and detailed debate. I think it is worth noting, as we approach a final vote, that the legislation before the Senate has not only been considered for many years but has received extraordinarily broad and deep support in the Congress. Indeed, very similar legislation passed the House of Representatives 2 weeks ago on a bipartisan basis with more than 300 votes.

That legislation provided an important change to what is, by any reasonable assessment, a very flawed bankruptcy system. Indeed, the best evidence of the need for this reform is that in 1998 alone, in the midst of one of the greatest economic expansions in

American history, nearly 1.5 million Americans sought bankruptcy protection. This is a staggering 350-percent increase since 1980.

Indeed, while the filings may have been reduced slightly in 1999, they are still far too high. It is estimated that 70 percent of filings were made in chapter 7, allowing a debtor to obtain relief from almost all of their unsecured debts. Conversely, only 30 percent of petitions filed were under chapter 13, which requires a repayment plan. This is the heart of the problem. People with an ability to repay some debts are repaying almost no debts because current bankruptcy law allows them to choose, totally escaping responsibility.

The Department of Justice estimated that 182,000 people last year could have repaid some of these debts and didn't. The question has come to the floor of the Senate, these 182,000 people, representing some $4 billion that could have been repaid but escaped repayment, what this means in public policy. Members of the Senate appropriately have raised questions about the impact on families, on poor people, on middle-income people, and on small businesses. Each of us has an obligation to ensure people meet their responsibilities, that we are not ending the opportunities for people who want, need, and deserve a second chance in American life.

To our credit, in our system we have allowed people who often, through no fault of their own, face bankruptcy to get another chance. We have been particularly sensitive to the poor, that those who have been disadvantaged or face tragedy in their lives are given a chance to reorganize their lives, to start over, through the protection of bankruptcy. It is important that every Member of the Senate know that this bankruptcy bill was rewritten to be sensitive to these needs, and more.

It has been argued on the Senate floor that these protections would help large American companies—credit card companies, banks, large retailers—who sometimes now are left with the price of inappropriate bankruptcies. It may help their interests. But how about the small retailer or the consumer who ultimately pays for inappropriate bankruptcies? How about the small business—the contractor, the subcontractor—that is left to absorb the cost of these inappropriate bankruptcies? It happens every day. As when one person or business inappropriately files for bankruptcy, though they could pay the bills and escape their obligation, that cost is passed along, not only to the consumer who pays more for everything in every store through every product but the subcontractors, the mom-and-pop businesses that are sometimes forced out of business by abuse of the bankruptcy law.

I believe this reform and these changes protect them as well. But even so, if we did so while still victimizing the single mother or the child or child support, it wouldn't be worth doing. Indeed, I would be here opposing the bill rather than fighting for it.

That is not what we did. This bill protects the American family, the vulnerable child, the single mother. Under current bankruptcy law, a single parent and the child are seventh in line behind the Government, accountants, rent, storage, and tax claims. Under this bill, a mother and child seeking money in bankruptcy stand behind no one. They are first in line in claiming assets in any bankruptcy.

Second, the question has been brought to the Senate, How about those who are poor and seek protection in bankruptcy? Are they jeopardized if they are not single mothers or not children who, through no fault of their own, find themselves in bankruptcy?

This bill provides a waiver so any judge can use discretion to ensure any citizen who needs bankruptcy protection because of extraordinary or extenuating circumstances, who is otherwise not eligible, can and will get it.

Finally, the question has been raised on the Senate floor: Is it not true that all the fault of bankruptcy is not with the individual, it is sometimes with unscrupulous, unnecessary, even unconscionable credit solicitations? I cannot tell the Senate that in every way this bill provides all the consumer protection I think it should have. Rarely in the Senate do we get to vote on perfect legislation as envisioned by any Member. The question is, as in protection for women and children, Is it better than current law? Unquestionably, the answer is yes.

There are 3.5 billion solicitations for credit cards in America every year, 41 mailings for every man, woman, and child in the country. The issue before the Senate is, If this bill is passed, is the consumer better protected than under current law?

Under this bill, we will require the prominent disclosure of the impact of making only minimum payments every month so every consumer knows. Every consumer today does not know.

It will require the disclosure of late fees, what they will be, and when they will be imposed. That is not required under current law.

It will require disclosure of the date under which introductory or teaser rates will expire, as well as what the permanent rate will be after that time. That is not required under current law.

I do not say this will provide perfect consumer protection but it is better consumer protection.

So in all these ways we have taken a difficult situation, recognizing the reality of abuse of bankruptcy laws, and provided a more fair bill, with access to the courts, protecting the most vulnerable with meaningful consumer protection. For all those reasons I ask Members of the Senate who on several occasions previously have voted for this bill to do so again, recognizing the balance we have tried to reach in one of the most extraordinarily complex pieces of legislation in which I have ever been involved, and that we follow our 300 colleagues in the House, vote for this legislation, get it to the President in the belief that he will sign bankruptcy reform and will provide these added protections for American businesses, large and small, and for American consumers.

With all the costs being imposed on American businesses in difficult and competitive times, one of the costs that should not be imposed is unfair and unreasonable petitions for bankruptcy from people and businesses that have the ability to repay these debts.

At long last, after all these years, having spoken on this floor more times than I care to remember for bankruptcy reform, this is my last speech. The Senate is nearing its last action. It is time to vote for the bill and implement bankruptcy reform. I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I ask unanimous consent the Senator from Delaware be recognized. We are trying to work out a unanimous consent agreement here. He will yield to us at such time as that is ready to go.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, I thank Senator REID. As we come to a conclusion on this bill, I just ask a couple of rhetorical questions I want us to consider. One of those is, do we believe as a people—not just as a Senate but as a people—that those in our country who incur substantial debt, in many cases through no fault of their own, should be able to gain access to help, to the forgiveness that can be found in a bankruptcy court? I think most of us would say, yes, they ought to have that right.

If we ask the second question: If someone filing for bankruptcy has the ability to repay a portion of their debts, should we expect that of them? I think most of us in this Chamber and across the country would agree, if they have the ability to repay a portion of their debts, they ought to do that.

Those are really the easy questions. The harder question in this debate is how do you determine who has the ability to repay a portion of their debts? In some cases, we give to a bankruptcy judge the discretion to make those decisions. In the legislation before us today, that we will vote on in a short while for final passage, we go a step beyond that. It is a good step.

What we do is provide, in essence, a safe harbor for those who really do not have a whole lot of money in the first place, so they can gain access to file

under chapter 7 and not have to go through an extended process of demonstrating a need or lack of means.

The way it works is pretty simple. I will discuss it again. I want to reiterate it.

Those families whose income is below 100 percent of family median income—that is about $46,000 in Delaware for a family of four; in Alabama it might be $33,000; in Connecticut it might be $50,000—have a safe harbor. They can go right to chapter 7 and file. That is pretty much the ball game.

For those whose income is between 100 percent of median income and 150 percent of median income, they have the option to get an expedited review, and in all likelihood will go ahead and file under chapter 7 as well.

For those people who have extenuating circumstances, and they don't meet either the test of safe harbor, the test of 100 percent or 150 percent of median family income, or they have extra medical expenses, those can be taken into account. If they have extra expenses for educational needs, those can become extenuating circumstances. For people who have seen a marriage end or for people who have lost their jobs, those can be extenuating circumstances and be accounted for by a bankruptcy judge who is given discretion to decide whether or not a person can then go ahead and file under chapter 7.

There is another very important change in the bill. I would like to share a letter I received from the child support enforcement agency in my State. As in other States, Delaware has a child support enforcement agency to make sure parents meet their obligations to their children for whom they do not have custody. In my State, our child support enforcement agency endorsed this legislation.

Frankly, that has been the case in virtually every State across America. The reason they do it is simple. This legislation makes it more likely that people who have an obligation to the children for whom they don't have custody will meet their obligations. Similarly, people who have an obligation to their spouse or former spouse for alimony will meet that obligation.

Under current law, once satisfied in bankruptcy, there are secured creditors, and there is money left over. When it comes to unsecured creditors, children and former spouses are near the end of the line.

Under this bill, children, alimony payments, and child support payments move not to the end of the line under the nonsecured creditors but to the front of the line. That is an important change of which we need to be mindful.

I know not everybody agrees with what we have done. There is some disagreement as well.

We had debate on an amendment that said to those people who might try to take their assets and go to a State where there is no limit on the amount of money they can put into an estate, a home, or residence to protect it from bankruptcy—we have attempted to make a real change there—to the extent they would have done it, it would have had to have been at least 2 years before bankruptcy, and it is capped at $150,000.

I know that causes heartburn for some people. But it also goes a long way in protecting the abuses that occasionally occur when people do just that.

I thank Senator HATCH and Senator SESSIONS. I express my thanks to those on our side—especially to Senator BIDEN and Senator TORRICELLI, and others—who have worked real hard to get us to a compromise which I think is fairer to creditors and certainly fairer to those who incur debt than is the current case.

I think it significantly increases the ability for those who have the capability of paying their debts to do so while better ensuring that those who do not will not be punished.

I yield back the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LOTT. Mr. President, I believe we are ready to go with a unanimous consent agreement which will allow us to complete action on this legislation and hopefully go to conference. Let me propound the request, see if we can get it locked in so that we can go ahead and get a vote here shortly. Let me note before I do that, we may allow, for instance, 10 minutes or 15 minutes for debate. I am assuming that maybe most of it will be yielded back. Obviously, you don't have to use the full time. That is why we do put some amount of time in here so that it will be available if there is a need for it.

I ask unanimous consent that Senator SESSIONS be recognized to offer his amendment No. 59, that it be considered in order, and there be up to 10 minutes for debate, and following that debate, the amendment be agreed to and the motion to reconsider be laid upon the table. I further ask unanimous consent that Senator FEINGOLD then be recognized to call up his amendment No. 51 and there be up to 15 minutes for debate and, following the debate, a vote occur.

I further ask unanimous consent that all of the pending amendments be withdrawn, and I ask unanimous consent that following that, the Senate proceed to a managers' amendment, to be followed by third reading of the Senate bill, and the Senate proceed to the House companion bill, H.R. 333, and that the text of S. 420 be inserted, the bill be advanced to third reading, and passage occur on H.R. 333, as amended, and the Senate bill be placed on the calendar.

Mr. WELLSTONE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

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

Mr. LOTT. I yield to Senator REID for a comment at this point.

Mr. REID. I ask that we vote on the Senate bill. That is what we had agreed to do.

Mr. LOTT. Mr. President, on that, since the Chair asked for consent and it was objected to, Senator REID is suggesting that a change be made. For the information of all Senators, this is standard and routine language necessary to send a bill to conference. This action is made and agreed to 40, 50 times on average in a year of a Senate session. However, this objection indicates to me that, once again, the goal here is to try to make it difficult for us to get to conference. The Senator from Minnesota knows what the rules are and what his rights are. You recall last year we had a hard time getting the bankruptcy bill into conference. It was for a different set of reasons, but that is what we have here, too.

Again, I may have to go through some hoops to get this bill to conference. That could take some time, and I am prepared to do that, since there was objection heard. I think that with the kind of support this bill has, with Senators speaking for it on both sides of the aisle, and with 80 Senators voting to invoke cloture, surely a bill with that kind of support—and I assume there are going to be about 80 votes for it on final passage—we should find a way to get it to conference.

Since objection was heard, then I renew my request but amend it to withdraw the reference to the House companion bill so that passage would occur on the Senate bill.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, I say to my friend from Alabama principally, because of a Senator wanting to vote on the underlying Feingold amendment and time being so precious, would the Senator from Alabama agree to roll those, have his after Senator FEINGOLD debates his?

Mr. SESSIONS. We are not going to vote on my amendment.

Mr. REID. That is correct.

Mr. SESSIONS. I would like to have it accepted before, and I would not need but 1 minute to comment on it.

Mr. REID. Senator FEINGOLD is here on the floor. The other question is, he has another amendment; it was my understanding that that was not going to be offered.

Mr. FEINGOLD. I would just need a couple minutes to offer that as well.

Mr. LOTT. Mr. President, I thought we clearly had an understanding on that. That additional Feingold amendment was not included in the UC. I

urge the Senators to let us proceed with this UC because we are under severe time constraints now. Could we proceed with the UC as requested?

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, reserving the right to object, I want to be clear on the amendment No. 51, that was No. 51, as modified. The leader originally said amendment No. 51.

Mr. REID. As modified.

Mr. FEINGOLD. As modified.

Mr. LOTT. We will make that change in the request: Amendment No. 51, as modified.

Mr. FEINGOLD. Although I had intended to offer the other amendment, given the situation here, even though it is a very worthy amendment and really should be brought up on the floor, I am going to withdraw it at this time.

Mr. LOTT. I would like to express our appreciation to Senator FEINGOLD for his willingness to do that in an effort to accommodate Senators on both sides of the aisle.

Mr. REID. Mr. Leader, I will just briefly say it is my fault. I explained that to Senator HATCH, and that was the agreement we had. I apologize to my friend from Wisconsin.

Prior to passage, Senator DASCHLE wishes 5 minutes and Senator JOHN KERRY 10 minutes.

Mr. LOTT. Mr. President, I would modify the request but also would need to reserve an equal amount of time for Senator HATCH or his designee of 15 minutes in addition to that 15 minutes.

Mr. SESSIONS. Reserving the right to object, I want to be sure that the modified language Senator FEINGOLD cared about and that he wanted in there—we have agreed on that language?

Mr. FEINGOLD. Mr. President, it is my understanding that we have agreed on the modification.

Mr. SESSIONS. I believe we have, and I will not object.

Mr. REID. The Chair has not accepted the unanimous consent agreement yet; is that true?

I have been informed that the manager on this side wants 5 minutes, and the manager on the other side wants 5 minutes before final passage.

Mr. LOTT. I believe Senator HATCH would be in control, or his designee, of a total of 20 minutes and 20 minutes on the other side divided among Senators DASCHLE, LEAHY, KERRY and I hope none of them will take the full time.

The PRESIDING OFFICER. Is there objection to the leader's request, as amended?

Without objection, it is so ordered.

Mr. LOTT. I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

AMENDMENT NO. 59, AS MODIFIED

Mr. SESSIONS. Mr. President, I offer my amendment No. 59, as modified.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alabama [Mr. SESSIONS] proposes an amendment numbered 59, as modified.

The amendment is as follows:

On page 148, strike line 4 and all that follows through page 151, line 15, and insert the following:

(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 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 first becomes due under the unexpired specific term of a rental agreement or lease or under a tenancy under applicable State, or local rent control 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 has a month to month tenancy (or one of shorter term) other than under applicable State or local rent control law where timely payments are made pursuant to clause (i), if the lessor files with a court a certification that the requirements of this clause have been met and serves a copy of the certification upon 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 property, if during the 2-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 any rental payment that first 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 with the court and serves a copy of that certification upon the lessor on or before that 15th day, 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)(B)(i), except that no tenant may take advantage of such remedy more than once under this title; or

''(B) the court orders that the exception to the automatic stay shall not become effective, or provides for a later date of applicability.''.

(3) by adding at the end of the flush material added by paragraph (2), the following:

Where a debtor makes a certification under subparagraph (A), the clerk of the court shall set a hearing on a date no later than 10 days after the date of the filing of the certification of the debtor and provide written notice thereof. If the debtor can demonstrate to the satisfaction of the court that the sent payment due post-petition or 10 days prior to the petition was made prior to the filing of the debtor's certification under subparagraph (A), or that the situation giving rise to the exception in paragraph (25) does not exist or has been remedied to the court's satisfaction, then a stay under subsection (a) shall be in effect until the termination of the stay under this section. If the debtor cannot make this demonstration to the satisfaction of the court, the court shall order the stay under subsection (a) lifted forthwith. Where a debtor does not file a certification under subparagraph (A), the stay under subsection (a) shall be lifted by operation of laws and the clerk of the court shall certify a copy of the bankruptcy docket as sufficient evidence that the automatic stay of subsection (a) is lifted.

Mr. SESSIONS. Mr. President, Senator FEINGOLD and I have worked on this for some time. He cares very deeply about this. I did, too, as a matter of legal principle and what I thought was correct. I think we have language with which both of us can live. The perfect being the enemy of the good, we might as well just take the good and bring this matter to a conclusion.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, as the Senator from Alabama suggested, I don't think either one of us is entirely happy with the outcome of this. I hope we have something that takes a more reasonable approach to the landlord-tenant situation.

Mr. SESSIONS. Mr. President, I yield back my time on the amendment and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. 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 PRESIDING OFFICER. Under the previous order, the amendment No. 59, as modified, is agreed to.

The amendment (No. 59), as modified, was agreed to.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

AMENDMENT NO. 51, AS MODIFIED

Mr. FEINGOLD. Mr. President, I send amendment No. 51, as modified, to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows.

The Senator from Wisconsin [Mr. FEINGOLD], for himself, Mr. THOMPSON and Mr. WELLSTONE, proposes an amendment numbered 51, as modified.

The amendment is as follows:

(Purpose: To strike section 1310, relating to barring certain foreign judgments)

On page 439, strike line 19 and all that follows through page 440, line 12.

Mr. FEINGOLD. Mr. President, I am happy to be joined in offering this bipartisan amendment by the Senator from Tennessee, Mr. THOMPSON, and the Senator from Minnesota, Mr. WELLSTONE. I ask unanimous consent they be listed as original cosponsors.

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

Mr. FEINGOLD. Mr. President, this amendment would delete section 1310 from the bill. Section 1310 is the epitome of a special interest fix—its language purports to be general, it identifies no particular person, but it is targeted to affect only a tiny number of people who were involved in cases arising out of transactions with Lloyd's of London, a large multinational insurance company.

Those people who invested with Lloyd's are called ''names.'' This provision, which bars the enforcement of certain foreign judgments against some of the ''names'' has nothing whatsoever to do with bankruptcy law. Very few people have heard of it but it has some history: It has been quietly promoted for at least a couple of years now, but it has never been the subject of a full hearing in the Judiciary committee. It found its way into the conference report that served as a vehicle for bankruptcy legislation last year, although it had never been debated or discussed in committee or on the floor. Let me emphasize that point: this special provision was nowhere to be found in the Senate bankruptcy bill in the last Congress. Nor was it in the House bankruptcy bill last year. Yet somehow, late last year, it was quietly slipped into the conference vehicle that was negotiated in secret. That vehicle was the empty shell of a bill unrelated to bankruptcy, into which was inserted the version of the bankruptcy bill favored by the majority leadership, along with the special-interest provision that my amendment seeks to strike. Somebody in Congress arranged that, but nobody in Congress ever voted on it. In the end, last year's conference report was vetoed.

As a result Section 1310 has been treated as part of the bill we started with this year, and it has reappeared in the version of the bill before us: the same provision, designed to assist only about 250 investors in Lloyds of London, the Names, who lost money on asbestos-related claims in the 1980s. These individuals had judgments entered against them in British courts, and American courts repeatedly have declined to throw out those judgments. In fact, eight circuit courts have ruled that these investors' disputes with Lloyds should be settled in British courts. Now, to be fair, the Names have attorneys who argue that the British courts won't treat their clients fairly and that their clients have suffered as a result. So they have been seeking special treatment from the Congress, and if the final conference vehicle had not been vetoed last year they would have succeeded.

Mr. President, this provision has been opposed by the State Department, under President Bill Clinton and George W. Bush. The State Department is worried about the impact of a law that gives the back of the hand to respected foreign courts, courts that we will rightly expect to respect and enforce the judgments of American courts. Here is what a State Department spokesman had to say about this issue in a Reuters article, dated March 13:

We have reservations about section 1301. There are commercial disputes involving U.S. and British companies every day. It is inevitable that, in some of those disputes, U.S. parties will lose.

But this cannot be the basis for the U.S. Congress to overturn decisions of both British and U.S. courts. Such action would be directly at odds with our own international economic policy, which promotes a rules-based system premised on the rule of law to protect U.S. investors abroad.

Just this morning Mr. President, I received a letter in support of our amendment, signed by Secretary of State Colin Powell and Secretary of the Treasury Paul O'Neill.

I ask unanimous consent that the text of the letter be printed in the RECORD.

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

THE SECRETARY OF STATE,
Washington, March 15, 2001.

Hon. RUSSELL D. FEINGOLD,
U.S. Senate.

DEAR SENATOR FEINGOLD: We write in support of the amendment that you and Senator Thompson have introduced to S. 420 (The Bankruptcy Reform Act). The Administration supports the overall bankruptcy reforms contained in S. 420. However, the Administration opposes Section 1310, which would bar enforcement in the United States of any foreign judgment between 1975 and 1993 if a U.S. court finds that the judgment was derived from fraud.

Section 1310 is intended to provide relief for some American investors who have a private commercial dispute with the Lloyd's of London (UK) insurance market that, according to the contracts they signed with Lloyd's, must be heard in British courts. U.S. courts have dismissed all attempts by these investors to sue here, requiring that they resolve their dispute in the United Kingdom as provided by their contractors. U.S. courts have upheld the enforcement of the U.K. court judgments. The investors now want legislation to overturn these decisions.

By directing the outcome in these court cases, Section 1310 has the potential to undercut the rule of law as it applies across international borders today, with serious consequences for U.S. commercial and other interests. Commercial disputes involving American and British companies arise every day, and it is inevitable that American parties sometimes lose. However, that cannot be the basis for federal legislation to overturn the decisions of both British and U.S. courts. Such action would be directly at odds with our goals of promoting a rules-based system to protect U.S. investors abroad.

The American investors have had the opportunity to argue the merits of their position before U.S. courts, as well as in the United Kingdom, but have not prevailed. For example, under U.S. law, our courts can refuse to enforce foreign court judgments if they find that the foreign court failed to follow fundamental standards of fairness and due process, or if the judgments violated our public policy. State and federal courts hearing these cases have not found this threshold to be met.

In these circumstances, intervening in these private commercial matters through legislation could open the door to reciprocal treatment in other countries. The result would be to undercut the orderliness and predictability that are essential to international business transactions and crucial to our Nation's economic well-being. It could also weaken our ability to negotiate new international rules on enforcement of civil judgments and to promote the enforcement of child custody cases.

We respectfully urge that the Senate adopt the amendment to remove Section 1310 from the Bankruptcy Reform Act.

Sincerely,

PAUL H. O'NEILL,
Secretary of the Treasury.
COLIN L. POWELL,
Secretary of State.

Mr. FEINGOLD. The Organization for International Investment, the National Association of Insurance Commissioners, and the Council of Insurance Agents and Brokers oppose the provision because of their concern over its potential impact on the international insurance market.

Now I realize there are arguments on the other side. The Names argue that they were defrauded by Lloyds, misled into investing when Lloyds knew that there were going to be many claims based on asbestos litigation. And despite their consistent losses in courts on both sides of the Atlantic, they might be right, and maybe the courts have been wrong not to let them make their claims of fraud in the way that they desired.

They may believe they were right to try to avoid the judgments against them. But Mr. President, I don't think we in the Senate are in a better position than the courts to assess those arguments at this point. I am not yet convinced that this is a matter that should be addressed by legislation, certainly not by bankruptcy legislation, and very certainly not without a hearing. At the very least, we need to have a full hearing and air these issues in a public forum, that will lend itself to a thoughtful and deliberate consideration of the issues. The kind of insiders' deal that led to this provision being added for a small group of people should be unacceptable to anyone who cares about maintaining the people's confidence in the integrity of the legislative process.

I hope my colleagues will join me in this bipartisan effort to strike this provision for a few simple reasons: It is a special deal for a very small group of people—they represent about one one-millionth of our population, but they somehow had the clout to get it inserted into the bill; it will undermine

the ability of American courts to see their judgments enforced abroad; and it has not been fully considered by the Judiciary Committee or the full Senate—there have been no hearings, no debate and until the last few days, no knowledge by most members that this provision was even a part of the bill.

