President Harry Truman was deter-
mined to do great things today. The centerpcie 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 trans-
portation. Our roads, our bridges, our
casinos; 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 and their achievements?

I am challenged to think of this
country as a part of the world.
We see only a call for smaller
dreams, and more limited hori-
zons.

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

I hear no call to greatness in this
peddling of massive tax cuts. I hear
no appeal to American pride to
disturb the old Soviet Union in the
arms race; witness mapping the
human genome for which the distin-
guished 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 Mem-
ber of this body to support this re-
search.

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

But, where is the leadership and in-
spiration for this new millennium? I
find the current debate about the
Bankruptcy Reform Act in 1978—
Continued

Mr. SESSIONS. Mr. President, we are
now proceeding on the bankruptcy bill
in the regular order. We have 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.
They may wipe out the children. They
are forever gone. They signed a con-
tract. They signed agreements. They
got sued. And they got judgments
against them. It is all wiped out; a per-
son does not have to pay anything
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.

Mr. SESSIONS. When 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
they would get thrown in jail. But
their assets would be distributed equal-
ly to whoever was claiming money
from that person in sort of a realistic-
priority way.

Over the years, we have provided tre-
mendous protections for the person fil-
ing bankruptcy. It does this in a lot
of different ways. How does it actu-
ally work?

Let’s say you are in debt and tele-
phone calls start coming from the
creditors. You promise to pay certain
people 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 bur-
densome. They 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 un-
able to pay the debts. So under this
circumstance, a person is al-
lowed to file bankruptcy. When bank-
rupency 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 bank-
rupency 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
to show the creditors he is willing
to pay debts. 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.
They may wipe out the children. They
are forever gone. They signed a con-
tract. They signed agreements. They
got sued. And they got judgments
against them. It is all wiped out; a per-
son does not have to pay anything
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.

Mr. SESSIONS. When 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, 300 million people in America, and some of them are rich, 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 firms, lawyers, who advertise. People still can remember that day. But now they can. You turn on the TV or the radio or go to the dime store, corner market shopping, and these advertisements: ‘Wipe out your debt. Don’t pay anybody you owe. Call old Joe, your friendly lawyer. He will tell you how to do the deal.’

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. Some go into the dime store, corner market shopping, and these advertisements: ‘Wipe out your debt. Don’t pay anybody you owe. Call old Joe, your friendly lawyer. He will tell you how to do the deal.’

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 you have $1,500 or $1,000, I will file your bankruptcy. Don’t pay any of your other debts. 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. Live off your credit card. 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 I practiced in the northern district of Alabama, where I practiced, 50 percent of the people who 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 you 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 fair 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 your income, if you make below median income, 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, 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—let us say 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 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 a few 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, but not for us.’ 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.

There have been, 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 is widely suggested 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—wipes 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 issue. 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 greater 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 who treated them and helped them get well? The legislation that deals with a fundamental right to health care 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 a home mortgage 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 recognize that they 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. 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 section that they write off regularly. 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.

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, 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 States have unlimited assets, and some Senators wanted to keep that. They fought us and fought us and fought us. Frankly, after being a co-sponsor with Senator KOLE, 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 the 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 that are 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 not 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. REID. I move, seconded by Senator 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...
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. 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 regard to 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 is limited.

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 antitwoman, 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 or 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 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 some couples 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:

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
Baucus
Bayh
Bilao
Bingaman
Baucus
Breaux
Byrd
cantwell
Carnahan
Carper
Chafee
Cleland
Clint
Collins
Conrad
Corzine
Cousins
Dayton

Bunning
Byrd
Carl Levin
Daschle
Dean
Dodd
Dorgan
Durbin
Edwards
Ensign
Fischer
Franken
Fraser
Fusillo
Graham
Greenberg
Griffith
Harkin
Hilven
Hollings
Inouye
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lee
Levin

Lieberman
Lincoln
Mikulski
Murray
Nelson (FL)
Nelson (NE)
Reed
Reid
Rockefeller
Rockefeller
Sarbanes
Schumer
Sensenbrenner
Specter
Stabenow
Stevens
Terricelli
Wollstone
Wyden

NAYS—43

Allard
Allen
Bennett
Bond
Brownback
Burns
Mr. WELLSTONE. Mr. President, 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 Senate 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 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. At the very minimum, we 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 does he have?

The PRESIDING OFFICER. The Senator has 3 minutes.

Mr. WELLSTONE. Did my colleague from Minnesota use all his time?

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 as a part of 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:

Answered “Present”—1

Mr. 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?
The amendment (No. 77) 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.

The amendment (No. 73) was 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 OFFICIAL. Is there objection? Without objection, it is so ordered.

