

to the bill S. 256, supra; which was ordered to lie on the table.

SA 86. Ms. CANTWELL (for herself, Mr. ENSIGN, and Mrs. MURRAY) submitted an amendment intended to be proposed by her to the bill S. 256, supra; which was ordered to lie on the table.

SA 87. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 88. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 89. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 90. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 91. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 92. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 93. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 94. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 95. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 96. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 97. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 98. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 99. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 100. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 101. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 102. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 103. Mr. LEAHY (for himself and Mr. SARBANES) submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 104. Mr. GRAHAM (for himself, Mr. DURBIN, and Mr. LEAHY) submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 105. Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 106. Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 107. Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 108. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 109. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 110. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 111. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 112. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 113. Mr. REID submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 114. Mr. REID submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 115. Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 116. Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 117. Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 118. Mr. KYL (for himself, Mr. FEINGOLD, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 119. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 120. Mr. LEVIN (for himself and Mr. PRYOR) submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 121. Mr. TALENT submitted an amendment intended to be proposed by him to the bill S. 256, supra.

SA 122. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 123. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 124. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 125. Mr. LAUTENBERG (for himself and Mr. DAYTON) submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 126. Mr. DODD submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 127. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 256, supra; which was ordered to lie on the table.

SA 128. Mr. SANTORUM proposed an amendment to the bill S. 256, supra.

SA 129. Mr. SCHUMER proposed an amendment to amendment SA 121 submitted by Mr. TALENT to the bill S. 256, supra.

#### TEXT OF AMENDMENTS

**SA 58.** Mr. STEVENS submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

#### SEC. ——. CERTAIN OBLIGATIONS UNDER THE COMMUNICATIONS ACT OF 1934.

Section 4 of the Communications Act of 1934 (47 U.S.C. 154) is amended by adding at the end the following:

“(p) APPLICATION OF BANKRUPTCY LAWS.—“(1) IN GENERAL.—The bankruptcy laws may not be applied—

“(A) to avoid, to discharge, to stay, or to set-off any pre-petition or post-petition debt obligation to the United States arising from an auction under section 309(j) of this Act;

“(B) to stay the payment obligations of the debtor to the United States if those obligations were a condition of the grant or retention of a license under this Act;

“(C) to prevent the automatic cancellation of a license under this Act pursuant to Commission rules for failure to comply with any monetary or nonmonetary condition for holding a license issued by the Commission, including the automatic cancellation of a license for failure to pay a monetary obligation of the debtor to the United States, whether or not dischargeable in a bankruptcy case, when due under an installment plan arising from an auction under section 309(j) of this Act, except that, upon cancellation of such license, the United States shall have an allowed unsecured claim for any outstanding debt to the United States with respect to such canceled license, and that such unsecured debt may be recovered by the United States under its rights as a creditor under this title or other applicable law;

“(D) to avoid, to discharge, or to set-off the pre-petition or post-petition payment obligation of a telecommunications carrier to contribute to the universal service fund, North American Numbering Plan, or other similar telecommunications funding mechanism established by Federal law; or

“(E) to avoid, to discharge, or to set-off the payment obligation of an entity subject to a pre-petition forfeiture or post-petition order or notice of apparent liability entered by the Commission pursuant to regulations of the Commission.

“(2) DEBTOR TO HAVE NO INTEREST IN PROCEEDS OF AUCTION.—A debtor in a proceeding under the bankruptcy laws shall have no right or interest in any portion of the proceeds from a subsequent auction of any license reclaimed by the Commission for failure to pay a monetary obligation of the debtor to the United States in connection with the grant or retention of a license under this Act.

“(3) SECURITY INTERESTS.—Notwithstanding any other provision of law, including State Uniform Commercial Codes, the Commission may—

“(A) establish rules and procedures governing security interests in licenses issued by the Commission, or the proceeds of the sale of such licenses; and

“(B) establish an office within the Commission for the recording and perfection of such security interests without regard to otherwise applicable State law.

“(4) BANKRUPTCY LAWS DEFINED.—In this subsection, the term ‘bankruptcy laws’ means title 11, United States Code, and any otherwise applicable Federal or State law regarding insolvencies or receiverships, including any Federal law enacted or amended after the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 not expressly in derogation of this section.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bankruptcy cases filed after the date of enactment of this Act.

**SA 59.** Mr. STEVENS submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_ . CERTAIN OBLIGATIONS UNDER THE COMMUNICATIONS ACT OF 1934.**

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

**“§ 561. Application with Communications Act of 1934**

“(a) IN GENERAL.—The bankruptcy laws may not be applied—

“(1) to avoid, to discharge, to stay, or to set-off any pre-petition or post-petition debt obligation to the United States arising from an auction under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j));

“(2) to stay the payment obligations of the debtor to the United States if those obligations were a condition of the grant or retention of a license under that Act;

“(3) to prevent the automatic cancellation of a license under that Act pursuant to Commission rules for failure to comply with any monetary or nonmonetary condition for holding a license issued by the Commission, including the automatic cancellation of a license for failure to pay a monetary obligation of the debtor to the United States, whether or not dischargeable in a bankruptcy case, when due under an installment plan arising from an auction under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), except that, upon cancellation of such license, the United States shall have an allowed unsecured claim for any outstanding debt to the United States with respect to such canceled license, and that such unsecured debt may be recovered by the United States under its rights as a creditor under this title or other applicable law;

“(4) to avoid, to discharge, or to set-off the pre-petition or post-petition payment obligation of a telecommunications carrier to contribute to the universal service fund, North American Numbering Plan, or other similar telecommunications funding mechanism established by Federal law; or

“(5) to avoid, to discharge, or to set-off the payment obligation of an entity subject to a pre-petition forfeiture or post-petition order or notice of apparent liability entered by the Commission pursuant to regulations of the Commission.

“(b) DEBTOR TO HAVE NO INTEREST IN PROCEEDS OF AUCTION.—A debtor in a proceeding under the bankruptcy laws shall have no right or interest in any portion of the proceeds from a subsequent auction of any license reclaimed by the Commission for failure to pay a monetary obligation of the debtor to the United States in connection with the grant or retention of a license under the Communications Act of 1934 (47 U.S.C. 151 et seq.).

“(c) SECURITY INTERESTS.—Notwithstanding any other provision of law, including State Uniform Commercial Codes, the Commission may—

“(1) establish rules and procedures governing security interests in licenses issued by the Commission, or the proceeds of the sale of such licenses; and

“(2) establish an office within the Commission for the recording and perfection of such security interests without regard to otherwise applicable State law.

“(d) DEFINITIONS.—In this section:

“(1) BANKRUPTCY LAWS.—The term ‘bankruptcy laws’ means this title and any otherwise applicable Federal or State law regarding insolvencies or receiverships, including any Federal law enacted or amended after the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 not expressly in derogation of this section.

“(2) COMMISSION.—The term ‘Commission’ means the Federal Communications Commission.”

(b) CLERICAL AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 560 the following:

“561. Application with Communications Act of 1934”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bankruptcy cases filed after the date of enactment of this Act.

**SA 60.** Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 47, strike lines 12 through 14, and insert the following:

**SEC. 202. EFFECT OF DISCHARGE.**

(a) INJUNCTION AFTER CONFIRMATION OF BANKRUPTCY PLAN OF REORGANIZATION.—

(1) IN GENERAL.—Section 524(g)(2)(B)(ii)(IV)(bb) of title 11, United States Code, is amended by inserting before the semicolon at the end the following: “, or, if such a vote is not obtained with respect to any such class of claimants so established, the plan satisfies the requirements for confirmation of a plan under section 1129(b) that would apply to such class if the class did not accept the plan for purposes of section 1129(a)(8) (whether or not the class has accepted the plan)”.

(2) EFFECTIVE DATE; APPLICATION.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act and shall apply with respect to cases under title 11 of the United States Code, which were commenced before, on, or after such date.

(b) VIOLATION OF INJUNCTION; EXCEPTION.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

**SA 61.** Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 132, between lines 5 and 6, insert the following:

**SEC. 234. DISALLOWANCE OF CLAIM IF BASED ON EXTENSION OF CREDIT TO CERTAIN INDIVIDUALS UNDER 21 YEARS OF AGE.**

Title 11, United States Code, as amended by this Act, is further amended by inserting after section 112 the following:

**“§ 113. Disallowance of claim if based on extension of credit to certain individuals under 21 years of age**

“(a) IN GENERAL.—In making a determination of whether to disallow a claim under this title, the court shall consider if the claim is based upon an extension to an individual of unsecured credit and the factors listed in subsection (b) are present. The factors listed in subsection (b) may be the basis for a disallowance of a claim under this title.

“(b) FACTORS.—The factors under this subsection are the following: if the individual, at the time unsecured credit was extended—

“(1) was under 21 years of age;

“(2) did not have a co-obligor on such unsecured credit who was a parent or spouse of the individual;

“(3) had an income level that was below or at the poverty line (as defined by the Office of Management and Budget, and revised an-

nually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)); and

“(4) already had 5 or more unsecured credit cards.”

**SA 62.** Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 132, between lines 5 and 6, insert the following:

**SEC. 234. DISALLOWANCE OF CLAIM IF BASED ON EXTENSION OF CREDIT TO CERTAIN INDIVIDUALS UNDER 21 YEARS OF AGE.**

Title 11, United States Code, as amended by this Act, is further amended by inserting after section 112 the following:

**“§ 113. Disallowance of claim if based on extension of credit to certain individuals under 21 years of age**

“(a) IN GENERAL.—In making a determination of whether to disallow a claim under this title, the court shall consider if the claim is based upon an extension to an individual of unsecured credit and the factors listed in subsection (b) are present. The factors listed in subsection (b) may be the basis for a disallowance of a claim under this title.

“(b) FACTORS.—The factors under this subsection are the following: if the individual, at the time unsecured credit was extended—

“(1) was under 21 years of age;

“(2) did not have a co-obligor on such unsecured credit who was a parent or spouse of the individual;

“(3) had an income level that was below or at the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)); and

“(4) already had 6 or more unsecured credit cards.”

**SA 63.** Mr. LEVIN (for himself and Mr. PRYOR) submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_ . CALCULATION OF FINANCE CHARGE DURING GRACE PERIOD.**

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

“(h) CALCULATION OF FINANCE CHARGE DURING GRACE PERIOD.—A creditor may not impose a finance charge with respect to any amount paid on time.”

**SA 64.** Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the end add the following:

**TITLE XVI—TREATMENT OF CERTAIN DISASTER MITIGATION PAYMENTS**

**SEC. 1601. PROPER TAX TREATMENT OF CERTAIN DISASTER MITIGATION PAYMENTS.**

(a) QUALIFIED DISASTER MITIGATION PAYMENTS EXCLUDED FROM GROSS INCOME.—

(1) IN GENERAL.—Section 139 of the Internal Revenue Code of 1986 (relating to disaster relief payments) is amended by adding at the end the following new subsections:

“(g) QUALIFIED DISASTER MITIGATION PAYMENTS.—

“(1) IN GENERAL.—Gross income shall not include any amount received as a qualified disaster mitigation payment.

“(2) QUALIFIED DISASTER MITIGATION PAYMENT DEFINED.—For purposes of this section, the term ‘qualified disaster mitigation payment’ means any amount which is paid pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date) to or for the benefit of the owner of any property for hazard mitigation with respect to such property. Such term shall not include any amount received for the sale or disposition of any property.

“(3) NO INCREASE IN BASIS.—Notwithstanding any other provision of this subtitle, no increase in the basis or adjusted basis of any property shall result from any amount excluded under this subsection with respect to such property.

“(h) DENIAL OF DOUBLE BENEFIT.—Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed (to the person for whose benefit a qualified disaster relief payment or qualified disaster mitigation payment is made) for, or by reason of, any expenditure to the extent of the amount excluded under this section with respect to such expenditure.”

(2) CONFORMING AMENDMENTS.—

(A) Subsection (d) of section 139 of such Code is amended by striking “a qualified disaster relief payment” and inserting “qualified disaster relief payments and qualified disaster mitigation payments”.

(B) Subsection (e) of section 139 of such Code is amended by striking “and (f)” and inserting “, (f), and (g)”.

(b) CERTAIN DISPOSITIONS OF PROPERTY UNDER HAZARD MITIGATION PROGRAMS TREATED AS INVOLUNTARY CONVERSIONS.—Section 1033 of such Code (relating to involuntary conversions) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

“(k) SALES OR EXCHANGES UNDER CERTAIN HAZARD MITIGATION PROGRAMS.—For purposes of this subtitle, if property is sold or otherwise transferred to the Federal Government, a State or local government, or an Indian tribal government to implement hazard mitigation under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date), such sale or transfer shall be treated as an involuntary conversion to which this section applies.”

(c) EFFECTIVE DATE.—

(1) QUALIFIED DISASTER MITIGATION PAYMENTS.—The amendments made by subsection (a) shall apply to amounts received in taxable years ending after December 31, 2003.

(2) DISPOSITIONS OF PROPERTY UNDER HAZARD MITIGATION PROGRAMS.—The amendments made by subsection (b) shall apply to sales or other dispositions in taxable years ending after December 31, 2003.

**SA 65.** Mr. ROCKEFELLER (for himself and Mr. OBAMA) submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 500, strike lines 7 through 11, and insert the following:

(1) by redesignating subsection (l) as subsection (n); and

(2) by inserting after subsection (k) the following:

“(l) Notwithstanding any other provision of this section, the benefits required to be provided by a last signatory operator under chapter 99 of the Internal Revenue Code of 1986, may not be terminated or modified by any court in a proceeding under this title.

“(m) If the debtor, during the 180-day period ending

**SA 66.** Mr. HARKIN (for himself, Mr. ROCKEFELLER, Mr. LEAHY, Mr. DAYTON, and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

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

**SA 67.** Mr. DODD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

At the end of the bill, add the following:

**TITLE XVI—MODIFICATIONS FOR THE PROTECTION OF FAMILIES**

**SEC. 1601. MODIFICATIONS FOR THE PROTECTION OF FAMILIES.**

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

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

(2) by adding at the end the following:

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

“(aa) taxes and mandatory withholdings from wages;

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

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

“(dd) pension payments;

“(ee) religious and charitable contributions;

“(ff) union dues;

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

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

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

“(jj) miscellaneous and emergency expenses.”

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

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

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

(2) in subsection (b)—

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

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

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

“(10) any—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) by striking subparagraph (D); and

(3) by striking “(E)” and inserting “(D)”.

(g) PERSONAL PROPERTY.—

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

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

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

(i) HOUSEHOLD GOODS.—

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

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

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

“(27A) ‘household goods’—

“(A) includes tangible personal property normally found in or around a residence; and  
“(B) does not include motor vehicles used for transportation purposes.”;

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

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

(1) in subclause (I)—

(A) by striking “\$500” and inserting “\$1,000”;

(B) by striking “90” and inserting “70”;

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

(2) in subclause (II)—

(A) by striking “\$750” and inserting “\$1,225”;

(B) by striking “70” and inserting “60”.

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

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

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

**SA 68.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

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

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

**SA 69.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

**SA 70.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

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

**SA 71.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

**SA 72.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

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

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

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

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

**SA 73.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

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

“(8)(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the debtor is a victim of offshoring.

“(B) In this paragraph—

“(i) the term ‘victim of offshoring’ means a debtor who, during the 2 year period before the date of the filing of the petition, lost a job in connection with offshoring; and

“(ii) the term ‘offshoring’ means any action taken by an employer the effect of which is to create, shift, or transfer employment positions or facilities outside the United States and which results in an employment loss.”.

**SA 74.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 499, strike line 3 and all that follows through page 500, line 2, and insert the following:

**SEC. 1402. FRAUDULENT TRANSFERS AND OBLIGATIONS.**

Section 548 of title 11, United States Code, as amended by section 907, is further amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking “one year” and inserting “4 years”;

(ii) by inserting “(including any transfer to or for the benefit of an insider under an employment contract)” after “any transfer”;

(iii) by inserting “(including any obligation to or for the benefit of an insider under an employment contract)” after “any obligation”;

(iv) in subparagraph (A), by striking “or” at the end;

(v) in subparagraph (B)—

(I) in clause (ii)—

(aa) in subclause (II), by striking “or” at the end;

(bb) in subclause (III), by striking the period at the end and inserting “; or”;

(cc) by adding at the end the following:

“(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.”; and

(II) by striking the period at the end and inserting “; or”;

(vi) by adding at the end the following:

“(C) made an excess benefit transfer or incurred an excess benefit obligation to an insider, general partner, or other affiliated person of the debtor, if the debtor—

“(i) was insolvent on the date on which the transfer was made or the obligation was incurred; or

“(ii) became insolvent in part as a result of the transfer or obligation.”;

(2) in subsection (b), by striking “one year” and inserting “2 years”;

(3) in subsection (d)(2)—

(A) in subparagraph (D), by striking “and” at the end;

(B) in subparagraph (E), by striking the period at the end and inserting “; and”;

(C) by adding at the end the following:

“(F) the terms ‘excess benefit transfer’ and ‘excess benefit obligation’ mean—

“(i) a transfer or obligation, as applicable, to an insider, general partner, or other affiliated person of the debtor in an amount that is not less than 10 times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees during the calendar year in which the transfer is made or the obligation is incurred; or

“(ii) if no such similar transfers were made to, or obligations incurred for the benefit of, such nonmanagement employees during such calendar year, a transfer or obligation that is in an amount that is not less than 25 percent more than the amount of any similar transfer or obligation made to or incurred for the benefit of such insider, partner, or other affiliated person of the debtor during the calendar year before the year in which such transfer is made or obligation is incurred.”.