We should strike Section 1310 and then we should ensure that it does not sneak back into the bill at a later date. If we adopt this amendment, I will keep an open mind on the issue of the remaining Lloyds names if it comes before the committee in the future, and I won't oppose a request to the chairman of the Judiciary Committee to schedule a hearing to examine the issues in full if the Names wish to pursue a legislative remedy through the normal channels. But until then, this special interest provision has no place in the bankruptcy bill or any other bill.

Mrs. LANDRIEU. Mr. President, I have received a number of letters on this subject. I ask unanimous consent that they be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NEW YORK, NY.

Re 8–420 Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, Sec. 1310. Enforcement of Certain Foreign Judgments Barred.

DEAR SENATOR LANDRIEU: I write to enlist your support in protecting hundreds of innocent victims from what many consider to be the biggest, most sophisticated, deliberate securities fraud in financial history that has been perpetrated by Lloyd's of London.

In the mid-seventies, when Lloyd's realized the extent of their exposure from underwriting insurance policies exposed to huge losses from asbestosis and pollution they set out to recruit Americans and other foreign investors to fund their losses. They did this with what we now know were fallacious financial statements for unregistered securities. More than three thousand Americans, who are called Names, were recruited. They were induced on the basis of Lloyd's three hundred year history to undertake what was purported to be a safe, conservative investment. My involvement with Lloyd's has resulted, so far, in the loss of my family home, over three hundred thousand dollars and my good health. Stress from Lloyd's produced heart attack. Am 77.

Over the years, many Names have become old and the draining of their resources has brought much hardship to those employed and to those no longer employed, especially those who were counting on some income from their Lloyd's investment to help sustain them in retirement. The constant stress, effort and anxiety endured in battling for our constitutional right to a fair trail, which Lloyd's has fought with over eighty million dollars paid to lawyers, lobbyists and campaign contributions to legislators and insurance commissioners, has taken a toll on all of us. Names have already sacrificed millions of dollars, stock and real estate to satisfy Lloyd's claims, but they are not through with having us cover their losses and that is why we need your help in passing Sec. 1310. I implore you to resist efforts by those conspiring to deny Names of their right to due process. The deceit and arrogance of Lloyd's can no longer be tolerated.

For the full, sordid story of fraud at Lloyd's I refer you to www.truthaboutlloyds, the special twenty-four page report in the February 21, 2000 European Edition of Time magazine and current articles in the Los Angeles Times on the former California Insurance Commissioner's acceptance of gifts and four hundred thousand dollars from Lloyd's and their lawyers, LeBoeuf, Lamb, Greene & MacRae, for among other things promoting opposition in the insurance and legal communities to the just claims and interests of the Names.

Thank you for your kind attention and, I hope, your vote in favor of S. 420, Sec. 1310.

Yours truly,

EDITH ANTHOINE.

SAN ANTONIO TX,
March 13, 2001.

Hon. MARY LANDRIEU,
Hart Office Building,
Washington, DC.

DEAR SENATOR LANDRIEU: I am an 80-year-old grandmother who has worked and saved all my life and who attempts to live honorably, only to be cheated and lied to by fancy pants, smooth talking Englishmen representing Lloyd's of London. For the past decade I have been traumatized by their threats. Much of my life savings have been depleted by their fraudulent representations. They have used every legal trick known, plus many they invented, to keep out of U.S. courts because they, along with those who have aided and abetted them, know that their lawlessness and misdeeds would be exposed.

As I understand the Bankruptcy Bill, Section 1310 prohibits the granting of a foreign judgment without giving the defrauded defendant an opportunity to present the merits of his/her case in a U.S. court. It seems to me that any fair-minded person would savor the justice implicit in this Amendment. Foreign interlopers who commit fraud in this country should not use the technicalities of foreign judgments to harvest their fraudulent gains. This will provide Constitutional due process to me and other Lloyd's victims. It will also provide American due process to future victims of fraud by foreigners.

I urge, and count on you to enthusiastically support this Amendment. Thank you for your help on this vital matter.

Sincerely yours,

JOAN B. WILSON.

MARCH 13, 2001.

DEAR SENATOR LANDRIEU, I am a senior citizen and am among those who have been hurt by Lloyds.

Right now, of course, I need what funds I do have to live on as I cannot work anymore. We (my now deceased husband & myself) had to sell an income producing apartment house in downtown Reno in order to pay what they requested of our letter of credit. In addition they wanted even more than that. We could not pay it. So, we were not ''wealthy Americans'' who could afford a big loss, or who refused to pay—we just didn't have it.

With the constant threat of Lloyds grabbing everything—life as you may understand—was not easy. However, compared to those who went bankrupt or homeless—as dreadful as our situation was, we were better off than those who went bankrupt or lost their homes. Lloyds is without a conscience.

Sincerely,

BEVERLY HUDSON.

NEW ORLEANS, LA,
March 13, 2001.

Re Section 1310 of the Bankruptcy Bill (S–420).

Hon. MARY LANDRIEU,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR LANDRIEU: I am a 72-year-old widow whose husband was an investor in Lloyd's of London along with my son and daughter. When my husband learned of Lloyd's fraud and the devastating affect it could have upon our two children he spent tireless hours attempting to right this very very wrong. It seemed at every turn, Lloyd's was far too powerful and far too well heeled, for my husband to fight this massive institution. As the stress continued to mount against him, in November of 1993 he died of a heart attack.

What Lloyd's of London did to my husband and my family, I will never forgive. It is my understanding that you are making the effort to stand up for the rights of Lloyd's investors by urging the passage of Section 1310 in the Bankruptcy Bill. It is my understanding that Section 1310 is designed to provide a level playing field, something that neither my husband nor children have had in connection with their investment at Lloyd's. You are absolutely doing the right thing.

I would ask that you let other colleagues in the Senate know that if Section 1310 is not passed it will likely wipe out all that my husband and two children have worked for. I ask for my children, that you ask your colleagues to pass Section 1310 and give all of Lloyd's investors a fighting chance to put Lloyd's fraud behind them forever.

I would also like to thank you very much on behalf of my family for taking the time to correct this wrong and not having asked for anything in return.

Thank you very much,

RUTH G. TUFTS.

SAN ANTONIO, TX,
March 13, 2001.

Senator MARY LANDRIEU of Louisiana,
U.S. Senate.

I am writing to you about S. 420 Bankruptcy Bill, Sec. 1310. I am desperately in need of your support of this legislation. It will allow me to raise a defense of fraud prior to any enforcement of Lloyd's of London judgment against me issued by a thoroughly biased English Court. Why is Lloyd's so fearful of facing the U.S. Justice system if they are not guilty?

Lloyd's of London purposely withheld and actively concealed information from U.S. citizens regarding existing asbestos claims. I foolishly believed their prior reputation and invested the inheritance that my father worked so hard for—only to lose it all—and much more. I was repeatedly falsely reassured in written communications that ''things would certainly improve next year''. As you no doubt know, the U.S. Justice Department and Postal Service is currently investigating Lloyd's. How can they have any credibility at all? I resigned in 1993 and have been fighting them at great financial and emotional expense ever since.

I am not a wealthy person. I am the same Shirley Cook, third grade teacher, mentioned in the Time Magazine article of February 28, 2000. I am now retired, age 65 and receive slightly over $20,000.00 per year in retirement. I live in a quite average house with a leaky roof and currently drive a seven year automobile.

Lloyd's has offered me a ''settlement'' of its fraudulent claims against me, but offer no legitimate proof of the validity of their demands. Even worse, there is no finality. If they want more money anytime in the future, all they have to do is bill me. If I move, I must notify them of my whereabouts! In fact, by payment of the settlement offer, I absolve them of any past, present or future claim of fraud and give up all rights to recourse of any kind. This is certainly not the American way. It is a travesty, and to me, personally, a tragedy.

I implore you to vigorously support and vote for justice for the Americans, your constituents, who were ill treated by a foreign court favoring a dishonest foreign company.

Most respectfully,

SHIRLEY M. COOK.

SAN ANTONIO, TX,
March 13, 2001.

Hon. MARY LANDRIEU,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR LANDRIEU: As an 80 year old grandmother, who has been thoroughly skinned by Lloyd's of London, I am again dismayed by their arrogance and audacity in coming to Washington to oppose legislation aimed at assuring Americans Constitutional due process in United States courts.

It is obvious to me that they are afraid that a trial on the merits would expose their fraud and deviousness. The United States Department of Justice, the Postal Service and the California Attorney General all seem to smell a rat in their behavior. Please don't let them pull the wool over the eyes of the Senate. I plead with you to support Section 1310 of the Bankruptcy Bill.

Trusting your wisdom and support, I remain

Respectfully and sincerely yours,

JOAN B. WILSON.

NEW YORK, NY,
March 13, 2001.

Senator MARY LANDRIEU,
U.S. Senate,
Washington, DC.

DEAR SENATOR LANDRIEU: I write to you in explanation of why it seems so terribly important that you vote for the bill which includes section 1301: it's a request for your understanding of the difficulty of being 79 years old and under acute stress because I wait to see what terrible move Lloyd's will make next. I'm not the suicide type and I intend to fight to the last ditch, but they have made light of the many years I have worked and lived carefully, of the fact that I trusted them on their assurance that Names would be first in their consideration, that they would certainly honor my request for modest and safe participation in their investments.

I had a sum of money because I lost my husband in an airplane accident from which I miraculously was rescued. The court awarded me some money. That together with my earnings which were at the time $39,000 annually, gave me $400,000, which was enough for them to accept me. Obviously it had to be a modest participation. I told them my goals were to make a bit of supplementary money annually. They appeared to understand. But what they did was something else again. They put me on syndicates which they knew to be already treacherous—with upcoming liabilities of billions of dollars. What kind of a character does that? Do they deserve the immunity that their courts have granted them? The inside traders all took themselves off the syndicates. The man who handled my affairs retired (in his 50s) and I should have suspected.

I'm still working. I really dare not stop. If we can get 1301 through, we will not be ducking our debts. We will simply be getting the time and opportunity to bring our fraud charges to the American court system where we as citizens should be able to plead our case and have it aired once and for all. Please help to give us that chance.

Thank you for your attention to my letter.

Sincerely yours,

BARBARA LYONS.

NEW ORLEANS, LA,
March 13, 2001.

Re Section 1310 of the Bankruptcy Bill (S–420).

Hon. MARY LANDRIEU,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR LANDRIEU: I respectfully urge your continued support of Section 1310 and that you inform your Senate colleagues of the importance of this provision, which will do no more than give me and hundreds of other defrauded U.S. citizens the ability to defend ourselves against the fraud perpetrated by Lloyd's of London.

Already as a result of Lloyd's fraud, I have had several hundred thousand dollars confiscated by them; my wife and I have partitioned our community to protect what is left of our estate, and I have spent countless hours and spent thousands of dollars in attorneys fees preparing for bankruptcy and otherwise fighting the terrible Lloyd's nemace.

If Section 1310 is not adopted, it is highly likely that Lloyd's will successfully (and wrongly) reap the rewards of their fraud against those hundreds of U.S. citizens and, personally, require me to file for bankruptcy.

As always, your help in protecting me, the citizens of Louisiana, and in this case hundreds of U.S. citizens across the country, is most appreciated.

Sincerely,

THOMAS O. LIND.

Mr. THOMPSON. Mr. President, I agree with my colleague's assessment. This is simply an effort to abrogate a series of contracts. This was a contract dispute involving thousands of people; 97 percent of those people settled those lawsuits. There were some who didn't settle them. They went to court in England and raised a fraud claim and lost. They went to court in this country and raised the fraud claim and lost.

In fact, there were two sets of lawsuits in England and two sets in America, and in every case the ultimate disposition at the appellate court level—five appellate courts in the U.S. ruled on the venue question, for example. In each and every case, they had their day in court and they lost. Some of them were on the fraud issue and some on other issues.

The bottom line is that it is not our job in Congress to determine factual issues in a lawsuit. So after having lost two sets of lawsuits in each country, they have here a provision in the bankruptcy bill that would in effect open the lawsuit again. It says, ''notwithstanding any other provision of law or contract . . ..'' So it is a clear abrogation of contracts and opens the situation again for courts in this country.

In addition to that, I am afraid it is clearly unconstitutional. Specifically, it violates article III in that it represents a congressional attempt to dictate a result with respect to the parties in a final determination by an article III court. As Judge Posner, of the Sixth Circuit, said, this thing has been litigated in England. The English system comports to our system. It is not exactly as if there was a due process of law situation. Most of us understand from where our court system comes. It was litigated. By this law, we are attempting to open up and overturn a final determination by an American court. If we get in the business in the Congress of overturning lawsuits with results we don't like, we will have clearly gone down a slippery slope and will be going contrary to the rule of law.

Secretary Powell and Secretary O'Neill have sent us a letter, and it contains this provision:

> By directing the outcome in these court cases, Section 1310 has the potential to undercut the rule of law as it applies across international borders today, with serious consequences for U.S. commercial and other interests.

I think they are right. Our sympathy is with the 300 or so Americans who had the opportunity to litigate this and lost, just as our sympathy is with the several thousand people who lost money and settled the lawsuits.

But the rule of law must prevail, and we must be concerned about our own commercial interests if, in fact, we do this when we have a British citizen over here in our court that makes a similar determination.

Mr. FEINGOLD. Mr. President, how much time do I have?

The PRESIDING OFFICER. Two minutes.

Mr. FEINGOLD. I ask the Senator from Tennessee if he will yield so I can offer a minute to the Senator from Texas and a minute to the Senator from Delaware.

Mr. THOMPSON. Yes.

Mr. FEINGOLD. I thank the Senator from Tennessee.

I yield a minute to the Senator from Texas.

Mr. GRAMM. Mr. President, all over the world tonight, legislative bodies are meeting to try to protect their citizens from living up to obligations that they have with American economic interests. All over the world tonight, legislative bodies that don't live up to the standards we have set for this, the greatest deliberative body in history, are trying to change domestic laws to make it possible for people to violate international standards of business.

There is no one in this body I care more about than the distinguished Senator from Alabama, and I have no doubt that there may very well have been wrongs committed in terms of selling people part of this liability. But I urge my colleagues tonight to look at the big issue of the viability of world commerce, and the enforceability of contracts, and to live up to the standards of the greatest deliberative body in history by adopting this amendment.

Mr. FEINGOLD. I thank the Senator.

I yield the remainder of my time to Senator BIDEN.

Mr. BIDEN. Mr. President, I associate myself with the remarks of the Senator from Tennessee, as well as the Senator from Texas. International relations, this would be a very serious mistake for us to make. Beyond commerce, this will do damage, in my view,

to our relations also with Great Britain. This will make it difficult for us to make the case that when we want foreign courts to make concessions based upon our needs, for them to be willing to do so, I think it is a mistake.

I understand and admire the Senator from Alabama for his desire to protect the interests of a citizen or citizens of his State, or others, but I think this is a mistake.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama has 7½ minutes.

Mr. SESSIONS. Mr. President, I will refer to a letter from Congressman HENRY HYDE, chairman of the House of Representatives Committee on International Relations and former chairman of the House Judiciary Committee, a man of great knowledge and experience. He says:

This provision does not impact State regulation of insurance and it does not violate any treaty obligations of this country. Consistent with the Hague Convention, recognition of a foreign award may be refused if the court in the country where enforcement is sought finds that ''recognition or enforcement of the award would be contrary to the public policy of that country.'' It certainly is contrary to the public policy of this country [Chairman Hyde continues] for an individual to be defrauded and then denied the right to assert fraud as a defense.

I ask unanimous consent to have printed in the RECORD letters from the former Chief Justice of the Supreme Court of Alabama, and a former Democratic Senator from this body, Howell Heflin, who said:

As a former judge, I am appalled at this entire situation.

I also ask unanimous consent to have a letter from Senator ROBERT KERREY of Nebraska and MARY LANDRIEU of Louisiana in reference to this matter, as well as a letter from Laura Unger, acting chairman of the Securities and Exchange Commission, printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, March 1, 2001.

Hon. MICHAEL G. OXLEY,
Chairman, Committee on Financial Services, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN OXLEY: Thank you for your letter dated February 28, 2001 regarding Lloyd's of London. As you stated in your letter, the SEC has filed a number of briefs amicus curiae with United States Courts of Appeals stating that forum selection provisions entered into between Lloyd's and plaintiffs in the cases violated the anti-waiver provisions of the United States federal securities laws. The SEC stated that these provisions acted to prohibit courts from giving effect to contractual provisions precluding purchasers from obtaining relief under the federal securities laws.

As we stated in our briefs, Congress has made a legislative determination of the rights and obligations necessary to protect investors in the United States and directed that those provisions cannot be waived. As a result, we continue to believe that the antiwaiver provisions of the federal securities laws render void any agreement to waive compliance with those laws. The SEC, however, submitted its briefs solely to address the legal issue of the applicability of the anti-waiver provisions and took no position on any other issue.

I hope this information is helpful. If you have any further questions, please do not hesitate to contact me.

Sincerely,

LAURA S. UNGER,
Acting Chairman.

U.S. SENATE,
Washington, DC, May 16, 2000.

Hon. ORRIN HATCH,
Chairman, Committee on the Judiciary, Washington, DC.

DEAR MR. CHAIRMAN: We are writing you regarding an issue of concern to a number of us on both sides of the aisle. As we understand it, you are aware that English courts have entered summary judgments against hundreds of Americans who contend that they were defrauded in the United States by Lloyd's of London. These Americans were deprived of the right in these actions of raising a fraud defense to Lloyd's claims. As a result, they have asked Congress to give them the right to raise their fraud claims in any collection action brought by Lloyd's in the United States. They are merely asking to have their day in court.

Enclosed is a copy of the proposed language which would provide these Americans with the right to their day in court. As you will see, it is limited in scope and the burden of proof will be upon those seeking to raise a fraud defense to prove such fraud. The amendment would in no way mandate how a court might ultimately decide whether fraud occurred. It simply gives these Americans their day in court.

We hope that it could be included in the pending bankruptcy legislation when it emerges from conference. We would appreciate your consideration in this regard.

Sincerely,

MARY L. LANDRIEU,
U.S. Senator.

HOWELL HEFLIN,
U.S. SENATOR (RETIRED),
Tuscumbia, AL, March 2, 2001.

Hon. RUSSELL D. FEINGOLD,
U.S. Senator, Hart Senate Office Building, Washington, DC.

DEAR RUSS: I am writing you about a matter which will be on the Senate floor next week. I would prefer to visit directly with you, but unfortunately I am unable to make the trip at this time.

Our State Democratic Party chairman here in Alabama, Jack Miller, and his law firm are old friends and supporters who have been involved with me from the time I first ran for Chief Justice of the Alabama Supreme Court and throughout my political career. They tell me that over the last three years, they have been working with a group of Americans who invested in Lloyd's of London and they have been trying to help them secure ''their day in court.'' This group invested in the 1980s before it was generally known that Lloyd's was facing horrendous asbestos losses. When they invested, they were not told of these losses. Obviously, had they been aware of the losses, they would not have made the investments.

Despite the strong support of the SEC, including the SEC's filing of amicus briefs with various courts, these Americans have not been allowed to assert their claims of fraud by Lloyd's. Lloyd's has used an agreement executed by agents appointed by Lloyd's to preclude these Americans from raising fraud as a defense. Lloyd's did this by passing a by-law which authorized LLoyd's to appoint an agent for the investors. The agent then signed away the investors' right to assert fraud as a defense or to question how Lloyd's had calculated what they allegedly owed. As a result of the agent's actions, the investors were just given a sheet of paper with the amounts owed and no backup information and they were not permitted to question how the numbers were calculated. Some of the investors instructed their agent not to sign away their rights and those agents which followed the investors' instructions were replaced by Lloyd's with an agent which would do as LLoyd's instructed in direct contravention of the instructions from the principal.

As a former judge, I am appalled at this entire situation. As I understand it, the provision in the pending bankruptcy bill, Section 1310, simply will give these Americans the right to have their case heard. The burden will be on them to prove by clear and convicing evidence, the highest civil standard, that they were defrauded.

There are no treaty implications. The Hague Convention only applies to arbitral awards, not judgements. Further, Article V of the Convention permits host countries to refuse enforcement of judgements which contravene the public policy of the host country. It would be difficult to find a situation which is more clearly against our country's public policy.

I hear that you have been concerned over the increasing use of arbitration provisions in the United States. Likewise, I am seriously concerned. What LLoyd's is attempting to do takes such provisions to a new level. The consumer is not only expected to sign away his constitutional rights and securities law protections, it can be done for him by another who is appointed his agent by the other party.

Finally, I gather that you have some questions regarding how this provision became part of the bankruptcy bill. As I understand it, my friends here in Alabama have been working for years to find a legislative vehicle to help these Americans secure a day in court. They have had bipartisan support, including former Senator Bob Kerrey and Senator Mary Landrieu. During their efforts over the last several years, the firm contacted Senator Jeff Sessions since the firm and Senator Sessions are both from Mobile. As a former U.S. Attorney, Senator Sessions agreed that these people had not been accorded their rights and he agreed to support their efforts.

I know that my friends here in Alabama would like the opportunity to meet with you and to respond to any questions you might have concenring this matter. If your scheduled permits this to occur, please let me know.

Thank you for considering what I have to say. I hope that it won't be too long before we can visit in person again.

Sincerely yours,

HOWELL HEFLIN.

HOUSE OF REPRESENTATIVES, COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC, March 5, 2001.

Hon. JESSE HELMS,
Chairman, Senate Committee on Foreign Relations, Washington, DC.

DEAR CHAIRMAN HELMS: I am strongly supportive of Section 1310 of S. 420, the Bankruptcy Reform Act of 2001, and I seek your support of this provision as well. It is important that this provision remain in the Senate bill and not be stricken.

This provision is necessary to allow American investors who believe they may have been defrauded by Lloyd's of London an opportunity to be heard in American courts.

Section 1310 is narrowly drafted to address the unique circumstances facing those Americans who were recruited in the United States to invest in Lloyd's before 1994 without full disclosure that they would be saddled with asbestos liabilities. The English court which rendered summary judgments in favor of Lloyd's and against the American investors denied those investors the right to assert fraud as an affirmative defense. Section 1310 provides a measured remedy in these cases, where, by clear and convincing evidence, the burden of proof is on the American investor to assert and prove fraud. As you are probably aware, a number of Members and Senators on both sides of the aisle, as well as the Securities and Exchange Commission have endeavored to give the Americans who believe they have been defrauded by Lloyd's legal forum in American courts with respect to the representations that were made to them in this country by Lloyd's and its agents. (See attached copy of the Commission's letter to Chairman Oxley)

The provision does not impact state regulation of insurance and it does not violate any treaty obligations of this country. Consistent with the Hague Convention, recognition of a foreign award may be refused if the court in the country where enforcement is sought finds that ''recognition or enforcement of the award would be contrary to the public of that country.'' It is certainly contrary to the public policy of this country for an individual to be defrauded and then denied the right to assert fraud as a defense.

If you have any questions concerning this provision or my support of it, I would be happy to discuss this matter with you.

Sincerely,

HENRY HYDE.

Mr. SESSIONS. This is a front page copy of Time magazine:

LLOYD'S OF LONDON, 1688—?

Its watchword is utmost good faith. So why does Lloyd's stand accused of the greatest swindle ever?

I was a Federal prosecutor for 12 years in Alabama. I was also in litigation. I am personally aware that there is fraud in big insurance companies. I had the opportunity and the responsibility to prosecute perhaps the largest insurance fraud case in the history of the United States that had even been investigated by committees here in the Senate. In that case, people were defrauded out of over $50 million-plus. The guy who did that, Alan Teal, was convicted. It just so happened he had previously, years before, been a member of Lloyd's. That has nothing to do with this, but I relay it here to let you know that I understand insurance fraud and I have been involved in prosecuted the big cases.