The amendment (No. 73) was withdrawn.

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

The PRESIDING OFFICIAL. 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 OFFICIAL (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. The result of the modification to the desk at this time.

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

The amendment, as modified, is as follows:

On page 147, line 3, strike "$250" and insert "$750000."

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 $750000. Frankly, I don't think that is high enough, but it certainly moves us in the right direction. I have to think that people who accumulate $250000 in credit card debt 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 OFFICIAL. Does the Senate 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 OFFICIAL. 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 OFFICIAL. 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 OFFICIAL. 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 OFFICIAL. 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 OFFICIAL. 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 OFFICIAL. The clerk will call the roll.

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

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

Mr. TORRICE. 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 at a rate of 1.2 million. 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 petitioners filed under chapter 13, which requires repayment plans. 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. This is a public policy issue. 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 that their responsibilities are met, 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 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.

If we believe in 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’s 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, several times 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 may use discretion to ensure any citizen who needs bankruptcy protection because of extraordinary or extenuating circumstances, who is otherwise irresponsible, 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 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. That is not the case here.

It is a tough decision. For all these reasons I ask Members of the Senate know that if this bill is passed, 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 current law, we will require the protection, what they will be, and when they will be imposed. That is not required under current law.

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 the case here. 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 the right thing, to recognize 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 reform. We are trying to prevent 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.

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

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

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

Mr. REID. Mr. President, I ask unanimous consent the Senator from Delaware be recognized. We are trying to work on a way to agree to a bankruptcy reform bill, a way to agree, if they have the ability to repay a portion of these debts, they ought to do that.

Second, the question has been raised, how do you determine who has the ability to repay a portion of their debts, should we expect that of them? I think most of us would say, yes, they ought to have that right.

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, 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 would agree, if they have the ability to repay a portion of their debts, they ought to do that.

Those are the really 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 that to a bankruptcy judge the discretion to make those decisions. In the legislation before us today, that will we vote on in a short while for final passage, we go a step beyond that. It is a good step. We do not say, we give that to a bankruptcy judge. We give that to a consumer protection act. We recognize that 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.

For 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 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 or 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 taken into account 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 unsecured 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 have been 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.

I yield back the floor.

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

The PRESIDING OFFICER (Mr. EN-SIGN). 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, 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 be recognized to call up his amendment No. 51 and there be up to 15 minutes for debate and, following the debate, the further amendment be offered. The further amendment is heard.

The PRESIDING OFFICER. The assistant 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 (Mr. EN-SIGN). 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, 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.

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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 motion to reconsider be laid upon the table. I further ask unanimous consent that the Senate proceed to the House companion bill, H.R. 333, and that the text of § 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, I am 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 with 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 revised my request for unanimous consent 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 this floor. Mr. President, 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. REID. 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 se-
vere time constraints now. Could we proceed with the UC as requested?

The PRESIDING OFFICER. The Sen-
ator from Wisconsin.

Mr. REID. As modified, Mr. Presi-
dent, amendment No. 59, as modified.

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

Mr. FEINGOLD. Although I had int-
tended 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 ef-
fort 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. FEINGOLD. 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 lan-
guage?

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 accept-
ated the unanimous consent agreement
yet; is that correct?

I have been informed that the man-
ger 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 Sen-
ator 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 fol-
"(B) the court orders that the exception to
the automatic stay shall not become effec-
tive, or provides for a later date of applica-
bility.
"(3) by adding at the end of the flush mate-
rial added by paragraph (2), the following:

Where a debtor does not file a certification
under subparagraph (A), the stay under sub-
paragraph (a) shall be lifted by operation of
laws and the court shall close the 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 deep-
ly 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 Sen-
ator from Wisconsin.

Mr. FEINGOLD. Mr. President, as the
Senator from Alabama suggested, I
do not 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 unan-
imous 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.
58, as modified, is agreed to.

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

The PRESIDING OFFICER. The Sen-
ator 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. Fein-
gold) for himself, Mr. Thompson and Mr.
Wells, proposes an amendment num-
bered 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 join in offering this bipartisan amendment by the Senator from Tennessee, Mr. THOMPSON, and the Senator from Minnesota, Mr. WELSTONE. 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 portends 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. Nobody has 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 example 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 the face of the Names and their attorneys who argue that the British courts won’t treat their clients fairly and that their clients have suffered as a result, 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 by Secretary of State 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 judgments of the 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:


Hon. RUSSELL D. FRINGOLD,
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). This Administration supports the overall bankruptcy reforms contained in S. 420. However, the Administration opposes Section 1310, which would bar enforcement in U.S. 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 and 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 them to go to 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 our goal to treat 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, 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. If Congress overstepped 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 predictability that is 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 not 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, and one in a 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 is 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 Lloyd’s 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 these letters be printed in the RECORD.

