

110TH CONGRESS
1ST SESSION

S. 1729

To amend titles 18 and 28 of the United States Code to provide incentives for the prompt payments of debts owed to the United States and the victims of crime by imposing surcharges on unpaid judgments owed to the United States and to the victims of crime, to provide for offsets on amounts collected by the Department of Justice for Federal agencies, to increase the amount of special assessments imposed upon convicted persons, to establish an Enhanced Financial Recovery Fund to enhance, supplement and improve the debt collection activities of the Department of Justice, to amend title 5, United States Code, to provide to assistant United States attorneys the same retirement benefits as are afforded to Federal law enforcement officers, and for authorized purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 28, 2007

Mr. LEAHY (for himself and Mr. COCHRAN) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To amend titles 18 and 28 of the United States Code to provide incentives for the prompt payments of debts owed to the United States and the victims of crime by imposing surcharges on unpaid judgments owed to the United States and to the victims of crime, to provide for offsets on amounts collected by the Department of Justice for Federal agencies, to increase the amount of special assessments imposed upon convicted persons, to establish an Enhanced Financial Recovery Fund to enhance, supplement and improve the debt collection activities of the

Department of Justice, to amend title 5, United States Code, to provide to assistant United States attorneys the same retirement benefits as are afforded to Federal law enforcement officers, and for authorized purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Enhanced Financial
 5 Recovery and Equitable Retirement Treatment Act of
 6 2007”.

7 **TITLE I—ENHANCED FINANCIAL**
 8 **RECOVERY**

9 **SEC. 101. IMPOSITION OF CRIMINAL SURCHARGE.**

10 (a) IN GENERAL.—Section 3612 of title 18, United
 11 States Code, is amended by striking subsection (g) and
 12 inserting the following:

13 “(g) IMPOSITION OF SURCHARGE.—

14 “(1) IN GENERAL.—A surcharge shall be im-
 15 posed upon a defendant if there are any unpaid
 16 criminal monetary penalties as of the date specified
 17 in subsection (f)(1).

18 “(2) AMOUNT OF SURCHARGE.—The surcharge
 19 imposed under paragraph (1) shall be—

20 “(A) 5 percent of the unpaid principal bal-
 21 ance; or

1 “(B) \$50, if the unpaid balance is less
2 than \$1,000.

3 “(3) ALLOCATION OF PAYMENTS.—

4 “(A) FINE OR SPECIAL ASSESSMENT.—If a
5 surcharge is imposed under paragraph (1) for a
6 fine or special assessment—

7 “(i) an amount equal to 95 percent of
8 each principal payment made by a defend-
9 ant shall be credited to the Crime Victims
10 Fund established under section 1402 of
11 the Victims of Crime Act of 1984 (42
12 U.S.C. 10601); and

13 “(ii) an amount equal to 5 percent of
14 each principal payment shall be credited to
15 the Department of Justice Enhanced Fi-
16 nancial Recovery Fund established under
17 section 104 of the Enhanced Financial Re-
18 covery and Equitable Retirement Treat-
19 ment Act of 2007.

20 “(B) RESTITUTION.—If a surcharge is im-
21 posed under paragraph (1) for a restitution ob-
22 ligation—

23 “(i) an amount equal to 95 percent of
24 each principal payment shall be paid to
25 any victim identified by the court; and

“(ii) an amount equal to 5 percent of each principal payment shall be credited to the Department of Justice Enhanced Financial Recovery Fund established under section 104 of the Enhanced Financial Recovery and Equitable Retirement Treatment Act of 2007.

“(C) SURCHARGES.—For any payment made by a defendant after the full amount of a surcharge imposed under paragraph (1) has been satisfied, the full amount of such payment shall be credited to the principal amount due or accrued interest, as the case may be.

“(4) DEFINITIONS.—In this section—

“(A) the term ‘criminal monetary penalties’ includes the principal amount of any amount imposed as a fine, restitution obligation, or special assessment, regardless of whether any payment schedule has been imposed; and

“(B) the term ‘principal payment’ does not include any amount that is imposed as interest, penalty, or a surcharge.”.

(b) CONFORMING AMENDMENTS.—Section 3612 of title 18, United States Code, is amended—

(1) by striking subsections (d) and (e); and

1 (2) by redesignating subsections (f) through (i),
 2 as amended by this Act, as subsection (d) through
 3 (g), respectively.