In addition, I was involved in asbestos litigation in the late 1970s. I know in the late 1970s there were thousands of asbestos cases being filed, tens of thousands were being filed, and more were on the way. Everyone knew it. Plaintiffs were beginning to win tremendous verdicts. Everybody who knew anything about the litigation wondered if there would ever be enough money to pay those verdicts.

During this same period of time, the companies that had the guaranteeing of the insurance, the reinsurance, was Lloyd's of London. What did they do? They were sending representatives to the United States, asking those people to invest hundreds of thousands of dollars of their own money into these accounts, and they told them: People have done well investing in Lloyd's. We think you will do well. But you are liable for everything that can come up. It is in the fine print. But they invested, thinking Lloyd's had a good reputation. The company began in 1688 with Members of Parliament, with lords and earls as investors in this.

So they invested, little knowing that the bullet was already in the heart, that this company faced absolute financial ruin as a result of the most unprecedented series of lawsuits in American history, asbestos lawsuits.

Now, when this case went to trial, they said they had a trial over there. They passed a securities law in England similar to our securities law, except they exempted one named entity—Lloyd's of London. Many Members of Parliament who passed that law were investors in Lloyd's. I don't know if they recused themselves or not.

These are some of the facts at which we are looking. The heart of the claim is this, that these American investors were not allowed to put on evidence in the British court that omission could lead to liability. In other words, they were not allowed to show under the law under which they were forced to operate, that Lloyd's had any duty to tell them when they were investing in these syndicates, that they were doomed to lose, and there would be money they would have to pay—really, tens of billions of dollars in asbestos claims, enough to ruin all of Lloyd's.

They sold these investments to American citizens, who did not fully know what they were facing. As one said, these were massive, unquantifiable losses that were heading Lloyd's way like a tidal wave, visible only to the few professional insiders who were tracking asbestos claims.

That was a fraud, I think, under any definition of the word.

The British judge, who excluded all evidence except the written documents that were submitted to the investors as the only evidence that went in on the question of fraud, those documents were submitted and they said you could be liable for any claims that may come against Lloyd's, but they did not say this tidal wave of claims was coming.

Up to 7 or more people all over the world, possibly up to 12, have committed suicide as a result of this. It has ruined the lives of many, many citizens.

The judge who tried the case and who was bound by the law so he didn't let this evidence in, said, ''The catalog of failings and incompetence in the 1980s by underwriters, managing agents, members and agents and others is staggering and has brought disgrace on one of the city's great markets.'' He goes on to skewer Lloyd's for their behavior, yet we can't get a remedy.

This says you don't get money as a result, you only go to court and show in a court of law you may have been defrauded.

Mr. President, let me take just a moment to more fully explain the issues involved in this section of S. 420 that we are debating here today.

The Lloyd's of London provision would allow American investors in Lloyd's to defend against debt collection actions by Lloyd's in American courts by attempting to show that Lloyd's defrauded them when it recruited them as investors in the United States. The investors claim that Lloyd's of London recruited them as investors with unlimited liability and without disclosing to them massive impending liabilities for asbestos and pollution losses.

This provision was added in the quasi-conference on the Bankruptcy Bill last year. Republicans and Democrats alike agreed to it.

The provision was in the Bankruptcy bill as introduced and passed by the Judiciary Committee of the House and by the whole House this year. It was in the Bankruptcy Bill as introduced and passed by the Senate Judiciary Committee this year where Senator FEINGOLD mentioned his objections to it.

There are legitimate arguments on both sides of this issue. I have listened to investors, and I have listened to Lloyd's of London. Further, my colleague from Wisconsin has spoken against this provision, and I respect his view.

Lloyd's asserts that an English court has found that Lloyd's, as a corporate entity, was not liable for fraud to several American investors that participated in that trial; that international law and comity among nations demands that we respect the judgment of the English courts;

That the agreements signed by the investors had forum-selection and choice-of-law clauses which provided that any dispute would be litigated in English courts under English law; and

That American courts have upheld the forum-selection and choice-of-law clauses.

On the other hand, the investors contend that Parliament precluded suits against Lloyd's for negligence and breach of contract in 1982 and for securities fraud in 1986; that after the investment contract was signed, Lloyd's changed its by-laws to require investors to pay their losses before asserting fraud as a defense even though many investors can't afford to pay their losses in full!;

That the English court failed to address allegations of fraud that took place in America;

That in 1995 a Colorado court, at the behest of state attorneys working under Gale Norton, issued a preliminary injunction against Lloyd's stating its statements to American investors were ''materially misleading and false because, as a result of underwriting and reinsurance of asbestos-related liabilities in various syndicates, which

liabilities had not been disclosed to [investors], those [investors] . . . are exposed to indefinite liability both in terms of amount and duration . . . .'';

That in 1996, Lloyd's settled the fraud claims of numerous State securities regulators by agreeing to reduce its claims against settling investors by $62 million; and

That in the February 26th edition of the Wall Street Journal it was reported that Lloyd's is currently under criminal investigation relating to defrauding its American investors.

In my view, this comes down to a very simple question:

Is this situation egregious enough to warrant an exception to the general rule of comity on judgments?

I believe that it is because of my personal experience as both Attorney General my State and a federal prosecutor.

I prosecuted criminals who defrauded policy-holders and investors.

In 1979, I became aware that insurance companies knew of large asbestos losses discovered in litigation in Pascagoula, Mississippi, and that these losses would be catastrophic to the insurance companies.

I know what it means to a family to be defrauded by an insurance company. It is wrong.

I believe in the sanctity of contract, but there is no contract if the investors were fraudulently induced to enter the investment agreement.

I believe in comity with the British government, but there is no comity if Parliament protects Lloyd's, but Congress does not protect American investors.

I believe that helping wealthy investors should not be at the top of our priority list, but many of these investors are not wealthy and as Time Magazine reported some have even lost their homes to Lloyd's.

I also believe that defrauding investors is intolerable, but that it is possible Lloyd's did not commit fraud.

However, under the current post-contract term that requires the investors to pay before they assert fraud as a defense, investors who cannot afford to pay their loss in full cannot prevent debt collection actions by Lloyd's even if Lloyd's did defraud them.

This amendment says that international comity is a two-way street. The British Parliament cannot protect wealthy British Investors from negligence and securities law claims and expect the American Congress not to at least give American investors a chance to assert fraud as a defense to debt-collection actions—a right that the investors had when they signed their investment contracts but that was unilaterally stripped away from them by Lloyd's after the fact.

Accordingly, I support this narrow provision in the bill to allow pre-1994 American investors to assert fraud as a defense prior to payment. If they cannot prove fraud by clear and convincing evidence, they will lose. If they can prove it, they will win. That is only fair.

Mr. FEINGOLD. I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the Feingold amendment, No. 51, as modified.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

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

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

Mr. REID. I announce that the Senator from California (Mrs. BOXER) is necessarily absent.

The result was announced—yeas 79, nays 18, as follows:

(Rollcall Vote No. 35 Leg.)

YEAS—79

Akaka	Durbin	Mikulski
Allard	Edwards	Miller
Allen	Ensign	Murkowski
Bayh	Enzi	Murray
Biden	Feingold	Nelson (NE)
Bond	Feinstein	Nickles
Brownback	Frist	Reed
Burns	Graham	Reid
Byrd	Gramm	Roberts
Cantwell	Hagel	Rockefeller
Carnahan	Harkin	Santorum
Carper	Hollings	Sarbanes
Chafee	Hutchison	Schumer
Cleland	Inhofe	Shelby
Clinton	Inouye	Smith (OR)
Cochran	Jeffords	Snowe
Collins	Johnson	Specter
Conrad	Kennedy	Stabenow
Corzine	Kerry	Thomas
Craig	Kohl	Thompson
Crapo	Leahy	Torricelli
Daschle	Levin	Voinovich
Dayton	Lieberman	Warner
DeWine	Lincoln	Wellstone
Dodd	Lugar	Wyden
Domenici	McCain	
Dorgan	McConnell	

NAYS—18

Baucus	Grassley	Landrieu
Bennett	Gregg	Lott
Bingaman	Hatch	Nelson (FL)
Breaux	Helms	Sessions
Bunning	Hutchinson	Smith (NH)
Campbell	Kyl	Thurmond

ANSWERED ''PRESENT''—2

Fitzgerald Stevens

NOT VOTING—1

Boxer

The amendment (No. 51), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the pending amendments are withdrawn.

The Senator from Utah.

AMENDMENTS NOS. 15 AS MODIFIED, 16, 20 AS MODIFIED, 24, 30 AS MODIFIED, 35, 38 AS MODIFIED, 43, 45 AS MODIFIED, 49, 50, 54 AS MODIFIED, 58, 60 AS MODIFIED, 66 AS MODIFIED, 81 AS MODIFIED, 106, 107, 108, AND 109

Mr. HATCH. Mr. President, I have sent a package of amendments to the desk that have been cleared by both sides. Pursuant to the prior agreement, I ask unanimous consent that the package be agreed to at this time, and I also ask unanimous consent the pending Breaux amendment No. 94 be withdrawn, pursuant to previous agreement.

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

The amendment (No. 94) was withdrawn.

The amendments (Nos. 15 as modified, 16, 20 as modified, 24, 30 as modified, 35, 38 as modified, 43, 45 as modified, 49, 50, 54 as modified, 58, 60 as modified, 66 as modified, 81 as modified, 106, 107, 108, and 109) were agreed to, as follows:

AMENDMENT NO. 15, AS MODIFIED

(Purpose: To clarify provisions relating to involuntary cases)

On page 413, after line 25, insert the following:

SEC. 1237. INVOLUNTARY CASES.

Section 303 of title 11, United States Code, is amended—

(1) in subsection (b)(1), by—

(A) inserting ''as to liability or amount'' after ''bona fide dispute''; and

(B) striking ''if such claims'' and inserting ''if such undisputed claims''; and

(2) in subsection (h)(1), by inserting before the semicolon the following: ''as to liability or amount''.

AMENDMENT NO. 16

(Purpose: To provide for family fishermen)

At the appropriate place insert the following:

SEC. ___. FAMILY FISHERMEN.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (7) the following:

''(7A) 'commercial fishing operation' includes—

''(A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products;

''(B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A); and

''(C) the transporting by vessel of a passenger for hire (as defined in section 2101 of title 46) who is engaged in recreational fishing;

''(7B) 'commercial fishing vessel' means a vessel used by a fisherman to carry out a commercial fishing operation;'';

(2) by inserting after paragraph (19) the following:

''(19A) 'family fisherman' means—

''(A) an individual or individual and spouse engaged in a commercial fishing operation (including aquaculture for purposes of chapter 12)—

''(i) whose aggregate debts do not exceed $1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

''(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

''(B) a corporation or partnership—

''(i) in which more than 50 percent of the outstanding stock or equity is held by—

''(I) 1 family that conducts the commercial fishing operation; or

''(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

''(ii)(I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation;

''(II) its aggregate debts do not exceed $1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

''(III) if such corporation issues stock, such stock is not publicly traded;''; and

(3) by inserting after paragraph (19A) the following:

''(19B) 'family fisherman with regular annual income' means a family fisherman whose annual income is sufficiently stable and regular to enable such family fisherman to make payments under a plan under chapter 12 of this title;''.

(b) WHO MAY BE A DEBTOR.—Section 109(f) of title 11, United States Code, is amended by inserting ''or family fisherman'' after ''family farmer''.

(c) CHAPTER 12.—Chapter 12 of title 11, United States Code, is amended—

(1) in the chapter heading, by inserting ''**OR FISHERMAN**'' after ''**FAMILY FARMER**'';

(2) in section 1201, by adding at the end the following:

''(e)(1) Notwithstanding any other provision of law, for purposes of this subsection, a guarantor of a claim of a creditor under this section shall be treated in the same manner as a creditor with respect to the operation of a stay under this section.

''(2) For purposes of a claim that arises from the ownership or operation of a commercial fishing operation, a co-maker of a loan made by a creditor under this section shall be treated in the same manner as a creditor with respect to the operation of a stay under this section.'';

(3) in section 1203, by inserting ''or commercial fishing operation'' after ''farm'';

(4) in section 1206, by striking ''if the property is farmland or farm equipment'' and inserting ''if the property is farmland, farm equipment, or property of a commercial fishing operation (including a commercial fishing vessel)''; and

(5) by adding at the end the following:

''§ 1232. Additional provisions relating to family fishermen

''(a)(1) Notwithstanding any other provision of law, except as provided in subsection (c), with respect to any commercial fishing vessel of a family fisherman, the debts of that family fisherman shall be treated in the manner prescribed in paragraph (2).

''(2)(A) For purposes of this chapter, a claim for a lien described in subsection (b) for a commercial fishing vessel of a family fisherman that could, but for this subsection, be subject to a lien under otherwise applicable maritime law, shall be treated as an unsecured claim.

''(B) Subparagraph (A) applies to a claim for a lien resulting from a debt of a family fisherman incurred on or after the date of enactment of this chapter.

''(b) A lien described in this subsection is—

''(1) a maritime lien under subchapter III of chapter 313 of title 46 without regard to whether that lien is recorded under section 31343 of title 46; or

''(2) a lien under applicable State law (or the law of a political subdivision thereof).

''(c) Subsection (a) shall not apply to—

''(1) a claim made by a member of a crew or a seaman including a claim made for—

''(A) wages, maintenance, or cure; or

''(B) personal injury; or

''(2) a preferred ship mortgage that has been perfected under subchapter II of chapter 313 of title 46.

''(d) For purposes of this chapter, a mortgage described in subsection (c)(2) shall be treated as a secured claim.''.

(d) CLERICAL AMENDMENTS.—

(1) TABLE OF CHAPTERS.—In the table of chapters for title 11, United States Code, the item relating to chapter 12, is amended to read as follows:

''12. Adjustments of Debts of a Family Farmer or Family Fisherman with Regular Annual Income ..... 1201''.

(2) TABLE OF SECTIONS.—The table of sections for chapter 12 of title 11, United States Code, is amended by adding at the end the following new item:

''1232. Additional provisions relating to family fishermen.''.

(e) APPLICABILITY.—

Nothing in this section shall change, affect, or amend the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801, et seq.).

Amend the table of contents accordingly.

AMENDMENT NO. 20, AS MODIFIED

(Purpose: To resolve an ambiguity relating to the definition of current monthly income)

On page 18, beginning on line 10, after ''preceding the date of determination'' insert '', which shall be the date which is the last day of the calendar month immediately preceding the date of the bankruptcy filing. If the debtor is providing the debtor's current monthly income at the time of the filing, and otherwise the date of determination shall be such date on which the debtor's current monthly income is determined by the court for the purposes of this Act.''.

AMENDMENT NO. 24

(Purpose: To amend the definition of a bankruptcy petition preparer)

On page 85, beginning on line 12, strike ''a person, other than''.

AMENDMENT NO. 30, AS MODIFIED

(Purpose: To provide a clarification of postpetition wages and benefits)

At the end of title III, add the following:

SEC. 330. CLARIFICATION OF POSTPETITION WAGES AND BENEFITS.

Section 503(b)(1)(A) of title 11, 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;''

AMENDMENT NO. 35

(Purpose: To clarify the duties of a debtor who is the plan administrator of an employee benefit plan)

At the appropriate place, insert the following:

SEC. ____. DUTIES WITH RESPECT TO A DEBTOR WHO IS A PLAN ADMINISTRATOR OF AN EMPLOYEE BENEFIT PLAN.

(a) IN GENERAL.—Section 521(a) of title 11, United States Code, as so designated by section 106(d) of this Act, is amended-

(1) in paragraph (4), by striking ''and'' at the end;

(2) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(6) unless a trustee is serving in the case, if at the time of filing, the debtor, served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002)) of an employee benefit plan, continue to perform the obligations required of the administrator.''.

(b) DUTIES OF TRUSTEES.—Section 704(a) of title 11, United States Code, as so designated and otherwise amended by this Act, is amended—

(1) in paragraph (10), by striking ''and'' at the end;

(2) in paragraph (11), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(12) where, at the time of the time of the commencement of the case, the debtor served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002)) of an employee benefit plan, continue to perform the obligations required of the administrator;''.

(c) CONFORMING AMENDMENT.—Section 1106(a) of title 11, United States Code, is amended by striking paragraph (1) and inserting the following:

''(1) perform the duties of the trustee, as specified in paragraphs (2), (5), (7), (8), (9), (10), (11), and (12) of section 704;''.

Amend the table of contents accordingly.

AMENDMENT NO. 38, AS MODIFIED

(Purpose: To allow a debtor to purchase health insurance)

Page 25, line 7, insert the following new subsection and redesignate the subsequent subsections accordingly:

''(i) SPECIAL ALLOWANCE FOR HEALTH INSURANCE.—Section 1329(a) of title 11, United States Code, is amended by inserting the following new paragraph—

'' '(4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor and any dependent of the debtor (if those dependents do not otherwise have health insurance coverage) if the debtor documents the cost of such insurance and demonstrates that—

'' '(A) such expenses are reasonable and necessary;

'' '(B)(i) if the debtor previously paid for health insurance, the amount is not materially larger than the cost the debtor previously paid or the cost necessary to maintain the lapsed policy, or;

'' '(ii) if the debtor did not have health insurance, the amount is not materially larger than the reasonable cost that would be incurred by a debtor who purchases health insurance and who has similar income, expenses, age, health status, and lives in the same geographic location with the same number of dependents that do not otherwise have health insurance coverage; and

'' '(C) the amount is not otherwise allowed for purposes of determining disposable income under section 1325(b) of this title.

Upon request of any party in interest the debtor shall file proof that a health insurance policy was purchased.' ''

AMENDMENT NO. 43

(Purpose: To address exceptions to discharge)

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,''.

AMENDMENT NO. 45, AS MODIFIED

(Purpose: To make amendments with respect to filings by small business concerns, and for other purposes)

On page 212, strike line 8 and all that follows through page 212, line 14, and insert the following:

SEC. 438. PLAN CONFIRMATION DEADLINE.

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

''(e)(1) In a small business case, the plan shall be confirmed not later than 45 days after the date that a plan is filed with the court as provided in section 1121(e).

''(2) The 45 day period referred to in paragraph (1) may be extended only if—

''(A) the debtor, after notice and hearing, demonstrates that it is more likely than not that the court will confirm a plan within a reasonable period of time;

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

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

On page 217, line 16, strike ''establishes'' and all that follows through ''time'' on line 20 and insert the following: ''establishes that—

''(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, as amended, or in cases in which these sections do not apply, within a reasonable period of time''.

AMENDMENT NO. 49

(Purpose: To provide that Federal election law fines and penalties are nondischargeable debts)

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.

AMENDMENT NO. 50

(Purpose: to provide that political committees may not file for bankruptcy)

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.

AMENDMENT NO. 54, AS MODIFIED

(Purpose: To encourage debtors to file in chapter 13 to repay their debts)

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: (1) in a case filed under chapter 7, 11 or 12 of this title during the three-year period preceding the date of the order for relief under this chapter, or (2) in a case filed under chapter 13 of this title during the two-year period preceding the date of such order, except that if the debtor demonstrates extreme hardship requiring that a chapter 13 case be filed, the court may shorten the two-year period.''.

AMENDMENT NO. 58

(Purpose: To make an amendment to preserve the existing bankruptcy appellate structure while providing a mechanism for obtaining early review by the court of appeals in appropriate circumstances)

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.

AMENDMENT NO. 60, AS MODIFIED

(Purpose: To make technical corrections to Title IX—Financial Contract Provisions)

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 line 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 after 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 338, 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 ''(vi) 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, strike ''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, strike ''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 strike ''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 depository 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''.

AMENDMENT NO. 66 AS MODIFIED

(Purpose: To save taxpayers $4,000,000 over 5 years, the costs associated with the storage of the tax returns of debtors in certain bankruptcy cases, according to the Congressional Budget Office)

Strike line 21, page 160 to line 12, page 161 and insert thereof:

''(f) An individual debtor in a case under chapter 7, 11, or 13 shall file with the court at the request of the Judge, U.S. Trustee, any party in interest—

''(1) at the time filed with the taxing authority, the Federal tax returns or transcript thereof required under applicable law, 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, the Federal tax returns or transcript thereof required under applicable law, 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 Federal tax returns or transcripts thereof described in paragraph (1) or (2); and''.

AMENDMENT NO. 81, AS MODIFIED

(Purpose: To require the General Accounting Office to conduct a study of the reaffirmation process, and for other purposes)

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 consumers are fully, fairly and consistently informed of their rights pursuant to this title.

(b) REPORT TO CONGRESS.—Not later than 1½ years 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.

AMENDMENT NO. 106

(Purpose: To improve the bill)

On page 187, line 20, strike ''(25)'' and insert ''(24)''.

On page 187, line 21, strike ''(26)'' and insert ''(25)''.

On page 191, strike line 25 and insert the following:

(2) in subsection (i), as so redesignated, by inserting ''and subject to the prior rights of holders of security interests in such goods or the proceeds thereof,'' after ''consent of a creditor,''; and

On page 192, line 1, strike ''(2)'' and insert ''(3)''.

On page 199, line 4, strike ''through (5)'' and insert ''and (4)''.

On page 255, line 8, strike ''(26)'' and insert ''(25)''.

On page 255, line 10, strike ''(27)'' and insert ''(26)''.

On page 278, line 9, strike ''(28)'' and insert ''(27)''.

On page 281, line 23, strike ''(28)'' and insert ''(27)''.

On page 347, line 21, strike ''to, under'' and insert ''to and under''.

On page 347, line 24, strike ''to, under'' and insert ''to and under''.

On page 348, line 13, strike ''to, under'' and insert ''to and under''.

On page 348, line 17, strike ''(27)'' and insert ''(26)''.

On page 348, line 19, strike ''(28)'' and insert ''(27)''.

On page 349, line 8, strike ''to, under'' and insert ''to and under''.

On page 349, line 21, strike ''(28)'' and insert ''(27)''.

On page 361, line 23, strike ''(28)'' and insert ''(27)''.

On page 362, lines 4 and 8, strike ''(28)'' each place it appears and insert ''(27)''.

On page 385, line 10, strike '', including'' and insert ''. If the health care business is a long-term care facility, the trustee may appoint''.

On page 385, line 13, add at the end the following: ''In the event that the trustee does not appoint the State Long-Term Care Ombudsman to monitor the quality of patient care in a long-term care facility, the court shall notify the individual who serves as the State Long-Term Care Ombudsman of the name and address of the individual who is appointed.''.

On page 386, line 12, insert after the first period the following: ''If the individual appointed as ombudsman is a person who is also serving as a State Long-Term Care Ombudsman appointed under title III or title VII of the Older Americans Act of 1965 (42 U.S.C. 3021 et seq., 3058 et seq.), that person shall have access to patient records, consistent with authority spelled out in the Older Americans Act and State laws governing the State Long-Term Care Ombudsman program.''.

On page 388, line 4, strike ''(28)'' and insert ''(27)''.

On page 388, line 6, strike ''(29)'' and insert ''(28)''.

On page 394, strike lines 9 through 13.

Redesignate sections 1220 through 1223 as sections 1219 through 1222, respectively.

On page 397, strike line 16 and all that follows through page 398, line 12.

On page 405, line 13, strike ''after'' and insert ''prior to''.

On page 406, line 5, strike ''after'' and insert ''prior to''.

Redesignate sections 1225 through 1236 as sections 1223 through 1234, respectively.

Amend the table of contents accordingly.

