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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

God our Father, we pause in the midst of the changes and challenges of life to receive a fresh experience of Your goodness. You are consistent; You constantly fulfill Your plans and purposes; and You are totally reliable. There is no shadow of turning with You; as You have been, You will be forever. All of Your attributes are summed up in Your goodness. It is the password for Your presence, the metonym for Your majesty, and the synonym for Your strength. Your goodness is generosity that You define. It is Your abundant, unqualified love poured out in graciousness and compassion. You are good when circumstances seem bad. When we ask for Your help, Your goodness can bring what is best out of the most complicated problems.

Thank You for Your goodness given so lavishly to our Nation throughout our history. Today, we turn again to You for Your guidance about what is good for our country. Keep us grounded in Your sovereignty, rooted in Your Commandments, and nurtured by the absolutes of Your truth and righteousness. May Your goodness always be the source of our Nation's greatness. In the Name of our Lord and Savior. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT of Mississippi, is recognized.

SCHEDULE

Mr. LOTT. Mr. President, this morning, the Senate will immediately resume consideration of S. 1301, the Consumer Bankruptcy Protection Act. At long last, I think we are going to be able to complete action on this legislation and get it into conference and give us a good opportunity then to get this work completed by the session's end.

It is expected that several amendments will be offered and debated this morning, with a stacked series of rollcall votes occurring at approximately 11:45 a.m. It looks like there will be two votes, probably, in that sequence, at 11:45. Those votes will hopefully include passage of bankruptcy legislation. Following disposition of that bill, the Senate may consider any other legislative or executive items cleared for action.

At this time, I believe we will probably go to the Internet taxation bill. Although we have had discussions with the Democratic leadership, no further agreements have been reached on other bills. I wanted to put the managers of that legislation, Internet taxation, on notice that we may very well go to that, which would be shortly in the afternoon.

From 10 until 11 o'clock, there will be a ceremony in the Rotunda where the Hon. Nelson Mandela will receive the Congressional Gold Medal. A number of Senators will be involved in that ceremony. We will continue to work on this bill, but we will defer votes until after that ceremony is over.

I yield the floor.

CONSUMER BANKRUPTCY REFORM ACT OF 1998

The PRESIDING OFFICER (Mr. BENNETT). Under the previous order, the Senate will now resume consideration of S. 1301, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1301) to amend title 11, United States Code, to provide for consumer bankruptcy protection, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Lott (for Grassley/Hatch) Amendment No. 3559, in the nature of a substitute.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I thank the majority leader for announcing the schedule this morning. Those who have followed the last few days of Senate debate know we are considering a reform of the bankruptcy code. We will be joined shortly by the Senator from Connecticut, Senator DODD, who will offer an amendment.

For those who have not paid attention to this debate, I hope that they have followed at least the outline of it and understand that what we are about is to try to change the bankruptcy code in a way that will reduce abusive filings—in other words, people who may be going into bankruptcy court to file for bankruptcy in a situation where they can, in fact, pay back either their debts or a sizable portion of those debts. We have tried to address this at several different levels. We have had a spirited debate about how to do it.

We understand the complexity of this. Historically, there has been a national commission which has taken a look at this rather complicated area of the law. I find myself in an unusual position here, having worked with my staff and studied this issue for a year, because I come to this with an interesting experience when it comes to bankruptcy law. Thirty years ago, I took a course in bankruptcy in law school. Twenty years ago, I was appointed trustee of a bankruptcy in my hometown of Springfield, IL, in one case. Now I bring that wealth of experience to this debate in an attempt to try to find our way through a very complicated area of the law. It was interesting.

Yesterday, when I spoke to a colleague of mine about bankruptcy, she

had said that she was surprised to learn how few people file bankruptcy with incomes over $50,000 a year. I told her that the average income of a person filing for bankruptcy in the United States of America is less than $18,000. So folks who are going into bankruptcy court, by and large, are people of very limited means. The average debt of the person going into bankruptcy court is about $28,000.

So if we are out to stop the high rollers and the abusers of the system, I hope that we take care in this bill, as well as in conference, to protect the vast majority of people petitioning the bankruptcy court for relief of their debts, who are, in fact, in lower-income categories, with a debt that is beyond their comprehension or at least their control.