4 **SEC. 102. IMPOSITION OF CIVIL SURCHARGE.**

5 (a) IN GENERAL.—Section 3011 of title 28, United
 6 States Code, is amended to read as follows:

7 **“§ 3011. Imposition of surcharge**

8 “(a) IN GENERAL.—A surcharge shall be imposed on
 9 a defendant if there is an unpaid balance due to the
 10 United States on any money judgment in a civil matter
 11 recovered in a district court as of—

12 “(1) the fifteenth day after the date of the
 13 judgment; or

14 “(2) if the day described in paragraph (1) is a
 15 Saturday, Sunday, or legal public holiday, the next
 16 day that is not a Saturday, Sunday, or legal holiday.

17 “(b) AMOUNT OF SURCHARGE.—A surcharge im-
 18 posed under subsection (a) shall be—

19 “(1) 5 percent of the unpaid principal balance;
 20 or

21 “(2) \$50, if the unpaid balance is less than
 22 \$1,000.

23 “(c) ALLOCATION OF PAYMENTS.—If a surcharge is
 24 imposed under subsection (a)—

1 “(1) an amount equal to 95 percent of each
2 principal payment made by a defendant shall be
3 credited as otherwise provided by law; and

4 “(2) an amount equal to 5 percent of each prin-
5 cipal payment shall be credited to the Department of
6 Justice Enhanced Financial Recovery Fund estab-
7 lished under section 104 of the Enhanced Financial
8 Recovery and Equitable Retirement Treatment Act
9 of 2007.

10 “(d) SURCHARGES.—For any payment made by a de-
11 fendant after the full amount of a surcharge imposed
12 under subsection(a) has been satisfied, the full amount of
13 such payment shall be credited to the principal amount
14 due or accrued interest, as the case may be.

15 “(e) DEFINITIONS.—In this section—

16 “(1) the term ‘principal payment’ does not in-
17 clude any amount that is imposed as interest, pen-
18 alty, or a surcharge; and

19 “(2) the term ‘unpaid balance due to the
20 United States’ includes any unpaid balance due to a
21 person that was represented by the Department of
22 Justice in the civil matter in which the money judg-
23 ment was entered.”.

24 (b) TECHNICAL AND CONFORMING AMENDMENT.—

25 The table of sections at the beginning of subchapter A

1 of chapter 176 of title 28, United States Code, is amended
 2 by striking the item relating to section 3011 and inserting
 3 the following:

“3011. Imposition of surcharge.”.

4 **SEC. 103. INCREASE IN THE AMOUNT OF SPECIAL ASSESS-**
 5 **MENTS.**

6 Section 3013 of title 18, United States Code, is
 7 amended by striking subsection (a) and inserting the fol-
 8 lowing:

9 “(a) The court shall assess on any person convicted
 10 of an offense against the United States—

11 “(1) in the case of an infraction or a mis-
 12 demeanor—

13 “(A) if the defendant is an individual—

14 “(i) the amount of \$10 in the case of
 15 an infraction or a class C misdemeanor;

16 “(ii) the amount of \$25 in the case of
 17 a class B misdemeanor; and

18 “(iii) the amount of \$100 in the case
 19 of a class A misdemeanor; and

20 “(B) if the defendant is a person other
 21 than an individual—

22 “(i) the amount of \$100 in the case of
 23 an infraction or a class C misdemeanor;

24 “(ii) the amount of \$200 in the case
 25 of a class B misdemeanor; and

1 “(iii) the amount of \$500 in the case
2 of a class A misdemeanor; and
3 “(2) in the case of a felony—
4 “(A) the amount of \$200 if the defendant
5 is an individual; and
6 “(B) the amount of \$1,000 if the defend-
7 ant is a person other than an individual.”.

8 **SEC. 104. ENHANCED FINANCIAL RECOVERY FUND.**

9 (a) **ESTABLISHMENT.**—There is established in the
10 Treasury a separate account known as the Department
11 of Justice Enhanced Financial Recovery Fund (in this sec-
12 tion referred to as the “Fund”).