AMENDMENT NO. 107

(Purpose: To provide for an additional bankruptcy judgeship for the district of Nevada)

On page 400, insert between lines 10 and 11 the following:

(T) One additional bankruptcy judgeship for the district of Nevada, and one for the district of Delaware.

AMENDMENT NO. 108

(Purpose: To correct the treatment of certain spousal income for purposes of means testing)

On page 10, line 14, after ''private'' insert ''or public'' and

On page 10, line 17, after ''necessary'' insert '', and that such expenses are not already accounted for in the Internal Revenue Service Standards referred to in 707(b)(a) of this title.''

AMENDMENT NO. 109

At the end of the bill, add the following:

TITLE XV—MISCELLANEOUS PROVISIONS

SEC. 1501. REIMBURSEMENT OF RESEARCH, DEVELOPMENT, AND MAINTENANCE COSTS.

(a) IN GENERAL.—Not later August 1, 2001, the Federal Crop Insurance Corporation shall promulgate final regulations to carry out section 522(b) of the Federal Crop Insurance Act (7 U.S.C. 522(b)), without regard to—

(1) the notice and comment provisions of section 553 of title 5, United States Code;

(2) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and

(3) chapter 35 of title 44, United States Code (commonly known as the ''Paperwork Reduction Act'').

(b) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this section, the Corporation shall use the authority provided under section 808 of title 5, United States Code.

(c) EFFECTIVE DATE.—The final regulations promulgated under subsection (a) shall take effect on the date of publication of the final regulations.

Amend the table of contents accordingly.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, just so Senators know, that included the Baucus, Feingold, Feinstein, Leahy, Schumer, Wellstone, Leahy, Ensign/Reid, Leahy, Kohl/Kennedy, Levin/Grassley, Biden/Specter/Sessions/Leahy, Collins/Kerry, Gramm of Texas, Reed of Rhode Island, Kennedy, Leahy, Bond/Kerry, Boxer, and Grassley amendments.

AMENDMENT NO. 30, AS MODIFIED

Mr. KENNEDY. Mr. President, this bipartisan amendment protects workers who face bankruptcy because they are owed money by employers for back pay. This amendment was passed by voice vote last year, but was dropped in conference. This should be a noncontroversial change, a change that would ensure that workers receive all the wages that are due them, workers who were denied minimum wage or overtime pay, workers who were victims of discrimination, workers who were wrongfully fired, and veterans who were denied jobs when they returned from active military duty.

Amending the bankruptcy bill to protect the back pay of workers is especially appropriate, because back pay awards help many of the people that this legislation places at risk, low income families, minorities, and women. My amendment helps workers take care of their families. Collecting a back pay award would give them more of the resources they need to afford food, clothing, and health care without turning to credit cards.

Our bankruptcy laws already protect wages so that businesses can continue to pay their workers during a reorganization. And some courts have taken the important step of requiring employers facing bankruptcy to live up to their obligations to provide back pay awards. This change would ensure that all workers are treated the same, no matter what bankruptcy court their employer has filed in.

The Department of Labor and the National Labor Relations Board obtain back pay awards on behalf of workers. For fiscal year 1998, the NLRB got back pay awards on behalf of about 24,000 workers, with an average award of $3,750 per worker. During the past 5 years, the NLRB also recovered about $1 million on behalf of approximately 300 American veterans who were wrongfully denied jobs after they returned to work from active military duty.

Similarly, for fiscal year 1999 the Department of Labor got back pay awards on behalf of about 2,000 workers, with an average award of about $900 per worker.

If these back pay awards do not receive protection in bankruptcy, most workers will never receive them. They will have earned the back pay, but will never see a dime. Without this amendment, workers lose twice—first when they are wrongfully denied wages, and then again when they are unable to collect the wages because their employers have declared bankruptcy.

Mr. KOHL. Mr. President, I am pleased that the Senate agreed to accept this amendment as part of the bankruptcy bill. Last session, my amendment was accepted by the Senate only to be stripped out of the conference report. The compromise reached on the amendment this year should ensure that it remains in the bill this year. In addition, I would like to thank Senator KENNEDY for joining me this year in offering this amendment.

The amendment corrects an inconsistency in current law regarding the treatment of backpay awards issued for violations of state or federal laws such as whistle blower protection laws, the Fair Labor Standards Act, or civil rights laws. For example, an employee who works ten hours of overtime during a pay period, but is only paid for nine, or an employee who is wrongfully fired for being a whistle blower does not currently receive the same treatment as the employee who continues to work for the bankrupt company postpetition. Some courts have held that where an award of backpay covers a time both before and after the employer's bankruptcy petition, the entire award is considered a general unsecured claim.

This amendment would clarify the treatment of backpay awards for the postpetition period. For example, the postpetition backpay due an employee who has been reinstated after a successful suit under whistleblower protection laws would clearly be an administrative expense under 11 U.S.C. § 503(b)(1)(A). So too would backpay due to workers whose overtime compensation was illegally denied or reduced.

Under the terms of the compromise agreed to in this amendment, before the postpetition award is treated as an administrative expense, the bankruptcy court must first determine that ''the award will not substantially increase the probability of layoff or termination of current employees or nonpayment of domestic support obligations during the case.'' The court should evaluate the possible impact of the award in the context of all other administrative expenses being awarded. The term ''substantial'' will ensure that the bankruptcy court only refuses to treat postpetition backpay awards as an administrative expense in the rarest of circumstances.

In general, these backpay awards range on average from only a few hundred dollars up to a couple of thousand dollars. Given that these awards are so small, there is virtually no chance that the award will substantially affect any part of an ongoing business concern. Should the award of the postpetition amount be significantly more than a couple of thousand dollars, it is still highly unlikely that it will substantially change the probability of layoff or termination of other employees.

This amendment is an important clarification to the code. I am pleased that the Senate recognized the consequence of these postpetition backpay awards.

AMENDMENT NO. 107, AS MODIFIED

Mr. ENSIGN. Mr. President, today I introduce, along with the senior Senator from Nevada, an amendment to the Bankruptcy Reform Act of 2001 to create an additional bankruptcy judgeship position for the District of Nevada.

This amendment follows the recommendation of the Judicial Conference Committee on the Administration of the Bankruptcy Committee to the Judicial Conference of the United States that legislation be transmitted to Congress to create an additional judgeship for the District of Nevada.

The combination of a rapidly growing population in Nevada and a high number of bankruptcy filings makes it imperative for Nevada to have another judgeship. Nevada continues to be the fastest growing state in the nation, and the Las Vegas metropolitan area remains one of the most rapidly growing cities. Between 1990 and 1999, the population of the state of Nevada grew by more than 66 percent. Its population growth is projected to increase by 10 percent from 2000 to 2005. At this current rate of growth, the Las Vegas area alone will nearly double to 2.5 million people in the next ten years.

Unfortunately, the growth in bankruptcy case filings in Nevada has been even more dramatic. Between 1990 and 1999 case filings grew by more than 226 percent. In 2000, the District of Nevada was ranked fifth highest in U.S. total filings per capita and first in the U.S. in filings of Chapter 7 per capita. By every measure, weighted filings per judgeship, case filings per judgeship,

Chapter 11 filings—the District of Nevada measured well above the national average.

The population growth in my state and the increased number of case filings clearly justifies the need for an additional bankruptcy judgeship position for the District of Nevada. We offer this amendment today in the hopes that we can accomplish this critical task for our home state of Nevada.

Mr. LEAHY. Mr. President, I am pleased that we finally adopted the amendments in the managers' package to improve this bill. I thank the efforts of Senators HATCH, DASCHLE, GRASSLEY, and REID.

For the information of my colleagues, we adopted the following amendments to improve this bill.

We adopted an amendment by Senator BAUCUS to resolve an ambiguity regarding involuntary bankruptcies.

We adopted an amendment by Senator BOXER to provide that public education expenses are treated equally with private education expenses in the bill's means-test.

We adopted an amendment by Senator FEINSTEIN regarding bankruptcy petition preparers.

We adopted an amendment by Senator JACK REED calling for a General Accounting Office review of the bill's reaffirmation provisions.

We adopted an amendment by Senator FEINGOLD to make Federal Election Commission fines and judges nondischargeable in a bankruptcy proceeding.

We adopted another amendment by Senator FEINGOLD to clarify that the Federal Election Commission has jurisdiction over insolvent Political Action Committees.

We adopted an amendment that I offered to clarify the definition of current monthly income in the bill's means-test to prevent unnecessary litigation.

We adopted another Leahy amendment to allow a person who has successfully completed a chapter 13 plan and paid off all her creditors to file another chapter 13 plan if some unforeseen economic disaster—such as a job loss or high medical expenses—hits that person within two years of the first chapter 13 completion.

We adopted a third Leahy amendment to modify the requirements for debtors to file tax returns to only Federal returns or transcripts to streamline the process and reduce unnecessary court storage costs.

We adopted an amendment by Senator SCHUMER and Senator GRASSLEY on corporate business reorganizations to prevent a single creditor from alleging fraud to delay the reorganization and to clarify that debts from violations of the False Claims Act are nondischargeable in bankruptcy.

We adopted an amendment by Senator WELLSTONE to clarify that the companies in bankruptcy must fulfil their legal obligations as sponsors and administrators of health care and other benefit plans.

We adopted an amendment by Senators REID and ENSIGN to authorize a bankruptcy judgeship for Nevada the fastest growing state in the nation.

We also adopted, at the request of Senators BIDEN and CARPER, an authorization for an additional bankruptcy judgeship for the District of Delaware, which has the heaviest caseload of bankruptcy cases in the country.

We accepted a colloquy between Senator LEVIN and Senator GRASSLEY to ensure that spikes in gasoline prices will be taken into account in the bill's means-test.

We adopted an amendment by Senators KOHL and KENNEDY to require that back pay awards are given the same priority as regular wages in bankruptcy proceedings.

We adopted an amendment by Senator GRAMM, which Senator SARBANES has cleared as the ranking member of the Senate Banking Committee, making corrections to the bill's financial contract provisions.

We adopted an amendment by Senators BOND and KERRY to improve the bill's small business provisions.

We adopted an amendment by Senator KENNEDY to include health insurance costs in the bill's means-test.

We adopted an amendment by Senator COLLINS and Senator KERRY on family fisherman protection in bankruptcy.

We adopted an amendment by Senators SESSIONS, LEAHY, SPECTER, and BIDEN regarding appeals of bankruptcy cases.

I am glad we made these important bipartisan changes to improve this bill and add more balance and fairness to it.

AMENDMENT NO. 59, AS FURTHER MODIFIED

Mr. SESSIONS. Mr. President, I ask unanimous consent that amendment No. 59 be further modified so that it strikes section 311 of the Kohl amendment No. 68.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment (No. 59), as further modified, is as follows:

Strike section 311 of Kohl amendment No. 68, and insert the following:

(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 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 first becomes due under the unexpired specific term of a rental agreement or lease or under a tenancy under applicable State, or local rent control 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 has a month to month tenancy (or one of shorter term) other than under applicable State or local rent control law where timely payments are made pursuant to clause (i), if the lessor files with a court a certification that the requirements of this clause have been met and serves a copy of the certification upon 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 property, if during the 2-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 any rental payment that first 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 with the court and serves a copy of that certification upon the lessor on or before that 15th day, 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)(B)(i), except that no tenant may take advantage of such remedy more than once under this title; or

''(B) the court orders that the exception to the automatic stay shall not become effective, or provides for a later date of applicability.''.

(3) by adding at the end of the flush material added by paragraph (2), the following:

''Where a debtor makes a certification under subparagraph (A), the clerk of the court shall set a hearing on a date no later than 10 days after the date of the filing of the certification of the debtor and provide written notice thereof. If the debtor can demonstrate to the satisfaction of the court that the sent payment due post-petition or 10 days prior to the petition was made prior to the filing of the debtor's certification under subparagraph (A), or that the situation giving rise to the exception in paragraph (25) does not exist or has been remedied to the court's satisfaction, then a stay under subsection (a) shall be in effect until the termination of the stay under this section. If the debtor cannot make this demonstration to the satisfaction of the court, the court shall order the stay under subsection (a) lifted forthwith. Where a debtor does not file a certification under subparagraph (A), the stay under subsection (a) shall be lifted by operation of law and the clerk of the court shall certify a copy of the bankruptcy docket as sufficient evidence that the automatic stay of subsection (a) is lifted.''

FLUCTUATING GAS PRICES

Mr. LEVIN. Mr. President, as the Senator knows, gas prices have fluctuated significantly in the last year. In my own state of Michigan, gas prices went from .80 cents a gallon in October 1999 to a high of $1.46 a gallon by June 2000. The Internal Revenue Service, IRS, Local Standards for Operating Costs and Public Transportation Costs, which includes costs for gasoline, are revised in October of each year but are often based on statistics from as long as 2 or 3 years before that. The IRS standards for gasoline costs can be out of date in a fast changing economy.

In the event a debtor has experienced significant increases in the costs of buying gasoline for their car, how would the means test adjust for this?

Mr. GRASSLEY. Mr. President, under the special circumstances provision, the debtor could explain in the debtor's petition why an additional allowance in excess of the amounts allowed under the Internal Revenue Standards was reasonable and necessary. As a practical matter, if the costs for gas have increased significantly over the costs for gas used by the Internal Revenue Service, the excess costs of gasoline over the IRS standard should and would be allowed under the special circumstances provision.

Mr. NELSON of Florida. Mr. President, I am opposed to the Bankruptcy Reform Act of 2001. I do not take my decision to vote against this legislation lightly. The growing personal debt of the American people and the dramatic rise in bankruptcy filings over the last 10 years should give us all reason for concern.

However, this legislation simply fails as a matter of sound public policy. Rather than addressing this complex issue with a solution that focuses on consumer and private sector responsibility, this bill almost exclusively places the burden of change on the people that bankruptcy law is supposed to help. It almost completely ignores the aggressive marketing practices of lenders who in some cases, seem to have lost the ability to judge a bad credit risk.

It is difficult to have sympathy for an industry that mails three billion solicitations a year, and expends very little effort to ensure that they are marketing to people who have the financial means or are even old enough to hold a credit card. It's clear that young and low-income individuals, who often have the least ability to repay, are prime targets of the credit industry's overly aggressive marketing tactics.

It appears that these companies have made a calculation that it is more profitable to have liberal lending policies and higher interest rates, than it is to deny credit or at least putting a reasonable credit limit in place.

I have heard many of my colleagues talk a lot over the past week about how consumers need to be more financially responsible. Fair enough. But I'm here to say that we should also demand more responsibility from big lenders who fail to do their homework.

Especially in a time of economic slow-down, I do not believe we should make it more difficult for people to get a fresh start unless we also make further demands of an industry that could solve many of its problems by simply making credit available responsibly.

I realize that this legislation also would benefit many small businesses that extend credit to their customers, and that are sometimes forced to foot the bill for individuals who choose to abuse the system. My concern about reckless lending practices is not aimed at the small businessman, and, I strongly want to stamp out abuse in the bankruptcy system.

However, a better bankruptcy bill would encourage responsible marketing of credit services and would include stronger provisions to curb predatory lending. This bill falls short of the mark in these areas and as result will not get my vote.

Mr. KERRY. Mr. President, the Bankruptcy Reform bill we are voting on today has a valid, uncontroversial and necessary purpose. It is intended to curb bankruptcy abuse and ensure that those who can afford to pay their debts, do pay their debts. And I would say to you, Mr. President, if this were—all about those goals—if this were a debate about personal responsibility—there would be a very different dialogue in the United States Senate and it would have given us a very different bill than the one we're voting on today. But Mr. President the bill we are voting on is seriously flawed and will harm innocent debtors who are genuinely in need of the protections and ''fresh start'' that bankruptcy procedures are intended to provide. It is for that reason that I must vote against this bill.

During the 106th Congress, I voted in favor of the Senate bankruptcy bill, because I believe that we need to reform the system and curb abuse. I had some serious reservations about that bill and had hoped that many of the concerns I had at that time would be addressed in conference. Unfortunately the conference bill, like the bill we are voting on today, did not target only those who abuse the bankruptcy system. What we needed during the 106th Congress, and what we need now, is bankruptcy reform that does not lump together those who need the protections of bankruptcy with those who abuse the system.

We must absolutely prevent the abuse of the bankruptcy system by the millionaires whom we know have received the protections of the bankruptcy system despite their ability to repay their debts. But even beyond the flagrant, high profile abuse of the bankruptcy system that we have read about in the papers, we must also be sure that every consumer acts responsibly and does not charge meals, vacations and clothes that he can't afford, only to turn to the bankruptcy system to bail him out of his debt.

At the same time, we must not forget that a fresh start in bankruptcy serves a valuable purpose for many individuals who truly need its protections. When an individual gets into financial trouble because, for example, she has catastrophic, unforeseen medical expenses, it is better for her, for her creditors and even for society as a whole if she is given the opportunity to have her debts discharged and is given a fresh start. The alternative is that the innocent but unlucky debtor may have as much as 25 percent of her wages garnished by her creditors. Most people live paycheck to paycheck and would be put in serious financial trouble if their paychecks were reduced by that much. In those circumstances, consumers have no choice but to cut back on other, important expenses. They stop paying for their auto insurance and health insurance. They deplete any savings they might have and stop contributing to their retirement accounts. This is a perverse result that doesn't benefit anyone and certainly should not be the outcome of our efforts to reform the bankruptcy system.

As you know, this bill implements a means-testing system that would create a presumption that a Chapter 7 bankruptcy, or fresh start bankruptcy, should be dismissed or converted to a Chapter 13 reorganization if a certain financial formula is satisfied. The means test applies an IRS standard to determine whether a case should be dismissed or converted. The IRS standard is inflexible, and it provides no room for a bankruptcy judge to determine whether the circumstances that led to the debtor's financial situation warrant treatment under Chapter 7. A father with a sick child is treated the same way as a reckless spender who ran up his credit cards on luxury items. Judges should have some discretion to distinguish those situations and exempt from means-testing debtors who, due to circumstances beyond their control, have come to the court to ask for the protection bankruptcy is intended to provide.

The purpose of the means test is to ensure that more individuals file in Chapter 13 and therefore pay off more of their debts. That sounds like a laudable goal. But it is likely to fail. Simply because more people are forced into Chapter 13 plans does not mean that they will be able to successfully complete those plans. Even under the current system, only a third of those who file for Chapter 13 successfully complete their plans. Simply funneling more individuals into Chapter 13 does not in any way guarantee that more debts will be paid off.

Finally, the means test imposes financial disclosure requirements that put significant burdens on all debtors, not just the ten percent or fewer whom experts say abuse the system. Under the means test, everyone who files for

bankruptcy must engage in more preparation, more paperwork and more attorney and other expenses prior to filing for bankruptcy, leaving fewer assets to distribute to creditors.

A narrowly targeted reform bill designed to reduce abuse of the system would have provided bankruptcy judges with the discretion to dismiss or convert a case to Chapter 7, but would not have mandated it. It would have provided creditors the opportunity to ask for a dismissal or conversion, but would not have put the burden on every filer to prove that he or she deserves the protections of Chapter 7. This bill simply fails to take that reasonable, targeted approach toward curbing abuse.

In its attempt to thwart abuse of the system, the bill we are voting will also result in some innocent debtors losing their rented homes and apartments. Current bankruptcy law allows individuals in bankruptcy to remain in their apartments as long as they keep paying their rent while the bankruptcy is pending, and as long as they repay any unpaid rent. A landlord must go to the bankruptcy court for permission to evict tenants who have filed for bankruptcy. There is no question that some tenants will abuse this provision, and withhold rent while gambling on the fact that the time and expense of going to bankruptcy court will prevent the landlord from getting permission to evict the tenant. This bill, which allows landlords to evict debtors without going to bankruptcy court, punishes the innocent tenant who is paying his rent while it attempts to get at those who abuse the system. And once again, the answer lies in more narrowly targeting reform. We simply need to make it easier and less expensive for a landlord to evict a tenant when that tenant has failed to pay his rent. It is not necessary, nor is it good public policy, to allow a landlord to evict a tenant who is paying rent and who will pay back any debts owed.

Perhaps one of the most disturbing parts of the bill is its impact on children. The bill's supporters claim that by moving child support claims from seventh to first priority in Chapter 7 cases, the bill ''puts child support first.'' What they don't say is that this provision is virtually meaningless and will help very few children. The reason is because few debtors in Chapter 7 have any assets to distribute to priority unsecured creditors, such as credit card companies, after secured creditors receive the value of their collateral. Therefore, this change would affect only the smallest number of cases.

In addition, by forcing more debtors to file Chapter 13, more debt, including credit card debt, will have to be repaid. The result is that banks and credit card companies will be in direct competition with single parents trying to collect child support after bankruptcy. Once again, Mr. President, a bill that claims to reform the system may actually make it worse for those most in need.

While this bill puts more burdens on the innocent debtor, it does not place more responsibility on the creditors who provide the consumers with the opportunity to take on increasing amounts of debt. A simple provision requiring credit card bills to state the length of time it would take and the interest that would be paid on the current debt if only the monthly minimum was paid would have provided real reform. Such a provision would have provided valuable information to consumers, and given them the tools they need to decide whether they can afford to take on any new debt. This bill, however, fails to include such a balanced reform provision. Instead, it includes an inadequate disclosure provision that would free 80% of all banks from any disclosure responsibility and place the burden of disclosure on the Federal Reserve for two years. After that time, it is unclear whether and how the consumer disclosure requirements would be maintained.

This bill is not only detrimental to consumers, but it also hurts our small businesses. This effort to reform our bankruptcy laws will make it more difficult for entrepreneurs to start a small business and impose additional regulations and reporting requirements on small businesses who file for bankruptcy. I believe we must do everything possible to ensure the viability of small businesses and to assist in fostering entrepreneurship in our economy. It has been the Congress's long-held belief that regulatory and procedural burdens should be lowered for small business wherever possible. However, the Bankruptcy Reform Act fails to meet this challenge. Instead, this legislation promotes additional red tape and a government bureaucracy that we have worked to reduce for small business. Specifically, the provisions included in the Bankruptcy Reform Act impose new technical and burdensome reporting requirements for small businesses who file for bankruptcy that are more stringent on small businesses than they are on big business. Further, the bill will provide creditors with greatly enhanced powers to force small businesses to liquidate their assets.

Any big business would have difficulty complying with these new burdensome reporting requirements. But think of the difficulties an entrepreneur or a mom and pop grocery store will have in complying with this dizzying array of new and complex reporting and other requirements. These small businesses are the most likely to need, but least likely to be able to afford, the assistance of a lawyer or an accountant to comply with these new taxing requirements. That is why during the consideration of this bill I offered an amendment to strike the small business provisions which will make it easier for creditors to force liquidations of small business during the bankruptcy process. Unfortunately, that amendment was not adopted.

A limited number of provisions do help small businesses and family fishing businesses. The amendments that I offered last year to extend the reorganization plan filing and confirmation deadlines for small business are included in this bill along with a provision to include small businesses in the creditors committee. Those amendments help small businesses, but they cannot compensate for the greater burdens this bill imposes.

Additionally, I am pleased that an amendment sponsored by Senator COLLINS and I which will extend Chapter 12 bankruptcy protections to our family fishermen has been included in the bill. Mr. President, small, family-owned fishing businesses are in serious trouble. Severe environmental factors such as coastal pollution, warmer oceans and changing currents have resulted in severely depleted fish stocks around the country. We are making progress in rebuilding stocks, however, the cost of this progress has been a steep decline in the amount of fishing allowed in Georges Bank and the Gulf of Maine. This in turn has made it much more difficult for fishermen in Massachusetts and Maine to maintain profitable businesses.