**SA 75.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 502, between lines 17 and 18, insert the following:

**SEC. 1407. VENUE OF CASES UNDER TITLE 11.**

Section 1408 of title 28, United States Code, is amended to read as follows:

“§ 1408. Venue of cases under title 11

“(a) Except as provided in section 1410, a case under title 11 may be commenced—

“(1) if the debtor is not a corporation, in the district court for the district—

“(A) in which the debtor’s domicile, residence, principal place of business in the United States, or principal assets in the United States have been located—

“(i) during the 180-day period immediately preceding the date of the commencement of the case; or

“(ii) for a longer portion of such 180-day period than the debtor’s domicile, residence, principal place of business in the United States, or principal assets in the United States were located in any other district; or

“(B) in which there is pending a case under title 11 concerning the debtor’s affiliate, a general partner of the debtor, or a partnership in which the debtor is a general partner;

“(2) if the debtor is a corporation, in the district court for the district—

“(A) in which the debtor’s principal place of business in the United States or principal assets in the United States have been located—

“(i) during the 180-day period immediately preceding the date of the commencement of the case; or

“(ii) for a longer portion of such 180-day period than the debtor’s principal place of business in the United States or principal assets in the United States were located in any other district; or

“(B) in which there is pending a case under title 11 concerning another corporation that directly or indirectly owns, controls, or holds with power to vote 50 percent or more of the outstanding voting securities of the debtor, if—

“(i) not later than 2 years before the date of the filing of the petition in the debtor’s case, the debtor’s financial statements were consolidated with those of the other corporation in 1 or more reports filed under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78(m) and 78o(d)); or

“(ii) the debtor has been controlled by the other corporation for not less than 1 year before the date of the filing of the petition in the debtor’s case.

“(b) In this section, the definitions in section 101 of title 11 shall apply.”

**SA 76.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 502, between lines 17 and 18, insert the following:

**SEC. 1407. FAIRNESS IN BANKRUPTCY LITIGATION.**

(a) **SHORT TITLE.**—This section may be cited as the “Fairness in Bankruptcy Litigation Act of 2005”.

(b) **VENUE IN BANKRUPTCY CASES.**—Section 1408 of title 28, United States Code, is amended—

(1) by inserting “(a)” before “Except”;

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

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

“(2) in which a case under title 11 concerning the controlling corporation is pending, if—

“(A) the debtor is controlled by another corporation;

“(B) within the 730 days before the date of the debtor’s filing under title 11, the financial statements of the debtor have been consolidated with those of the controlling corporation in 1 or more reports filed under section 13 or 15(d) of the Securities Exchange Act of 1934; and

“(C) the controlling corporation is a debtor in a proceeding under title 11; or

“(3) in which a case under title 11 concerning the controlling corporation is pending, if—

“(A) the debtor is a corporation other than a corporation described in paragraph (2);

“(B) the debtor has been controlled by another corporation for not less than 365 days before the date of the filing of the debtor’s petition under title 11; and

“(C) the controlling corporation is a debtor in a proceeding under title 11.

“(b) For purposes of subsection (a)—

“(1) if the debtor is a corporation, the domicile and residence of the debtor are located where the debtor’s principal place of business is located; and

“(2) the term ‘control’ has the meaning given that term in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).”

(c) **CURE OR WAIVER OF DEFECTS.**—Section 1406(c) of title 28, United States Code, is amended to read as follows:

“(c) As used in this section—

“(1) the term ‘district court’—

“(A) includes the District Court of Guam, the District Court of the Northern Mariana Islands, and the District Court of the Virgin Islands; and

“(B) with regard to cases pending before a bankruptcy court, includes a bankruptcy court; and

“(2) the term ‘district’ includes the territorial jurisdiction of each district court.”

**SA 77.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 213, strike lines 1 through 7, and insert the following:

**SEC. 410. VENUE OF CERTAIN PROCEEDINGS.**

(a) **TITLE 11 CASES.**—Section 1408 of title 28, United States Code, is amended to read as follows:

“§ 1408. Venue of cases under title 11

“(a) Except as provided in section 1410, a case under title 11 may be commenced—

“(1) if the debtor is not a corporation, in the district court for the district—

“(A) in which the debtor’s domicile, residence, principal place of business in the United States, or principal assets in the United States have been located—

“(i) during the 180-day period immediately preceding the date of the commencement of the case; or

“(ii) for a longer portion of such 180-day period than the debtor’s domicile, residence, principal place of business in the United States, or principal assets in the United States were located in any other district; or

“(B) in which there is pending a case under title 11 concerning the debtor’s affiliate, a general partner of the debtor, or a partnership in which the debtor is a general partner;

“(2) if the debtor is a corporation, in the district court for the district—

“(A) in which the debtor’s principal place of business in the United States or principal assets in the United States have been located—

“(i) during the 180-day period immediately preceding the date of the commencement of the case; or

“(ii) for a longer portion of such 180-day period than the debtor’s principal place of business in the United States or principal assets in the United States were located in any other district; or

“(B) in which there is pending a case under title 11 concerning another corporation that directly or indirectly owns, controls, or holds with power to vote 50 percent or more

of the outstanding voting securities of the debtor, if—

“(i) not later than 2 years before the date of the filing of the petition in the debtor’s case, the debtor’s financial statements were consolidated with those of the other corporation in 1 or more reports filed under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78(m) and 78o(d)); or

“(ii) the debtor has been controlled by the other corporation for not less than 1 year before the date of the filing of the petition in the debtor’s case.

“(b) In this section, the definitions in section 101 of title 11 shall apply.”

(b) **RELATED CASES.**—Section 1409(b) of title 28, United States Code, is amended by striking “or a consumer debt of less than \$5,000” and inserting “, a consumer debt of less than \$15,000, or a debt (excluding a consumer debt) against a noninsider of less than \$10,000.”

**SA 78.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (8), by striking “or” after the semicolon;

(2) in paragraph (9), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

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

**SA 79.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 132, between lines 5 and 6, insert the following:

**SEC. 234. CUSTOMER RIGHT TO PARTICIPATE IN BANKRUPTCY PROCEEDINGS.**

Section 1109(b) of title 11, United States Code, is amended by inserting “a customer of the debtor or a bona fide nonprofit representative of customers of the debtor,” after “a creditor.”

**SA 80.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 179, strike line 1 and all that follows through page 182, line 3, and insert the following:

**SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.**

Section 1322(d) of title 11, United States Code, is amended to read as follows:

“(d)(1) If the current monthly income of the debtor and the debtor’s spouse combined, when multiplied by 12, is not less than—

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

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

“(C) in the case of a debtor in a household exceeding 4 individuals, the highest median

family income of the applicable State for a family of 4 or fewer individuals, plus \$525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 3 years.

“(2) If the current monthly income of the debtor and the debtor’s spouse combined, when multiplied by 12, is less than—

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

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

“(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$525 per month for each individual in excess of 4, the plan may not provide for payments over a period that is longer than 3 years.”.

**SA 81.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 155, strike line 8 and all that follows through line 20, and insert the following:

“(I) consumer debts owed to a single creditor for a purchase of a single item for more than \$500 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

“(II) cash advances aggregating more than \$1500 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

**SA 82.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 196, strike line 7 and all that follows through line 21.

**SA 83.** Mr. KENNEDY (for Mr. LEAHY (for himself and Mr. SARBANES)) proposed an amendment to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 215, strike lines 3 through 18, and insert the following:

**SEC. 414. DEFINITION OF DISINTERESTED PERSON.**

Section 101(14)(B) of title 11, United States Code, is amended by inserting “, within five years before the date of the filing of the petition,” after “was not”.

**SA 84.** Mr. KERRY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 480, strike line 20, and insert the following:

in by the creditor).

“(11a)(A) Repayment information that would apply to any annual percentage rate applicable to the consumer’s account under

the credit plan, including information regarding any change in any annual percentage rate charged to the consumer under the plan, appearing in conspicuous type on the front of the first page of the first billing statement prepared following the change, and accompanied by an appropriate explanation, containing—

“(i) the words ‘THERE HAS BEEN A CHANGE IN THE ANNUAL PERCENTAGE RATE FOR YOUR ACCOUNT.’;

“(ii) the words ‘THE PREVIOUS INTEREST RATE:’ followed by the previous annual percentage rate charged to the consumer under the plan; and

“(iii) the words ‘THE CURRENT INTEREST RATE’ followed by the current annual percentage rate charged to the consumer under the plan.

“(B) Any creditor who fails to comply with subparagraph (A), shall not be entitled to use the benefits and presumptions provided to creditors under section 707(b)(2) of title 11, United States Code.”.

**SA 85.** Ms. CANTWELL (for herself, Mr. ENSIGN, and Mrs. MURRAY) submitted an amendment intended to be proposed by her to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 407, line 5, strike the period and insert the following: ; and

(3) by adding at the end the following: “Notwithstanding any other provision of this title, contractual rights do not permit a trustee to collect any termination payment, fee, or charge under a terminated contract for the sale of electricity if a governmental agency having jurisdiction over the debtor’s wholesale sales of electricity in the interstate market has made a finding that the debtor engaged in manipulation of the electricity market and revoked the debtor’s authority to make any market based sales of electricity. The preceding sentence shall take effect on the date of enactment of that sentence and shall be applicable to any termination payment, fee, or charge that has not yet been determined pursuant to a final, non-appealable order to be owed to the debtor.”.

**SA 86.** Ms. CANTWELL (for herself, Mr. ENSIGN, and Mrs. MURRAY) submitted an amendment intended to be proposed by her to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_ . MANIPULATIVE CONDUCT BARRING RIGHT TO TERMINATION PAYMENTS.**

(a) IN GENERAL.—Title 11 of the United States Code is amended by adding after section 562, as added by this Act, the following:

**“SEC. 563. MANIPULATIVE CONDUCT BARRING RIGHT TO TERMINATION PAYMENTS.**

“ Notwithstanding any other provision of this title, a trustee may not collect any termination payment, fee, or charge under a terminated contract for the sale of electricity if a governmental agency having jurisdiction over the debtor’s wholesale sales of electricity in the interstate market has—

“(1) made a finding that the debtor engaged in manipulation of the electricity market; and

“(2) revoked the debtor’s authority to make any market based sales of electricity.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of enactment of this Act and shall be applicable to any termination payment, fee, or charge that has not yet been determined pursuant to a final, non-appealable order to be owed to the debtor.

**SA 87.** Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

**SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.**

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

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

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

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

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

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

**SA 88.** Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

“(e) In a small business case—

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

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

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

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

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

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

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

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

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

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

**SA 89.** Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

**Subtitle B—Small Business Bankruptcy Provisions**

**SEC. 431. SCHEDULING CONFERENCES.**

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

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

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

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

**SEC. 432. SERIAL FILER PROVISIONS.**

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

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

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

(B) by adding at the end the following:

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

(2) by adding at the end the following:

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

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

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

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

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

“(2) Paragraph (1) does not apply—

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

“(B) to the filing of a petition if—

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

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

**SA 90.** Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

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

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

(2) by adding at the end the following:

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

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

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

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

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

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

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

**SA 91.** Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

**SEC. 332. FRAUDULENT INVOLUNTARY BANKRUPTCY.**

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

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

“(1)(1) If—

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

“(B) the debtor is an individual; and

“(C) the court dismisses such petition, the court, upon the motion of the debtor, shall seal all the records of the court relating to such petition, and all references to such petition.

“(2) If the debtor is an individual and the court dismisses a petition under this section,

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

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

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

**SA 92.** Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

Beginning on page 33, strike line 1 and all that follows through page 45, line 6, and insert the following:

**SEC. 106. CREDIT COUNSELING.**

(a) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code, is amended by adding at the end the following:

“(h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

“(2)(A) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved nonprofit budget and credit counseling agencies for such district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from such agencies by reason of the requirements of paragraph (1).

“(B) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in subparagraph (A) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter. Notwithstanding the preceding sentence, a nonprofit budget and credit counseling agency may be disapproved by the United States trustee (or the bankruptcy administrator, if any) at any time.

“(3) The court may waive the requirements of paragraph (1), based on the sworn statement filed by the debtor under section 521(b)(3). The court may condition the waiver on the debtor’s meeting the requirements of paragraph (1) within a specified period of time after the court’s waiver.”.

(b) CHAPTER 7 DISCHARGE.—Section 727(a) of title 11, United States Code, is amended—

(1) in paragraph (9), by striking “or” at the end;

(2) in paragraph (10), by striking the period and inserting “; or”; and

(3) by adding at the end the following:

“(11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this

paragraph shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section, or if the court finds that exigent circumstances merit a waiver of the requirements of this paragraph (The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in this paragraph shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.)”.

(c) CHAPTER 13 DISCHARGE.—Section 1328 of title 11, United States Code, is amended by adding at the end the following:

“(g)(1) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

“(2) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1), or if the court finds that exigent circumstances merit a waiver of the requirements of this paragraph.

“(3) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.”.

(d) DEBTOR’S DUTIES.—Section 521 of title 11, United States Code, is amended—

(1) by inserting “(a)” before “The debtor shall—”; and

(2) by adding at the end the following:

“(b) In addition to the requirements of subsection (a), an individual debtor, other than a debtor who is excused by section 109(h)(2) from meeting the requirements of section 109(h)(1), shall file with the court—

“(1) a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor;

“(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the approved nonprofit budget and credit counseling agency referred to in paragraph (1); or

“(3) a sworn statement that sets forth exigent circumstances that preclude the filing of a certificate including—

“(A) the debtor is facing foreclosure, garnishment, attachment, eviction, levy of execution, utility shutoff, or similar claim enforcement procedure that would deprive the debtor of property or necessary services before the debtor could obtain counseling;

“(B) the debtor is unable to obtain counseling services due to lack of transportation, incapacity, or disability;

“(C) the debtor attempted to obtain counseling within the five-day period immediately before filing bankruptcy but was unsuccessful in obtaining counseling for circumstances beyond the debtor’s control;

“(D) the debtor cannot afford costs associated with the counseling program; or

“(E) the debtor met the requirements of section 109(h)(1) and a certificate was unavailable, lost, or unreasonably denied.”.

(e) GENERAL PROVISIONS.—

(1) IN GENERAL.—Chapter 1 of title 11, United States Code, is amended by adding at the end the following:

“§ 111. Nonprofit budget and credit counseling agencies; financial management instructional courses

“(a) The clerk shall maintain a publicly available list of—

“(1) nonprofit budget and credit counseling agencies that provide 1 or more services described in section 109(h) currently approved by the United States trustee (or the bankruptcy administrator, if any); and

“(2) instructional courses concerning personal financial management currently approved by the United States trustee (or the bankruptcy administrator, if any), as applicable.

“(b) The United States trustee (or bankruptcy administrator, if any) shall only approve a nonprofit budget and credit counseling agency or an instructional course concerning personal financial management as follows:

“(1) The United States trustee (or bankruptcy administrator, if any) shall have thoroughly reviewed the qualifications of the nonprofit budget and credit counseling agency or of the provider of the instructional course under the standards set forth in this section, and the services or instructional courses that will be offered by such agency or such provider, and may require such agency or such provider that has sought approval to provide information with respect to such review.

“(2) The United States trustee (or bankruptcy administrator, if any) shall have determined that such agency or such instructional course fully satisfies the applicable standards set forth in this section.

“(3) If a nonprofit budget and credit counseling agency or instructional course did not appear on the approved list for the district under subsection (a) immediately before approval under this section, approval under this subsection of such agency or such instructional course shall be for a probationary period not to exceed 6 months.