13 (b) **DEPOSITS.**—Notwithstanding section 3302 of
14 title 31, United States Code, or any other law regarding
15 the crediting of collections, there shall be credited as an
16 offsetting collection to the Fund an amount equal to—

17 (1) 2 percent of any amount collected pursuant
18 to civil debt collection litigation activities of the De-
19 partment of Justice (in addition to any amount
20 credited under section 11013 of the 21st Century
21 Department of Justice Appropriations Authorization
22 Act (28 U.S.C. 527 note));

23 (2) 5 percent of all amounts collected as res-
24 titution due to the United States pursuant to the

1 criminal debt collection litigation activities of the
2 Department of Justice;

3 (3) any surcharge collected under section
4 3612(g) of title 18, United States Code, as amended
5 by this Act, or section 3011 of title 28, United
6 States Code, as amended by this Act; and

7 (4) 50 percent of any special assessment col-
8 lected under section 3013(a) of title 18, United
9 States Code, as amended by this Act.

10 (c) AVAILABILITY.—The amounts credited to the
11 Fund shall remain available until expended.

12 (d) PAYMENTS FROM THE FUND.—

13 (1) AMOUNT.—

14 (A) IN GENERAL.—Except as provided in
15 subparagraph (B), the Attorney General shall
16 use not less than \$20,000,000 of the Fund in
17 each fiscal year, to the extent that funds are
18 available, for the civil and criminal debt collec-
19 tion activities of the Department of Justice, in-
20 cluding restitution judgments where the bene-
21 ficiaries are the victims of crime.

22 (B) EXCEPTIONS.—

23 (i) ADJUSTMENT OF AMOUNT.—In
24 each fiscal year following the first fiscal
25 year in which deposits into the Fund are

1 greater than \$20,000,000, the amount to
2 be used under paragraph (1) shall be in-
3 creased by a percentage equal to the
4 change in the Consumer Price Index for
5 the calendar year preceding that fiscal
6 year.

7 (ii) LIMITATION.—In any fiscal year,
8 amounts in the Fund shall be available to
9 the extent that the amount appropriated in
10 that fiscal year for the purposes described
11 in subparagraph (A) is not less than an
12 amount equal to the amount appropriated
13 for such activities in fiscal year 2006, ad-
14 justed annually in the same proportion as
15 increases reflected in the amount of aggre-
16 gate level of appropriations for the Execu-
17 tive Office of United States Attorneys and
18 United States Attorneys.

19 (2) USE OF FUNDS.—

20 (A) IN GENERAL.—Funds used under
21 paragraph (1) shall be used to enhance, supple-
22 ment, and improve civil and criminal debt col-
23 lection litigation activities of the Department of
24 Justice, primarily such activities by United
25 States attorneys' offices. A portion of such

1 sums may be used by the Department of Jus-
2 tice to provide legal, investigative, accounting,
3 and training support to the United States attor-
4 neys' offices.

5 (B) LIMITATION ON USE.—Funds used
6 under paragraph (1) may not be used to deter-
7 mine whether a defendant is guilty of an of-
8 fense or liability to the United States (except
9 incidentally for the provision of assistance nec-
10 essary or desirable in a case to ensure the pres-
11 ervation of assets or the imposition of a judg-
12 ment which assists in the enforcement of a
13 judgment or in a proceeding directly related to
14 the failure of a defendant to satisfy the mone-
15 tary portion of a judgment).

16 (e) OTHER USE OF FUNDS.—After using funds
17 under subsection (d), the Attorney General may use
18 amounts remaining in the Fund for additional civil or
19 criminal debt collection activities, for personnel expenses,
20 for personnel benefit expenses incurred as a result of this
21 Act or the amendments made by this Act, or for other
22 prosecution and litigation expenses. The availability of
23 amounts from the Fund shall have no effect on the imple-
24 mentation of title II or the amendments made by title II.

1 (f) DEFINITION.—In this section, the term “United
2 States”—

3 (1) includes—

4 (A) the executive departments, the judicial
5 and legislative branches, the military depart-
6 ments, and independent establishments of the
7 United States; and

8 (B) corporations primarily acting as in-
9 strumentalities or agencies of the United
10 States; and

11 (2) except as provided in paragraph (1), does
12 not include any contractor of the United States.

13 **SEC. 105. EFFECTIVE DATES.**

14 (a) IN GENERAL.—The amendments made by section
15 101 and section 103 shall apply to any offense committed
16 on or after the date of enactment of this Act, including
17 any offense involving conduct that continued on or after
18 the date of enactment of this Act.

19 (b) FUND AND SURCHARGES.—

20 (1) IN GENERAL.—Section 104 and the amend-
21 ments made by section 102 shall take effect 30 days
22 after the date of enactment of this Act.