This amendment Senator COLLINS and I sponsored will ensure that fishermen have the flexibility under Chapter 12 of the bankruptcy code to wait out the rebuilding of our commercial fish stocks without back-tracking on our conservation gains to date. It will help preserve the rich New England fishing heritage in Massachusetts without wiping out the fiercely independent small-boat fishermen.

Despite those provisions, which I do believe improve the system, overall this bill does not provide for real bankruptcy reform. Mr. President, sponsors of this bill say it is necessary because we are in the midst of a ''bankruptcy crisis.'' There has been widespread and justifiable concern over the increase in consumer bankruptcies during the 1990s. There were more than 1.4 million bankruptcy filings in 1998. However, personal bankruptcy filings have fallen steadily since then, down to 1.3 million in 1999 and to 1.2 million last year. That is fewer bankruptcies per capita than there were at the time the bankruptcy bill was first introduced. I cannot help but think that had we enacted bankruptcy reform in 1998, the sponsors of the bill would have been taking credit for this downturn in bankruptcies.

But without congressional intervention, bankruptcies have been on the decline. The reason, Mr. President, is simple. Lenders are profit-maximizing institutions which select their own credit criteria. If there is an increase in personal bankruptcies, credit card companies simply won't offer their cards to consumers who don't have the means to pay. The free-market thus corrects any upswing in bankruptcy.

Although the free market will correct the over-extension of credit to

those who can least afford it, the market will not address the small percentage of bankruptcy filers who abuse the system. We need legislation for that. But that legislation should be targeted; it should be narrowly crafted; and it should avoid punishing those who truly need and deserve bankruptcy protection. This bill does not do that, and I must vote against it.

Mr. HATCH. Mr. President, I am pleased that S. 420, the bankruptcy legislation, cures some abuses in the Bankruptcy Code regarding executory and unexpired leases.

One provision, Section 404 of the bill, amends Section 365(d)(4) of the Bankruptcy Code. Presently, Section 365(d)(4) provides a retail debtor 60 days to decide whether to assume or reject its lease. A bankruptcy judge may extend this deadline for cause, and therein is the problem. Too many bankruptcy judges have allowed this exception essentially to eliminate any notion of a reasonable and firm deadline on a retail debtor's decision to assume or reject a lease. Bankruptcy judges have been extending this deadline for months and years, often to the date of confirmation of a plan.

This situation is unfair. A shopping center operator is a compelled creditor. It has no choice but to continue to provide space and services to the debtor in bankruptcy. Yet, the current Code permits a retail debtor as much as years to decide what it will do with its lease. Coupled with the increased use of bankruptcy by retail chains, the Bankruptcy Code is tipped unfairly against the shopping center operator.

Some stores curtail their operations or go dark, and still the lessor cannot regain control of its space.

This legislation, like the conference report in the last two Congresses, ends this abuse. It imposes a firm, bright line deadline on a retail debtor's decision to assume or reject a lease, absent the lessor's consent. It permits a bankruptcy trustee to assume or reject a lease on a date which is the earlier of the date of confirmation of a plan or the date which is 120 days after the date of the order for relief. A further extension of time may be granted, within the 120-day period, for an additional 90 days, for cause, upon motion of the trustee or lessor. Any subsequent extension can only be granted by the judge upon the prior written consent of the lessor: either by the lessor's motion for an extension, or by a motion of the trustee, provided that the trustee has the written approval of the lessor. This is important. We are taking away the bankruptcy judges' discretion to grant extensions of the time for the retail debtor to decide whether to assume or reject a lease after a maximum possible period of 210 days from the time of entry of the order of relief. Beyond that maximum period, there is no authority in the judge to grant further time unless the lessor has agreed in writing to the extension.

Retail debtors filing for bankruptcy will factor into their plans this new deadline. Most retail chains undertake a careful review of their financial condition and business outlook before they file for bankruptcy. They will already have an understanding of which leases are ones they wish to assume and which ones they wish to dispose of. The legislation gives them an additional 120 days to decide on what to do with their leases, once they file for bankruptcy. Within that 120 day time period, an additional 90 days can be granted for cause. A further extension may be negotiated by the retail debtor and the lessor if circumstances warrant, and any such extension can be granted by a judge only with prior written consent of the lessor. Further, a lessor's prior written approval of one such extension does not constitute approval for any further extensions, each such extension beyond the 210 day period requires the lessor's prior written approval. The current imbalance between the retail debtor and the lessor will be redressed by the legislation.

The bill in Section 404 also amends Section 365(f)(1) of the Bankruptcy Code to make sure that all of the provisions of Section 365(b) are adhered to and that Section 365(f) does not override Section 365(b).

This addresses another growing abuse under the Bankruptcy Code. The bill makes clear that an owner must be able to retain control over the mix of retail uses in a shopping center. When an owner enters into a use clause with a retail tenant forbidding assignments of the lease for a use different than that specified in the lease, that clause should be honored. Congress has so intended already, but bankruptcy judges have sometimes ignored the law.

Congress made clear, in Section 365(f)(2)(B), that the trustee may assign an executory contract or unexpired lease of the debtor, only if the trustee makes adequate assurance of future performance under the contract or lease.

In Section 365(b)(3), Congress provided that for purposes of the Bankruptcy Code:

''Adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance—

''(A) of the source of rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease;

(B) that any percentage rent due under such lease will not decline substantially;

(C) that assumption or assignment of such lease is subject to all provisions thereof, including (but not limited to) provisions such as a radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to such shopping center; and

(D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

Congress added these provisions to the Code in recognition that a shopping center must be allowed to protect its own integrity as an on going business enterprise, notwithstanding the bankruptcy of some of its retail tenants. A shopping center operator, for example, must be able to determine the mix of retain tenants it leases to. Congress decided that use or similar restrictions in a retail lease, which the retailer cannot evade under nonbankruptcy law, should not be evaded in bankruptcy.

Regrettably, bankruptcy judges have not followed this Congressional mandate. Under another provision of the Code, Section 365(f), a number of bankruptcy judges have misconstrued the Code and allowed the assignment of a lease even though terms of the lease are not being followed. This ignores Section 365(b)(3) and is wrong.

For example, if a shopping center's lease with an educational retailer requires that the premises shall be used solely for the purpose of conducting the retail sale of educational items, as the lease in the In re Simon Property Group, L.P. v. Learningsmith, Inc. case provided, then the lessor has a right to insist on adherence to this use clause, even if the retailer files for bankruptcy. The clause is fully enforceable if the retailer is not in a bankruptcy proceeding, and the retailer should not be able to evade it in bankruptcy. Otherwise, the shopping centers operator loses control over the nature of his or her business.

Unfortuantley, in the Learningsmith case, the judge allowed the assignment of the lease to a candle retailer because it offered more money than an educational store to buy the lease, in contravention of Section 365(b)(3) of the Code. As a result, the lessor lost control over the nature of its very business, operating a particular mix of retail stores. If other retailers file for bankruptcy in that shopping center, the same result can occur.

The bill remedies this problem by amending Section 365(f)(1) to make clear it operates subject to all provisions of Section 365(b).

The legal holding in the Learningsmith case, and other cases like it which do not enforce Section 365(b), particularly 365(b)(3), are overturned by this legislation.

Mr. GRAMM. Mr. President, Title IX of S. 420, the Bankruptcy Reform Act of 2001, involves financial contract provisions. The provisions of Title IX have been carefully crafted with the assistance of the President's Working Group on Financial Markets following a review of current statutory provisions governing the treatment of qualified financial contracts and similar financial contracts upon the insolvency of a counterparty.

Title IX amends the Bankruptcy Code, the Federal Deposit Insurance Act, FDIA, as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, FIRREA, the payment system risk reduction and

netting provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991, FDICIA, and the Securities Investor Protection Act of 1970, SIPI. These amendments address the treatment of certain financial transactions following the insolvency of a party to such transactions. The amendments are designed to clarify and improve the consistency between the applicable statutes and to minimize the risk of a disruption within or between financial markets upon the insolvency of a market participant.

Since its adoption in 1978, the Bankruptcy Code has been amended several times to afford different treatment for certain financial transactions upon the bankruptcy of a debtor, as compared with the treatment of other commercial contracts and transactions. These amendments were designed to further the policy goal of minimizing the systemic risks potentially arising from certain interrelated financial activities and markets. Similar amendments have been made to the FDIA and the FDICIA. Both the Federal Deposit Insurance Corporation, FDIC, and the Securities investor Protection Corporation, SIPC, have issued policy statements and letters clarifying general issues in this regard.

Systemic risk has been defined as the risk that a disruption at a firm, in a market segment, to a settlement system, etc., can cause widespread difficulties at other firms, in other market segments or in the financial system as a whole. If participants in certain financial activities are unable to enforce their rights to terminate financial contracts with an insolvent entity in a timely manner, to offset or net payment and other transfer obligations and entitlements arising under such contracts, and to foreclose on collateral securing such contracts, the resulting uncertainty and potential lack of liquidly could increase the risk of an inter-market disruption.

Congress has in the past taken steps to ensure that the risk of such systemic events is minimized. For example, both the Bankruptcy Code and the FDIA contain provisions that protect the rights of financial participants to terminate swap agreements, forward contracts, securities contracts, commodity contracts and repurchase agreements following the bankruptcy or insolvency of a counterparty to such contracts or agreements. Furthermore, other provisions prevent transfers made under such circumstances from being avoided as preferences or fraudulent conveyances, except when made with actual intent to defraud and taken in bad faith. Protections also are afforded to ensure that the acceleration, termination, liquidation, netting, setoff and collateral foreclosure provisions of such transactions and master agreements for such transactions are enforceable.

In addition, FDICIA sought to protect the enforceability of close-out netting provisions in ''netting contracts'' between ''financial institutions.'' FDICIA states that the goal of enforcing netting arrangements is to reduce systemic risk within the banking system and financial markets.

The orderly resolution of insolvencies involving counterparties to such contracts also is an important element in the reduction of systemic risk. The FDIA allows the receiver for an insolvent insured depository institution the opportunity to review the status of certain contracts to determine whether to terminate or transfer the contracts to new counterparties. These provisions provide the receiver with flexibility in determining the most appropriate resolution for the failed institution and facilitate the reduction of systemic risk by permitting the transfer, rather than termination, of such contracts.

In general, Title IX is designed to clarify the treatment of certain financial contracts upon the insolvency of a counterparty and to promote the reduction of systemic risk. It furthers the goals of prior amendments to the Bankruptcy Code and the FDIA regarding the treatment of those financial contracts and of the payment system risk reduction provisions in FDICIA. It has four principal purposes:

1. To strengthen the provisions of the Bankruptcy Code and the FDIA that protect the enforceability of acceleration, termination, liquidation, close-out netting, collateral foreclosure and related provisions of certain financial agreements and transactions.

2. To harmonize the treatment of these financial agreements and transactions under the Bankruptcy Code and the FDIA.

3. To amend the FDIA and FDICIA to clarify that certain rights of the FDIC acting as conservator or receiver for a failed insured depository institution (and in some situations, rights of SIPC and receivers of certain uninsured institutions) cannot be defeated by operation of the terms of FDICIA.

4. To make other substantive and technical amendments to clarify the enforceability of financial agreements and transactions in bankruptcy or insolvency.

All these changes are designed to further minimize systemic risk to the banking system and the financial markets.

In section 901, subsections (a) through (f) amend the FDIA definitions of ''qualified financial contract,'' ''securities contract,'' ''commodity contract,'' ''forward contract,'' ''repurchase agreement'' and ''swap agreement'' to make them consistent with the definitions in the Bankruptcy Code and to reflect the enactment of the Commodity Futures Modernization Act of 2000 (CFMA). It is intended that the legislative history and case law surrounding those terms, to the date of this amendment, be incorporated into the legislative history of the FDIA.

Subsection (b) amends the definition of ''securities contract'' expressly to encompass margin loans, to clarify the coverage of securities options and to clarify the coverage of repurchase and reverse repurchase transactions. The inclusion of ''margin loans'' in the definition is intended to encompass only those loans commonly known in the securities industry as ''margin loans,'' such as arrangements where a securities broker or dealer extends credit to a customer in connection with the purchase, sale or trading of securities, and does not include loans that are not commonly referred to as ''margin loans,'' however documented. The reference in subsection (b) to a ''guarantee by or to any securities clearing agency'' is intended to cover other arrangements, such as novation, that have an effect similar to a guarantee. The reference to a ''loan'' of a security in the definition is intended to apply to loans of securities, whether or not for a ''permitted purpose'' under margin regulations. The reference to ''repurchase and reverse repurchase transactions'' is intended to eliminate any inquiry under the qualified financial contract provisions of the FDIA as to whether a repurchase or reverse repurchase transaction is a purchase and sale transaction or a secured financing. Repurchase and reverse repurchase transactions meeting certain criteria are already covered under the definition of ''repurchase agreement'' in the FDIA (and a regulation of the FDIC). Repurchase and reverse repurchase transactions on all securities (including, for example, equity securities, asset-backed securities, corporate bonds and commercial paper) are included under the definition of ''securities contract''.

Subsection (b) also specifies that purchase, sale and repurchase obligations under a participation in a commercial mortgage loan do not constitute ''securities contracts.'' While a contract for the purchase, sale or repurchase of a participation may constitute a ''securities contract,'' the purchase, sale or repurchase obligation embedded in a participation agreement does not make that agreement a ''securities contract.''

A number of terms used in the qualified financial contract provisions, but not defined therein, are intended to have the meanings set forth in the analogous provisions of the Bankruptcy Code or FDICIA (for example, ''securities clearing agency''). The term ''person,'' however, is not intended to be so interpreted. Instead, ''person'' is intended to have the meaning set forth in 1 U.S.C. §1.

Subsection (e) amends the definition of ''repurchase agreement'' to codify the substance of the FDIC's 1995 regulation defining repurchase agreement to include those on qualified foreign government securities. See 12 CFR §360.5. The term ''qualified foreign government securities'' is defined to include those that are direct obligations of, or fully guaranteed by, central governments of members of the Organization for Economic Cooperation and Development, OECD. Subsection (e) reflects developments in the repurchase

agreement markets, which increasingly use foreign government securities as the underlying asset. The securities are limited to those issued by or guaranteed by full members of the OECD, as well as countries that have concluded special lending arrangements with the International Monetary fund associated with the Fund's General Arrangements to Borrow.

Subsection (e) also amends the definition of ''repurchase agreement'' to include those on mortgage-related securities, mortgage loans and interests therein, and expressly to include principal and interest-only U.S. government and agency securities as securities that can be the subject of a ''repurchase agreement.''

This amendment is not intended to affect the status of repos involving securities or commodities as securities contracts, commodity contracts, or forward contracts, and their consequent eligibility for similar treatment under the qualified financial contract provisions. In particular, an agreement for the same and repurchase of a security would continue to be a securities contract as defined in the FDIA, even if not a ''repurchase agreement'' as defined in the FDIA. Similarly, an agreement for the sale and repurchase of a commodity, even though not a ''repurchase agreement'' as defined int he FDIA, would continue to be a forward contract for purposes of the FDIA.

Subsection (e), like subsection (b) for ''securities contracts,'' specifies that repurchase obligations under a participation in a commercial mortgage loan do not make the participation agreement a ''repurchase agreement.'' such repurchase obligations embedded in participations in commercial loans (such as recourse obligations) do not constitute a ''repurchase agreement.'' However, a repurchase agreement involving the transfer of participations in commercial mortgage loans with a simultaneous agreement to repurchase the participation on demand or at a date certain one year or less after such transfer would constitute a ''repurchase agreement'', as well as a ''securities contract''.

Subsection (f) amends the definition of ''swap agreement'' to include 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 of precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity sway, option future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option.'' As amended, the definition of ''swap agreement'' will update the statutory definition and achive contractual netting across economically similar transactions.

The definition of ''swap agreement'' originally was intended to provide sufficient flexibility to avoid the need to amend the definition as the nature and uses of swap transactions matured. to that end, the phrase ''or any other similar agreement'' was included int he definition. (The phrase ''or any similar agreement'' has been added to the definition of ''forward contract,'' ''commodity contract,'' ''repurchase agreement'' and ''securities contract'' for the same reason.) To clarify this, subsection (f) expands the definition of ''swap agreement'' to include ''any agreement or trqansaction that is similar to any other agreement or transaction referred to in Section 11(e)(8)(D)(vi) of the FDIA and is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value.''

The definition of ''swap agreement,'' however, should not be interpreted to permit parties to document non-swaps as swap transactions. Traditional commercial arrangements, such as supply agreements, or other non-financial market transactions, such as commercial, residential or consumer loans, cannot be treated as ''swaps'' under either the FDIA or the Bankruptcy Code simply because the parties purport to document or label the transactions as ''swap agreements.'' In addition, these definitions apply only for purposes of the FDIA and the Bankruptcy Code. These definitions, and the characterization of a certain transaction as a ''swap agreement,'' are not intended to affect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in subsection (f). Similarly, Section 914 and a new paragraph of Section 11(e) of the FDIA provide that the definitions of ''securities contract,'' ''repurchase agreement,'' ''forward contract,'' and ''commodity contract,'' and the characterization of certain transactions as such a contract or agreement, are not intended to affect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in subsection (f).

The definition also includes any security agreement or arrangement, or other credit enhancement, related to a swap agreement, including any guarantee or reimbursement obligation related to a swap agreement. This ensures that any such agreement, arrangement or enhancement is itself deemed to be a swap agreement, and therefore eligible for treatment as such for purposes of termination, liquidation, acceleration, offset and netting under the FDIA and the Bankruptcy Code. Similar changes are made in the definitions of ''forward contract,'' ''commodity contract,'' ''repurchase agreement'' and ''securities contract.''

The use of the term ''forward'' in the definition of ''swap agreement'' is not intended to refer only to transactions that fall within the definition of ''forward contract.'' Instead, a ''forward'' transaction could be a ''swap agreement'' even if not a ''forward contract.''

Subsection (g) amends the FDIA by adding a definition for ''transfer,'' which is a key term used in the FDIA, to ensure that it is broadly construed to encompass dispositions of property or interests in property. The definition tracks that in section 101 of the Bankruptcy Code.

Subsection (h) makes clarifying technical changes to conform the receivership and conservatorship provisions of the FDIA. This subsection (h) also clarifies that the FDIA expressly protects rights under security agreements, arrangements or other credit enhancements related to one or more qualified financial contracts, QFCs. An example of a security arrangement is a right of setoff, and examples of other credit enhancements are letters of credit, guarantees, reimbursement obligations and other similar agreements.

Subsection (i) clarifies that no provision of Federal or state law relating to the avoidance of preferential or fraudulent transfers, including the anti-preference provision of the National Bank Act, can be invoked to avoid a transfer made in connection with any QFC of an insured depository institution in conservatorship or receivership, absent actual fraudulent intent on the part of the transferee.

Section 902 provides that no provision of law, including FDICIA, shall be construed to limit the power of the FDIC to transfer or to repudiate any QFC in accordance with its powers under the FDIA. As discussed below, there has been some uncertainty regarding whether or not FDICIA limits the authority of the FDIC to transfer or to repudiate QFCs of an insolvent financial institution. Section 902, as well as other provisions in the Act, clarify that FDICIA does not limit the transfer powers of the FDIC with respect to QFCs.

Section 902 denies enforcement to ''walkaway'' clauses in QFCs. A walkaway clause is defined as a provision that, after calculation of a value of a party's position or an amount due to or from one of the parties upon termination, liquidation or acceleration of the QFC, either does not create a payment obligation of a party or extinguishes a payment obligation of a

party in whole or in part solely because of such party's status as a non-defaulting party.

In Section 903, subsection (a) amends the FDIA to expand the transfer authority of the FDIC to permit transfers of QFCs to ''financial institutions'' as defined in FDICIA or in regulations. This provision will allow the FDIC to transfer QFCs to a non-depository financial institution, provided the institution is not subject to bankruptcy or insolvency proceedings.

The new FDIA provision specifies that when the FDICa QFCs that are cleared on or subject to the rules of a particular clearing organization, the transfer will not require the clearing organization to accept the transferee as a member of the organization. This provision gives the FCIC flexibility in resolving QFCs cleared on or subject to the rules of a clearing organization to accept for clearing any QFCs from the transferee, except on the terms and conditions applicable to other parties permitted to clear through that clearing organization. ''Clearing organization'' is defined to mean a ''clearing organization'' within the meaning of FDICIA, as amended both by the CFMA and by Section 906 of the Act.

The new FDIA provision also permits transfers to an eligible financial institution that is a non-U.S. person, or the branch or agency of a on-U.S. person or a U.S. financial institution that is not an FDIC-insured institution if, following the transfer, the contractual rights of the parties would be enforceable substantially to the same extent as under the FDIA. It is expected that the FDIC would not transfer QFCs to such a financial institution if there were an impending change of law that would impair the enforceability of the parties' contractual rights.

Subsection (b) amends the notification requirements following a transfer of the QFCs of a failed depository institution to require the FDIC to notify any party to a transferred QFC of such transfer by 5:00 p.m. Eastern Time on the business day following the date of the appointment of the FDIC acting as receiver or following the date of such transfer by the FDIC acting as a conservator. This amendment is consistent with the policy statement on QFCs issued by the FDIC on December 12, 1989.

Subsection (c) amends the FDIA to clarify the relationship between the FDIA and FDICIA. There has been some uncertainty whether FDICIA permits counterparties to terminate or liquidate a QFC before the expiration of the time period provided by the FDIA during which the FDIC may repudiate or transfer a QFC in a conservatorship or receivership. Subsection (c) provides that a party may not terminate a QFC based solely on the appointment of the FDIC as receiver until 5:00 p.m. (Eastern Time) on the business day following the appointment of the receiver or after the person has received notice of a transfer under FDIA section 11(d)(9), or based solely on the appointment of the FDIC as conservator, notwithstanding the provisions of FDICIA. This provides the FDIC with an opportunity to undertake an orderly resolution of the insured depository institution.

The amendment also prohibits the enforcement of rights of termination or liquidation that arise solely because of the insolvency of the institution or are based on the ''financial condition'' of the depository institution in receivership or conservatorship. For example, termination based on a cross-default provision in a QFC that is triggered upon a default under another contract could be rendered ineffective if such other default was caused by an acceleration of amounts due under that other contract, and such acceleration was based solely on the appointment of a conservator or receiver for that depository institution. Similarly, a provision in a QFC permitting termination of the QFC based solely on a downgraded credit rating of a party will not be enforceable in an FDIC receivership or conservatorship because the provision is based solely on the financial condition of the depository institution in default. However, any payment, delivery or other performance-based default, or breach of a representation or covenant putting in question the enforceability of the agreement, will not be deemed to be based solely on financial condition for purposes of this provision. The amendment is not intended to prevent counterparties from taking all actions permitted and recovering all damages authorized upon repudiation of any QFC by a conservator or receiver, or from taking actions based upon a receivership or other financial condition-triggered default in the absence of a transfer (as contemplated in Section 11 (e)(10) of the FDIA).

The amendment allows the FDIC to meet its obligation to provide notice to parties to transferred QFCs by taking steps reasonably calculated to provide notice to such parties by the required time. This is consistent with the existing policy statement on QFCs issued by the FDIC on December 12, 1989.

Finally, the amendment permits the FDIC to transfer QFCs of a failed depository institution to a bridge bank or a depository institution organized by the FDIC for which a conservator is appointed either (i) immediately upon the organization of such institution or (ii) at the time of a purchase and assumption transaction between the FDIC and the institution. This provision clarifies that such institutions are not to be considered financial institutions that are ineligible to receive such transfers under FDIA section 11(e)(9). This is consistent with the existing policy statement on QFCs issued by the FDIC on December 12, 1989.