DEAR SENATOR LANDRIEU: I write to enlist your support in enacting this bill to protect 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 asbestos 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 and unregistered securities. More than three thousand Americans, who are called Names, were recruited. They were induced on the basis of Lloyd’s three hundred and eighty-billion-dollar undertaking 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 my heart attack. Am 77.

Over the years, many Names have become old and retired, and a majority of their resources brought much hardship to those employed and to those no longer employed, especially those who were counting on some income from their military retirement to supplement their endeavors and may have invested the inheritance that my father foolishly believed their prior reputation and credibility at all? I resigned in 1993 and have been fighting them at great financial and emotional expense. As the stress continued to mount for my husband to fight this massive institution, it seemed at every turn, Lloyd’s was far too powerful and far too well heeled, for him to stand up for the rights of Lloyd’s of London.

Thank you very much.

JOAN B. WILSON.

DEAR SENATOR LANDRIEU, I am a senior citizen and am among those who have been hurt by 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. Consumer Commission’s acceptance of the technicalities of foreign judgments to harvest their fraudulent gains. We should strike Section 1310 and forbid granting 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 have 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,

Beverly Hudson,

DEAR SENATOR LANDRIEU, I am a senior citizen and am among those who have been hurt by 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. Consumer Commission’s acceptance of the technicalities of foreign judgments to harvest their fraudulent gains. We should strike Section 1310 and forbid granting 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 have 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.

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

Sincerely yours,

Beverly Hudson,
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.

Respectfully and sincerely yours,

JOAN B. WILSON


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 is 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 $600,000, 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 and safe participation in their investments.

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 abilities of billions of dollars. What kind of justice for the Americans?

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 London, and in this case hundreds of U.S. citizens across the country, is most appreciated.

Sincerely,

THOMAS O. LIND


RE Section 1310 of the Bankruptcy Bill (S-420).

Hon. Mary Landrieu,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR LANDRIEU: I respectfully urge you to support 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 nemesis.

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 London, and in this case hundreds of U.S. citizens across the country, is most appreciated.

Sincerely,

Mr. Thompson.

Mr. Feingold. I respect your 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 both England and the U.S. 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 treaty,” any court can relitigate 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 extraordinary as a dual process of the 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.

Mr. Feingold. I thank the Senator. I yield the remainder of my time to Senator Biden.

Mr. Biden. Mr. President, I assoicate myself with the remarks of the Senator from Tennessee, as well as the Texas and a minute to the Senator from Delaware.

Mr. Feingold. 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 am concerned about our own commercial interests if, in fact, we do this when we have a British citizen 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.

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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 Texas and a minute to 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 Brit-
ain. This will make it difficult for us to
make the case that when we want for-
eign courts to make concessions based
upon our needs, for them to be willing
to do so, I think it is a mistake.
I understand why the Senator from
Alabama has 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 PRESIDENT PRO Tempore.

TO THE HON. JOHN C. S MITH,
Chairman, Committee on Financial
Services, House of Representatives, Rayburn
House Office Building, Washington, D. C.

DEAR CHAIRMAN SMITH: Thank you for
your letter dated February 28, 2001 regarding
Lloyd's of London. As you stated in your let-
ter, the SEC has filed a number of briefs ami-
cus 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 provi-
sions of the United States federal securities
laws. The SEC stated that these provisions act-
ed to strip plaintiffs of their right to bring suit
in the United States by another who is appointed his agent by the

Chairman, Committee on the Judiciary,
Washington, D. C.

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 under-
stand 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 de-
prived of the right in these actions of raising
a fraud defense to prove such fraud. As a re-
sult, 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. This case is merely asking to
have their day in court.

Enclosed is a copy of the proposed lan-
guage 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
American courts in no way mandate how a
British 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 appreci-
ate your consideration in this regard.

Sincerely,
MARY L. LANDRIEU,
U. S. Senator,
Acting Chairman.

HOWELL HEPFLN,
Chairman, Committee on Financial Services,
Washington, D. C.

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HOWELL HEPFLN,
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 knowing they would be defrauded with asbestos liabilities. The English court which rendered summary judgments in favor of Lloyd's and against the American investors then allowed the investors to assert fraud as an affirmative defense. Section 1310 provides a remedied remedy in those 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 judgment 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 is certainly contrary to the public policy of this country for an individual to be defrauded and then denied the 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, 1968—

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 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 prosecuting insurance 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 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 were guaranteeing 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 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 comes up. If you invested, the fine print. But they would not tell them that 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 invited these folks 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 said investors 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 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 which under 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, once they were investors in Lloyd's. They sold these investments to American citizens, who did not fully know what they were facing. As one said, these were massive, quantifiable 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 judges 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 he didn't let them evidence in, said: "The catalog of failings and incompetence in the 1960s 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 of London for their false 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 was inserted by 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-confidence 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 FENGGOLD 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 who 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 could 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 criminals, and 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, 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, beyond all reasonable 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?