23 (2) PENDING CASES.—The amendments made
24 by section 102 shall apply to any case pending on
25 or after the date of enactment of this Act.

1 **TITLE II—EQUITABLE RETIRE-**
 2 **MENT TREATMENT OF AS-**
 3 **SISTANT UNITED STATES AT-**
 4 **TORNEYS**

5 **SEC. 201. RETIREMENT TREATMENT OF ASSISTANT UNITED**
 6 **STATES ATTORNEYS.**

7 (a) CIVIL SERVICE RETIREMENT SYSTEM.—

8 (1) ASSISTANT UNITED STATES ATTORNEY DE-
 9 FINED.—Section 8331 of title 5, United States
 10 Code, is amended—

11 (A) in paragraph (28), by striking “and”
 12 at the end;

13 (B) in paragraph (29) relating to dynamic
 14 assumptions, by striking the period and insert-
 15 ing a semicolon;

16 (C) by redesignating paragraph (29) relat-
 17 ing to air traffic controllers as paragraph (30);

18 (D) in paragraph (30), as so redesignated,
 19 by striking the period and inserting “; and”;
 20 and

21 (E) by adding at the end the following:

22 “(31) ‘assistant United States attorney’ means
 23 an assistant United States attorney appointed under
 24 section 542 of title 28.”.

1 (2) RETIREMENT TREATMENT.—Chapter 83 of
 2 title 5, United States Code, is amended by adding
 3 after section 8351 the following:

4 **“§ 8352. Assistant United States attorneys**

5 “Except as provided under the Enhanced Financial
 6 Recovery and Equitable Retirement Treatment Act of
 7 2007 (including the provisions relating to the non-applica-
 8 bility of mandatory separation requirements under section
 9 8335(b) and 8425(b) of this title), an assistant United
 10 States attorney shall be treated in the same manner and
 11 to the same extent as a law enforcement officer for pur-
 12 poses of this chapter.”.

13 (3) TECHNICAL AND CONFORMING AMEND-
 14 MENTS.—

15 (A) TABLE OF SECTIONS.—The table of
 16 sections for chapter 83 of title 5, United States
 17 Code, is amended by inserting after the item re-
 18 lating to section 8351 the following:

“8352. Assistant United States attorneys.”.

19 (B) MANDATORY SEPARATION.—Section
 20 8335(a) of title 5, United States Code, is
 21 amended by striking “8331(29)(A)” and insert-
 22 ing “8331(30)(A)”.

23 (b) FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.—

1 (1) ASSISTANT UNITED STATES ATTORNEY DE-
 2 FINED.—Section 8401 of title 5, United States
 3 Code, is amended—

4 (A) in paragraph (34), by striking “and”
 5 at the end;

6 (B) in paragraph (35), by striking the pe-
 7 riod and inserting “; and”; and

8 (C) by adding at the end the following:

9 “(36) ‘assistant United States attorney’ means
 10 an assistant United States attorney appointed under
 11 section 542 of title 28.”.

12 (2) RETIREMENT TREATMENT.—Section 8402
 13 of title 5, United States Code, is amended by adding
 14 at the end the following:

15 “(h) Except as provided under the Enhanced Finan-
 16 cial Recovery and Equitable Treatment Act of 2006 (in-
 17 cluding the provisions relating to the non-applicability of
 18 mandatory separation requirements under section 8335(b)
 19 and 8425(b) of this title), an assistant United States at-
 20 torney shall be treated in the same manner and to the
 21 same extent as a law enforcement officer for purposes of
 22 this chapter.”.

23 (c) MANDATORY SEPARATION.—Sections 8335(b)(1)
 24 and 8425(b)(1) of title 5, United States Code, are each
 25 amended by adding at the end the following: “This sub-

1 section shall not apply in the case of an assistant United
 2 States attorney.”.

3 **SEC. 202. PROVISIONS RELATING TO INCUMBENTS.**

4 (a) DEFINITIONS.—In this section—

5 (1) the term “assistant United States attorney”
 6 means an assistant United States attorney appointed
 7 under section 542 of title 28, United States Code.

8 (2) the term “incumbent” means an individual
 9 who is serving as an assistant United States attor-
 10 ney on the effective date of this section.