“(4) At the conclusion of the applicable probationary period under paragraph (3), the United States trustee (or bankruptcy administrator, if any) may only approve for an additional 1-year period, and for successive 1-year periods thereafter, an agency or instructional course that has demonstrated during the probationary or applicable subsequent period of approval that such agency or instructional course—

“(A) has met the standards set forth under this section during such period; and

“(B) can satisfy such standards in the future.

“(5) Not later than 30 days after any final decision under paragraph (4), an interested person may seek judicial review of such decision in the appropriate district court of the United States.

“(c)(1) The United States trustee (or the bankruptcy administrator, if any) shall only approve a nonprofit budget and credit counseling agency that demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides.

“(2) To be approved by the United States trustee (or the bankruptcy administrator, if any), a nonprofit budget and credit counseling agency shall, at a minimum—

“(A) have a board of directors the majority of which—

“(i) are not employed by such agency; and

“(ii) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency;

“(B) if a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee;

“(C) provide for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

“(D) provide full disclosures to a client, including funding sources, counselor qualifications, possible impact on credit reports, and any costs of such program that will be paid by such client and how such costs will be paid;

“(E) provide adequate counseling with respect to a client’s credit problems that includes an analysis of such client’s current financial condition, factors that caused such financial condition, and how such client can develop a plan to respond to the problems without incurring negative amortization of debt;

“(F) provide trained counselors who receive no commissions or bonuses based on the outcome of the counseling services provided by such agency, and who have adequate experience, and have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (E);

“(G) demonstrate adequate experience and background in providing credit counseling; and

“(H) have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan.

“(d) The United States trustee (or the bankruptcy administrator, if any) shall only approve an instructional course concerning personal financial management—

“(1) for an initial probationary period under subsection (b)(3) if the course will provide at a minimum—

“(A) trained personnel with adequate experience and training in providing effective instruction and services;

“(B) learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such instructional course;

“(C) adequate facilities situated in reasonably convenient locations at which such instructional course is offered, except that such facilities may include the provision of such instructional course by telephone or through the Internet, if such instructional course is effective; and

“(D) the preparation and retention of reasonable records (which shall include the debtor’s bankruptcy case number) to permit evaluation of the effectiveness of such instructional course, including any evaluation of satisfaction of instructional course requirements for each debtor attending such instructional course, which shall be available for inspection and evaluation by the Executive Office for United States Trustees, the United States trustee (or the bankruptcy administrator, if any), or the chief bankruptcy judge for the district in which such instructional course is offered; and

“(2) for any 1-year period if the provider thereof has demonstrated that the course meets the standards of paragraph (1) and, in addition—

“(A) has been effective in assisting a substantial number of debtors to understand personal financial management;

“(B) is otherwise likely to increase substantially the debtor’s understanding of personal financial management; and

“(C) if a fee is charged for such course, is offered for a reasonable fee and offered to all persons without regard to ability to pay the fee.

“(e) The district court may, at any time, investigate the qualifications of a nonprofit budget and credit counseling agency referred to in subsection (a), and request production of documents to ensure the integrity and effectiveness of such agency. The district court may, at any time, remove from the approved list under subsection (a) a nonprofit budget and credit counseling agency upon finding such agency does not meet the qualifications of subsection (b).

“(f) The United States trustee (or the bankruptcy administrator, if any) shall notify the clerk that a nonprofit budget and credit counseling agency or an instructional course is no longer approved, in which case the clerk shall remove it from the list maintained under subsection (a).

“(g)(1) No nonprofit budget and credit counseling agency may provide to a credit reporting agency information concerning whether a debtor has received or sought instruction concerning personal financial management from such agency.

“(2) A nonprofit budget and credit counseling agency that willfully or negligently fails to comply with any requirement under this title with respect to a debtor shall be liable for damages in an amount equal to the sum of—

“(A) any actual damages sustained by the debtor as a result of the violation; and

“(B) any court costs or reasonable attorneys' fees (as determined by the court) incurred in an action to recover those damages.”

(2) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title 11, United States Code, is amended by adding at the end the following:

“111. Nonprofit budget and credit counseling agencies; financial management instructional courses.”

(f) LIMITATION.—Section 362 of title 11, United States Code, is amended by adding at the end the following:

“(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

“(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.”

**SA 93.** Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

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

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

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

“(C) a creditor of such assisted person, to the extent that the creditor is assisting such

assisted person to restructure any debt owed by such assisted person to the creditor;

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

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

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

**SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.**

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

**“§ 526. Restrictions on debt relief agencies**

“(a) A debt relief agency shall not—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“526. Restrictions on debt relief agencies.”

**SEC. 228. DISCLOSURES.**

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

**“§ 527. Disclosures**

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

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

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

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

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

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

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

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

“IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM A BANKRUPTCY PETITION PREPARER.

“If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES A BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.”

**SA 94.** Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

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

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

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

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

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

“(3) Amounts reasonably necessary to be expended under paragraph (2)(A)(i), shall be

determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

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

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

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

**SA 95.** Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

**SEC. 707A. DISCHARGE UNDER CHAPTER 13.**

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

(1) in paragraph (2), by striking “(1)(B), (1)(C).”; and

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

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

(4) by adding at the end the following:

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

**SA 96.** Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

**SA 97.** Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 182, between lines 3 and 4, insert the following:

**SEC. 318A. APPLICABILITY OF MEANS TEST AND PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.**

(a) APPLICABILITY OF MEANS TEST TO CHAPTER 13.—Section 1325(b) of title 11, United States Code, as amended by this Act, is further amended—

(1) in paragraph (2), by inserting “or, if lower and not likely to increase substantially in the 2 months after the order for relief, the debtor’s monthly income on the date of the order for relief under this chapter” after “received by the debtor”; and

(2) in paragraph (3), by inserting “(or, if lower and not likely to increase substantially in the 2 months after the order for relief, the debtor’s monthly income on the date of the order for relief under this chapter)” after “if the debtor has current monthly income”; and

(3) in paragraph (4)—

(A) in subparagraph (A)(ii), by striking “debtor and the debtor’s spouse combined” and inserting “debtor, and in a joint case the debtor and the debtor’s spouse, or, if lower and not likely to increase substantially in the 2 months after the order for relief, the monthly income on the date of the order for relief under this chapter”; and

(B) in subparagraph (A)(ii)(III), by striking “and” after the semicolon;

(C) in subparagraph (B), by striking the period at the end and inserting “; and”; and

(D) by adding at the end the following:

“(C) provided that if the debtor’s income decreases during the case to less than the amount set forth in subparagraph (A)(ii), and is not likely again to exceed that amount within 1 month, may be reduced to 3 years.”

(b) CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.—Section 1322(d)

of title 11, United States Code, as amended by this Act, is further amended—

(1) in paragraph (1), by striking “debtor and the debtor’s spouse combined” and inserting “debtor, and in a joint case the debtor and the debtor’s spouse, or, if lower and not likely to increase substantially in the 2 months after the order for relief, the monthly income on the date of the order for relief under this chapter”; and

(2) in paragraph (2), by striking “debtor and the debtor’s spouse combined” and inserting “debtor, and in a joint case the debtor and the debtor’s spouse, or, if lower and not likely to increase substantially in the 2 months after the order for relief, the monthly income on the date of the order for relief under this chapter”.

**SA 98.** Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 112, line 17, insert “, other than an attorney or an employee of an attorney” after “any person”.

On page 120, lines 12 and 13, strike “AN ATTORNEY OR” and insert “A”.

On page 120, line 19, strike “AN ATTORNEY OR” and insert “A”.

On page 120, lines 21 and 22, strike “ATTORNEY OR”.

**SA 99.** Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

**SEC. 332. NO BANKRUPTCY FOR INSOLVENT POLITICAL COMMITTEES.**

Section 109 of title 11, United States Code, is amended by adding at the end the following:

“(i) A political committee subject to the jurisdiction of the Federal Election Commission under Federal election laws may not be a debtor under this title.”.

**SA 100.** Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 63, between lines 3 and 4, insert the following:

“(4) Nothing in this section shall preclude a court from ordering disgorgement of payments accepted, or other remedies under this title or other applicable law, when a creditor has accepted payments under such agreement or in anticipation of such agreement and the agreement is not enforceable.

**SA 101.** Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

Beginning on page 222, strike line 23 and all that follows through page 223, line 21, and insert the following:

“(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition or the date of the

order for relief in an amount not more than \$1,250,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

“(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than \$1,250,000 (excluding debt owed to 1 or more affiliates or insiders);”.

**SA 102.** Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 14, strike line 1 and all that follows through page 16, line 13, and insert the following:

“(4) The court, on its own initiative or on the motion of a party in interest may order the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion filed under section 707(b), including reasonable attorneys’ fees, if—

“(A) a trustee files a motion for dismissal or conversion under this subsection; and

“(B) the court grants such motion.

“(5)(A) Except as provided in subparagraph (B) and subject to paragraph (6), the court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may award a debtor all reasonable costs (including reasonable attorneys’ fees) in contesting a motion filed by a party in interest (other than a trustee or United States trustee (or bankruptcy administrator, if any)) under this subsection if—

“(i) the court does not grant the motion; and

“(ii) the court finds that—

“(I) the position of the party that filed the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

“(II) the motion was made solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

**SA 103.** Mr. LEAHY (for himself and Mr. SARBANES) submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 215, strike lines 3 through 18.

**SA 104.** Mr. GRAHAM (for himself, Mr. DURBIN, and Mr. LEAHY) submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 473, after line 9, by inserting the following:

**“SEC. 1236. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED STATES CODE.**

Section 507(a) of title 11, United States Code, as amended by sections 212 and 253, is amended by adding at the end the following:

“(11) Eleventh, allowed unsecured claims of customs brokers (as defined in section 641 of the Tariff Act of 1930 (19 U.S.C. 1641)) and sureties (as provided in section 623 of the

Tariff Act of 1930 (19 U.S.C. 1623)) for duties, taxes, or other charges paid to the United States Customs Service on behalf of the debtor arising out of the importation of merchandise entered for consumption within one year before the date of the filing of the petition.”.

**SA 105.** Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

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

(1) in subsection (b)—

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

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

(C) by adding at the end the following:

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

(2) by adding at the end the following:

**SA 106.** Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

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

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

(1) in subsection (b)—

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

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

(C) by adding at the end the following:

“(10) such claim is based on a debt that is secured by, or conditioned upon—

“(A) a personal check held for future deposit; or

“(B) electronic access to a bank account.”; and

(2) by adding at the end the following:

**SA 107.** Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 100, strike line 14 and all that follows through line 17 and insert the following:

**SEC. 222. SENSE OF CONGRESS.**

It is the sense of Congress that the Financial Literacy and Education Commission, in consultation with State and local governments and non-profit and private sector entities, should work, as part of the Commission’s national strategy to improve the financial literacy and education of all Americans (including for those in elementary school or secondary school or enrolled in other institutions of learning), to improve financial education and literacy campaigns, including those that are curricula based, that have the goal of reducing the number of individuals who file for bankruptcy.

**SA 108.** Mr. CORZINE submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for

other purposes; which was ordered to lie on the table; as follows:

On page 132, between lines 5 and 6, insert the following:

**SEC. 234. LIMITING CLAIMS ARISING FROM VIOLATIONS OF STATE LAW.**

Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (8), by striking “or” at the end;

(2) in paragraph (9), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(10) such claim is for a secured debt that would otherwise be enforceable against the debtor, and, in connection with such secured debt, a party other than the debtor violated any applicable State law that related to—

“(A) interest, fees, or other charges imposed in connection with such agreement, including—

“(i) fees paid to third parties, such as yield spread premiums and other payments made to mortgage brokers, whether by the debtor, the debtor, or a third party; and

“(ii) charges for premiums for insurance, debt cancellation, and debt suspension products, whether such product was voluntary or involuntary and whether the beneficiary of such product is the debtor, the creditor, or a third party;

“(B) consideration of the ability of the debtor to repay such secured debt;

“(C) fees imposed if the debtor repays all or part of such secured debt before it is due;”

“(D) amortization of such secured debt, including without limitation negative amortization and balloon payments;

“(E) refinancing of debt;

“(F) counseling of the borrower prior to consummation of the transaction from which the secured debt arose; or

“(G) any other matter that the court determines to be relevant to the fair disposition of the claim, with due consideration of the intent of the applicable State law.”

**SA 109.** Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 473, between lines 9 and 10, insert the following:

**SEC. 1236. MANAGEMENT OF BUSINESS DEBTORS.** (a) IN GENERAL.—Chapter 3 of title 11, United States Code, is amended—

(1) in section 321(a), by striking “7, 12,” each place it appears and inserting “12”;

(2) in section 326—

(A) in subsection (a), by striking “disbursed or turned over” and inserting “disbursed, turned over, or, solely for the purposes of section 331, held for disbursement or turnover”; and

(B) in subsection (c), by striking “(c)” and all that follows through “in the case,” and inserting the following:

“(c) If more than 1 person serves as trustee in the case—

“(1) the compensation of each such person shall be determined without regard to subsection (a) or (b); and

“(2)”;

(3) in section 327(d), by striking “as attorney or accountant” and inserting “in any professional capacity”;

(4) in section 328—

(A) in subsection (a)—

(i) by striking “or on a contingent fee basis” and inserting “, on a fixed or percentage fee basis, or on a contingent fee basis and with indemnification and exculpation”; and

(ii) by striking “different from the compensation” and inserting “, indemnification,

or exculpation different from the compensation, indemnification, or exculpation”; and

(B) in subsection (b), by striking “as attorney or accountant” and inserting “in any professional capacity”;

(5) in section 347(a)—

(A) by striking “726, 1226, or 1326 of this title” and inserting “726, 1101, 1226, or 1326”;

(B) by striking “7, 12, or 13 of this title” and inserting “7, 11, 12, or 13”; and

(C) by striking “into the court and disposed of under chapter 129 of title 28” and inserting “to the United States Trustee System Fund, established under section 589a of title 28”; and

(6) in section 362(h), by striking “individual” and inserting “entity”.

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

(1) in section 1107, by adding at the end the following:

“(c) The court, on request of a party in interest, and after notice and a hearing, may appoint an individual as the responsible person for the debtor in possession—

“(1) who shall manage and operate the affairs of the debtor (as defined by rule 9001(5) of the Federal Rules of Bankruptcy Procedure);

“(2) who shall not be required to be an officer or employee of the debtor;

“(3) who shall not be considered an insider of the debtor; and

“(4) whose designation shall not vitiate the liability of any other person chargeable under the law with the duties imposed upon the debtor under this title or by any other provision of law.”; and

(2) in section 1114(d), by striking “shall appoint” and inserting “shall direct the United States trustee to appoint”.

**SA 110.** Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 18, strike line 1 and all that follows through “(2)” on line 3, and insert the following:

(7)(A) Notwithstanding paragraph (2), a debtor described in this paragraph need only provide the calculations or other information showing that the debtor meets the standards of this paragraph. Paragraph (2) shall not apply, and the court may not dismiss a case based on any form of means testing,

**SA 111.** Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

“(D) Subparagraphs (A) through (C) shall not apply, and the court may not dismiss or convert a case based on any form of means testing, if—

“(i) the debtor or the debtor’s spouse is a member of the armed forces—

“(I) on active duty (as defined in section 101(d)(1) of title 10); or

“(II) performing a homeland defense activity (as defined in section 901(1) of title 32);

“(ii) the debtor or the debtor’s spouse is a veteran (as defined in section 101(2) of title 38), and the indebtedness occurred primarily during a period of not less than 180 days, during which he or she was—

“(I) on active duty (as defined in section 101(d)(1) of title 10); or

“(II) performing a homeland defense activity (as defined in section 901(1) of title 32);

“(iii) the debtor or the debtor’s spouse is a reserve of the armed forces, and the indebted-

ness occurred primarily during a period of not less than 180 days, during which he or she was—

“(I) on active duty (as defined in section 101(d)(1) of title 10); or

“(II) performing a homeland defense activity (as defined in section 901(1) of title 32); or

“(iv) the debtor’s spouse died while serving as a member of the armed forces—

“(I) on active duty (as defined in section 101(d)(1) of title 10); or

“(II) performing a homeland defense activity (as defined in section 901(1) of title 32).

**SA 112.** Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

“(D) Subparagraphs (A) through (C) shall not apply, and the court may not dismiss or convert a case based on any form of means testing, if the debtor is a disabled veteran (as defined in section 3741(1) of title 38), and the indebtedness occurred primarily during a period during which he or she was—

“(i) on active duty (as defined in section 101(d)(1) of title 10); or

“(ii) performing a homeland defense activity (as defined in section 901(1) of title 32).

**SA 113.** Mr. REID submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 452, strike line 15 and all that follows through page 458, line 16, and insert the following:

**SEC. 1223. BANKRUPTCY JUDGESHIPS.**

(a) SHORT TITLE.—This section may be cited as the “Bankruptcy Judgeship Act of 2005”.