Section 904 limits the disaffirmance and repudiation authority of the FDIC with respect to QFCs so that such authority is consistent with the FDIC's transfer authority under FDIA section 11(e)(9). This ensures that no disaffirmance, repudiation or transfer authority of the FDIC may be exercised to ''cherry-pick'' or otherwise treat independently all the QFCs between a depository institution in default and a person or any affiliate of such person. The FDIC has announced that its policy is not to repudiate or disaffirm QFCs selectively. This unified treatment is fundamental to the reduction of systemic risk.

Section 905 states that a master agreement for one or more securities contracts, commodity contracts, forward contracts, repurchase agreements or swap agreements will be treated as a single QFC under the FDIA (but only to the extent the underlying agreements are themselves QFCs). This provision ensures that cross-product netting pursuant to a master agreement, or pursuant to an umbrella agreement for separate master agreements between the same parties, each of which is used to document one or more qualified financial contracts, will be enforceable under the FDIA. Cross-product netting permits a wide variety of financial transactions between two parties to be netted, thereby maximizing the present and potential future risk-reducing benefits of the netting arrangement between the parties. Express recognition of the enforceability of such cross-product master agreements furthers the policy of increasing legal certainty and reducing systemic risks in the case of an insolvency of a large financial participant.

In section 906, subsection (a)(1) amends the definition of ''clearing organization'' to include clearinghouses that are subject to exemptions pursuant to orders of the Securities and Exchange Commission or the Commodity Futures Trading Commission and to include multilateral clearing organizations, the definition of which was added to FDICIA by the CFMA.

Subsection (a)(2). FDICIA provides that a netting arrangement will be enforced pursuant to its terms, notwithstanding the failure of a party to the agreement. However, the current netting provisions of FDICIA limit this protection to ''financial institutions,'' which include depository institutions. This subsection amends the FDICIA definition of covered institutions to include (i) uninsured national and State member banks, irrespective of their eligibility for deposit insurance and (ii) foreign banks, including the foreign bank and its branches or agencies as a combined group, or only the foreign bank parent of a branch or agency. The latter change will extend the protections of FDICIA to ensure that U.S. financial organizations participating in netting agreements with foreign banks are covered by the Act, thereby enhancing the safety and soundness of these arrangements. It is intended that a non-defaulting foreign bank and its branches and agencies be considered to be a single financial institution for purposes of the bilateral netting provisions of FDICIA (except to the extent

that the non-defaulting foreign bank and its branches and agencies on the one hand, and the defaulting financial institution, on the other, have entered into agreements that clearly evidence an intention that the non-defaulting foreign bank and its branches and agencies be treated as separate financial institutions for purposes of the bilateral netting provisions of FDICIA).

Subsection (a)(3) amends FDICIA to provide that, for purposes of FDICIA, two or more clearing organizations that enter into a netting contract are considered ''members'' of each other. This assures the enforceability of netting arrangements involving two or more clearing organizations and a member common to all such organizations, thus reducing systemic risk in the event of the failure of such a member. Under the current FDICIA provisions, the enforceability of such arrangements depends on a case-by-case determination that clearing organizations could be regarded as members of each other for purposes of FDICIA.

Subsection (a)(4) amends the FDICIA definition of netting contract and the general rules applicable to netting contracts. The current FDICIA provisions require that the netting agreement must be governed by the law of the United States or a State to receive the protections of FDICIA. However, many of these agreements, particularly netting arrangements covering positions taken in foreign exchange dealings, are governed by the laws of a foreign country. This subsection broadens the definition of ''netting contract'' to include those agreements governed by foreign law, and preserves the FDICIA requirement that a netting contract not be invalid under, or precluded by, Federal law.

Subsections (b) and (c) establish two exceptions to FDICIA's protection of the enforceability of the provisions of netting contracts between financial institutions and among clearing organization members.

First, the termination provisions of netting contracts will not be enforceable based solely on (i) the appointment of a conservator for an insolvent depository institution under the FDIA or (ii) the appointment of a receiver for such institution under the FDIA, if such receiver transfers or repudiates QFCs in accordance with the FDIA and gives notice of a transfer by 5:00 p.m. on the business day following the appointment of a receiver. This change is made to confirm the FDIC's flexibility to transfer or repudiate the QFCs of an insolvent depository institution in accordance with the terms of the FDIA. This modification also provides important legal certainly regarding the treatment of QFCs under the FDIA, because the current relationship between the FDIA and FDICIA is unclear.

The second exception provides that FDICIA does not override a stay order under SIPA with respect to foreclosure on securities, but not cash, collateral of a debtor, section 911 makes a conforming change to SIPA. There is also an exception relating to insolvent commodity brokers.

Subsections (b) and (c) also clarify that a security agreement or other credit enhancement related to a netting contract is enforceable to the same extent as the underlying netting contract.

Subsection (d) adds a new section 407 to FDICIA. This new section provides that, notwithstanding any other law, QFCs with uninsured national banks, uninsured Federal branches or agencies, or Edge Act corporations, or uninsured State member banks that operate, or operate as, a multilateral cleaning organization and that are placed in receivership or conservatorship will be treated in the same manner as if the contract were with an insured national bank or insured Federal branch for which a receiver or conservator was appointed. This provision will ensure that parties to QFCs with these institutions will have the same rights and obligations as parties entering into the same agreements with insured depository institutions. The new section also specifically limits the powers of a receiver or conservator for such an institution to those contained in 12 U.S.C. §§1821(e)(8), (9), (10), and (11), which address QFCs.

While the amendment would apply the same rules to such institutions that apply to insured institutions, the provision would not change the rules that apply to insured institutions. Nothing in this section would amend the International Banking Act, the Federal Deposit Insurance Act, the national Bank Act, or other statutory provisions with respect to receiverships of insured national banks or Federal branches.

In section 907, subsection (a)(1) amends the Bankruptcy Code definitions of ''repurchase agreement'' and ''swap agreement'' to conform with the amendments to the FDIA contained in sections 901(c) and 901(f) of the Act.

In connection with the definition of ''repurchase agreement,'' the term ''qualified foreign government securities'' is defined to include securities that are direct obligations of, or fully guaranteed by, central governments of members of the Organization for Economic Cooperation and Development OECD. This language reflects developments in the repurchase agreement markets, which increasingly use foreign government securities as the underlying asset. The securities are limited to those issued by or guaranteed by full members of the OECD, as well as countries that have concluded special lending arrangements with the International Monetary Fund associated with the Fund's General Arrangements to Borrow.

Subsection (a)(1) also amends the definition of ''repurchase agreement'' to include those on mortgage-related securities, mortgage loans and interests therein, and expressly to include principal and interest-only U.S. government and agency securities as securities that can be the subject of a ''repurchase agreement.'' The reference in the definition to United States government- and agency-issued or fully guaranteed securities is intended to include obligations issued or guaranteed by Fannie Mae and the Federal Home Loan Mortgage Corporation (Feddie Mac) as well as all obligations eligible for purchase by Federal Reserve banks under the similar language of section 14(b) of the Federal Reserve Act.

This amendment is not intended to affect the status of repos involving securities or commodities as securities contracts, commodity contracts, or forward contracts, and their consequent eligibility for similar treatment under other provisions of the Bankruptcy Code. In particular, an agreement for the sale and repurchase of a security would continue to be a securities contract as defined in the Bankruptcy Code and thus also would be subject to the Bankruptcy Code provisions pertaining to securities contracts, even if not a ''repurchase agreement'' as defined in the Bankruptcy Code. Similarly, an agreement for the sale and repurchase of a commodity, even though not a ''repurchase agreement'' as defined in the Bankruptcy Code, would continue to be a forward contract for purposes of the Bankruptcy Code and would be subject to the Bankruptcy Code provisions pertaining to forward contracts.

Subsection (a)(1) specifies that repurchase obligations under a participation in a commercial mortgage loan do not make the participation agreement a ''repurchase agreement.'' Such repurchase obligations embedded in participations in commercial loans, such as recourse obligations, do not constitute a ''repurchase agreement.'' However, a repurchase agreement involving the transfer of participations in commercial mortgage loans with a simultaneous agreement to repurchase the participation on demand or at a date certain one year or less after such transfer would constitute a ''repurchase agreement'', as well as a ''securities contract''.

The definition of ''swap agreement'' is amended to include 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 total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option.'' As amended, the definition of ''swap agreement'' will update the statutory definition and achieve contractual netting across economically similar transactions.

The definition of ''swap agreement'' originally was intended to provide sufficient flexibility to avoid the need to amend the definition as the nature and uses of swap transactions matured. To that end, the phrase ''or any other similar agreement'' was included in the definition. The phrase ''or any similar agreement'' has been added to the definitions of ''forward contract,'' ''commodity contract,'' ''repurchase agreement,'' and ''securities contract'' for the same reason. To clarify this, subsection (a)(1) expands the definition of ''swap agreement'' to include ''any agreement or transaction that is similar to any other agreement or transaction referred to in [Section 101(53B) of the Bankruptcy Code] and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value.''

The definition of ''swap agreement'' in this subsection should not be interpreted to permit parties to document non-swaps as swap transactions. Traditional commercial arrangements, such as supply agreements, or other non-financial market transactions, such as commercial, residential or consumer loans, cannot be treated as ''swaps'' under either the FDIA or the Bankruptcy Code because the parties purport to document or label the transactions as ''swap agreements.'' These definitions, and the characterization of a certain transaction as a ''swap agreement,'' are not intended to affect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in subsection (a)(1)(C). Similarly, Section 914 provides that the definitions of ''securities contract,'' ''repurchase agreement,'' ''forward contract,'' and ''commodity contract,'' and the characterization of certain transactions as such a contract or agreement, are not intended to affect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in the definition of ''swap agreement.''

The definition also includes any security agreement or arrangement, or other credit enhancement, related to a swap agreement, including any guarantee or reimbursement obligation related to a swap agreement. This ensures that any such agreement, arrangement or enhancement is itself deemed to be a swap agreement, and therefore eligible for treatment as such for purposes of termination, liquidation, acceleration, offset and netting under the Bankruptcy Code and the FDIA. Similar changes are made in the definitions of ''forward contract,'' ''commodity contract,'' ''repurchase agreement,'' and ''securities contract.'' An example of a security arrangement is a right of setoff; examples of other credit enhancements are letters of credit and other similar agreements. A security agreement or arrangement or guarantee or reimbursement obligation related to a ''swap agreement,'' ''forward contract,'' ''commodity contract,'' ''repurchase agreement'' or ''securities contract'' will be such an agreement or contract only to the extent of the damages in connection with such agreement measured in accordance with Section 562 of the Bankruptcy Code (added by the Act). This limitation does not affect, however, the other provisions of the Bankruptcy Code (including Section 362(b)) relating to security arrangements in connection with agreements or contracts that otherwise qualify as ''swap agreements,'' ''forward contracts,'' ''commodity contracts,'' ''repurchase agreements'' or ''securities contracts.''

The use of the term ''forward'' in the definition of ''swap agreement'' is not intended to refer only to transactions that fall within the definition of ''forward contract.'' Instead, a ''forward'' transaction could be a ''swap agreement'' even if not a ''forward contract.''

Subsections (a)(2) and (a)(3) amend the Bankruptcy Code definitions of ''securities contract'' and ''commodity contract,'' respectively, to conform them to the definitions in the FDIA.

Subsection (a)(2), like the amendments to the FDIA, amends the definition of ''securities contract'' expressly to encompass margin loans, to clarify the coverage of securities options and to clarify the coverage of repurchase and reverse repurchase transactions. The inclusion of ''margin loans'' in the definition is intended to encompass only those loans commonly known in the securities industry as ''margin loans,'' such as arrangements where a securities broker or dealer extends credit to a customer in connection with the purchase, sale or trading of securities, and does not include loans that are not commonly referred to as ''margin loans,'' however documented. The reference in subsection (b) to a ''guarantee'' by or to a ''securities clearing agency'' is intended to cover other arrangements, such as novation, that have an effect similar to a guarantee. The reference to a ''loan'' of security in the definition is intended to apply to loans of securities, whether or not for a ''permitted purpose'' under margin regulations. The reference to ''repurchase and reverse repurchase transactions'' is intended to eliminate any inquiry under Section 555 and related provisions as to whether a repurchase or reverse repurchase transaction is a purchase and sale transaction or a secured financing. Repurchase and reverse repurchase transactions meeting certain criteria are already covered under the definition or ''repurchase agreement'' in the Bankruptcy Code. Repurchase and reverse repurchase transactions on all securities (including, for example, equity securities, asset-backed securities, corporate bonds and commercial paper) are included under the definition of ''securities contract''. A repurchase or reverse repurchase transaction which is a ''securities contract'' but not a ''repurchase agreement'' would thus be subject to the ''counterparty limitations'' contained in Section 555 of the Bankruptcy Code (i.e., only stockbrokers, financial institutions, securities clearing agencies and financial participants can avail themselves of Section 555 and related provisions).

Subsection (a)(2) also specifies that purchase, sale and repurchase obligations under a participation in a commercial mortgage loan do not constitute ''securities contracts.'' While a contract for the purchase, sale or repurchase of a participation may constitute a ''securities contract,'' the purchase, sale or repurchase obligation embedded in a participation agreement does not make that agreement a ''securities contract.''

Subsection (b) amends the Bankruptcy Code definitions of ''financial institution'' and ''forward contract merchant.'' The definition for ''financial institution'' includes Federal Reserve Banks and the receivers or conservators of insolvent depository institutions. With respect to securities contracts, the definition of ''financial institution'' expressly includes investment companies registered under the Investment Company Act of 1940.

Subsection (b) also adds a new definition of ''financial participant'' to limit the potential impact of insolvencies upon other major market participants. This definition will allow such market participants to close-out and net agreements with insolvent entities under sections 362(b)(6), 555 and 556 even if the creditor could not qualify as, for example, a commodity broker. Sections 362(b)(6), 555 and 556 preserve the limitations of the right of close-out and net such contracts, in most cases, to entities who qualify under the Bankruptcy Code's counterparty limitations. However, where the counterparty has transactions with a total gross dollar value of at least $1 billion 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 million (aggregated across counterparties) in one or more agreements or transactions on any day during the previous 15-month period, sections 362(b)(6), 555 and 556 and corresponding amendments would permit it to exercise netting and related rights irrespective of its inability otherwise to satisfy those counterparty limitations. This change

will help prevent systemic impact upon the markets from a single failure, and is derived from threshold tests contained in Regulation EE promulgated by the Federal Reserve Board in implementing the netting provisions of the Federal Deposit Insurance Corporation Improvement Act. It is intended that the 15-month period be measured with reference to the 15 months preceding the filing of a petition by or against the debtor.

''Financial participant'' is also defined to include ''clearing organizations'' within the meaning of FDICIA, as amended by the CFMA and Section 906 of the Act. This amendment, together with the inclusion of ''financial participants'' as eligible counterparties in connection with ''commodity contracts,'' ''forward contracts'' and ''securities contracts'' and the amendments made in other Sections of the Act to include ''financial participants'' as counterparties eligible for the protections in respect of ''swap agreements'' and ''repurchase agreements,'' take into account the CFMA and will allow clearing organizations to benefit from the protections of all of the provisions of the Bankruptcy Code relating to these contracts and agreements. This will further the goal of promoting the clearing of derivatives and other transactions as a way to reduce systemic risk. The definition of ''financial participant'' (as with the other provisions of the Bankruptcy Code relating to ''securities contracts,'' ''forward contracts,'' ''commodity contracts,'' ''repurchase agreements'' and ''swap agreements) is not mutually exclusive, i.e., an entity that qualifies as a ''financial participant'' could also be a ''swap participant,'' ''repo participant,'' ''forward contract merchant,'' 'commodity broker,'' ''stockbroker,'' ''securities clearing agency'' and/or ''financial institution.''

Subsection (c) adds to the Bankruptcy Code new definitions for the terms ''master netting agreement'' and master netting agreement participant.''

The definition of ''master netting agreement'' is designed to protect the termination and close-out netting provisions of cross-product master agreements between parties. Such an agreement may be used (i) to document a wide variety of securities contracts, commodity contracts, forward contracts, repurchase agreements and swap agreements of (ii) as an umbrella agreement for separate master agreement between the same parties, each of which is used to document a discrete type of transaction. The definition includes security agreements or arrangements or other credit enhancements related to one or more such agreements and clarifies that a master netting agreement will be treated as such even if it documents transactions that are not within the enumerated categories of qualifying transactions (but the provisions of the Bankruptcy Code relating to master netting agreements and the other categories of transactions will not apply to such other transactions).

A ''master netting agreement participant'' is an entity that is a party to an outstanding master netting agreement with a debtor before the filing of a bankruptcy petition.

Subsection (d) amends section 362(b) of the Bankruptcy Code to protect enforcement, free from the automatic stay, of setoff or netting provisions in swap agreements and in master netting agreements and security agreements or arrangements related to one or more swaping agreements or master netting agreements. This provision parallels the other provisions of the Bankruptcy Code that protect netting provisions of securities contracts, commodity contracts, forward contracts, and repurchase agreements. Because the relevant definitions include related security agreements, the references to ''setoff' in these provisions, as well in section 362(b)(6) and (7) of the Bankruptcy Code, are intended to refer also to rights to foreclose on, and to set off against-obligations to return, collateral securing swap agreements, mater netting agreements, repurchase agreements, securities contracts, commodity contracts, or forward contracts. Collateral may be pledged to cover the cost of replacing the defaulted transactions in the relevant market, as well as other costs and expenses incurred or estimated to be incurred for the purpose of hedging or reducing the risks arising out of such termination. Enforcement of these agreements and arrangement free from the automatic stay is consistent with the policy goals of minimizing systemic risk.

Subsection (d) also clarifies that the provisions protecting setoff and foreclosure in relation to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, and master netting agreements free from the automatic stay apply to collateral pledged by the debtor but that cannot technically be ''held by'' the creditor, such as receivables and book-entry securities, and to collateral that has been repledged by the creditor and securities re-sold pursuant to repurchase agreements.

The current codification of section 546 of the Bankruptcy Code contains two subsections designated as ''(g)''; subsection (e) corrects this error.

Subsections (e) and (f) amend sections 546 and 548(d) of the Bankruptcy Code to provide that transfers made under or in connection with a master netting agreement may not be avoided by a trustee except where such transfer is made with actual intent to hinder, delay or defraud and not taken in good faith. This amendment provides the same protections for a transfer made under, or in connection with, a master netting agreement as currently is provided for margin payments, settlement payments and other transfers received by commodity brokers, forward contract merchants, stockbrokers, financial institutions, securities clearing agencies, repo participants, and swap participants under Sections 546 and 548(d), except to the extent the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.

Subsections (g), (h), (i) and (j) clarify that the provisions of the Bankruptcy Code that protect (i) rights of liquidation under securities contracts, commodity contracts, forward contracts and repurchase agreements also protect rights of termination or acceleration under such contracts, and (ii) rights to terminate under swap agreements also protect rights of liquidation and acceleration.

Subsection (k) adds a new section 561 to the Bankruptcy Code to protect the contractual right of a master netting agreement participant to enforce any rights of termination, liquidation, acceleration, offset or netting under a master netting agreement. Such rights include rights arising (i) from the rules of a derivatives clearing organization, multilateral clearing organization, securities clearing agency, securities exchange, securities association, contract market, derivatives transaction execution facility or board of trade, (ii) under common law, law merchant or (iii) by reason of normal business practice. This reflects the enactment of the CFMA and the current treatment of rights under swap agreements under section 560 of the Bankruptcy Code. Similar changes to reflect the enactment of the CFMA have been made to the definition of ''contractual right'' for purposes of Sections 555, 556, 559 and 560 of the Bankruptcy Code.

Subsections (b)(2)(A) and (b)(2)(B) of new Section 561 limit the exercise of contractual rights to net or to offset obligations where the debtor is a commodity broker and one leg of the obligations sought to be netted relates to commodity contracts traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act. Under subsection (b)(2)(A) netting or offsetting is not permitted in these circumstances if the party seeking to net or to offset has no positive net equity in the commodity accounts at the debtor. Subsection (b)(2)(B) applies only if the debtor is a commodity broker, acting on behalf of its own customer, and is in turn a customer of another commodity broker. In that case, the latter commodity broker may not net or offset obligations under such commodity contracts with other claims against its customer, the debtor. Subsections (b)(2)(A) and (b)(2)(B) limit the depletion of assets available for distribution to customers of commodity brokers. This is consistent with the principle of subchapter IV of chapter 7 of title 11 that gives priority to customer claims in the bankruptcy of a commodity

broker. Subsection (b)(2)(C) provides an exception to subsections (b)(2)(A) and (b)(2)(B) for cross-margining and other similar arrangements approved by, or submitted to and not rendered ineffective by, the Commodity Futures Trading Commission, as well as certain other netting arrangements.

For the purposes of Bankruptcy Code sections 555, 556, 559, 560 and 561, it is intended that the normal business practice in the event of a default of a party based on bankruptcy or insolvency is to terminate, liquidate or accelerate securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements and master netting agreements with the bankrupt or insolvent party.

The protection of netting and offset rights in sections 560 and 561 is in addition to the protections afforded in sections 362(b)(6), (b)(7), (b)(17) and (b)(28).

Under the Act, the termination, liquidation or acceleration rights of a master netting agreement participant are subject to limitations contained in other provisions of the Bankruptcy Code relating to securities contracts and repurchase agreements. In particular, if a securities contract or repurchase agreement is documented under a master netting agreement, a party's termination, liquidation and acceleration rights would be subject to the provisions of the Bankruptcy Code relating to orders authorized under the provisions of SIPA or any statute administered by the SEC. In addition, the netting rights of a party to a master netting agreement would be subject to any contractual terms between the parties limiting or waiving netting or set off rights. Similarly, a waiver by a bank or a counterparty of netting or set off rights in connection with QFCs would be enforceable under the FDIA.

Section 502 of the Act clarifies that, with respect to municipal bankruptcies, all the provisions of the Bankruptcy Code relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements and master netting agreements (which by their terms are intended to apply in all proceedings under title 11) will apply in a Chapter 9 proceeding for a municipality. Although sections 555, 556, 559 and 560 provide that they apply in any proceeding under the Bankruptcy Code, Section 502 makes a technical amendment in Chapter 9 to clarify the applicability of these provisions.

New section 561 of the Bankruptcy Code clarifies that the provisions of the Bankruptcy Code related to securities contracts, commodity contracts, forward contracts, repurchasing agreements, swap agreements and master netting agreements apply in a proceeding ancillary to a foreign insolvency proceeding under new Chapter 15.

Subsections (l) and (m) clarify that the exercise of termination and netting rights will not otherwise affect the priority of the creditor's claim after the exercise of netting, foreclosure and related rights.

Subsection (n) amends section 553 of the Bankruptcy Code to clarify that the acquisition by a creditor of setoff rights in connection with swap agreements, repurchase agreements, securities contracts, forward contracts, commodity contracts and master netting agreements cannot be avoided as a preference.

This subsection also adds setoff of the kinds described in sections 555, 556, 559, 560, and 561 of the Bankruptcy Code to the types of setoff excepted from section 553(b).

Subsection (o), as well as other subsections of the Act, adds references to ''financial participant'' in all the provisions of the Bankruptcy Code relating to securities, forward and commodity contracts and repurchase and swap agreements.

Section 908 amends section 11(e)(8) of the Federal Deposit Insurance Act to explicitly authorize the FDIC, in consultation with appropriate Federal banking agencies, to prescribe regulations on recordkeeping by any insured depository institution with respect to QFCs only if the insured depository institution is in a troubled condition (as such term is defined in the FDIA).