11 (b) NOTICE REQUIREMENT.—Not later than 9
 12 months after the date of enactment of this Act, the De-
 13 partment of Justice shall take measures reasonably de-
 14 signed to provide notice to incumbents on—

15 (1) their election rights under this title; and

16 (2) the effects of making or not making a time-
 17 ly election under this title.

18 (c) ELECTION AVAILABLE TO INCUMBENTS.—

19 (1) IN GENERAL.—An incumbent may elect, for
 20 all purposes, to be treated—

21 (A) in accordance with the amendments
 22 made by this title; or

23 (B) as if this title had never been enacted.

24 (2) FAILURE TO ELECT.—Failure to make a
 25 timely election under this subsection shall be treated

1 in the same way as an election under paragraph
 2 (1)(A), made on the last day allowable under para-
 3 graph (3).

4 (3) TIME LIMITATION.—An election under this
 5 subsection shall not be effective unless the election
 6 is made not later than the earlier of—

7 (A) 120 days after the date on which the
 8 notice under subsection (b) is provided; or

9 (B) the date on which the incumbent in-
 10 volved separates from service.

11 (d) LIMITED RETROACTIVE EFFECT.—

12 (1) EFFECT ON RETIREMENT.—In the case of
 13 an incumbent who elects (or is deemed to have elect-
 14 ed) the option under subsection (c)(1)(A), all service
 15 performed by that individual as an assistant United
 16 States attorney (and, with respect to subparagraph
 17 (B) of this paragraph, any service performed by
 18 such individual pursuant to an appointment under
 19 sections 515, 541, 543, and 546 of title 28, United
 20 States Code) shall—

21 (A) to the extent performed on or after the
 22 effective date of that election, be treated in ac-
 23 cordance with applicable provisions of sub-
 24 chapter III of chapter 83 or chapter 84 of title

1 5, United States Code, as amended by this title;
2 and

3 (B) to the extent performed before the ef-
4 fective date of that election, be treated in ac-
5 cordance with applicable provisions of sub-
6 chapter III of chapter 83 or chapter 84 of title
7 5, United States Code, as if the amendments
8 made by this title had then been in effect.

9 (2) NO OTHER RETROACTIVE EFFECT.—Noth-
10 ing in this title (including the amendments made by
11 this title) shall affect any of the terms or conditions
12 of an individual's employment (apart from those
13 governed by subchapter III of chapter 83 or chapter
14 84 of title 5, United States Code) with respect to
15 any period of service preceding the date on which
16 such individual's election under subsection (c) is
17 made (or is deemed to have been made).

18 (e) INDIVIDUAL CONTRIBUTIONS FOR PRIOR SERV-
19 ICE.—

20 (1) IN GENERAL.—An individual who makes an
21 election under subsection (c)(1)(A) shall, with re-
22 spect to prior service performed by such individual,
23 deposit, with interest, to the Civil Service Retire-
24 ment and Disability Fund the difference between the
25 individual contributions that were actually made for

1 such service and the individual contributions that
2 would have been made for such service if the amend-
3 ments made by section 202 of this title had then
4 been in effect.

5 (2) EFFECT OF NOT CONTRIBUTING.—If the
6 deposit required under paragraph (1) is not paid, all
7 prior service of the incumbent shall remain fully
8 creditable as law enforcement officer service, but the
9 resulting annuity shall be reduced in a manner simi-
10 lar to that described in section 8334(d)(2)(B) of
11 title 5, United States Code.

12 (3) PRIOR SERVICE DEFINED.—In this sub-
13 section, the term “prior service” means, with respect
14 to any individual who makes an election (or is
15 deemed to have made an election) under subsection
16 (c)(1)(A), all service performed as an assistant
17 United States attorney, but not exceeding 20 years,
18 performed by such individual before the date as of
19 which applicable retirement deductions begin to be
20 made in accordance with such election.

21 (f) REGULATIONS.—The Office of Personnel Manage-
22 ment shall prescribe regulations necessary to carry out
23 this title, including provisions under which any interest
24 due on the amount described under subsection (e) shall
25 be determined.

1 **SEC. 203. EFFECTIVE DATES.**

2 (a) IN GENERAL.—The amendments made by section
3 201 shall take effect on the first day of the first applicable
4 pay period beginning on or after 120 days after the date
5 of enactment of this Act.

6 (b) INCUMBENTS.—Section 202 of this title shall take
7 effect 120 days after the date of enactment of this Act.

○