(b) AUTHORIZATION FOR ADDITIONAL TEMPORARY BANKRUPTCY JUDGESHIPS.—The following temporary judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(1) One additional bankruptcy judgeship for the eastern and western districts of Arkansas.

(2) Four additional bankruptcy judgeships for the district of Delaware.

(3) Four additional bankruptcy judgeships for the middle district of Florida.

(4) One additional bankruptcy judgeship for the northern district of Florida.

(5) Two additional bankruptcy judgeships for the southern district of Florida.

(6) Two additional bankruptcy judgeships for the northern district of Georgia.

(7) Two additional bankruptcy judgeships for the southern district of Georgia.

(8) One additional bankruptcy judgeship for the northern district of Indiana.

(9) One additional bankruptcy judgeship for the eastern district of Kentucky.

(10) Four additional bankruptcy judgeships for the district of Maryland.

(11) Four additional bankruptcy judgeships for the eastern district of Michigan.

(12) One additional bankruptcy judgeship for the northern district of Mississippi.

(13) One additional bankruptcy judgeship for the southern district of Mississippi.

(14) Two additional bankruptcy judgeships for the district of Nevada.

(15) One additional bankruptcy judgeship for the district of New Jersey.

(16) One additional bankruptcy judgeship for the northern district of New York.

(17) Two additional bankruptcy judgeships for the southern district of New York.

(18) One additional bankruptcy judgeship for the eastern district of North Carolina.

(19) One additional bankruptcy judgeship for the western district of North Carolina.

(20) One additional bankruptcy judgeship for the southern district of Ohio.

(21) One additional bankruptcy judgeship for the eastern district of Pennsylvania.

(22) One additional bankruptcy judgeship for the middle district of Pennsylvania.

(23) One additional bankruptcy judgeship for the western district of Pennsylvania.

(24) One additional bankruptcy judgeship for the district of Puerto Rico.

(25) One additional bankruptcy judgeship for the district of South Carolina.

(26) Two additional bankruptcy judgeships for the western district of Tennessee.

(27) One additional bankruptcy judgeship for the eastern district of Texas.

(28) One additional bankruptcy judgeship for the district of Utah.

(29) One additional bankruptcy judgeship for the eastern district of Virginia.

(c) EXTENSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIP.—

(1) IN GENERAL.—The temporary bankruptcy judgeship authorized for the northern district of Alabama under section 3(a)(1) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) is extended until the first vacancy occurring in the office of a bankruptcy judge in such district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring not less than 5 years after the date of enactment of this Act.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary bankruptcy judgeship referred to in paragraph (1).

(d) TRANSFER OF BANKRUPTCY JUDGESHIP SHARED BY THE MIDDLE DISTRICT OF GEORGIA AND THE SOUTHERN DISTRICT OF GEORGIA.—The bankruptcy judgeship shared by the southern district of Georgia and the middle district of Georgia shall be converted to a bankruptcy judgeship for the middle district of Georgia.

(e) CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.—

(1) DISTRICT OF DELAWARE.—The temporary bankruptcy judgeship authorized for the district of Delaware under section 3(a)(3) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(2) SOUTHERN DISTRICT OF ILLINOIS.—The temporary bankruptcy judgeship authorized for the southern district of Illinois under section 3(a)(4) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(3) DISTRICT OF PUERTO RICO.—The temporary bankruptcy judgeship authorized for the district of Puerto Rico under section 3(a)(7) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(f) TECHNICAL AMENDMENTS.—Section 152(a)(2) of title 28, United States Code, is amended—

(1) in the item relating to the eastern and western districts of Arkansas, by striking “3” and inserting “4”;

(2) in the item relating to the district of Delaware, by striking “1” and inserting “6”;

(3) in the item relating to the middle district of Florida, by striking “8” and inserting “12”;

(4) in the item relating to the northern district of Florida, by striking “1” and inserting “2”;

(5) in the item relating to the southern district of Florida, by striking “5” and inserting “7”;

(6) in the item relating to the northern district of Georgia, by striking “8” and inserting “10”;

(7) in the item relating to the middle district of Georgia, by striking “2” and inserting “3”;

(8) in the item relating to the southern district of Georgia, by striking “2” and inserting “4”;

(9) in the item relating to the middle and southern districts of Georgia, by striking “Middle and Southern . . . . . 1”;

(10) in the item relating to the southern district of Illinois, by striking “1” and inserting “2”;

(11) in the item relating to the northern district of Indiana, by striking “3” and inserting “4”;

(12) in the item relating to the eastern district of Kentucky, by striking “2” and inserting “3”;

(13) in the item relating to the district of Maryland, by striking “4” and inserting “8”;

(14) in the item relating to the eastern district of Michigan, by striking “4” and inserting “8”;

(15) in the item relating to the northern district of Mississippi, by striking “1” and inserting “2”;

(16) in the item relating to the southern district of Mississippi, by striking “2” and inserting “3”;

(17) in the item relating to the district of Nevada, by striking “3” and inserting “5”;

(18) in the item relating to the district of New Jersey, by striking “8” and inserting “9”;

(19) in the item relating to the northern district of New York, by striking “2” and inserting “3”;

(20) in the item relating to the southern district of New York, by striking “9” and inserting “11”;

(21) in the item relating to the eastern district of North Carolina, by striking “2” and inserting “3”;

(22) in the item relating to the western district of North Carolina, by striking “2” and inserting “3”;

(23) in the item relating to the southern district of Ohio, by striking “7” and inserting “8”;

(24) in the item relating to the eastern district of Pennsylvania, by striking “5” and inserting “6”;

(25) in the item relating to the middle district of Pennsylvania, by striking “2” and inserting “3”;

(26) in the item relating to the western district of Pennsylvania, by striking “4” and inserting “5”;

(27) in the item relating to the district of Puerto Rico, by striking “2” and inserting “4”;

(28) in the item relating to the district of South Carolina, by striking “2” and inserting “3”;

(29) in the item relating to the western district of Tennessee, by striking “4” and inserting “6”;

(30) in the item relating to the eastern district of Texas, by striking “2” and inserting “3”;

(31) in the item relating to the district of Utah, by striking “3” and inserting “4”;

(32) in the item relating to the eastern district of Virginia, by striking “5” and inserting “6”.

SA 114. Mr. REID submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for

other purposes; which was ordered to lie on the table; as follows:

On page 454, strike line 15 and all that follows through page 457, line 22, and insert the following:

(2) TECHNICAL AND CONFORMING AMENDMENTS.—Section 152(a)(2) of title 28, United States Code, is amended—

(A) in the item relating to the eastern district of California, by striking “6” and inserting “7”;

(B) in the item relating to the central district of California, by striking “21” and inserting “24”;

(C) in the item relating to the district of Delaware, by striking “1” and inserting “6”;

(D) in the item relating to the southern district of Florida, by striking “5” and inserting “7”;

(E) in the item relating to the southern district of Georgia, by striking “2” and inserting “3”;

(F) in the item relating to the district of Maryland, by striking “4” and inserting “7”;

(G) in the item relating to the eastern district of Michigan, by striking “4” and inserting “5”;

(H) in the item relating to the southern district of Mississippi, by striking “2” and inserting “3”;

(I) in the item relating to the district of New Jersey, by striking “8” and inserting “9”;

(J) in the item relating to the eastern district of New York, by striking “6” and inserting “7”;

(K) in the item relating to the northern district of New York, by striking “2” and inserting “3”;

(L) in the item relating to the southern district of New York, by striking “9” and inserting “10”;

(M) in the item relating to the eastern district of North Carolina, by striking “2” and inserting “3”;

(N) in the item relating to the eastern district of Pennsylvania, by striking “5” and inserting “6”;

(O) in the item relating to the middle district of Pennsylvania, by striking “2” and inserting “3”;

(P) in the item relating to the district of Puerto Rico, by striking “2” and inserting “4”;

(Q) in the item relating to the western district of Tennessee, by striking “4” and inserting “5”;

(R) in the item relating to the eastern district of Virginia, by striking “5” and inserting “6”;

(S) in the item relating to the district of South Carolina, by striking “2” and inserting “3”;

(T) in the item relating to the district of Nevada, by striking “3” and inserting “4”;

(U) in the item relating to the northern district of Alabama, by striking “5” and inserting “6”;

(V) in the item relating to the eastern district of Tennessee, by striking “3” and inserting “4”.

(c) CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.—The temporary bankruptcy judgeships authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, and the eastern district of Tennessee under paragraphs (1), (3), (7), and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to permanent bankruptcy judgeships.

(d) AUTHORIZATION FOR ADDITIONAL BANKRUPTCY JUDGESHIPS.—The following judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(1) One additional bankruptcy judgeship for the eastern and western districts of Arkansas.

(3) Four additional bankruptcy judgeships for the middle district of Florida.

(4) One additional bankruptcy judgeship for the northern district of Florida.

(6) Two additional bankruptcy judgeships for the northern district of Georgia.

(7) One additional bankruptcy judgeship for the southern district of Georgia.

(8) One additional bankruptcy judgeship for the northern district of Indiana.

(9) One additional bankruptcy judgeship for the eastern district of Kentucky.

(10) One additional bankruptcy judgeship for the district of Maryland.

(11) Three additional bankruptcy judgeships for the eastern district of Michigan.

(12) One additional bankruptcy judgeship for the northern district of Mississippi.

(14) Two additional bankruptcy judgeships for the district of Nevada.

(17) One additional bankruptcy judgeships for the southern district of New York.

(19) One additional bankruptcy judgeship for the western district of North Carolina.

(20) One additional bankruptcy judgeship for the southern district of Ohio.

(23) One additional bankruptcy judgeship for the western district of Pennsylvania.

(26) One additional bankruptcy judgeships for the western district of Tennessee.

(27) One additional bankruptcy judgeship for the eastern district of Texas.

(28) One additional bankruptcy judgeship for the district of Utah.

(e) EXTENSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIP.—

(1) IN GENERAL.—The temporary bankruptcy judgeship authorized for the northern district of Alabama under section 3(a)(1) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) is extended until the first vacancy occurring in the office of a bankruptcy judge in such district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring not less than 5 years after the date of enactment of this Act.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary bankruptcy judgeship referred to in paragraph (1).

(f) TRANSFER OF BANKRUPTCY JUDGESHIP SHARED BY THE MIDDLE DISTRICT OF GEORGIA AND THE SOUTHERN DISTRICT OF GEORGIA.—The bankruptcy judgeship shared by the southern district of Georgia and the middle district of Georgia shall be converted to a bankruptcy judgeship for the middle district of Georgia.

(g) CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.—

(1) DISTRICT OF DELAWARE.—The temporary bankruptcy judgeship authorized for the district of Delaware under section 3(a)(3) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(2) SOUTHERN DISTRICT OF ILLINOIS.—The temporary bankruptcy judgeship authorized for the southern district of Illinois under section 3(a)(4) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(3) DISTRICT OF PUERTO RICO.—The temporary bankruptcy judgeship authorized for the district of Puerto Rico under section 3(a)(7) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(h) TECHNICAL AMENDMENTS.—Section 152(a)(2) of title 28, United States Code, is amended—

(1) in the item relating to the eastern and western districts of Arkansas, by striking “3” and inserting “4”;

(2) in the item relating to the district of Delaware, by striking “1” and inserting “6”;

(3) in the item relating to the middle district of Florida, by striking “8” and inserting “12”;

(4) in the item relating to the northern district of Florida, by striking “1” and inserting “2”;

(5) in the item relating to the southern district of Florida, by striking “5” and inserting “7”;

(6) in the item relating to the northern district of Georgia, by striking “8” and inserting “10”;

(7) in the item relating to the middle district of Georgia, by striking “2” and inserting “3”;

(8) in the item relating to the southern district of Georgia, by striking “2” and inserting “4”;

(9) in the item relating to the middle and southern districts of Georgia, by striking “Middle and Southern . . . . . 1”;

(10) in the item relating to the southern district of Illinois, by striking “1” and inserting “2”;

(11) in the item relating to the northern district of Indiana, by striking “3” and inserting “4”;

(12) in the item relating to the eastern district of Kentucky, by striking “2” and inserting “3”;

(13) in the item relating to the district of Maryland, by striking “4” and inserting “8”;

(14) in the item relating to the eastern district of Michigan, by striking “4” and inserting “8”;

(15) in the item relating to the northern district of Mississippi, by striking “1” and inserting “2”;

(16) in the item relating to the southern district of Mississippi, by striking “2” and inserting “3”;

(17) in the item relating to the district of Nevada, by striking “3” and inserting “5”;

(18) in the item relating to the district of New Jersey, by striking “8” and inserting “9”;

(19) in the item relating to the northern district of New York, by striking “2” and inserting “3”;

(20) in the item relating to the southern district of New York, by striking “9” and inserting “11”;

(21) in the item relating to the eastern district of North Carolina, by striking “2” and inserting “3”;

(22) in the item relating to the western district of North Carolina, by striking “2” and inserting “3”;

(23) in the item relating to the southern district of Ohio, by striking “7” and inserting “8”;

(24) in the item relating to the eastern district of Pennsylvania, by striking “5” and inserting “6”;

(25) in the item relating to the middle district of Pennsylvania, by striking “2” and inserting “3”;

(26) in the item relating to the western district of Pennsylvania, by striking “4” and inserting “5”;

(27) in the item relating to the district of Puerto Rico, by striking “2” and inserting “4”;

(28) in the item relating to the district of South Carolina, by striking “2” and inserting “3”;

(29) in the item relating to the western district of Tennessee, by striking “4” and inserting “6”;

(30) in the item relating to the eastern district of Texas, by striking “2” and inserting “3”;

(31) in the item relating to the district of Utah, by striking “3” and inserting “4”; and (32) in the item relating to the eastern district of Virginia, by striking “5” and inserting “6”.

SA 115. Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 452, strike line 15 and all that follows through page 458, line 16, and insert the following:

SEC. 1223. BANKRUPTCY JUDGESHIPS.

(a) SHORT TITLE.—This section may be cited as the “Bankruptcy Judgeship Act of 2005”.

(b) AUTHORIZATION FOR ADDITIONAL BANKRUPTCY JUDGESHIPS.—The following judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(1) One additional bankruptcy judgeship for the eastern and western districts of Arkansas.

(2) Four additional bankruptcy judgeships for the district of Delaware.

(3) Two additional bankruptcy judgeships for the middle district of Florida.

(4) Two additional bankruptcy judgeships for the southern district of Florida.

(5) Two additional bankruptcy judgeships for the northern district of Georgia.

(6) One additional bankruptcy judgeship for the southern district of Georgia.

(7) Three additional bankruptcy judgeships for the district of Maryland.

(8) Two additional bankruptcy judgeships for the eastern district of Michigan.

(9) Two additional bankruptcy judgeships for the district of Nevada.

(10) One additional bankruptcy judgeship for the district of New Jersey.

(11) Two additional bankruptcy judgeships for the southern district of New York.

(12) One additional bankruptcy judgeship for the eastern district of North Carolina.

(13) One additional bankruptcy judgeship for the eastern district of Pennsylvania.

(14) One additional bankruptcy judgeship for the district of South Carolina.

(15) Two additional bankruptcy judgeships for the western district of Tennessee.

(16) One additional bankruptcy judgeship for the district of Utah.

(17) One additional bankruptcy judgeship for the eastern district of Virginia.

(c) TEMPORARY BANKRUPTCY JUDGESHIPS.—

(1) AUTHORIZATION FOR ADDITIONAL TEMPORARY BANKRUPTCY JUDGESHIPS.—The following judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(A) One additional bankruptcy judgeship for the district of Puerto Rico.

(B) One additional bankruptcy judgeship for the northern district of New York.

(C) One additional bankruptcy judgeship for the middle district of Pennsylvania.

(D) One additional bankruptcy judgeship for the district of Maryland.

(E) One additional bankruptcy judgeship for the northern district of Mississippi.

(F) One additional bankruptcy judgeship for the southern district of Mississippi.

(G) One additional bankruptcy judgeship for the southern district of Georgia.

(2) VACANCIES.—

(A) IN GENERAL.—The first vacancy in the office of bankruptcy judge in each of the judicial districts set forth in paragraph (1)—

(i) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under paragraph (1) to such office; and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

(B) **TERM EXPIRATION.**—In the case of a vacancy resulting from the expiration of the term of a bankruptcy judge not described in subparagraph (A), that judge shall be eligible for reappointment as a bankruptcy judge in that district.