Section 909 amends FDIA section 13(e)(2) to provide that an agreement for the collateralization of governmental deposits, bankruptcy estate funds, Federal Reserve Bank or Federal Home Loan Bank extensions of credit or one or more QFCs shall not be deemed invalid solely because such agreement was not entered into contemporaneously with the acquisition of the collateral or because of pledges, delivery or substitution of the collateral made in accordance with such agreement.

The amendment codifies portions of policy statements issued by the FDIC regarding the application of section 13(e), which codifies the ''D'Oench Duhme'' doctrine. With respect to QFCs, this codification recognizes that QFCs often are subject to collateral and other security arrangements that may require posting and return of collateral on an ongoing basis based on the mark-to-market value of the collateralized transactions. The codification of only portions of the existing FDIC policy statements on these and related issues should not give to any negative implication regarding the continued validity of these policy statements.

Section 910 adds a new section 562 to the Bankruptcy Code providing that damage under any swap agreement, securities contract, forward contract, commodity contract, repurchase agreement or master netting agreement will be calculated as of the earlier of (i) the date of rejection of such agreement by a trustee or (ii) the date of liquidation, termination or acceleration of such contract or agreement.

New section 562 provides important legal certainty and makes the Bankruptcy Code consistent with the current provisions related to the timing of the calculation of damages under QFCs in the FDIA.

Section 911 amends SIPA to provide that an order or decree issued pursuant to SIPA shall not operate as a stay of any right of liquidation, termination, acceleration, offset or netting under one or more securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements or master netting agreements (as defined in the Bankruptcy Code and including rights of foreclosure on collateral), except that such order or decree may stay any right to foreclose on or dispose of securities (but not cash) collateral pledged by the debtor or sold by the debtor under a repurchase agreement or lent by the debtor under a securities lending agreement. A corresponding amendment to FDICIA is made by section 906. A creditor that was stayed in exercising rights against such securities would be entitled to post-insolvency interest to the extent of the value of such securities.

Section 912 generally protects asset-backed securitization transactions from legal uncertainties and disruptions related to the bankruptcies of certain parties and allows for the further development of structured finance. Asset securitization involves the issuance of securities supported by assets having an ascertainable cash flow or market value. Securitization of receivables, such as small-business loans, commercial and multifamily mortgages, and car loans, allows for the funding of such loans from capital market sources. The process generally enlarges the pool of capital available and reduces financing costs for vital lending purposes such as the financing of small-business operations and home ownership.

Through a number of definitions designed to ensure that the exclusion from property of the estate applies only to the intended type of transaction, new section 541(b)(5) of the Bankruptcy Code excludes from the property of a debtor's estate any ''eligible asset'', and proceeds thereof, tot he 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.'' Each term is explicitly defined to reflect its specific role or application in the securitization process to ensure that only bona fide securitizations are eligible for the safe harbor exclusion. All defined elements of a securitization must be present for the safe harbor to apply. Other commercial transactions lacking any of the defined elements, such as transactions documented and structured as collateralized lending arrangements and other commercial asset sales or financings that are unrelated to securitization transactions, would be ineligible for the safe harbor provided by section 541(b)(5).

The phrase ''to the extent'' in new section 541(b)(5) makes clear that a

portion of the eligible asset may remain part of the debtor's estate, for example, where the eligible entity obtains the right to receive only interest payments on the first 10 percent of payments due on a receivable in connection with an asset-backed securitization. In addition, the reference to section 548(a) in new section 541(b)(5) will make clear that the safe harbor does not supersede a trustee's power to avoid fraudulent transfers.

New section 541(b)(5) is not intended to override state law requirements, if any, regarding ''perfection'' of an asset sale. However, regardless of strict compliance with such state law requirements, new section 541(b)(5) is intended to provide an exclusion of the debtor's interest in eligible assets, and proceeds thereof, from the debtor's estate, upon compliance with section 541(b)(5). Thus, despite an eligible entity's failure to have properly perfected a sale for state law purposes, the eligible assets in question would remain excluded from the debtor's estate. In such event, however, a third party creditor with an interest in such eligible assets under state law would not be precluded from asserting, outside of the bankruptcy proceedings, such interest against the issuer or any other party purporting to have an interest in those assets. In other words, the amendments do not purport to extinguish any party's interest in the securitized assets other than the debtor's interest to the extent transferred by the debtor to the securitization vehicle. In order to provide certainty to participants in the asset-backed securities marked, including both issuers and purchasers of such securities, it is noted that the ''strong-arm'' provisions of section 544 of the Bankruptcy Code are not intended to override the general rule set forth in new section 541(b)(5) so as to bring such assets back into the debtor's estate.

Frequently, asset securitizations involve the issuance of more than one class of securities with differing payment priorities, subordination provisions and other characteristics. The definition of ''asset-backed securitization'' contained in new section 541(e)(1) requires that at least one tranche of the asset-backed securities backed by the eligible assets in question be rated investment grade, thereby requiring that each asset-backed securitization as to which eligible assets are excluded from the debtor's estate be a carefully reviewed transaction subjected to third party scrutiny by a nationally recognized statistical rating organization. The investment-grade rating requirement applies only when the security is initially issued. In view of the cost and time associated with obtaining an investment-grade rating, such ratings are generally not pursued for smaller transactions. These and other burdens of the rating process add further protection against potential abuse of the safe harbor for sham transactions and ensure its application of its intended purpose—to preserve payments on asset-backed securities issued in the public and private markets.

New section 541(e)(4) defines the term ''eligible asset.'' This definition is based upon the definition provided in rule 3a–7 under the Investment Company Act of 1940, which provides an exemption from registration under the Investment Company Act for issuers of asset-backed securities (i.e., issuers in the business of purchasing, or otherwise acquiring, and holding eligible assets). The phrase ''or other assets'' is intended to cover assets often conveyed in connection with securitization transactions such as letters of credit, guarantees, cash collateral accounts, and other assets that are provided as additional credit support. This phrase would also cover other assets, such as swaps, hedge agreements, etc., that are provided to protect bondholders against interest rate, currency and other market risks. The inclusion of cash and securities as eligible assets allows so-called market-value based securitizations of equity and other non-amortizing securities to fall within the purview of the amendment, although securitizations of such securities are not included under Rule 3a–7 and therefore would be subject to regulation under the Investment Company Act if another exemption therefrom were not available.

New sections 541(e)(3) and (4) define the terms ''eligible entity'' and ''issuer,'' respectively. The definitions exclude operating companies by encompassing only single purpose entities. Because securitization transactions often involve intermediary transferees, an eligible entity can be either an issuer or an entity engaged exclusively in the business of acquiring and transferring eligible assets directly or indirectly to an issuer.

New section 541(e)(5) defines the term ''transferred.'' In order for the eligible assets to be excluded from the debtor's estate under section 541, the debtor must represent and warrant in a written agreement that such eligible assets were sold, contributed or otherwise conveyed with the intention of removing them from the debtor's estate pursuant to section 541 (whether or not reference is made to section 541 in the written agreement). The definition makes clear that the debtor's written intention as to the exclusion of the eligible assets will be honored, regardless of the state law characterization of the transfer as a sale, contribution or other conveyance, and regardless of any other aspect of the transaction (such as the debtor's holding an interest in the issuer or any securities issued by the issuer, the ongoing servicing obligation of the debtor; the tax and accounting characterization; or any recourse to the debtor, whether relating to a breach of a representation, warranty or covenant, or otherwise) which may affect a state law analysis as to the true sale.

In Section 913, subsection (a) provides that the amendments made under Title IX take effect on the date of enactment.

Subsection (b) provides that the amendments made under Title IX shall not apply with respect to cases commenced, or to conservator/receiver appointments made, before the date of enactment. The amendments would, however, apply to contracts entered into prior to the date of enactment, so long as a Bankruptcy Code case were commenced or a conservator/receiver appointment were made on or after the date of enactment under any Federal or state law.

Section 914 provides that the meaning of terms used in Title IX are applicable for purposes of Title IX 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 laws (as that term is defined in Section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

Mr. HUTCHINSON. Mr. President, I rise in support of S. 420, the Bankruptcy Reform Act of 2001, and I commend Senators GRASSLEY, HATCH, and SESSIONS for their hard work, dedication, and perseverence. As a result of their efforts, a sense of balance and fairness has been restored to our legal system and American consumers and businesses will both benefit.

This bill is long overdue as over the past decade there has been an explosion in the number of bankruptcy filings. Last year, there were 1.25 million total bankruptcy filings in America, in 1990, a mere ten years earlier, there were 782,960 filings. In Arkansas, there were 7,062 filings in 1990 and 16,784 in 2000. This explosion is due in no small part to the current Bankruptcy Code's generous, no questions asked policy of providing complete debt forgiveness under Chapter 7 without seriously considering whether a person filing bankruptcy can repay some or all of those debts.

Furthermore, the United States economy loses $40 billion annually as a result of bankruptcy filings and the U.S. Department of Justice estimates that creditors lose $3.22 billion every year because of bankruptcies filed by persons who could repay their debts. These losses are passed on to all consumers—including, and especially, those who responsibly pay at least part of their debts but choose not use the bankruptcy code to escape them. The Congressional Budget Office estimates that as a result each American household pays an extra $400 annually in the form of higher costs for goods, services, and credit.

The Bankruptcy Reform Act of 2001 will reduce the number of frivolous bankruptcy filings while still allowing those who truly need help to obtain a fresh start. I am proud to support this legislation and I ask my colleagues to

join me in support of the Bankruptcy Reform Act of 2001.

Mrs. MURRAY. Mr. President, I rise to express my support for the bankruptcy reform legislation. This legislation offers an imperfect but fairly balanced approach to reforming the bankruptcy system. Through the amendment process we have improved the bill, but it could be more fair to all sectors of our society. I am disappointed some good amendments that would have improved the legislation were rejected.

The bankruptcy reform legislation that passed the House a couple of weeks ago is less friendly to individuals in adverse circumstances not of their own doing. If this bankruptcy reform bill is weakened in conference, I will have a hard time supporting it. I will likely oppose a conference agreement that looks at all like the House bill.

In recent years, consumer bankruptcy filings have dramatically increased. We debated bankruptcy reform in the last two Congresses. Those discussions showed our desire to elevate personal responsibility in consumer financial transactions; to prevent bankruptcy filings from being used by consumers as a financial planning tool; and, to recapture the stigma associated with a bankruptcy filing. It is clear the system is broke, and bankruptcy reform is needed.

I voted for bankruptcy reform in both the 105th and 106th Congresses, and I plan to vote for this bill. Despite these votes, I have reservations about how the unintended consequences of this bill will affect the less fortunate.

The bill will have an enormous impact on women and child support. The largest growing group of filers are women, usually single mothers. The bill's overall philosophy of pushing debtors from chapter 7 to chapter 13 will have an unintended effect on women. They usually have fewer means and are more susceptible to crafty creditors seeking to intimidate and reaffirm their debts. They need the protection of chapter 7, but could be pushed into chapter 13.

Women will also be disadvantaged by provisions in this bill that fail to prioritize domestic obligations. Under the provisions of this bill, women will find themselves competing with powerful commercial creditors for necessary resources, such as past-due child support, from spouses who are in bankruptcy. It is unfair to place the critical needs of families and single mothers trying to survive behind those of well-off commercial creditors.

Another problem with this bill is the new filing requirements are very complex, which could result in unintended discrimination against lower-income individuals and families. Many low-income families don't have the means to combat most creditors. Because debtors must prove they are filing for legitimate reasons, those without the means to combat powerful commercial interests will be placed at an unfair disadvantage.

I was also disappointed that the U.S. Senate failed to adopt some very good amendments that would have significantly improved the bill. Senator KOHL offered an amendment that would have limited the practice of wealthy debtors shielding themselves from creditors in bankruptcy behind State homestead exemption laws that allow them to shelter large amounts of money in a new home. His amendment would have placed a national cap on this exemption, and limited the abusive practice of sheltering large amounts of money in large homes. I supported this needed amendment, but it was rejected on the floor of the Senate.

Several amendments were also offered that would have restricted the marketing to and use of credit cards by young people. Credit card companies are aggressively marketing to young people, and many young people are getting into massive debt. Companies should only be allowed to offer credit cards to those who can pay for them.

Finally, I am disappointed that amendments were rejected that would have limited predatory lending practices. Some of these predatory loans can have interest rates over 100%.

I was pleased to see that the bill included language to end the practice of using the bankruptcy code to escape civil punishment for violence, intimidation or threats against individuals using family planning services. This provision was added in the Judiciary Committee and greatly improves the bill. It ensures that those who violate the law cannot escape justice through the bankruptcy laws. This critical provision of this bill that must not be stripped or drastically changed in conference.

Overall, this is a decent bill that will improve on the current abuses of the bankruptcy system. While I have concerns over many of this bill's provisions, I hope they can be dealt with in conference or in future legislation.

This bill should be strengthened in conference, not weakened as has happened to other versions of bankruptcy legislation. I will closely examine a conference agreement with this in mind before voting to send this legislation to the President.

Mr. LEVIN. Mr. President, once again the Senate will vote on a bankruptcy reform bill. In the last session of Congress, when the bankruptcy bill came before the Senate, I voted in favor of the bill. I said at the time that because of the amendments adopted in the Senate, the bill was a more reasonable approach to bankruptcy reform that had been reported by the Judiciary Committee. However, I further stated that if the legislation came back from conference, without those modest amendments, I would consider opposing the bill. In the end, the bankruptcy legislation came back from conference in a form that I could not support. The conferees who worked out the differences on the bill deleted or weakened many of the provisions I had supported.

Today, I will vote for this bill with the hope that it does not return from conference in a form I cannot support. The Senate today adopted the Kohl amendment establishing a nationwide homestead cap. That provision must be retained in conference. The Senate has now spoken twice with respect to homestead abuse. We cannot legitimately reform the bankruptcy system if we do not prevent wealthy debtors from shielding luxurious homes while shedding thousands of dollars of debt in bankruptcy.

In addition, the conferees should keep in the final bill, the amendment making debts arising from clinic violence nondischargeable, the amendment on landlord-tenant, the amendment on separated spouses, and the amendment on the means test with respect to high energy costs. It is also my hope that the conference will yield more protections for consumers.

If the bankruptcy bill comes back from conference without these and some of the other reasonable amendments adopted in the Senate, I may once again be forced to oppose the final legislation.

Mrs. CLINTON. Mr. President, I rise today in support of final passage of S. 420, the Bankruptcy Reform Act. Many of my colleagues may remember that I was a strong critic of the bill that passed out of the 106th Congress because I did not believe it provided a balanced approach to bankruptcy reform.

While we have yet to achieve the kind of bankruptcy reform I believe is possible, I have worked with a number of people over the past three years to make improvements that bring us closer to our goals, particularly when it comes to child support.

Women can now be assured that they can continue to collect child support payments after the child's father has declared bankruptcy. The legislation makes child support the first priority during bankruptcy proceedings.

This year, we have made more progress. The Senate agreed to include a revised version of Senator SCHUMER's amendment to ensure that any debts resulting from any act of violence, intimidation, or threat would be non-dischargeable. Earlier today, this body agreed to include a cap on the homestead exemption to ensure that wealthy debtors could not shield their wealth by purchasing a mansion in a state with no cap on homestead exemption. And finally, today I worked hard to make sure that once a person has been declared bankrupt, single mothers can still collect the child support they depend upon. Senator HATCH and I passed an amendment to ensure that child's custodian—usually the mother—will be informed by the bankruptcy trustee of her right to have the State child support agency collect the non-dischargeable child support from the ex-spouse.

In addition, I was concerned about competing non-dischargeable debt so I worked hard with Senator BOXER to ensure that more credit card debt can be erased so that women who use their credit cards for food, clothing and medical expenses in the 90 days before bankruptcy do not have to litigate each and every one of these expenses for the first $750.

Let me be very clear—I will not vote for final passage of this bill if it comes back from conference if these kind of reforms are missing. I am voting for this legislation because it is a work in progress, and it is making progress towards reform.

Bankruptcy reform is important. I grew up with a father who worked hard to avoid having debts. In recent weeks, I have heard form many small credit unions throughout New York, hard working small lenders whose entire membership suffers when the credit union is faced with covering bankruptcy losses.

One credit union from Hoosick Falls has assets of only $2.5 million, but when one of their members filed a Chapter 7 bankruptcy, this small credit union was left with a bill of thousands, which penalized the entire 1,000 membership with increased fees.

Reform is needed. The right kind of reform is necessary. We're on our way toward that goal, and I hope we can achieve final passage of a good bankruptcy reform bill this year.

Mrs. FEINSTEIN. Mr. President, I rise in support of final passage of the bankruptcy bill.

The Senate has worked on this legislation for over four years. The Judiciary Committee, on which I sit, has debated this issue again and again, and we have even sent a bill to the President although that bill was fatally flawed and was vetoed as a result.

This bill is by no means perfect. However, the bill now before us is better than the Conference Report we were faced with at the end of last year, and it is better and more balanced than the bill presented to us in the Judiciary Committee just a few weeks ago.

I believe that the modifications to the legislation made in Committee and on the Floor merit a ''Yes'' vote on final passage.

Since the bill's introduction, I have consistently supported its underlying goal of promoting personal responsibility—as, I think, has every member of this Senate. Debtors who can pay back what they owe, should pay what they owe or at least part of it.

Moreover, the bankruptcy code should not be a haven for irresponsible individuals who have recklessly accumulated debts by spending freely without regard to the consequences. After all, bankruptcy has a societal cost.

And although much has been made of the big credit card companies and banks, not every creditor is a big business. Many harmed by bankruptcy filings are small businessmen and women dry cleaners, home repair workers, and others.

An empirical review of bankruptcy filings indicates that reform is needed. Despite a recent drop, bankruptcy filings continue to remain at unacceptably high levels.

In 1980, individuals filed 287,000 bankruptcies.

In 1999, more than 1.3 million Americans filed for bankruptcy—an increase of 358 percent over 20 years. Bankruptcy has become so commonplace that more than one in a hundred households will file for bankruptcy this year.

The bill we are voting on today appropriately readjusts our bankruptcy laws so that bankruptcy filers must repay a portion of their debts, if they can do so. At the same time, the bill protects debtors below the median income who are truly in need of a fresh start.

This bill assists single parents with children in collecting child support debt from the bankruptcy estate. Philip Strauss, Principal Attorney of the San Francisco Department of Child Support Services, testified on this issue at a February 8, Judiciary Committee hearing, noting that the Bankruptcy Act of 2001 ''will enhance substantially the enforcement of child support obligations against debtors in bankruptcy.''

Specifically, the Bankruptcy Act of 2001 gives child support the highest priority of unsecured claims in a bankruptcy estate. Moreover, the bill prevents a debtor from confirming a bankruptcy plan if the debtor does not make full payment of any child support becoming due after the petition date.

This bill is significantly improved from the Conference Report I voted against in December. While I voted for the Senate-passed bankruptcy bill in the 106th Congress, I voted against the Conference Report because the shadow conference deleted key Senate-passed amendments and did not strike a fair enough balance between creditors and debtors.

For example, last year, the Conference Report deleted a Senate passed amendment that would prevent anti-abortion extremists from using bankruptcy laws to avoid paying civil judgements against them under the Freedom of Access to Clinic Entrances Act.

The FACE Act has led to successful criminal and civil judgements against groups that use intimidation and outright violence to prevent people from obtaining or providing reproductive health services. This amendment is crucial to protecting a woman's safe access to reproductive services.

This year, however, I am pleased that the Bankruptcy Act of 2001 has incorporated a modified version of the FACE amendment, and now makes ''non-dischargeable'' all debts incurred for harassing, obstructing, or other threatening violence against a person seeking any lawful goods and services, including access to reproductive health clinics. I appreciate the efforts of Senators SCHUMER and HATCH in coming to this agreement.

Additionally, this bill includes the Kohl-Feinstein homestead amendment, which places a nationwide $125,000 cap on the amount of money a bankruptcy filer can shield from creditors simply by buying a home. This amendment closes a loophole in bankruptcy code that permits wealthy bankruptcy filers to hide their assets in multimillion dollar estates.

This bill contains my amendment to curb abuses by bankruptcy mills. These operations, generally under the control of a non-attorney bankruptcy petition preparer, are often linked with price gouging of debtors, incompetent service, and remain a significant source of fraud in the bankruptcy system. California, in particular, has suffered from the abuses of these mill operators.

Bankruptcy courts will now have the authority to fine these mill operators $500 per violation, with triple fines if the mill operator does not tell debtor she was filing for bankruptcy or advises the debtor to hide assets. The amendment empowers the U.S. Trustee to take enforcement actions against the mills, sets maximum fees for petition preparers, and victims can sue for increased damages.

In addition, the Senate bill includes a compromise amendment I forged with Senator SESSIONS and Senator FEINGOLD to balance the needs of landlords and tenants, when a tenant files bankruptcy.

Finally, this legislation contains my amendment directing the Federal Reserve Board to investigate the practice of issuing credit cards indiscriminately, without taking steps to ensure that consumers are capable of repaying their debt, or in a manner that encourages consumers to accumulate additional debt.

The amendment allows the Federal Reserve Board to issue regulations that would require additional disclosures to consumers, and to take any other actions, consistent with its statutory authority, that the Board finds necessary to ensure responsible industry-wide practices and to prevent resulting consumer debt and insolvency.

It was my hope that we could improve this bill even more—with limits on how credit card companies provide products to minors, and with disclosure and other requirements to give consumers the tools to handle the burdens of credit card debt. I also believe bankruptcy judges should have some discretion in applying the means test. Unfortunately, several such amendments failed.

So I do have concerns about this bill, and I know that I will make some people in my State unhappy by voting for it. I understand their point of view, and by voting for this legislation I am not turning my back on those concerns. I do think we should try this approach. If it turns out that this bill does not appropriately solve the current problems with our nation's bankruptcy laws, I will be on the front lines of the fight to reopen this debate and to fix the glitches.

Nevertheless, this bill is a necessary, reasoned approach to solving some real problems with our bankruptcy laws. Abuses are rampant. For many, bankruptcy has become a financial planning tool, rather than its intended use as an option of last resort. Something must be done, and I will vote for this bill.

Mr. DOMENICI. Mr. President, I rise today in support of the bankruptcy reform bill. We have been working on this reform for several years now. Indeed, we passed this bill last year, only to have it pocket vetoed by President Clinton. It is time we get it passed and signed by the President.

Although there has been a slight decline in bankruptcies recently, the 1990s saw a steady increase, despite a robust economy. There are now more than a million bankruptcies a year. Many people are concerned that bankruptcy is being used as a financial planning tool and the public has become frustrated with many stories of bankruptcy abuse.

This bill goes a long way to curbing the abuse without undercutting the truly needy debtor's right to a fresh start. This legislation accounts for the honest but unfortunate debtor who faces mounting bills as a result of medical expenses, divorce, and other reasonable causes.

However, it prevents a debtor from pursuing a lavish lifestyle and then using bankruptcy to avoid obligations. Debtors must take responsibility for their spending. After all, the money creditors lose in bankruptcy is passed on to consumers in higher prices for consumer goods, services, and credit. This often has the greatest adverse affect on the neediest in our society.

This bill strikes a fair balance between the interests of debtors and creditors. Those who truly need bankruptcy relief will receive a ''fresh start'' under Chapter 7. Those debtors who can afford to repay some of their debt will be required to do so under a Chapter 13 repayment plan. It is just common sense that a debtor who can afford to repay some of their debt should do so.

Here's how the crux of the bill works. The bankruptcy court looks at 100 percent of the debtor's living expenses, priority expenses, and secured debt. If after their review, the debtor can still pay $10,000 or 25 percent of his or her debt, they are required to do so under a Chapter 13 repayment plan. This makes sense.

The legislation also provides a $125,000 homestead exemption cap so that the debtor cannot declare bankruptcy but still retain his million dollar home. Again, this makes sense.