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.

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

(Rollcall Vote No. 35 Leg.)

YEAS—79

Akaka—Durbin—Mikulski
Allen—Edwards—Murray
Biden—Eisenstein—Markowski
Bayh—Emmett—Mann
Biden—Feingold—Nelson (NE)
Bond—Feinstein—Nichols
Brownback—Frist—Reed
Burns—Graham—Roberts
Byrd—Gramm—Rockefeller
Cantwell—Hagel—Sarbanes
Carnahan—Harkin—Sanford
Carnap—Hegar—Schumer
Cleland—Inhofe—Shelby
Clinton—Inouye—Smith (OR)
Curtain—Jeffords—Snowe
Culbertson—Johnson—Speier
Cordy—Kennedy—Stabenow
Corker—Kerry—Thomas
Cruz—Kemp—Thompson
Curney—Kerry—Torrington
Dayton—Levin—Voinovich
DeWeine—Lincoln—Warner
Dodd—Lugar—Wellstone
Domenici—McCain—Wyden
Dorgan—McCandless—Wyden

NAYS—18

Baucus—Grassley—Landrieu
Bennett—Gregg—Lotz
Brown—Hutto—Nelson (FL)
Breaux—Helms—Sessions
Bunning—Hutchinson—Smith (NC)
Campbell—Kasich—Thompson

ANSWERED “PRESENT”—2

Stevens—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, 39 as modified, 43, 45 as modified, 55, 60 as modified, 65 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 Senate which 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, 39 as modified, 43, 45 as modified, 49, 50, 54 as modified, 58, 60 as modified, 65 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 amend—

(1) in subsection (b)(1), by—

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

(B) striking “if such claims” and inserting “if such undisputed claims”;

(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.

(1) Definition.—Section 101 of title 11, United States Code, is amended—

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

“(7) ‘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;

“(D) ‘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:

“(19) ‘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 $150,000 and not less than 40 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 in 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 related conduct the commercial fishing operation; and

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

(b) Section 1202(a) 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 section heading, by inserting “OR FISHERMAN” after “FAMILY FARMER”;

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

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

“(f) 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.

“(g) In the section heading, by inserting “fishing” after “farmer”;

(3) in section 1203, by inserting “fishing” after “farm”;

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

(b) Section 1323. Additional provisions relating to family fishermen—

(1) The table of contents for title 11, United States Code, is amended to read as follows:


(2) Section 1323. Additional provisions relating to family fishermen—

(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 a writ of attachment, 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 materially increase the probability of layoff or termination of current employees or of nonpayment of domestic support obligations during the case;"

(c) Section 506(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 a writ of attachment, 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 materially increase the probability of layoff or termination of current employees or of nonpayment of domestic support obligations during the case;"

(d) In section 1329(a) of title 11, United States Code, is amended by inserting the following:

“SEC. 330. CLARIFICATION OF POSTPETITION DUTIES WITH RESPECT TO A DEBTOR WHO IS A PLAN ADMINISTRATOR OF AN EMPLOYEE BENEFIT PLAN.

(a) In general.—Section 332(a) of title 11, United States Code, is amended by—

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

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

(3) by adding at the end the following:

“(6) if a trustee is serving as an 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”;

(3) by adding at the end the following:

“(12) where, at 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 1104;

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:

“(1) SPECIAL ALLOWANCE FOR HEALTH INSURANCE.—Section 1329(a) of title 11, United States Code, is amended by inserting the following:

“(1) 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 the dependents do not otherwise have health insurance coverage) if the debtor documents the cost of such insurance and demonstrates that—

(1) such expenses are reasonable and necessary;

(2) if the debtor previously paid for health insurance, the amount is not materially larger than the cost the debtor previously paid or else it is necessary to maintain the lapsed policy, or

(3) 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 area with the same number of dependents that do not otherwise have health insurance coverage; and

(4) 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.”
SEC. 11235. EXPEDITED APPEALS OF BANKRUPTCY CASES TO COURTS OF APPEALS. (a) Appeals.—Section 158 of title 28, United States Code, is amended by inserting after subsection (a)(1), by striking “Subject to subsection (b),” and inserting “Subject to subsections (b) and (d)(2),” and in subsection (d)–

(1) In subsection (d)(1)—

(A) by inserting “(1)” after “(d);” and

(B) by adding at the end the following—

“(2) A court of appeals that would have jurisdiction of a subsequent appeal under section 158(d)(2) 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; or

(II) a question concerning the resolution of conflicting decisions; or

(III) a matter of public importance; and

(ii) an immediate appeal from the order or decree materially advances 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 this Act) 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 such title of such proposal during proceedings pending before that court or panel.