(3) **EXTENSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.**—

(A) **IN GENERAL.**—The temporary bankruptcy judgeships authorized for the northern district of Alabama and the eastern district of Tennessee under paragraphs (1) and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) are extended until the first vacancy occurring in the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring 5 years or more after the date of enactment of this Act.

(B) **APPLICABILITY OF OTHER PROVISIONS.**—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary bankruptcy judgeships referred to in this paragraph.

(d) **TRANSFER OF BANKRUPTCY JUDGESHIP SHARED BY THE MIDDLE DISTRICT OF GEORGIA AND THE SOUTHERN DISTRICT OF GEORGIA.**—The bankruptcy judgeship shared by the southern district of Georgia and the middle district of Georgia shall be converted to a bankruptcy judgeship for the middle district of Georgia.

(e) **CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.**—

(1) **DISTRICT OF DELAWARE.**—The temporary bankruptcy judgeship authorized for the district of Delaware under section 3(a)(3) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(2) **DISTRICT OF PUERTO RICO.**—The temporary bankruptcy judgeship authorized for the district of Puerto Rico under section 3(a)(7) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(f) **TECHNICAL AMENDMENTS.**—Section 152(a)(2) of title 28, United States Code, is amended—

(1) in the item relating to the eastern and western districts of Arkansas, by striking “3” and inserting “4”;

(2) in the item relating to the district of Delaware, by striking “1” and inserting “6”;

(3) in the item relating to the middle district of Florida, by striking “8” and inserting “10”;

(4) in the item relating to the southern district of Florida, by striking “5” and inserting “7”;

(5) in the item relating to the northern district of Georgia, by striking “8” and inserting “10”;

(6) in the item relating to the middle district of Georgia, by striking “2” and inserting “3”;

(7) in the item relating to the southern district of Georgia, by striking “2” and inserting “3”;

(8) in the item relating to the middle and southern districts of Georgia, by striking “Middle and Southern . . . . . 1”;

(9) in the item relating to the district of Maryland, by striking “4” and inserting “7”;

(10) in the item relating to the eastern district of Michigan, by striking “4” and inserting “6”;

(11) in the item relating to the district of Nevada, by striking “3” and inserting “5”;

(12) in the item relating to the district of New Jersey, by striking “8” and inserting “9”;

(13) in the item relating to the southern district of New York, by striking “9” and inserting “11”;

(14) in the item relating to the eastern district of North Carolina, by striking “2” and inserting “3”;

(15) in the item relating to the eastern district of Pennsylvania, by striking “5” and inserting “6”;

(16) in the item relating to the district of Puerto Rico, by striking “2” and inserting “3”;

(17) in the item relating to the district of South Carolina, by striking “2” and inserting “3”;

(18) in the item relating to the western district of Tennessee, by striking “4” and inserting “6”;

(19) in the item relating to the district of Utah, by striking “3” and inserting “4”;

(20) in the item relating to the eastern district of Virginia, by striking “5” and inserting “6”.

**SA 116.** Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 452, strike line 15 and all that follows through page 458, line 16, and insert the following:

**SEC. 1223. BANKRUPTCY JUDGESHIPS.**

(a) **SHORT TITLE.**—This section may be cited as the “Bankruptcy Judgeship Act of 2005”.

(b) **AUTHORIZATION FOR ADDITIONAL BANKRUPTCY JUDGESHIPS.**—The following judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(1) One additional bankruptcy judgeship for the eastern and western districts of Arkansas.

(2) Four additional bankruptcy judgeships for the district of Delaware.

(3) Four additional bankruptcy judgeships for the middle district of Florida.

(4) One additional bankruptcy judgeship for the northern district of Florida.

(5) Two additional bankruptcy judgeships for the southern district of Florida.

(6) Two additional bankruptcy judgeships for the northern district of Georgia.

(7) Two additional bankruptcy judgeships for the southern district of Georgia.

(8) One additional bankruptcy judgeship for the northern district of Indiana.

(9) One additional bankruptcy judgeship for the eastern district of Kentucky.

(10) Four additional bankruptcy judgeships for the district of Maryland.

(11) Four additional bankruptcy judgeships for the eastern district of Michigan.

(12) One additional bankruptcy judgeship for the northern district of Mississippi.

(13) One additional bankruptcy judgeship for the southern district of Mississippi.

(14) Two additional bankruptcy judgeships for the district of Nevada.

(15) One additional bankruptcy judgeship for the district of New Jersey.

(16) One additional bankruptcy judgeship for the northern district of New York.

(17) Two additional bankruptcy judgeships for the southern district of New York.

(18) One additional bankruptcy judgeship for the eastern district of North Carolina.

(19) One additional bankruptcy judgeship for the western district of North Carolina.

(20) One additional bankruptcy judgeship for the southern district of Ohio.

(21) One additional bankruptcy judgeship for the eastern district of Pennsylvania.

(22) One additional bankruptcy judgeship for the middle district of Pennsylvania.

(23) One additional bankruptcy judgeship for the western district of Pennsylvania.

(24) One additional bankruptcy judgeship for the district of Puerto Rico.

(25) One additional bankruptcy judgeship for the district of South Carolina.

(26) Two additional bankruptcy judgeships for the western district of Tennessee.

(27) One additional bankruptcy judgeship for the eastern district of Texas.

(28) One additional bankruptcy judgeship for the district of Utah.

(29) One additional bankruptcy judgeship for the eastern district of Virginia.

(c) **EXTENSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIP.**—

(1) **IN GENERAL.**—The temporary bankruptcy judgeship authorized for the northern district of Alabama under section 3(a)(1) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) is extended until the first vacancy occurring in the office of a bankruptcy judge in such district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring not less than 5 years after the date of enactment of this Act.

(2) **APPLICABILITY OF OTHER PROVISIONS.**—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary bankruptcy judgeship referred to in paragraph (1).

(d) **TRANSFER OF BANKRUPTCY JUDGESHIP SHARED BY THE MIDDLE DISTRICT OF GEORGIA AND THE SOUTHERN DISTRICT OF GEORGIA.**—The bankruptcy judgeship shared by the southern district of Georgia and the middle district of Georgia shall be converted to a bankruptcy judgeship for the middle district of Georgia.

(e) **CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.**—

(1) **DISTRICT OF DELAWARE.**—The temporary bankruptcy judgeship authorized for the district of Delaware under section 3(a)(3) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(2) **SOUTHERN DISTRICT OF ILLINOIS.**—The temporary bankruptcy judgeship authorized for the southern district of Illinois under section 3(a)(4) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(3) **DISTRICT OF PUERTO RICO.**—The temporary bankruptcy judgeship authorized for the district of Puerto Rico under section 3(a)(7) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(f) **TECHNICAL AMENDMENTS.**—Section 152(a)(2) of title 28, United States Code, is amended—

(1) in the item relating to the eastern and western districts of Arkansas, by striking “3” and inserting “4”;

(2) in the item relating to the district of Delaware, by striking “1” and inserting “6”;

(3) in the item relating to the middle district of Florida, by striking “8” and inserting “12”;

(4) in the item relating to the northern district of Florida, by striking “1” and inserting “2”;

(5) in the item relating to the southern district of Florida, by striking “5” and inserting “7”;

(6) in the item relating to the northern district of Georgia, by striking "8" and inserting "10";

(7) in the item relating to the middle district of Georgia, by striking "2" and inserting "3";

(8) in the item relating to the southern district of Georgia, by striking "2" and inserting "4";

(9) in the item relating to the middle and southern districts of Georgia, by striking "Middle and Southern . . . . . 1";

(10) in the item relating to the southern district of Illinois, by striking "1" and inserting "2";

(11) in the item relating to the northern district of Indiana, by striking "3" and inserting "4";

(12) in the item relating to the eastern district of Kentucky, by striking "2" and inserting "3";

(13) in the item relating to the district of Maryland, by striking "4" and inserting "8";

(14) in the item relating to the eastern district of Michigan, by striking "4" and inserting "8";

(15) in the item relating to the northern district of Mississippi, by striking "1" and inserting "2";

(16) in the item relating to the southern district of Mississippi, by striking "2" and inserting "3";

(17) in the item relating to the district of Nevada, by striking "3" and inserting "5";

(18) in the item relating to the district of New Jersey, by striking "8" and inserting "9";

(19) in the item relating to the northern district of New York, by striking "2" and inserting "3";

(20) in the item relating to the southern district of New York, by striking "9" and inserting "11";

(21) in the item relating to the eastern district of North Carolina, by striking "2" and inserting "3";

(22) in the item relating to the western district of North Carolina, by striking "2" and inserting "3";

(23) in the item relating to the southern district of Ohio, by striking "7" and inserting "8";

(24) in the item relating to the eastern district of Pennsylvania, by striking "5" and inserting "6";

(25) in the item relating to the middle district of Pennsylvania, by striking "2" and inserting "3";

(26) in the item relating to the western district of Pennsylvania, by striking "4" and inserting "5";

(27) in the item relating to the district of Puerto Rico, by striking "2" and inserting "4";

(28) in the item relating to the district of South Carolina, by striking "2" and inserting "3";

(29) in the item relating to the western district of Tennessee, by striking "4" and inserting "6";

(30) in the item relating to the eastern district of Texas, by striking "2" and inserting "3";

(31) in the item relating to the district of Utah, by striking "3" and inserting "4"; and

(32) in the item relating to the eastern district of Virginia, by striking "5" and inserting "6".

**SA 117.** Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 454, strike line 15 and all that follows through page 457, line 22, and insert the following:

(2) TECHNICAL AND CONFORMING AMENDMENTS.—Section 152(a)(2) of title 28, United States Code, is amended—

(A) in the item relating to the eastern district of California, by striking "6" and inserting "7";

(B) in the item relating to the central district of California, by striking "21" and inserting "24";

(C) in the item relating to the district of Delaware, by striking "1" and inserting "6";

(D) in the item relating to the southern district of Florida, by striking "5" and inserting "7";

(E) in the item relating to the southern district of Georgia, by striking "2" and inserting "3";

(F) in the item relating to the district of Maryland, by striking "4" and inserting "7";

(G) in the item relating to the eastern district of Michigan, by striking "4" and inserting "5";

(H) in the item relating to the southern district of Mississippi, by striking "2" and inserting "3";

(I) in the item relating to the district of New Jersey, by striking "8" and inserting "9";

(J) in the item relating to the eastern district of New York, by striking "6" and inserting "7";

(K) in the item relating to the northern district of New York, by striking "2" and inserting "3";

(L) in the item relating to the southern district of New York, by striking "9" and inserting "10";

(M) in the item relating to the eastern district of North Carolina, by striking "2" and inserting "3";

(N) in the item relating to the eastern district of Pennsylvania, by striking "5" and inserting "6";

(O) in the item relating to the middle district of Pennsylvania, by striking "2" and inserting "3";

(P) in the item relating to the district of Puerto Rico, by striking "2" and inserting "4";

(Q) in the item relating to the western district of Tennessee, by striking "4" and inserting "5";

(R) in the item relating to the eastern district of Virginia, by striking "5" and inserting "6";

(S) in the item relating to the district of South Carolina, by striking "2" and inserting "3";

(T) in the item relating to the district of Nevada, by striking "3" and inserting "4";

(U) in the item relating to the northern district of Alabama, by striking "5" and inserting "6"; and

(V) in the item relating to the eastern district of Tennessee, by striking "3" and inserting "4".

(c) CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.—The temporary bankruptcy judgeships authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, and the eastern district of Tennessee under paragraphs (1), (3), (7), and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to permanent bankruptcy judgeships.

**SA 118.** Mr. KYL (for himself, Mr. FEINGOLD, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which

was ordered to lie on the table; as follows:

On page 231, line 13, strike "45" and insert "60".

**SA 119.** Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

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

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

(1) in subsection (b)—

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

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

(C) by adding at the end the following:

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

(2) by adding at the end the following:

**SA 120.** Mr. LEVIN (for himself and Mr. PRYOR) submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 495, strike line 8, and insert the following:

or more consecutive months.

"(i) CALCULATION OF FINANCE CHARGE DURING GRACE PERIOD.—A creditor may not impose a finance charge with respect to any amount paid on time."

**SA 121.** Mr. TALENT submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

On page 500, between lines 2 and 3, insert the following:

(4) by adding at the end the following:

"(e)(1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if—

"(A) such transfer was made to a self-settled trust or similar device;

"(B) such transfer was by the debtor;

"(C) the debtor is a beneficiary of such trust or similar device; and

"(D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.

"(2) For the purposes of this subsection, a transfer includes a transfer made in anticipation of any money judgment, settlement, civil penalty, equitable order, or criminal fine incurred by, or which the debtor believed would be incurred by—

"(A) any violation of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws; or

"(B) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the

purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78l and 78o(d)) or under section 6 of the Securities Act of 1933 (15 U.S.C. 77f).”.

**SA 122.** Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 65, after line 21, insert the following:

**SEC. 203A. AMENDMENT OF ATTORNEY PROVISIONS.**

(a) **BANKRUPTCY SCHEDULES.**—Section 707(b) of title 11, United States Code, as amended by this Act, is further amended by striking paragraph (4).

(b) **REAFFIRMATION.**—Section 524(k) of title 11, United States Code, as amended by this Act, is further amended by striking paragraph (5).

**SA 123.** Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 15, strike line 18 and all that follows through page 17, line 6, and insert the following:

“(5) Subject to paragraph (6), the court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may award a debtor all reasonable costs (including reasonable attorneys’ fees) in contesting a motion filed by a party in interest (other than a trustee or United States trustee (or bankruptcy administrator, if any)) under this subsection if—

“(A) the court does not grant the motion; and

“(B) the court finds that—

“(i) the position of the party that filed the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

“(ii) the attorney (if any) who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

**SA 124.** Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, lines 4 and 5, strike “This Act may be cited as the Bankruptcy Abuse and Consumer Protection Act of 2005.” and insert “This Act may be cited as the Credit Card Company Profitability Act of 2005.”.

**SA 125.** Mr. LAUTENBERG (for himself and Mr. DAYTON) submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_ . LIMITATIONS ON PENALTIES DUE TO LATE PAYMENTS.**

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

“(h) **LIMITATIONS ON PENALTIES DUE TO LATE PAYMENTS.**—

“(1) **LIMITATIONS ON INTEREST RATE INCREASES.**—

“(A) **ADVANCE NOTICE REQUIRED.**—In the case of a credit card account under an open end credit plan, the creditor shall provide written or electronic notice to the obligor of its intention to increase the annual rate of interest applicable to the account due to a delinquency, and the effective date of such increase, not later than 15 days before that effective date.

“(B) **OPPORTUNITY TO REMEDY DELINQUENCY.**—Except as provided in subparagraph (C), no increase in an annual rate of interest applicable to a credit card account under an open end credit plan due to a delinquency may be imposed if the obligor makes the payments required to bring the account up to date or to bring the outstanding balance below the amount of credit authorized to be extended with respect to the account, as applicable, during the 15-day period prescribed by subparagraph (A).

“(C) **EXCEPTION FOR REPEATED DELINQUENCY.**—Subparagraph (B) shall not apply to an increase in an annual rate of interest in any case in which the obligor has been delinquent with respect to the subject account on 3 separate occasions during the 12-month period immediately preceding the date of the increase.

“(3) **RELATION TO STATE LAWS.**—No provision of this subsection shall be construed to annul, alter, or affect or exempt any person subject to the provisions of this subsection from complying with, the laws of any State with respect to delinquency fees and penalties, except to the extent that those laws are inconsistent with any provision of this subsection and then only to the extent of the inconsistency. The Board may determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this chapter if the Board determines that such law gives greater protection to the consumer.

“(4) **DEFINITIONS.**—For purposes of this subsection an obligor is ‘delinquent’ or a ‘delinquency’ exists, if the obligor has, with respect to the subject credit card account—

“(A) failed to make payment on or before the due date for such payment; or

“(B) exceeded the amount of credit authorized to be extended with respect to the account of the obligor.”.

**SA 126.** Mr. DODD submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_ . LIMITS ON FINANCE AND INTEREST CHARGES FOR ON-TIME PAYMENTS.**

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

“(h) **PROHIBITION ON PENALTIES FOR ON-TIME PAYMENTS.**—

“(1) **PROHIBITION ON FINANCE CHARGES FOR ON-TIME PAYMENTS.**—In the case of any credit card account under an open end credit plan, where no other balance is owing on the account, no finance or interest charge may be imposed with regard to any amount of a new extension of credit that was paid on or before the date on which it was due.

“(2) **PROHIBITION ON CANCELLATION OR ADDITIONAL FEES FOR ON-TIME PAYMENTS OR PAYMENT IN FULL.**—In the case of any credit card account under an open end consumer credit plan, no fee or other penalty may be imposed on the consumer in connection with the payment in full of an existing account balance, or payment of more than the minimum required payment of an existing account balance.”.