This is reasonable reform that benefits debtors, consumers, and creditors alike and I will again vote for its passage.

Mr. DASCHLE. Mr. President, the bankruptcy bill before us today has come this far because it is needed to address the record number of bankruptcy filings this country has seen in recent years.

The number of personal bankruptcies hit 1.4 million in 1998—a new record. While that number declined slightly last year—to 1.3 million bankruptcy filings—it is still too high. It is still nearly twice the number we saw in 1990, during the depths of a recession.

What accounts for this increase?

It's clear that most people who file for bankruptcy do so only after suffering a serious reversal, such as serious illness, divorce or job loss. And most do so only as a last resort.

But economic conditions clearly are not the only factor. If they were, we would have seen a drop in bankruptcy filings during the 1990s, given the booming economy. Instead, we saw record increases during the 90s.

Clearly, some people are gaming and abusing the bankruptcy system. For them, the old stigma associated with bankruptcy has faded.

The purpose of this bill is to stop those abuses.

Many have asked—fairly—whether the solution it imposes is too tough on ordinary debtors who deserve the protection of bankruptcy court.

Critics of this bill say that it makes it more difficult for people who have incurred overwhelming debts through no fault of their own to get back on their feet.

In many ways, I agree with them.

This bill could have been more balanced. It could have been crafted in a way that would have allowed all consumers to have their problems fully considered in bankruptcy court.

A number of Democratic Senators offered amendments that would have made this bill better. Unfortunately, many of those amendments were rejected.

I am pleased, however, that two key amendments were adopted. Both Senator SCHUMER's amendment on clinic violence, and Senator KOHL's amendment closing the homestead loophole, were needed to address real abuses of the bankruptcy code.

If we are going to insist that consumers repay more of their debts, certainly we should also insist that people who resort to violence at health clinics must repay the debts they incur as a result of their illegal behavior. And certainly we must ensure that people who declare bankruptcy can't squirrel away millions of dollars in fancy homes that creditors can't touch.

These abuses were not addressed in the bill President Clinton refused to sign last year. Their inclusion in this bill is one reason I am able to support it today.

A bigger reason for my support is a basic principle that I grew up with. People who incur debts have a responsibility to repaying them if they can.

That is a fundamental belief in South Dakota. It's part of the fabric of who we are.

The pioneers who settled our state relied on each other during the hard times, the weak harvests, and at planting times. They knew they could trust each other to make good on their debts—because they had to.

Their survival depended on it.

Most people I know still feel that way.

This bill is needed because of the people who do not share that belief—the minority of people who see bankruptcy as an easy out, rather than a last resort. It says to those people: ''Paying your debts isn't a matter of choice. It's a matter of honor. And it is a legal responsibility to which you will be held accountable.''

There are real costs when somebody does not repay their debts. Somebody has to pick up the tab.

Some of those costs fall on lenders. But some are passed on to honest borrowers who do repay their debts. They get stuck with higher interest rates. So there are consumers on both sides of this equation.

Under current law, people can file under Chapter 7 to wipe out their debts, and a judge can throw out a case if he or she determines that the filer can afford to repay some of the debts. But there is no consistent legal standard for determining one's ability to pay.

This bill establishes such a standard. It says that bankruptcy judges must determine if a filer can pay $10,000—or 25 percent of his debts—over the next five years.

It is important to note: This new standard does not apply to filers who—after deducting food, rent, transportation, education and other expenses—earn less than their state's median income. These people can still file for relief under chapter 7.

Opponents of the bill say it imposes new legal hurdles and paper burdens on consumers that will deny many the protection they deserve. These are serious concerns.

We must monitor implementation of this new standard closely. If this bill is enacted into law—if we see that creditors are abusing the provisions of this law to harass debtors—we have a moral responsibility to revisit this law. And I can tell you, I will be the first Senator on this floor calling for that re-examination.

Time will tell if this bill strikes the right balance.

The Senate has heard good arguments on both sides of this debate.

Because of the improvements that were made in committee and on the floor, and because of the fundamental values with which I was raised, I will vote for it.

At the same time, I urge the conferees who will take it up next to respect and preserve the balance in it, so it can continue to command the broad, bipartisan support it will need to reach the President's desk and be signed into law.

Mr. GRASSLEY. Mr. President, I encourage my colleagues to vote for this important bankruptcy bill. We've been working on bankruptcy reform for a long time, and it's high time that we

pass this bill. This bill will be a big step forward in restoring personal responsibility and in cracking down on bankruptcy abuse. It will also be a big step forward in providing key information to credit card customers and helping people manage their debt.

Let me remind my colleagues that the fundamental question we face with this bill is whether or not people should repay their debts. S. 420 provides that when a person can repay his or her debts, then that person won't be able to take the easy way out. The bill will end the free ride for wealthy deadbeats who walk away from their debts and pass the tab on to honest consumers. No more will those freeloaders get off scott free. But the bill does this by preserving the ability for people who truly need to go into bankruptcy and wipe away their debts so they can have a fresh start.

The point I'm trying to make is that we have a good balance in the bill. Contrary to what our critics say, bankruptcy should not be easy. Yes, we need to have a way for people who are in dire straits to be able to start anew. Our bill does not close out the availability of bankruptcy for these people. Yet, it is just and fair for people who can pay their debts to do just that—pay up. I don't know what people think, but the fact is that someone has to pay if people walk away from their debts. It is not only businesses that have to pay—we all pay when people walk away from their debts. Economic losses from bankruptcy cause higher prices for goods and services, so everyone picks up the tab—consumers, small businesses, the economy.

Our bill makes many improvements with the current system. We make it harder for people to commit fraud and abuse. We prioritize certain debts, such as child support and alimony. We include a number of consumer protections, such as more expansive disclosure requirements, credit counseling, and increased penalties for abusive creditors and deceptive advertising. These are all important steps in correcting many problems in the bankruptcy system.

An important provision in the bill is the permanent extension of Chapter 12, which expired last June. Our family farmers need this crucial protection because they can face bankruptcy due to low commodity prices. The bill also provides significant new tax relief when they sell off assets. This is an extra reason to vote for this bill for my colleagues from farm country.

So, let me remind my colleagues again what this bill does. S. 420 reforms the bankruptcy system to require repayment of debts by individuals who have the ability to pay, while protecting the right of debtors to a financial fresh start. S. 420 strengthens protections for child support and alimony payments by making family support obligations a first priority in bankruptcy. S. 420 makes permanent Chapter 12 bankruptcy for family farmers and lessens the capital gains tax burden on financially strapped farmers who declare bankruptcy.

S. 420 also creates new protections for patients when hospitals and nursing homes declare bankruptcy. S. 420 requires credit card companies to disclose the dangers of making only minimum payments and prohibits deceptive advertising of low introductory rates. S. 420 strengthens enforcement and penalties against abusive creditors for predatory debt collection practices.

So the bill is fair and balanced. S. 420 deserves to be passed by an overwhelming vote.

Mr. LEAHY. Mr. President, I have tried over the last several weeks to improve this bankruptcy legislation through the legislative process. We were able to have an informative hearing and a productive Committee markup. Unfortunately, the Committee did not provide a Committee report to inform other Senators of what was good about the bill and what prompted eight members of the committee to vote against it.

This important matter was, instead, rushed to the floor last week. Last Monday we began debating the bill, but on Tuesday, the first day the bill was open to amendment, the Republican leadership abandoned work on the bill. Instead, the Republican leadership chose to shift the Senate's attention to overriding the ergonomics rule that had been developed by the Department of Labor over the past decade.

On Wednesday we returned to the bankruptcy bill but beginning on Thursday and carrying through until Tuesday of this week, the main focus of the debate were the competing budgetary amendment on providing a lockbox for Medicare. That too is an exceedingly important topic and one on which a majority of the Senate voted to adopt the Democratic lockbox proposal.

That proposal is not in the bill because after the vote the Republican side invoked the Budget Act and the chair ruled that the amendment, although supported by a majority of the Senate was not consistent with the technical requirements of the Budget Act. That debate was a major disruption in our efforts to otherwise improve the bankruptcy bill.

Beginning last Wednesday and continuing through today I have offered amendments to improve the bill and urged others with amendments to do the same. There has never been an effort to filibuster this debate or this bill. The only threat of a filibuster I can recall is when the Republican chairman of the Banking Committee spoke against certain amendments.

That threat was overcome and with the commitment of Senator GRASSLEY and the cooperation of Senator HATCH, we were able to obtain votes on the Schumer predatory lending amendment and in relation to the Durbin amendment. I thank both Senator GRASSLEY and Senator HATCH for their cooperation in this regard. In fact, once the Senate had an opportunity to consider it, we voted to adopt the Schumer amendment.

Despite the lack of a filibuster threat or a filibuster, the Republican Senate leadership filed a cloture petition on Monday afternoon. There was no need for cloture then or on Wednesday when, with the support of the Senate leadership, cloture was invoked. I voted against cloture. I voted against it because I reject the use of cloture as a time management tool. I believe that cloture is properly reserved in the Senate to those circumstances where unreasonable delay or a filibuster are interfering with the work of the Senate.

Unfortunately, over the last 6 years the Republican leadership has abused the cloture process to avoid considering amendments and to interfere with the Senate doing its work. In my view, the invocation of cloture this week on this bill was unnecessary and unfortunate. It signals a retreat from the progress shown by Senate adoption of S. Res. 8 in January and threatens a return to the dark days of the last few Congresses when cloture became a regular instrument, rather than the last resort, of Senate leadership.

Through the legislative process, through our hearing and Judiciary Committee markup and by means of amendments being adopted on the Senate floor, we have made some progress. It is sufficient for me to support the bill.

I had hoped and worked for a more open process. I wanted to be able to moderate the bill, improve it and be able to support it. I supported the bankruptcy bill that passed the Senate 97 to one in the 105th Congress.

I even supported the bankruptcy bill that passed the Senate in the last Congress given the progress we showed during Senate consideration and in hopes that we would be able to continue to improve the bill in cooperation with the House. I vote for this bill in that same spirit—to move the process forward and improve our legislative product. Unfortunately, last year the conference that resulted was under the auspices of the Foreign Relations Committee and not the Judiciary Committee and the product that resulted was changed and tilted too harshly against American consumers and working people. That was the modified bill that I voted against last year, that was the bill the President vetoed, and that was the bill that was the basis for S. 220 and S. 420 this year.

I am encouraged that we have included some privacy protection in the bill. The Leahy-Hatch amendment adopted by the Judiciary Committee to deal with the Toysmart.com-type situation and customer information of bankrupt companies is a good start. It is something I have worked on for some time and thank Senator HATCH for his joining with me in that effort.

I am pleased that we were also able to add some protection today for

shielding the identity of children whose names appear in bankruptcy records. By a vote of 99 to none, the Senate agreed to adopt our amendment. I thank Senator HATCH for joining with me in that effort, as well.

I filed amendments to do more to enforce financial privacy laws and protections. Unfortunately, the bill still falls short in this regard.

I am encouraged that we have made progress in assuring access to health clinics. Senator SCHUMER is to be commended for his steadfast efforts in this regard. The Schumer-Leahy amendment that the Senate adopted by a bipartisan vote with 80 Senators in favor last year was dropped in S. 220 and S. 420. I again want to commend Senator HATCH for working with Senator SCHUMER to include a modified version of Senator SCHUMER's amendment in the bill.

I am encouraged that the Senate beat back an attempt to table the Kohl-Feinstein amendment and their sensible cap on the homestead exemption has been included in the bill. Throughout the debate Republican supporters have indicated that a key outstanding issue is the homestead exemption cap. That question was answered today when the Senate adopted the Kohl-Feinstein amendment today.

I was pleased that we adopted the Bingaman LIHEAP amendment, which I cosponsored, and the Carnahan energy cost amendment.

I am pleased that the Leahy amendment on separate spouses to protect battered women was adopted by a bipartisan majority of Senators and I thank them.

I am encouraged that we were able to make other improvements in the measures included in the managers' package. We started work on that package last Friday. Unfortunately Republican delay prevented its adoption before the cloture vote on Wednesday.

I regret that we have not made the progress that we should have, and that we have made in the past, in terms of providing consumers with greater disclosures and protections to help them avoid overextending their credit and consumption.

Early in the debate I took the bill's supporters at face value when they argued that we need this bill to help small businesses. Those claims began this debate and were repeated today. In between I gave them the chance to shown that they meant it by voted for a small business amendment that would have allowed small businesses, as already defined in the bill, priority over large corporate creditors. That amendment was unfortunately, and in my view unwisely, rejected.

We have also heard claims from the outset of this debate and through today that the bill is needed to address the $500 a family ''tax'' that bankruptcy abuse loads onto each American family. I have been asking how this bill benefits the average American family and where that ''tax refund'' is achieved. I have heard only silence from the other side. I have noted in this year's debate and in debates past that billions of dollars in benefits that are expected to flow to credit card companies and other large corporate creditors, hundreds of millions to individual companies.

What I have been asking is where this bill or those corporations' practices will pass those benefits on ordinary Americans. Again, I have heard only silence. In fact, the benefits of this bill will flow to the profits of those large corporate interests. There is no provision in this bill to lower annual fees for credit cards, for example. There is no provision to lower interest rates for consumers. If this bill will benefit creditors to the tune of $5 billion or over the next several years, then why have then made no commitment to pass those benefits through to their customers and American consumers?

Instead, what this bill does is require American taxpayers through our taxpayer-financed bankruptcy courts to assist creditors in their debt collection efforts and requires consumers to do more paperwork and confront more rules and hurdles and government bureaucracy to file for bankruptcy.

I will continue to work in good faith with Chairman HATCH, Senator GRASSLEY, Senator SESSIONS, Senator BIDEN and others who strongly support S.420.

I will continue to work through the legislative process to improve this measure, to add balance, moderation and fairness. I hope to be able to support the final legislative product after a productive conference. I trust that this Congress, the Senate conferees will support the Senate position where we have made improvements to the bill and not so easily abandon those advancements in our discussions with our House counterparts. Had we done that in the 105th Congress, three years ago, we would already have a reformed bankruptcy law. Unfortunately, that was not the position of Republican Senate conferees in those days.

I commend all Senators on both sides of the aisle who have worked so hard this year to improve this bill. I commend those who have participated in our debates and discussions. I especially appreciate the help I received in managing this bill from Senator SCHUMER, who consented to manage from time to time when I could not and who is the Ranking Democrat on the Judiciary Subcommittee of jurisdiction, and Senator REID, who remains a great help in some many ways on so many matters. I congratulate Senator SCHUMER, Senator KOHL, Senator FEINSTEIN, and Senator FEINGOLD for the improvements they have been able to make. I thank Senator HATCH for his courtesy to Senator DURBIN on his alternative amendment and thank Senator GRASSLEY for his courtesy to Senator SCHUMER with respect to his predatory lending amendment. I thank Senator BIDEN for his support of our efforts to have this matter considered by the Judiciary Committee.

I thank the staffs of all Senators who participated in this debate for their hard work and, in particular, the staffs of Senators KENNEDY, BIDEN, KOHL, FEINSTEIN, FEINGOLD, SCHUMER, DURBIN, DASCHLE, and REID and the staffs of Senators HATCH, GRASSLEY and SESSIONS. In particular, I want to thank the following staff: Makan Delrahaim, Renee Augustine, Rita Lari, Kolan Davis, Ed Haden, Melody Barnes, Jim Greene, Victoria Bassetti, Jeff Miller, David Hantman, Tom Oscherwitz, Jennifer Leach, Bob Schiff, Ben Lawsky, Natacha Blain, Jim Williams, Mark Childress, Jonathan Adelstein, Eddie Ayoob, Peter Arapis, Liz McMahon, and Greg Cota. I appreciate the exceptional work of my counsel Ed Pagano, who has labored long and hard to help improve this bill.

Although bankruptcy filing had been going down over the last two years, I have seen recent reports that link this bill with an expected rise in such filings. Unfortunately, the effect of House passage of its bill has been to generate fear in the public that people had better file for bankruptcy now rather than wait for the harsh and onerous new burdens contemplated in that bill and, unfortunately, in the Senate bill. I can understand if bankruptcy lawyers feel an obligation to advise their clients of the possibility that the terms and paperwork and costs of filing for bankruptcy may soon change.

Indeed, a principal reason Senator FEINSTEIN successfully opposed the Wyden-Smith amendment was a similar argument with respect to California utilities—that a prospective change in the law would force them into premature and possibly unnecessary bankruptcies.

In much the same way that the Bush administration's talk about weakness in the economy has served to drive the market down, shatter consumer confidence and contribute to a further weakening, this drive for exacting requirements of those on the brink of insolvency seems to be accelerating bankruptcy filings and contributing to the economic downturn. That is an immediate and unfortunate byproduct of this effort.

Perhaps it is appropriate that we end this phase of the debate today, on March 15. It is on this day that we are reminded to beware the Ides of March. There remains much about this bill that counsels caution. Unless it is further moderated and balanced in discussions between the Houses or at the insistence of the President, enactment of a bill like the one the Senate is voting on today will be the start of a process that will likely consume several years.

Just as the overreaching that occurred in so-called immigration reform and welfare reform and telecommunications reform have required us to revisit those matters and still require corrections, so, too, the bankruptcy bill as currently constituted will result

in hardships and consequences that will require us to return to these matters again and again in the days, months and years ahead.

In addition, I expect we will be hearing more about this bill and the lobbying efforts and the contributions by the bill's corporate beneficiaries as soon as next week, when campaign finance reform is debated.

Mr. HATCH. Mr. President, S. 420, the Consumer Bankruptcy Reform Act, is one of the most important legislative efforts to reform the bankruptcy laws in decades.

I want to thank a few of the people who have worked on the bill. Let me first acknowledge the majority leader, who has worked very hard to keep this bill moving forward. Because of his dedication to the important reforms in this bill, we now have legislation that makes enormous strides in eliminating abuse in the bankruptcy system. I am also grateful to the assistant majority Leader, Senator NICKLES, along with Senators DASCHLE and REID for their efforts in trying to work with us to move the legislation forward.

Let me also acknowledge the ranking Democratic member of the Senate Judiciary Committee, Senator LEAHY, who has worked where he can to reach agreement on many of the bill's provisions, and who ably managed the bill for his side of the aisle. I also want to commend my colleagues, Senators GRASSLEY, BIDEN and others for their sponsorship of and leadership on this much needed legislation. I particularly appreciate the dedication they have shown in working with me in making the passage of this bill an inclusive and bipartisan process.

Also, let me express my thanks to Senator SESSIONS who has shown unwavering dedication to accomplishing the important reforms in this bill, to Senator GRAMM for his efforts over the past several years in helping see sensible reform through the Senate, and to the many other members of the Senate for their hard work and cooperation.

At the Committee staff level, let me acknowledge a few people who have worked very hard on this bill. Kolan Davis and Rita Lari Jochun, of Senator GRASSLEY's staff, along with Ed Haden and Brad Harris of Senator SESSIONS' staff, all of whom deserve praise for their impressive efforts on this legislation. In addition, Judiciary Committee Staff Director, Makan Delrahim, who has been lead counsel on this bill, and Judiciary Committee Counsel, René Augustine, who has really been working day and night to make sure this bill stayed on track.

Let me make one observation here. When we started this bankruptcy reform process, René didn't have any children, and by the time this bill becomes effective, she will have two children. Mr. President, I feel like I have given birth twice during this process myself. Thanks as well should be given to the Judiciary Committee's Chief Counsel, Sharon Prost, and all of the other Judiciary Committee staff who have worked hard on this.

On Senator LEAHY's Committee staff, I want to acknowledge Minority Chief Counsel Bruce Cohen, and thank counsel Ed Pagano for his efforts. In addition, I want to recognize the efforts of Jennifer Leach of Senator TORRICELLI's staff, as well as the dedicated work of Jim Greene of Senator BIDEN's staff, as well as the very able Ben Lawsky of Senator SCHUMER's staff.

I also want to commend John Mashburn and Dave Horpe of the majority leader's staff, Stewart Verdery, Eric Ueland, and Matt Kirk of the Assistant Majority Leader's staff, and Eddie Ayoob of the Minority Whip's office for their efforts on this legislation.

Also, my thanks goes to Laura Ayoud, and others in the office of Senate Legislative Counsel, for their extraordinary efforts that have made this legislation possible.

The compelling need for this reform is underscored by the dramatic rise we have seen over the past several years in bankruptcy filings. The Bankruptcy Code was liberalized back in 1978, and since that time, consumer bankruptcy filings have risen at an unprecedented rate.

Mr. President, the bankruptcy system was intended to provide a ''fresh start'' for those who truly need it. We need to preserve the bankruptcy system within limits to allow individuals to emerge from financial hardship. What we do not need is to preserve the elements of the system that allow it to be abused—that allow some debtors to use bankruptcy as a financial planning tool rather than as a last resort. I firmly believe that by allowing people who can repay their debts to avoid their financial obligations, we are doing a disservice to the honest and hardworking people in this country who end up paying for it.

Mr. President, again I would like to applaud the bipartisan efforts of my colleagues who have made S. 420 a broadly-supported bill. The impact of this important legislation not only will be to curb the rampant number of frivolous bankruptcy filings, but also will be to give a boost to our economy.

Thank you. I yield the floor.

Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Mr. President, all time is yielded back.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. All time has been yielded back. The bill having been read the third time, the question is, Shall the bill pass? The yeas and nays have been ordered. 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 California (Mrs. BOXER) is necessarily absent.

I further announce that, if present and voting, the Senator from California (Mrs. BOXER) would vote ''nay''.

The result was announced—yeas 83, nays 15, as follows:

[Rollcall Vote No. 36 Leg.]

YEAS—83

Akaka	Dorgan	McCain
Allard	Edwards	McConnell
Allen	Ensign	Mikulski
Baucus	Enzi	Miller
Bayh	Feinstein	Murkowski
Bennett	Frist	Murray
Biden	Graham	Nelson (NE)
Bingaman	Gramm	Nickles
Bond	Grassley	Reid
Breaux	Gregg	Roberts
Bunning	Hagel	Santorum
Burns	Hatch	Schumer
Byrd	Helms	Sessions
Campbell	Hollings	Shelby
Cantwell	Hutchinson	Smith (NH)
Carnahan	Inhofe	Smith (OR)
Carper	Inouye	Snowe
Chafee	Jeffords	Specter
Cleland	Johnson	Stabenow
Clinton	Kohl	Stevens
Cochran	Kyl	Thomas
Collins	Landrieu	Thompson
Conrad	Leahy	Thurmond
Craig	Levin	Torricelli
Crapo	Lieberman	Voinovich
Daschle	Lincoln	Warner
DeWine	Lott	Wyden
Domenici	Lugar	

NAYS—15

Brownback	Feingold	Nelson (FL)
Corzine	Harkin	Reed
Dayton	Hutchison	Rockefeller
Dodd	Kennedy	Sarbanes
Durbin	Kerry	Wellstone

ANSWERED ''PRESENT''

Fitzgerald

NOT VOTING—1

Boxer

The bill (S. 420), as amended, was passed, as follows:

[The bill was not available for printing. It will appear in a future edition of the RECORD.]

Mr. REID. 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.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

BROWNFIELDS REVITALIZATION AND ENVIRONMENTAL RESTORATION ACT

Mr. REID. Mr. President, prior to our going out today, I want to speak on something that is not related to bankruptcy. What I would like to talk about today is the disappointment I have that we are not going to be able to do a bipartisan brownfields bill, S. 350, tomorrow or Monday. I want to talk about this bill which is entitled the Brownfields Revitalization and Environmental Restoration Act. I am sorry we cannot take this up today.

We cannot take it up because there has been objection on the other side. We have worked very hard. We wanted