(3) Procedure.—Subject to the 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.

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 323(a)(2)” and insert “described in subparagraph (A) or (B) of section 323(a)(2)” that is owed to a domestic governmental unit or owed by a recipient 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. 1123. FEDERAL ELECTION LAW FINES AND PENALTIES AS NONDISCHARGEABLE DEBT.

Section 523(a) of title 11, United States Code, as 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;”

AMENDMENT NO. 50

(Purpose: To provide that political committees may not file for bankruptcy) At the appropriate place, insert the following:

SEC. 11236. NO BANKRUPTCY FOR INSOLVENT POLITICAL COMMITTEES.

Section 105 of title 11, United States Code, is amended by inserting after paragraph (14B) (as added by this Act) the following—

“(14C) incurred to pay fines or penalties imposed under Federal election law;”

AMENDMENT NO. 58

(Purpose: To make amendments with respect to filings by small business concerns, and for other purposes) On page 293, line 11, strike “discharge a debtor” and insert “discharge an individual debtor.”

On page 302, line 8, strike “described in section 323(a)(2)” and insert “described in subparagraph (A) or (B) of section 323(a)(2)” that is owed to a domestic governmental unit or owed by a recipient 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. 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” before “or”

On page 299, line 17, strike “or” and insert “including” before “or”

On page 301, line 18, strike “or any” and insert “including any” before “or”

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 “(Y)” and insert “including” before “or”

On page 306, line 10, insert “is of a type” before “clause and”

On page 308, line 5, strike “or any” and insert “including any” before “or”

On page 308, line 23, strike “the Gramm-Leach-Bliley Act,” and insert “the Gramm-Leach-Bliley Act, and” before “the Gramm-Leach-Bliley Act.”

On page 308, line 25, strike all after “2000” and insert a period following “2000.”

On page 309, line 1, 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—

“(5) by including at the end of section 11(e) the following new paragraph:

SEC. 11(e). Clarification of terms—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 336, line 1, insert “in the case of a corporation chartered under section 23A of the Federal Reserve Act, or an uninsured State member bank that operates, or operates as a multilateral clearing organization pursuant to section 10(r) of the Act”.

On page 330, line 3, insert “soley” 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 the”.

On page 332, line 4, strike “(D),” or and insert “(D) including”.

On page 333, line 14, insert “mortgagee” before “loan”.

On page 333, line 18, insert “mortgagee” 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 spreads, and all”.

On page 336, line 22, insert after “(1)” 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 “after the period after “2000”.

On page 340, line 20, insert “mortgagee” 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” after “any”.

On page 346, line 7, strike “or” the first time it appears.

On page 334, line 21, strike “or any” and insert “including any”.

On page 346, line 7, strike “or” the first time it appears.

On page 336, line 24, strike “a securities clearing agency” after “association”.

On page 333, line 25, insert “a securities clearing agency” before “a contract market”.

On page 335, line 5, strike “a securities clearing agency” after “association”.

On page 335, line 6, strike the end parenthese after “Act”.

On page 335, line 13, strike “(5c)” and insert “(5(c))”.

On page 338, line 24, strike “a national securities exchange”.

On page 339 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: “(III) FEDERAL REGULATORY 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 1231).”

On page 372, line 18, insert “governmental unit, limited liability company” after “partnership”.

On page 373, line 22, insert “on” after “State law”.

On page 374, line 10, insert “and” before “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, line 160 to line 12, line 161 and insert thereof. “(1) 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, or any governmental authority, the Federal tax returns or transcript thereof required under applicable law, with respect to the period that is 3 years before the order of relief; and “(2) any amendments to any of the Federal tax returns or transcripts thereof described in paragraph (1) or (2)”.

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. 294. 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 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 in under 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 “(3) on page 192, line 1, strike “(2)” and insert “(3).” On page 199, line 4, strike “(through (5)” and insert “and (4)”.

On page 250, 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 348, line 13, strike “to, under” and insert “to and under”.

On page 349, line 17, strike “(27)” and insert “(26)”.

On page 358, line 19, strike “(28)” and insert “(27)”.

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

On page 350, 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 “(29)” each place it appears and insert “(27)”.

On page 366, line 10, strike “(i)”, “including”, and insert “(i)”. If the health care business is a long-term care facility, the trustee may appoint

On page 366, 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 “(26)” and insert “(27)”.