**SA 127.** Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; which was ordered to lie on the table; as follows:

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

**SEC. 332. ASSET PROTECTION TRUSTS.**

Section 548 of title 11, United States Code, as amended by this Act, is further amended by adding at the end the following:

“(e) The trustee may avoid a transfer of an interest of the debtor in property made by an individual debtor within 10 years before the date of the filing of the petition to an asset protection trust if the amount of the transfer or the aggregate amount of all transfers to the trust within such 10-year period exceeds \$1,000,000, to the extent that debtor has a beneficial interest in the trust and the debtor’s beneficial interest in the trust does not become property of the estate by reason of section 541(c)(2). For purposes of this subsection, a fund or account of the kind specified in section 522(d)(12) is not an asset protection trust.”.

For purposes of this amendment, an asset protection trust is defined as:

A trust settled by the debtor for the benefit of the debtor directly or indirectly, where the beneficial interests of the trust are otherwise protected by state law from begin alienated, either voluntarily or involuntarily, before they are distributed to the beneficiaries.

**SA 128.** Mr. SANTORUM proposed an amendment to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

At the appropriate place, insert the following:

—ASSISTANCE FOR WORKERS AND SMALL BUSINESSES

**SEC. \_\_\_\_ 00. SHORT TITLE.**

This title may be cited as the “Worker and Small Business Assistance Act”.

**Subtitle A—Minimum Wage Adjustment**

**SEC. \_\_\_\_ 01. MINIMUM WAGE.**

(a) **IN GENERAL.**—Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

“(1) except as otherwise provided in this section, not less than—

“(A) \$5.70 an hour, beginning on the date that is 6 months after the date of enactment of the Worker and Small Business Assistance Act; and

“(B) \$6.25 an hour, beginning on the date that is 1 year after the date on which the wage takes effect under subparagraph (A);”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on the date that is 6 months after the date of enactment of this Act.

**Subtitle B—Workplace Flexibility**

**SEC. \_\_\_\_ 11. SHORT TITLE.**

This subtitle may be cited as the “Workplace Flexibility Act”.

**SEC. \_\_\_\_ 12. BIWEEKLY WORK PROGRAMS.**

(a) **IN GENERAL.**—The Fair Labor Standards Act of 1938 is amended by inserting after section 13 (29 U.S.C. 213) the following:

**“SEC. 13A. BIWEEKLY WORK PROGRAMS.**

“(a) VOLUNTARY PARTICIPATION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), no employee may be required to participate in a program described in this section. Participation in a program described in this section may not be a condition of employment.

“(2) COLLECTIVE BARGAINING AGREEMENT.—In a case in which a valid collective bargaining agreement exists between an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law, an employee may only be required to participate in such a program in accordance with the agreement.

“(b) BIWEEKLY WORK PROGRAMS.—

“(1) IN GENERAL.—Notwithstanding section 7, an employer may establish biweekly work programs that allow the use of a biweekly work schedule—

“(A) that consists of a basic work requirement of not more than 80 hours, over a 2-week period; and

“(B) in which more than 40 hours of the work requirement may occur in a week of the period, except that no more than 10 hours may be shifted between the 2 weeks involved.

“(2) CONDITIONS.—An employer may carry out a biweekly work program described in paragraph (1) for employees only pursuant to the following:

“(A) AGREEMENT.—The program may be carried out only in accordance with—

“(i) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the employees under applicable law; or

“(ii) in the case of an employee who is not represented by a labor organization described in clause (i), a written agreement arrived at between the employer and employee before the performance of the work involved if the agreement was entered into knowingly and voluntarily by such employee and was not a condition of employment.

“(B) STATEMENT.—The program shall apply to an employee described in subparagraph (A)(i) if such employee has affirmed, in a written statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to participate in the program.

“(C) MINIMUM SERVICE.—No employee may participate, or agree to participate, in the program unless the employee has been employed for at least 12 months by the employer, and for at least 1,250 hours of service with the employer during the previous 12-month period.

“(3) COMPENSATION FOR HOURS IN SCHEDULE.—Notwithstanding section 7, in the case of an employee participating in such a biweekly work program, the employee shall be compensated for each hour in such a biweekly work schedule at a rate not less than the regular rate at which the employee is employed.

“(4) COMPUTATION OF OVERTIME.—All hours worked by the employee in excess of such a biweekly work schedule or in excess of 80 hours in the 2-week period, that are requested in advance by the employer, shall be overtime hours.

“(5) OVERTIME COMPENSATION PROVISION.—The employee shall be compensated for each such overtime hour at a rate not less than one and one-half times the regular rate at which the employee is employed, in accordance with section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

“(6) DISCONTINUANCE OF PROGRAM OR WITHDRAWAL.—

“(A) DISCONTINUANCE OF PROGRAM.—An employer that has established a biweekly work program under paragraph (1) may discontinue the program for employees described in paragraph (2)(A)(ii) after providing 30 days' written notice to the employees who are subject to an agreement described in paragraph (2)(A)(ii).

“(B) WITHDRAWAL.—An employee may withdraw an agreement described in paragraph (2)(A)(ii) at the end of any 2-week period described in paragraph (1)(A), by submitting a written notice of withdrawal to the employer of the employee.

“(c) PROHIBITION OF COERCION.—

“(1) IN GENERAL.—An employer shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of interfering with the rights of the employee under this section to elect or not to elect to work a biweekly work schedule.

“(2) DEFINITION.—In paragraph (1), the term ‘intimidate, threaten, or coerce’ includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

“(d) DEFINITIONS.—In this section:

“(1) BASIC WORK REQUIREMENT.—The term ‘basic work requirement’ means the number of hours, excluding overtime hours, that an employee is required to work or is required to account for by leave or otherwise.

“(2) COLLECTIVE BARGAINING.—The term ‘collective bargaining’ means the performance of the mutual obligation of the representative of an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph shall not compel either party to agree to a proposal or to make a concession.

“(3) COLLECTIVE BARGAINING AGREEMENT.—The term ‘collective bargaining agreement’ means an agreement entered into as a result of collective bargaining.

“(4) ELECTION.—The term ‘at the election of’, used with respect to an employee, means at the initiative of, and at the request of, the employee.

“(5) EMPLOYEE.—The term ‘employee’ means an individual—

“(A) who is an employee (as defined in section 3);

“(B) who is not an employee of a public agency; and

“(C) to whom section 7(a) applies.

“(6) EMPLOYER.—The term ‘employer’ does not include a public agency.

“(7) OVERTIME HOURS.—The term ‘overtime hours’ when used with respect to biweekly work programs under subsection (b), means all hours worked in excess of the biweekly work schedule involved or in excess of 80 hours in the 2-week period involved, that are requested in advance by an employer.

“(8) REGULAR RATE.—The term ‘regular rate’ has the meaning given the term in section 7(e).”

(b) REMEDIES.—

(1) PROHIBITIONS.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended—

(A) by inserting “(A)” after “(3)”;

(B) by adding “or” after the semicolon; and

(C) by adding at the end the following:

“(B) to violate any of the provisions of section 13A.”

(2) REMEDIES AND SANCTIONS.—Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended—

(A) in subsection (c)—

(i) in the first sentence—

(I) by inserting after “7 of this Act” the following: “, or of the appropriate legal or monetary equitable relief owing to any employee or employees under section 13A”; and

(II) by striking “wages or unpaid overtime compensation and” and inserting “wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, and”;

(ii) in the second sentence, by striking “wages or overtime compensation and” and inserting “wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, and”;

(iii) in the third sentence—

(I) by inserting after “first sentence of such subsection” the following: “, or the second sentence of such subsection in the event of a violation of section 13A.”; and

(II) by striking “wages or unpaid overtime compensation under sections 6 and 7 or” and inserting “wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, or”;

(B) in subsection (e)—

(i) in the second sentence, by striking “section 6 or 7” and inserting “section 6, 7, or 13A”; and

(ii) in the fourth sentence, in paragraph (3), by striking “15(a)(4) or” and inserting “15(a)(4), a violation of section 15(a)(3)(B), or”.

(c) NOTICE TO EMPLOYEES.—Not later than 30 days after the date of enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations contained in section 516.4 of title 29, Code of Federal Regulations, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) to employees so that the notice reflects the amendments made to the Act by this section.

**SEC. 13. CONGRESSIONAL COVERAGE.**

Section 203 of the Congressional Accountability Act of 1995 (2 U.S.C. 1313) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking “and section 12(c)” and inserting “section 12(c), and section 13A”; and

(B) by striking paragraph (3);

(2) in subsection (b)—

(A) by striking “The remedy” and inserting the following:

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the remedy”;

(B) by adding at the end the following:

“(2) BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOURS PROGRAMS.—The remedy for a violation of subsection (a) relating to the requirements of section 13A of the Fair Labor Standards Act of 1938 shall be such remedy as would be appropriate if awarded under sections 16 and 17 of such Act (29 U.S.C. 216, 217) for such a violation.”; and

(3) in subsection (c), by striking paragraph (4).

**SEC. 14. TERMINATION.**

The authority provided by this subtitle and the amendments made by this subtitle terminates 5 years after the date of enactment of this Act.

**Subtitle C—Small Business Fair Labor Standards Act Exemption****SEC. 21. ENHANCED SMALL BUSINESS EXEMPTION.**

(a) IN GENERAL.—Section 3(s)(1)(A)(ii) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(1)(A)(ii)) is amended by striking “\$500,000” and inserting “\$1,000,000”.

(b) EFFECT OF AMENDMENT.—The amendment made by subsection (a) shall not apply

in any State that does not have in effect, or that does not subsequently enact after the date of enactment of the Worker and Small Business Assistance Act, legislation applying minimum wage and hours of work protections to workers covered by the Fair Labor Standards Act of 1938 as of the day before the date of enactment of the Worker and Small Business Assistance Act.

**SEC. 22. SCOPE OF EMPLOYMENT.**

Section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)), in the matter preceding paragraph (1), and section 7(a)(1) of such Act (29 U.S.C. 207(a)(1)), are amended by striking “who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce,” and inserting “who in any workweek is engaged in industrial homework subject to section 11(d) and engaged in commerce or in the production of goods for commerce, or who in any workweek is employed in an enterprise engaged in commerce or in the production of goods for commerce.”.

**Subtitle D—Small Business Paperwork Reduction**

**SEC. 31. SMALL BUSINESS PAPERWORK REDUCTION.**

(a) IN GENERAL.—Section 3506 of title 44, United States Code (commonly referred to as the “Paperwork Reduction Act”), is amended by adding at the end the following:

“(j)(1) In the case of a first-time violation by a small business concern of a requirement regarding the collection of information by an agency, the head of such agency shall provide that no civil fine shall be imposed on the small business concern unless, based on the particular facts and circumstances regarding the violation—

“(A) the head of the agency determines that the violation has the potential to cause serious harm to the public interest;

“(B) the head of the agency determines that failure to impose a civil fine would impede or interfere with the detection of criminal activity;

“(C) the violation is a violation of an internal revenue law or a law concerning the assessment or collection of any tax, debt, revenue, or receipt;

“(D) the violation is not corrected on or before the date that is 6 months after the date of receipt by the small business concern of notification of the violation in writing from the agency; or

“(E) except as provided in paragraph (2), the head of the agency determines that the violation presents a danger to the public health or safety.

“(2)(A) In any case in which the head of an agency determines under paragraph (1)(E) that a violation presents a danger to the public health or safety, the head of the agency may, notwithstanding paragraph (1)(E), determine that a civil fine should not be imposed on the small business concern if the violation is corrected within 24 hours of receipt of notice in writing by the small business concern of the violation.

“(B) In determining whether to provide a small business concern with 24 hours to correct a violation under subparagraph (A), the head of the agency shall take into account all of the facts and circumstances regarding the violation, including—

“(i) the nature and seriousness of the violation, including whether the violation is technical or inadvertent or involves willful or criminal conduct;

“(ii) whether the small business concern has made a good faith effort to comply with applicable laws, and to remedy the violation within the shortest practicable period of time; and

“(iii) whether the small business concern has obtained a significant economic benefit from the violation.

“(C) In any case in which the head of the agency imposes a civil fine on a small business concern for a violation with respect to which this paragraph applies and does not provide the small business concern with 24 hours to correct the violation, the head of the agency shall notify Congress regarding such determination not later than 60 days after the date that the civil fine is imposed by the agency.

“(3) With respect to any agency, this subsection shall not apply to any violation by a small business concern of a requirement regarding collection of information by such agency if such small business concern previously violated any requirement regarding collection of information by such agency.

“(4) In determining if a violation is a first-time violation for purposes of this subsection, the head of an agency shall not take into account any violation of a requirement regarding collection of information by another agency.

“(5) Notwithstanding any other provision of law, no State may impose a civil penalty on a small business concern, in the case of a first-time violation by the small-business concern of a requirement regarding collection of information under Federal law, in a manner inconsistent with the provisions of this subsection.

“(6) For purposes of this subsection, the term ‘small business concern’ means a business concern that meets the requirements of section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated pursuant to such section.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any violation occurring on or after October 1, 2004.

**Subtitle E—Small Business Regulatory Relief**

**SEC. 41. ENHANCED COMPLIANCE ASSISTANCE FOR SMALL BUSINESSES.**

(a) IN GENERAL.—Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note) is amended by striking subsection (a) and inserting the following:

“(a) COMPLIANCE GUIDE.—

“(1) IN GENERAL.—For each rule for which an agency head does not make a certification under section 605(b) of title 5, United States Code, the agency shall publish 1 or more guides to assist small entities in complying with the rule, and shall entitle such publications ‘small entity compliance guides’.

“(2) PUBLICATION OF GUIDES.—The publication of each guide under this subsection shall include—

“(A) the posting of the guide in an easily identified location on the website of the agency; and

“(B) distribution of the guide to known industry contacts, such as small entities, associations, or industry leaders affected by the rule.

“(3) PUBLICATION DATE.—An agency shall publish each guide (including the posting and distribution of the guide as described under paragraph (2))—

“(A) on the same date as the date of publication of the final rule (or as soon as possible after that date); and

“(B) not later than the date on which the requirements of that rule become effective.

“(4) COMPLIANCE ACTIONS.—

“(A) IN GENERAL.—Each guide shall explain the actions a small entity is required to take to comply with a rule.

“(B) EXPLANATION.—The explanation under subparagraph (A)—

“(i) shall include a description of actions needed to meet requirements to enable a small entity to know when such requirements are met; and

“(ii) if determined appropriate by the agency, may include a description of possible procedures, such as conducting tests, that assist a small entity in meeting such requirements.

“(C) PROCEDURES.—Procedures described under subparagraph (B)(ii)—

“(i) shall be suggestions to assist small entities; and

“(ii) shall not be additional requirements relating to the rule.

“(5) AGENCY PREPARATION OF GUIDES.—The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities, and may cooperate with associations of small entities to develop and distribute such guides. An agency may prepare guides and apply this section with respect to a rule or a group of related rules.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 211(3) of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note) is amended by inserting “and entitled” after “designated”.

**Subtitle F—Minimum Wage Tip Credit**

**SEC. 51. TIPPED WAGE FAIRNESS.**

Section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended—

(1) in paragraph (2), by inserting before the period the following: “: *Provided*, That the tips shall not be included as part of the wage paid to an employee to the extent they are excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee”; and

(2) adding at the end the following: “Notwithstanding any other provision of this Act, any State or political subdivision of a State which, on and after the date of enactment of the Worker and Small Business Assistance Act, prohibits any portion of a tipped employee’s tips from being considered as wages in determining if such tipped employee has been paid the applicable minimum wage rate, may not establish or enforce any such law, ordinance, regulation, or order with respect to tipped employees unless such law, ordinance, regulation, or order permits a tip credit in an amount not less than an amount equal to—

“(A) the cash wage paid such employee which is required under such law, ordinance, regulation, or order on the date of enactment of such Act; and

“(B) an additional amount on account of tips received by such employee which amount is equal to the difference between such cash wage and the minimum wage rate in effect under such law, ordinance, regulation, or order or the minimum wage rate in effect under section 6, whichever is higher.”.

**Subtitle G—Small Business Tax Relief**

**SEC. 60. AMENDMENT OF 1986 CODE.**

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

**PART I—PROVISIONS RELATING TO ECONOMIC STIMULUS FOR SMALL BUSINESSES**

**SEC. 61. CLARIFICATION OF CASH ACCOUNTING RULES FOR SMALL BUSINESS.**

(a) CASH ACCOUNTING PERMITTED.—Section 446 (relating to general rule for methods of accounting) is amended by adding at the end the following new subsection:

“(g) CERTAIN SMALL BUSINESS TAXPAYERS PERMITTED TO USE CASH ACCOUNTING METHOD WITHOUT LIMITATION.—

“(1) IN GENERAL.—An eligible taxpayer shall not be required to use an accrual method of accounting for any taxable year.

“(2) ELIGIBLE TAXPAYER.—For purposes of this subsection—

“(A) IN GENERAL.—A taxpayer is an eligible taxpayer with respect to any taxable year if—

“(i) for all prior taxable years beginning after December 31, 2004, the taxpayer (or any predecessor) met the gross receipts test of subparagraph (B), and

“(ii) the taxpayer is not subject to section 447 (determined without regard to subsection (c)(2) thereof) or 448 (determined without regard to subsection (b)(3) thereof).

“(B) GROSS RECEIPTS TEST.—A taxpayer meets the gross receipts test of this subparagraph for any prior taxable year if the average annual gross receipts of the taxpayer for the 3-taxable-year period ending with such prior taxable year does not exceed \$10,000,000. The rules of paragraphs (2) and (3) of section 448(c) shall apply for purposes of the preceding sentence.”

(b) CLARIFICATION OF INVENTORY RULES FOR SMALL BUSINESS.—Section 471 (relating to general rule for inventories) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

“(c) SMALL BUSINESS TAXPAYERS NOT REQUIRED TO USE INVENTORIES.—

“(1) IN GENERAL.—An eligible taxpayer shall not be required to use inventories under this section for a taxable year.

“(2) TREATMENT OF TAXPAYERS NOT USING INVENTORIES.—If an eligible taxpayer does not use inventories with respect to any property for any taxable year beginning after December 31, 2004, such property shall be treated as a material or supply which is not incidental.

“(3) ELIGIBLE TAXPAYER.—For purposes of this subsection, the term ‘eligible taxpayer’ has the meaning given such term by section 446(g)(2).”

(c) EFFECTIVE DATE AND SPECIAL RULES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer changing the taxpayer’s method of accounting for any taxable year under the amendments made by this section—

(A) such change shall be treated as initiated by the taxpayer;

(B) such change shall be treated as made with the consent of the Secretary of the Treasury; and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period (not greater than 4 taxable years) beginning with such taxable year.

**SEC. 62. MODIFICATION OF TREATMENT OF QUALIFIED RESTAURANT PROPERTY AS 15-YEAR PROPERTY FOR PURPOSES OF DEPRECIATION DEDUCTION.**

(a) EXTENSION OF TREATMENT.—Clause (v) of section 168(e)(3)(E) (defining 15-year property) is amended by striking “2006” and inserting “2009”.

(b) TREATMENT TO INCLUDE NEW CONSTRUCTION.—Paragraph (7) of section 168(e) (relating to classification of property) is amended to read as follows:

“(7) QUALIFIED RESTAURANT PROPERTY.—The term ‘qualified restaurant property’ means any section 1250 property which is a building or an improvement to a building if more than 50 percent of the building’s square

footage is devoted to preparation of, and seating for on-premises consumption of, prepared meals.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any property placed in service after the date of the enactment of this Act.

**SEC. 63. EXTENSION OF INCREASED EXPENSING FOR SMALL BUSINESSES.**

(a) IN GENERAL.—Section 179 (relating to election to expense certain depreciable business assets) is amended by striking “2008” each place it appears and inserting “2009”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

## PART II—REVENUES

**SEC. 71. FRIVOLOUS TAX SUBMISSIONS.**

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

**“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

“(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of \$5,000 if—

“(1) such person files what purports to be a return of a tax imposed by this title but which—

“(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

“(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

“(2) the conduct referred to in paragraph (1)—

“(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

“(B) reflects a desire to delay or impede the administration of Federal tax laws.

“(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

“(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of \$5,000.

“(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

“(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term ‘specified frivolous submission’ means a specified submission if any portion of such submission—

“(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

“(ii) reflects a desire to delay or impede the administration of Federal tax laws.

“(B) SPECIFIED SUBMISSION.—The term ‘specified submission’ means—

“(i) a request for a hearing under—

“(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

“(II) section 6330 (relating to notice and opportunity for hearing before levy), and

“(ii) an application under—

“(I) section 6159 (relating to agreements for payment of tax liability in installments),

“(II) section 7122 (relating to compromises), or

“(III) section 7811 (relating to taxpayer assistance orders).

“(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

“(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

“(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

“(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.”

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

“(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.”

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking “(A)” and inserting “(A)(i)”;

(B) by striking “(B)” and inserting “(ii)”;

(C) by striking the period at the end of the first sentence and inserting “; or”; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

“(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).”

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing”.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing”, and

(2) in subsection (c), by striking “and (e)” and inserting “(e), and (g)”.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

“(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.”

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

“Sec. 6702. Frivolous tax submissions.”

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

**SEC. 72. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.**

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking “Any person who—” and inserting “(a) IN GENERAL.—Any person who—”, and

(2) by adding at the end the following new subsection:

“(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.”

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking “\$100,000” and inserting “\$250,000”,

(B) by striking “\$500,000” and inserting “\$1,000,000”, and

(C) by striking “5 years” and inserting “10 years”.

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking “misdemeanor” and inserting “felony”, and

(ii) by striking “1 year” and inserting “10 years”, and

(B) by striking the third sentence.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking “\$100,000” and inserting “\$250,000”,

(B) by striking “\$500,000” and inserting “\$1,000,000”, and

(C) by striking “3 years” and inserting “5 years”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

**SEC. 73. MODIFICATION OF INTERACTION BETWEEN SUBPART F AND PASSIVE FOREIGN INVESTMENT COMPANY RULES.**

(a) LIMITATION ON EXCEPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (2) of section 1297(e) (relating to passive foreign investment company) is amended by adding at the end the following flush sentence:

“Such term shall not include any period if the earning of subpart F income by such corporation during such period would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i).”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of controlled foreign corporations beginning after March 2, 2005, and to taxable years of United States shareholders with or within which such taxable years of controlled foreign corporations end.

**SEC. 74. TAX TREATMENT OF INVERTED CORPORATE ENTITIES.**

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by striking section 7874 and inserting the following:

**“SEC. 7874. RULES RELATING TO INVERTED CORPORATE ENTITIES.**

“(a) INVERTED CORPORATIONS TREATED AS DOMESTIC CORPORATIONS.—

“(1) IN GENERAL.—If a foreign incorporated entity is treated as an inverted domestic corporation, then, notwithstanding section 7701(a)(4), such entity shall be treated for purposes of this title as a domestic corporation.

“(2) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incor-

porated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

“(A) the entity completes after March 20, 2002, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

“(B) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

“(i) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

“(ii) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

“(C) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

Except as provided in regulations, an acquisition of properties of a domestic corporation shall not be treated as described in subparagraph (A) if none of the corporation's stock was readily tradeable on an established securities market at any time during the 4-year period ending on the date of the acquisition.

“(b) PRESERVATION OF DOMESTIC TAX BASE IN CERTAIN INVERSION TRANSACTIONS TO WHICH SUBSECTION (a) DOES NOT APPLY.—

“(1) IN GENERAL.—If a foreign incorporated entity would be treated as an inverted domestic corporation with respect to an acquired entity if either—

“(A) subsection (a)(2)(A) were applied by substituting ‘after December 31, 1996, and on or before March 20, 2002’ for ‘after March 20, 2002’ and subsection (a)(2)(B) were applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’, or

“(B) subsection (a)(2)(B) were applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’,

then the rules of subsection (c) shall apply to any inversion gain of the acquired entity during the applicable period and the rules of subsection (d) shall apply to any related party transaction of the acquired entity during the applicable period. This subsection shall not apply for any taxable year if subsection (a) applies to such foreign incorporated entity for such taxable year.

“(2) ACQUIRED ENTITY.—For purposes of this section—

“(A) IN GENERAL.—The term ‘acquired entity’ means the domestic corporation or partnership substantially all of the properties of which are directly or indirectly acquired in an acquisition described in subsection (a)(2)(A) to which this subsection applies.

“(B) AGGREGATION RULES.—Any domestic person bearing a relationship described in section 267(b) or 707(b) to an acquired entity shall be treated as an acquired entity with respect to the acquisition described in subparagraph (A).

“(3) APPLICABLE PERIOD.—For purposes of this section—

“(A) IN GENERAL.—The term ‘applicable period’ means the period—

“(i) beginning on the first date properties are acquired as part of the acquisition described in subsection (a)(2)(A) to which this subsection applies, and

“(ii) ending on the date which is 10 years after the last date properties are acquired as part of such acquisition.

“(B) SPECIAL RULE FOR INVERSIONS OCCURRING BEFORE MARCH 21, 2002.—In the case of

any acquired entity to which paragraph (1)(A) applies, the applicable period shall be the 10-year period beginning on January 1, 2003.

“(c) TAX ON INVERSION GAINS MAY NOT BE OFFSET.—If subsection (b) applies—

“(1) IN GENERAL.—The taxable income of an acquired entity (or any expanded affiliated group which includes such entity) for any taxable year which includes any portion of the applicable period shall in no event be less than the inversion gain of the entity for the taxable year.

“(2) CREDITS NOT ALLOWED AGAINST TAX ON INVERSION GAIN.—Credits shall be allowed against the tax imposed by this chapter on an acquired entity for any taxable year described in paragraph (1) only to the extent such tax exceeds the product of—

“(A) the amount of the inversion gain for the taxable year, and

“(B) the highest rate of tax specified in section 11(b)(1).

For purposes of determining the credit allowed by section 901 inversion gain shall be treated as from sources within the United States.

“(3) SPECIAL RULES FOR PARTNERSHIPS.—In the case of an acquired entity which is a partnership—

“(A) the limitations of this subsection shall apply at the partner rather than the partnership level,

“(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—

“(i) the partner's distributive share of inversion gain of the partnership for such taxable year, plus

“(ii) income or gain required to be recognized for the taxable year by the partner under section 367(a), 741, or 1001, or under any other provision of chapter 1, by reason of the transfer during the applicable period of any partnership interest of the partner in such partnership to the foreign incorporated entity, and

“(C) the highest rate of tax specified in the rate schedule applicable to the partner under chapter 1 shall be substituted for the rate of tax under paragraph (2)(B).

“(4) INVERSION GAIN.—For purposes of this section, the term ‘inversion gain’ means any income or gain required to be recognized under section 304, 311(b), 367, 1001, or 1248, or under any other provision of chapter 1, by reason of the transfer during the applicable period of stock or other properties by an acquired entity—

“(A) as part of the acquisition described in subsection (a)(2)(A) to which subsection (b) applies, or

“(B) after such acquisition to a foreign related person.

The Secretary may provide that income or gain from the sale of inventories or other transactions in the ordinary course of a trade or business shall not be treated as inversion gain under subparagraph (B) to the extent the Secretary determines such treatment would not be inconsistent with the purposes of this section.

“(5) COORDINATION WITH SECTION 172 AND MINIMUM TAX.—Rules similar to the rules of paragraphs (3) and (4) of section 860E(a) shall apply for purposes of this section.

“(6) STATUTE OF LIMITATIONS.—

“(A) IN GENERAL.—The statutory period for the assessment of any deficiency attributable to the inversion gain of any taxpayer for any pre-inversion year shall not expire before the expiration of 3 years from the date

the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(A) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

“(B) PRE-INVERSION YEAR.—For purposes of subparagraph (A), the term ‘pre-inversion year’ means any taxable year if—

“(i) any portion of the applicable period is included in such taxable year, and

“(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(A) is completed.

“(d) SPECIAL RULES APPLICABLE TO ACQUIRED ENTITIES TO WHICH SUBSECTION (b) APPLIES.—

“(1) INCREASES IN ACCURACY-RELATED PENALTIES.—In the case of any underpayment of tax of an acquired entity to which subsection (b) applies—

“(A) section 6662(a) shall be applied with respect to such underpayment by substituting ‘30 percent’ for ‘20 percent’, and

“(B) if such underpayment is attributable to one or more gross valuation understatements, the increase in the rate of penalty under section 6662(h) shall be to 50 percent rather than 40 percent.

“(2) MODIFICATIONS OF LIMITATION ON INTEREST DEDUCTION.—In the case of an acquired entity to which subsection (b) applies, section 163(j) shall be applied—

“(A) without regard to paragraph (2)(A)(ii) thereof, and

“(B) by substituting ‘25 percent’ for ‘50 percent’ each place it appears in paragraph (2)(B) thereof.

“(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) RULES FOR APPLICATION OF SUBSECTION (a)(2).—In applying subsection (a)(2) for purposes of subsections (a) and (b), the following rules shall apply:

“(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (a)(2)(B)—

“(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

“(ii) stock of such entity which is sold in a public offering or private placement related to the acquisition described in subsection (a)(2)(A).

“(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(2)(B) are met with respect to such domestic corporation or partnership, such actions shall be treated as pursuant to a plan.

“(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

“(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (a)(2) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

“(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary—

“(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

“(ii) to treat stock as not stock.

“(2) EXPANDED AFFILIATED GROUP.—The term ‘expanded affiliated group’ means an affiliated group as defined in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) shall be applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’ each place it appears.

“(3) FOREIGN INCORPORATED ENTITY.—The term ‘foreign incorporated entity’ means any entity which is, or but for subsection (a)(1) would be, treated as a foreign corporation for purposes of this title.

“(4) FOREIGN RELATED PERSON.—The term ‘foreign related person’ means, with respect to any acquired entity, a foreign person which—

“(A) bears a relationship to such entity described in section 267(b) or 707(b), or

“(B) is under the same common control (within the meaning of section 482) as such entity.

“(5) SUBSEQUENT ACQUISITIONS BY UNRELATED DOMESTIC CORPORATIONS.—

“(A) IN GENERAL.—Subject to such conditions, limitations, and exceptions as the Secretary may prescribe, if, after an acquisition described in subsection (a)(2)(A) to which subsection (b) applies, a domestic corporation stock of which is traded on an established securities market acquires directly or indirectly any properties of one or more acquired entities in a transaction with respect to which the requirements of subparagraph (B) are met, this section shall cease to apply to any such acquired entity with respect to which such requirements are met.

“(B) REQUIREMENTS.—The requirements of the subparagraph are met with respect to a transaction involving any acquisition described in subparagraph (A) if—

“(i) before such transaction the domestic corporation did not have a relationship described in section 267(b) or 707(b), and was not under common control (within the meaning of section 482), with the acquired entity, or any member of an expanded affiliated group including such entity, and

“(ii) after such transaction, such acquired entity—

“(I) is a member of the same expanded affiliated group which includes the domestic corporation or has such a relationship or is under such common control with any member of such group, and

“(II) is not a member of, and does not have such a relationship and is not under such common control with any member of, the expanded affiliated group which before such acquisition included such entity.

“(f) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

“(1) the use of related persons, pass-thru or other noncorporate entities, or other intermediaries, or

“(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.”.

(b) INFORMATION REPORTING.—The Secretary of the Treasury shall exercise the Secretary’s authority under the Internal Revenue Code of 1986 to require entities involved in transactions to which section 7874 of such Code (as added by subsection (a)) applies to report to the Secretary, shareholders, partners, and such other persons as the Secretary may prescribe such information as is necessary to ensure the proper tax treatment of such transactions.

(c) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 is

amended by striking the item relating to section 7874 and inserting the following:

“Sec. 7874. Rules relating to inverted corporate entities.”.

(d) TRANSITION RULE FOR CERTAIN REGULATED INVESTMENT COMPANIES AND UNIT INVESTMENT TRUSTS.—Notwithstanding section 7874 of the Internal Revenue Code of 1986 (as added by subsection (a)), a regulated investment company, or other pooled fund or trust specified by the Secretary of the Treasury, may elect to recognize gain by reason of section 367(a) of such Code with respect to a transaction under which a foreign incorporated entity is treated as an inverted domestic corporation under section 7874(a) of such Code by reason of an acquisition completed after March 20, 2002, and before January 1, 2004.

(e) DISCLOSURE OF CORPORATE EXPATRIATION TRANSACTIONS.—

(1) IN GENERAL.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

“(i) PROXY SOLICITATIONS IN CONNECTION WITH CORPORATE EXPATRIATION TRANSACTIONS.—

“(1) DISCLOSURE TO SHAREHOLDERS OF EFFECTS OF CORPORATE EXPATRIATION TRANSACTION.—The Commission shall, by rule, require that each domestic issuer shall prominently disclose, not later than 5 business days before any shareholder vote relating to a corporate expatriation transaction, as a separate and distinct document accompanying each proxy statement relating to the transaction—

“(A) the number of employees of the domestic issuer that would be located in the new foreign jurisdiction of incorporation or organization of that issuer upon completion of the corporate expatriation transaction;

“(B) how the rights of holders of the securities of the domestic issuer would be impacted by a completed corporate expatriation transaction, and any differences in such rights before and after a completed corporate expatriation transaction; and

“(C) that, as a result of a completed corporate expatriation transaction, any taxable holder of the securities of the domestic issuer shall be subject to the taxation of any capital gains realized with respect to such securities, and the amount of any such capital gains tax that would apply as a result of the transaction.