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

On page 394, strike lines 9 through 13.

Redesignate sections 1229 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 400, line 13, strike “(after” and insert “prior to”.

On page 406, line 5, strike “(after” and insert “prior to”.

On page 416, 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.

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 "or," 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) amendment 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. 13894), 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 801 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.

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 non-controversial 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.

Outstanding 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 before them.

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 21,800 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 100 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 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 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 back pay awards issued for violations of federal laws such as whistleblower 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 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 affect any of the 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 the ongoing business concern. Should the award be substantial in 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.

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 judge 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. President, the American people and my colleagues and I are pleased that we have 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 Feingold regarding bankruptcy petition preparers.

We adopted an amendment by Senator Jack Reed calling for a General Accounting Office review of the bill’s reauthorization provisions.

We adopted an amendment by Senator Feingold to make Federal Election Commission fines and judges non-dischargeable 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 an additional 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 non-dischargeable in bankruptcy.

We adopted an amendment by Senator Wellstone to clarify that the bankruptcy must fulfill 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 of 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 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 means-test.

We adopted an amendment by Senator Collins and Senator Kerry on family fisherman protection in bankruptcy.

We accepted a third Leahy 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. 59.

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

**AMENDMENT NO. 59, AS FURTHER MODIFIED**

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

(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:—

(25) 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 became due under the excepted 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 180 days prior to 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 tenant (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 the clause have been met and serves a copy of the certification upon the debtor.

(26) 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 non-bankruptcy law after the date of filing of the petition for that other case;

(27) 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; or

(28) under subsection (a)(3), of an eviction proceeding described in any such paragraph, the exception to the automatic stay shall become effective on the 15th day after the debtor files with the court a certification 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 (29)(B)(iv); provided, that the tenant takes advantage of such remedy more than once under this title; or

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

(b) 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 notice due post-petition 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 subparagraph (A), or the debtor makes this demonstration to the satisfaction of the court, the court shall order the stay under subsection (a) lifted forthwith. Where a debtor does not make this demonstration to the court’s satisfaction, the court shall order the stay 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.
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 $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 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 Service, IRS, Local Standards for Operating Costs would be 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 put a reasonable credit limit in place.

I have heard 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 practices and would in some way or another reduce 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.

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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 the opportunity for a landlord to evict a tenant who is paying his rent while the bankruptcy is pending, and as long as they repay any unpaid rent owed.

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 owed. 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 for creditors to force a dismissed 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 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 owed.

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 companies 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 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 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 increase 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 small business, 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 force the bankruptcy court to order the 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 that would exclude small businesses from the creditors committee. Those amendments help small businesses, but they cannot compensate for the greater burdens this bill imposes.

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 the progress has been a 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 having to give up 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 be in a better position to take credit for this downturn in bankruptcies.

But without congressional intervention, bankruptcies have been on the decline. The rise 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 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 there 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, if not years, often until the date of confirmation of a plan. This situation is unfair. A shopping center operator is a compelled creditor. It imposes a firm, bright deadline. The bankruptcy judges must vote against it.

Beyond that maximum period, there 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, if not years, often until the date of confirmation of a plan. This situation is unfair. A shopping center operator is a compelled creditor. It imposes a firm, bright deadline. The bankruptcy judges must vote against it.

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, SIP. These amendments address the treatment of certain financial transactions and agreements involving counterparties 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 are similar amendments that 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 statements clarifying significant issues in this regard.

Systemic risk has been defined as the risk that a disruption at a firm, in a market segment, or to a settlement system, etc., can cause widespread difficulties in 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 liquidity 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. Protection also is 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 enter into new contracts with 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 to such contracts. It further enforces 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 in 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) are permitted to transfer or exercise any rights under the terms of the agreements.

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” was 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 a “contract 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 repurchase 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 already covered 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.” The 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 the 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 1996 regulation defining repurchase agreement as a collateral loan by or to a U.S. 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 not only 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 in the 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 some or all of the 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 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; a weather swap, weather derivative, or weather option." As amended, the definition of "swap agreement" would update the statutory definition and achieve contractual netting across economically similar transactions.

The definition of "swap agreement" was originally intended to provide sufficient flexibility to avoid the need to conclude separate transactions that address the complexities 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 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 transaction 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 regulatory treatment in 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, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk." 

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 "swaps." 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 Section 11(e)(8)(D)(vi) of the FDIA provide that the definitions of "securities contract," "repurchase agreement," "forward contract," and "commodity contract," and the characterization of certain transactions as 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). Instead, these definitions also includes any securities 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 of "transfer," which is a transfer including in an 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 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 letter 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 in an 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 a non-federal 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 of the definition 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 of a failed depository institution to QFCs of FDICIA-insured 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 FDICs 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 by both the CFMA and by Section 903.