“(2) DEFINITIONS.—In this subsection, the following definitions shall apply:

“(A) CORPORATE EXPATRIATION TRANSACTION.—The term ‘corporate expatriation transaction’ means any transaction, or series of related transactions, described in subsection (a) or (b) of section 7874 of the Internal Revenue Code of 1986.

“(A) DOMESTIC ISSUER.—The term ‘domestic issuer’ means an issuer created or organized in the United States or under the law of the United States or of any State.”.

(2) EFFECTIVE DATE.—Section 14(i) of the Securities Exchange Act of 1934 (as added by this subsection) shall apply with respect to corporate expatriation transactions (as defined in that section 14(i)) proposed on and after the date of enactment of this Act.

(f) EFFECTIVE DATE.—Except as provided in subsection (e)(2), the amendments made by this section shall take effect as if included in the American Jobs Creation Act of 2004.

**SEC. 75. IMPOSITION OF MARK-TO-MARKET TAX ON INDIVIDUALS WHO EXPATRIATE.**

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

**“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

“(a) GENERAL RULES.—For purposes of this subtitle—

“(1) MARK TO MARKET.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

“(2) RECOGNITION OF GAIN OR LOSS.—In the case of any sale under paragraph (1)—

“(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

“(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

“(3) EXCLUSION FOR CERTAIN GAIN.—

“(A) IN GENERAL.—The amount which, but for this paragraph, would be includible in the gross income of any individual by reason of this section shall be reduced (but not below zero) by \$600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

“(B) COST-OF-LIVING ADJUSTMENT.—

“(i) IN GENERAL.—In the case of an expatriation date occurring in any calendar year after 2004, the \$600,000 amount under subparagraph (A) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting ‘calendar year 2003’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of \$1,000, such amount shall be rounded to the next lower multiple of \$1,000.

“(4) ELECTION TO CONTINUE TO BE TAXED AS UNITED STATES CITIZEN.—

“(A) IN GENERAL.—If a covered expatriate elects the application of this paragraph—

“(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

“(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

“(B) REQUIREMENTS.—Subparagraph (A) shall not apply to an individual unless the individual—

“(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary may require,

“(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

“(iii) complies with such other requirements as the Secretary may prescribe.

“(C) ELECTION.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

“(b) ELECTION TO DEFER TAX.—

“(1) IN GENERAL.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of

subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

“(2) DETERMINATION OF TAX WITH RESPECT TO PROPERTY.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

“(3) TERMINATION OF POSTPONEMENT.—No tax may be postponed under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

“(4) SECURITY.—

“(A) IN GENERAL.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

“(B) ADEQUATE SECURITY.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

“(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

“(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

“(5) WAIVER OF CERTAIN RIGHTS.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

“(6) ELECTIONS.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

“(7) INTEREST.—For purposes of section 6601—

“(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

“(B) section 6621(a)(2) shall be applied by substituting ‘5 percentage points’ for ‘3 percentage points’ in subparagraph (B) thereof.

“(c) COVERED EXPATRIATE.—For purposes of this section—

“(1) IN GENERAL.—Except as provided in paragraph (2), the term ‘covered expatriate’ means an expatriate.

“(2) EXCEPTIONS.—An individual shall not be treated as a covered expatriate if—

“(A) the individual—

“(i) became a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

“(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or

“(B)(i) the individual’s relinquishment of United States citizenship occurs before such individual attains age 18½, and

“(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

“(d) EXEMPT PROPERTY; SPECIAL RULES FOR PENSION PLANS.—

“(1) EXEMPT PROPERTY.—This section shall not apply to the following:

“(A) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

“(B) SPECIFIED PROPERTY.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

“(2) SPECIAL RULES FOR CERTAIN RETIREMENT PLANS.—

“(A) IN GENERAL.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

“(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

“(ii) an amount equal to the present value of the expatriate’s nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

“(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includible in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

“(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan’s behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

“(D) APPLICABLE PLANS.—This paragraph shall apply to—

“(i) any qualified retirement plan (as defined in section 4974(c)),

“(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

“(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

“(e) DEFINITIONS.—For purposes of this section—

“(1) EXPATRIATE.—The term ‘expatriate’ means—

“(A) any United States citizen who relinquishes citizenship, and

“(B) any long-term resident of the United States who—

“(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

“(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

“(2) EXPATRIATION DATE.—The term ‘expatriation date’ means—

“(A) the date an individual relinquishes United States citizenship, or

“(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

“(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

“(A) the date the individual renounces such individual's United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

“(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)-(4)),

“(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

“(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

“(4) LONG-TERM RESIDENT.—The term ‘long-term resident’ has the meaning given to such term by section 877(e)(2).

“(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES' INTERESTS IN TRUST.—

“(1) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

“(A) the individual shall not be treated as having sold such interest,

“(B) such interest shall be treated as a separate share in the trust, and

“(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

“(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

“(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual's share in the trust.

“(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

“(A) IN GENERAL.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

“(i) paragraph (1) and subsection (a) shall not apply, and

“(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

“(B) AMOUNT OF TAX.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

“(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

“(ii) the balance in the deferred tax account immediately before the distribution determined without regard to any increases

under subparagraph (C)(ii) after the 30th day preceding the distribution.

“(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(ii)—

“(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

“(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting ‘5 percentage points’ for ‘3 percentage points’ in subparagraph (B) thereof.

“(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

“(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

“(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

“(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary's interest in a trust is the amount of gain which would be allocable to such beneficiary's vested and nonvested interests in the trust if the beneficiary held directly all assets allocable to such interests.

“(E) TAX DEDUCTED AND WITHHELD.—

“(i) IN GENERAL.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

“(ii) EXCEPTION WHERE FAILURE TO WAIVE TREATY RIGHTS.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

“(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

“(II) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

“(F) DISPOSITION.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii), there is hereby imposed a tax equal to the lesser of—

“(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

“(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

“(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

“(i) QUALIFIED TRUST.—The term ‘qualified trust’ means a trust which is described in section 7701(a)(30)(E).

“(ii) VESTED INTEREST.—The term ‘vested interest’ means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

“(iii) NONVESTED INTEREST.—The term ‘nonvested interest’ means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

“(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

“(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

“(3) DETERMINATION OF BENEFICIARIES' INTEREST IN TRUST.—

“(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary's interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

“(B) OTHER DETERMINATIONS.—For purposes of this section—

“(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

“(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

“(I) the methodology used to determine that taxpayer's trust interest under this section, and

“(II) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

“(g) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

“(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

“(2) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

“(h) IMPOSITION OF TENTATIVE TAX.—

“(1) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

“(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

“(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

“(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

“(i) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

“(1) IMPOSITION OF LIEN.—

“(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

“(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate’s income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

“(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

“(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

“(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

“(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

“(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.”

(b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

“(d) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

“(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

“(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) shall not apply to any property if either—

“(A) the gift, bequest, devise, or inheritance is—

“(i) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

“(ii) included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

“(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States.”

(c) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new paragraph:

“(48) TERMINATION OF UNITED STATES CITIZENSHIP.—

“(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual’s citizenship is treated as relinquished under section 877A(e)(3).

“(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.”

(d) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(1) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

“(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation).”

(2) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Section 6103(l) (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

“(19) DISCLOSURE TO DENY VISA OR ADMISSION TO CERTAIN EXPATRIATES.—Upon written request of the Attorney General or the Attorney General’s delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).”

(B) SAFEGUARDS.—

(i) TECHNICAL AMENDMENTS.—Paragraph (4) of section 6103(p) of the Internal Revenue Code of 1986, as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107-210; 116 Stat. 961), is amended by striking “or (17)” after “any other person described in subsection (1)(16)” each place it appears and inserting “or (18)”.

(ii) CONFORMING AMENDMENTS.—Section 6103(p)(4) (relating to safeguards), as amended by clause (i), is amended by striking “or (18)” after “any other person described in subsection (1)(16)” each place it appears and inserting “(18), or (19)”.

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(B) TECHNICAL AMENDMENTS.—The amendments made by paragraph (2)(B)(i) shall take effect as if included in the amendments made by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107-210; 116 Stat. 961).

(e) CONFORMING AMENDMENTS.—

(1) Section 877 is amended by adding at the end the following new subsection:

“(g) APPLICATION.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after April 1, 2005.”

(2) Section 2107 is amended by adding at the end the following new subsection:

“(f) APPLICATION.—This section shall not apply to any expatriate subject to section 877A.”

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

“(F) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.”

(4)(A) Paragraph (1) of section 6039G(d) is amended by inserting “or 877A” after “section 877”.

(B) The second sentence of section 6039G(e) is amended by inserting “or who relinquishes

United States citizenship (within the meaning of section 877A(e)(3))” after “877(a)”.

(C) Section 6039G(f) is amended by inserting “or 877A(e)(2)(B)” after “877(e)(1)”.

(f) CLERICAL AMENDMENT.—The table of sections for part A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

“Sec. 877A. Tax responsibilities of expatriation.”

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after April 1, 2005.

(2) GIFTS AND BEQUESTS.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after April 1, 2005, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

**SEC. 76. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENT.**

(a) DETERMINATION OF PENALTY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, in the case of an applicable taxpayer—

(A) the determination as to whether any interest or applicable penalty is to be imposed with respect to any arrangement to which any initiative described in paragraph (2) applied, or to any underpayment of Federal income tax attributable to items arising in connection with any arrangement described in paragraph (2), shall be made without regard to section 6664 of the Internal Revenue Code of 1986, and

(B) if any such interest or applicable penalty is imposed, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(2) APPLICABLE TAXPAYER.—For purposes of this subsection, the term “applicable taxpayer” means a taxpayer eligible to participate in—

(A) the Department of the Treasury’s Offshore Voluntary Compliance Initiative, or

(B) the Department of the Treasury’s voluntary disclosure initiative which applies to the taxpayer by reason of the taxpayer’s underreporting of United States income tax liability through financial arrangements which rely on the use of offshore arrangements which were the subject of the initiative described in subparagraph (A).

(b) DEFINITIONS AND RULES.—For purposes of this section—

(1) APPLICABLE PENALTY.—The term “applicable penalty” means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) VOLUNTARY OFFSHORE COMPLIANCE INITIATIVE.—The term “Voluntary Offshore Compliance Initiative” means the program established by the Department of the Treasury in January of 2003 under which any taxpayer was eligible to voluntarily disclose previously undisclosed income on assets placed in offshore accounts and accessed through credit card and other financial arrangements.

(3) PARTICIPATION.—A taxpayer shall be treated as having participated in the Voluntary Offshore Compliance Initiative if the

taxpayer submitted the request in a timely manner and all information requested by the Secretary of the Treasury or his delegate within a reasonable period of time following the request.

(c) **EFFECTIVE DATE.**—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

**SEC. 77. TREASURY REGULATIONS ON FOREIGN TAX CREDIT.**

Section 901 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) **REGULATIONS.**—The Secretary may prescribe regulations disallowing a credit under subsection (a) for all or a portion of any foreign tax, or allocating a foreign tax among 2 or more persons, in cases where the foreign tax is imposed on any person in respect of income of another person or in other cases involving the inappropriate separation of the foreign tax from the related foreign income.”

**SEC. 78. TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT INSTRUMENTS.**

(a) **IN GENERAL.**—Section 1275(d) (relating to regulation authority) is amended—

(1) by striking “The Secretary” and inserting the following:

“(1) **IN GENERAL.**—The Secretary”, and

(2) by adding at the end the following new paragraph:

“(2) **TREATMENT OF CONTINGENT PAYMENT CONVERTIBLE DEBT.**—

“(A) **IN GENERAL.**—In the case of a debt instrument which—

“(i) is convertible into stock of the issuing corporation, into stock or debt of a related party (within the meaning of section 267(b) or 707(b)(1)), or into cash or other property in an amount equal to the approximate value of such stock or debt, and

“(ii) provides for contingent payments,

any regulations which require original issue discount to be determined by reference to the comparable yield of a noncontingent fixed rate debt instrument shall be applied as requiring that such comparable yield be determined by reference to a noncontingent fixed rate debt instrument which is convertible into stock.

“(B) **SPECIAL RULE.**—For purposes of subparagraph (A), the comparable yield shall be determined without taking into account the yield resulting from the conversion of a debt instrument into stock.”

(b) **CROSS REFERENCE.**—Section 163(e)(6) (relating to cross references) is amended by adding at the end the following:

“For the treatment of contingent payment convertible debt, see section 1275(d)(2).”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to debt instruments issued on or after the date of the enactment of this Act.

**SA 129.** Mr. SCHUMER proposed an amendment to amendment SA 121 submitted by Mr. TALENT to the bill S. 256, to amend title 11 of the United States Code, and for other purposes; as follows:

Beginning on page 1 of the amendment, strike all after (4) and insert the following:

“(e)(1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if—

“(A) such transfer was made to a self-settled trust or similar device;

“(B) such transfer was by the debtor; and

“(C) the debtor is a beneficiary of such trust or similar device.

“(2) Paragraph (1) shall not apply to the trusts specified in section 522(d)(12).”

**NOTICES OF HEARINGS/MEETINGS**

**SUBCOMMITTEE ON NATIONAL PARKS**

Mr. THOMAS. Mr. President, I would like to announce for the information of the Senate and the public that the following hearing has been scheduled before the Subcommittee on National Parks of the Committee on Energy and Natural Resources.

The hearing will be held on Tuesday, March 15, at 2:30 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following bills: S. 175, a bill to establish the Bleeding Kansas and Enduring Struggle for Freedom National Heritage Area, and for other purposes; S. 322, a bill to establish the Champlain Valley National Heritage Partnership in the States of Vermont and New York, and for other purposes; S. 323, a bill to authorize the Secretary of the Interior to study the suitability and feasibility of designating the French Colonial Heritage Area in the State of Missouri as a unit of the National Park System, and for other purposes, and S. 429, a bill to establish the Upper Housatonic Valley National Heritage Area in the State of Connecticut and the Commonwealth of Massachusetts, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD-364 Dirksen Senate Office Building, Washington, DC 20510-6150.

For further information, please contact Tom Lillie at (202) 224-5161 or Brian Carlstrom at (202) 224-6293.

**AUTHORITY FOR COMMITTEES TO MEET**

**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS**

Mr. ENZI. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Monday, March 7, 2005, at 2 p.m. to consider the nomination of Michael Jackson to be Deputy Secretary of Homeland Security.

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

**PRIVILEGES OF THE FLOOR**

Mr. HARKIN. Mr. President, I ask unanimous consent that John Anderson of my staff be granted floor privileges for the duration of today’s session.

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

Mr. DURBIN. Mr. President, I ask unanimous consent that Robert Preiss, congressional fellow on my staff, be granted the privilege of the floor for the duration of the session.

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

**ORDER FOR STAR PRINT—S. 6**

Mr. SESSIONS. Mr. President, I ask unanimous consent that S. 6 be star printed with the changes that are at the desk.

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

**MEASURE READ THE FIRST TIME—S. 539**

Mr. SESSIONS. Mr. President, I understand there is a bill at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 539) to amend title 28, United States Code, to provide the protection of habeas corpus for certain incapacitated individuals whose life is in jeopardy, and for other purposes.

Mr. SESSIONS. Mr. President, I now ask for a second reading, and in order to place the bill on the calendar under the provisions of rule 14, I object to my own request.

The PRESIDING OFFICER. Objection having been heard, the bill will receive its second reading on the next legislative day.

**ORDERS FOR TUESDAY, MARCH 8, 2005**

Mr. SESSIONS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:45 a.m. on Tuesday, March 8. I further ask unanimous consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then resume consideration of S. 256, the Bankruptcy Reform Act; provided that at 10:15 the Senate resume consideration of the Schumer amendment as provided under the previous order. I further ask unanimous consent that the Senate recess following the conclusion of the vote on the Schumer amendment until 2:15 p.m.

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

**PROGRAM**

Mr. SESSIONS. Mr. President, tomorrow the Senate will continue its consideration of the bankruptcy bill. Under a previous order, at 10:15, we will resume consideration of the Schumer amendment. There will be 2 hours of debate prior to the 12:15 p.m. vote in