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 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 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 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 and not a default under another contract, 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 the notification requirement 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 for depository institutions (i) 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 amends the FDIA to provide for the transfer of QFCs selectively. This unified treatment is fundamental to the reduction of systemic risk.

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 (b) 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 Subchapter D status, (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 protection of FDICIA’s provisions to 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 such 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, any two or more clearing organizations that enter into a netting contract are considered “members” of each other. This ensures 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. The new subsection is modeled on the provisions of section 907.

Subsection (a)(4) amends the FDICIA definition of netting contract and the general rules applicable to netting contracts. The current FDICIA provisions require a netting agreement to be governed by the laws of the United States or a State to receive the protections of FDICIA. However, many of these agreements, particularly netting agreements 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 organizations 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 DIF, 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 DIF. This modification also provides important legal certainty regarding the treatment of QFCs under the DIF, because the current relationship between the DIF, the insolvent depository institution, and the QFCs 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 QFC. Section 907 amends the definition of QFCs to account for the possible formation 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 provision 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 transferred the assets of a 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 of the FDIC under 12 U.S.C. §§1821(o)(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 statute and 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 amendment 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 forward agreements as underlying assets. 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 agreements 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 guaranteed by 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 (Fannie Mae) 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 commodity 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 security 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 are evidenced 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.” While 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-to-morrow, 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 agreement, weather contract, 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(33)] of the Bankruptcy Code" and that is of a type that has been, is presently, or in the future becomes, the subject of recurring 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 financial risk or value.

The definition of "swap agreement" in this subsection should not be interpreted to permit parties to document the 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" 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, are 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, or any other security or guarantee or reimbursement obligation related to a swap agreement. Any 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 arrangement or guarantee or reimbursement obligation related to a swap agreement would be a swap agreement. This definition includes any security agreement or arrangement or any other agreement to satisfy those 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 of or "repurchase agreement" in the Bankruptcy Code. Repurchase and reverse repurchase transactions (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 agreement, or any other agreement 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 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 (b) also amends the Bankruptcy Code definitions of "financial institution" and "forward contract merchant." The definition for "financial institution" expressly includes investment companies registered under the Investment Company Act of 1940.

Subsection (b) also adds a new definition of "financial position of an insolvent financial institution" and "forward contract merchant." The definition for "financial institution" expressly includes investment companies registered under the Investment Company Act of 1940.

Subsection (b) also adds a new definition of "financial position of an insolvent financial institution" and "forward contract merchant." The definition for "financial institution" expressly includes investment companies registered under the Investment Company Act of 1940.

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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 Reserve Act and the Commodity 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 trades 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 participants" as used in the other provisions of the Bankruptcy Code includes "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.

Section (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 defined 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, swap agreements, and repurchase agreements and swap agreements of (ii) as an umbrella agreement for separate master agreements 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 otherwise considered as 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 "financial participant" on 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 master netting agreements and security agreements or arrangements related to one or more swap 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 section 546(d) 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, master netting agreements, repurchase agreements, security agreements, 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, 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 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 association, exchange, market, derivatives transaction execution facility or board of trade, (ii) under common law, law merchant and (iii) by reason of normal business practices that reflect the principles 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 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 commodities for which netting or offsetting is requested. 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. Those provisions are contained in subchapter I 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 arrangements.

For the purposes of the 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 to a bankruptcy asset arrangement be 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 and 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 arrangement 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 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 bankrupcy provisions and rights under 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 clarifying that they apply to 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, repurchase 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, 559, 556, and 561 of the Bankruptcy Code to the types of setoff excepted from section 553(h).

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 Bankruptcy Code 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 has no similar arrangements approved by, or submitted to and not rendered ineffective by, the Commodity Futures Trading Commission, as well as certain other arrangements.

Section 909 amends FDIA section 13(e)(2) to provide that an agreement for the collateralization of governmental deposit, bankruptcy estate funded 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 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 reader the impression that the legislation marginalizing 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, swap agreements, repurchase 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 or otherwise 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 generates a framework for asset-backed securitization transactions from legal uncertainties and disruptions related to the bankruptcies of certain parties and allows for the further development of certain asset-backed security arrangements involving 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 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 internal transactions, new section 541(b)(5) of the Bankruptcy Code excludes from the property of a debtor’s estate any “eligible asset”, and proceeds thereof, to the extent that such eligible asset was “transferred” by the debtor, before the date of commencement of the case, to an “eligible entity” in connection with an “asset-backed securitization.” 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 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 asset in question would remain excluded from the debtor’s estate.

In order to provide certainty to participants in the asset-backed securities market, in new section 541(b)(5) so as to bring such assets back into the debtor’s estate.

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 appointed in connection with a case of a person, until 90 days after 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 appointed were not 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, and securities law. The term “security” 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. I commend Senators GRASSLEY, HATCH, and SESSIONS for their hard work, dedication, and perseverance. As a result of their efforts, a sense of balance and fairness has been restored to our legal system, and 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 70,000 filings. In Arkansas, there were 7,062 filings in 1990 and 16,784 in 2000.

The U.S. Department of Justice estimates that creditors lose $32.2 billion every year because of bankruptcies filed by people who hold debt. 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.

We 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 not benefit these 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 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 Koni, who is the majority leader in the Senate, and I have been working to limit the practice of wealthy debtors shielding themselves from creditors in bankruptcy. The bill now passed by the Senate, although it limited the practice of sheltering large amounts of money in a new home. His amendment would have placed a ceiling on any 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 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, and exploiting individual’s social situation. 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 laws. 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 I threaten to 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 it. The bankruptcy reform 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 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 debtors arising from clinic violence nondischargeable, the amendment on landlord-tenant, the amendment on separated spouses, and the amendment I offered on tenant rights 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 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 person who 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 declared bankruptcy, they 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 to us in the Judiciary Committee in its present form. If these kinds 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 family 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 fails 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 13 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 reform bill this year.

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 ever presented to us in the Judiciary Committee, on which I sit, has deleted a Senate passed amendment, and did not strike a fair compromise amendment I forged with Senator SESSIONS and Senator FEINGold to balance the needs of landlords and tenants, when a tenant files bankruptcy.

For example, last year, the Conference Report deleted a Senate passed amendment empowering the U.S. Trustee to fine 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 peti- tion preparers, and victims can sue for increased damages.

In addition, the Senate bill includes a compromise amendment I forged with Senator SESSIONS and Senator FEIN- gold 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.

This 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 to 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 this legislation, but I do not want to turn 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 code laws, I will be on the front lines of the fight to reopen this debate and to fix the glitches.

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 bankruptcy filings. 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 Straus, President 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 medical and other health services. 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 conditions, 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.

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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 this legislation, but I do not want to turn 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 code laws, I will be on the front lines of the fight to reopen this debate and to fix the glitches.

March 15, 2001

CONGRESSIONAL RECORD—SENATE
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, I 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 in recent years, 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 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.

The bankruptcy reform that benefits debtors, consumers, and creditors alike and I will again vote for its passage.

Mr. DASCHLE. Mr. President, the bankruptcy law bill before us today has come 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 that abuse.

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 Kyl’s amendment on the homeless 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 they 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 repay 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 developments 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 pay their debts.

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, he or she is expected to 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 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 when people walk away from their debts. It is not only businesses that have to pay—yes, 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 and what promises creditors 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 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 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.

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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 also thank Senator FEINGOLD for his steadfast efforts in this regard. The Schummer-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 that 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 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 week and were repeated today. In between I gave them the chance to show 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 so-called “tax refund” or 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 creditors.

What I have been asking is where this bill or those corporations’ practices will pass those benefits on ordinary Americans. Again, I have heard none of the benefits of this bill or those creditors’ claims that 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 in 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?

Indeed, 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 procedures and new 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 a few 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 the other side. I have been reminded to beware the Ides of March. It is on 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, Senator KOHL, Senator FEINSTEIN and Senator FEINGOLD for their 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, DURBIN, DASCHLE, and REID and the staffs of Senators HATCH, GRASSLEY and SESSIONS. In particular, I want to thank the following staff: Makan Delrahim, Renee Augustine, Rita Lari, Kolan Haden, Melody Barnes, Jim Greene, Victoria Bassetti, Jeff Miller, David Huntman, 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 note the recent report of 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 later. This bill, the hardest 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 practices in this bill 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 during Desert Storm has hurt the economy, this bill will do the same to the economy. To cite bankruptcy filings may soon change.

Perhaps it is appropriate that we end this phase of the debate today, on March 15, the day of tax day. 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 telecommunication reforms have required us to re-visit 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 directed by the bill’s corporate beneficiaries as soon as next week, when campaign finance reform is debated.

Mr. HATCH. Mr. President, 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 Sessions, 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 Democrat 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, Hatfield, 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. Also, deputy staff directors, 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 been birthed twice during this process by 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 acknowledge 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 Ayob 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 to preserve is 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. The PRESIDING OFFICER. The QUESTION 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 it up today.

We cannot take it up because there has been obstruction on the other side. We have worked very hard. We wanted...