As we go about these changes, I am glad to see that we have included amendments that not only try to tighten up the procedures in the bankruptcy court, but also say to the people in the credit industry that they have an equal obligation here. We want you to continue to extend credit across America so that American families and businesses can use credit cards and second mortgages and other things to finance their lives and businesses; but we want you to be certain that you follow some rules, too.

We have talked a lot about personal responsibility here when it comes to consumers. I think that is a valid observation. We also want to speak to corporate responsibility, so that those who are peddling these credit cards around the country, in fact, give full disclosure to the would-be consumers about the terms. Many of us will go home tonight and look through the mail, and you know what you are going to find—a stack of preapproved credit card applications. It is luring. People say: This can be easy. I will take all my debts and put them on one card. Look at this low interest rate; this is terrific. Let's do this right away.

Yet, they find that it is a teaser rate and only applies for a few months. If they decide in some instances to pay off their credit card at the end of each month, they may face a penalty. Yes, a penalty for paying off the balance on your card because, of course, the company makes money if you continue to really roll over the debt month after month and pay interest.

Senator REED of Rhode Island successfully offered an amendment that said that you have to have full disclosure if that is going to occur, and other amendments in this bill try to say to the consumers that you have a right to know, too. For example, if you pay the minimum monthly balance on your credit card, we have a provision in this bill that says you should state right under it how long it will take to pay off the credit card debt and how much you will pay in interest if you pay the minimum monthly amount.

So we are trying to strike a balance here—a balance that says those who come into court have to be, in fact, deserving of bankruptcy procedure, and that those who extend credit in this country have to be more open and honest in the way that they deal with consumers. I think that is the right balance. It still puts the burden on each of us to make the right decisions for ourselves and our families. It gives us the information about the credit card companies to make that decision more knowledgeably and with an understanding of what we are getting into.

At this time, I see my colleague from the State of Connecticut is here to offer his amendment under the unanimous consent agreement.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Connecticut is recognized to offer an amendment regarding student loans on which there will be 15 minutes: 10 minutes under the control of the Senator from Connecticut, and 5 minutes under the control of the Senator from Iowa.

The Senator from Connecticut.

Mr. DODD. Mr. President, first of all, we want to wrap this bill up, I gather, fairly quickly. I want to extend my congratulations to Senator GRASSLEY of Iowa, Senator HATCH, my colleague from Utah, and Senator DURBIN, the manager for this side of the aisle on this legislation. It has been a long journey for them, I know, in committee in trying to deal with this legislation. I am particularly grateful for the courtesies which they have extended to me, and for the various ideas we have had for inclusion in this legislation.

AMENDMENT NO. 3614 TO AMENDMENT NO. 3559

(Purpose: To improve certain bankruptcy procedures relating to dependent children)

Mr. DODD. Mr. President, with that in mind, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Connecticut (Mr. DODD) proposes an amendment numbered 3614 to amendment No. 3559.

Mr. DODD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . PROTECTION OF SAVINGS EARMARKED FOR THE POSTSECONDARY EDUCATION OF CHILDREN.—Section 541(b) of title 11, United States Code, as amended by section 403 of this Act is amended—

(1) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(2) by inserting after paragraph (6) the following:

''(7) except as otherwise provided under applicable State law, any funds placed in a qualified State tuition program (as described in section 529(b) of the Internal Revenue Code of 1986) at least 180 days before the date of entry of the order for relief; or

''(8) any funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) at least 180 days before the date of entry of the order for relief.''.

Mr. DODD. Mr. President, this amendment is a third amendment to two others that have been offered and have actually been included in the managers' amendment.

I thank, again, Senator HATCH, Senator DURBIN, Senator GRASSLEY, and others for their consideration.

This amendment, the third, is designed to protect children who through no fault of their own are involved in bankruptcy. It provides legal and legitimate college savings accounts established for the benefit of children which will be beyond the reach of creditors.

This amendment parallels Senator HATCH's provisions to protect retirement savings accounts, and particularly contains measures to prevent fraudulent transfers of assets intended solely to avoid the rightful reach of creditors. So we have written into this the exact same kind of parallel provisions that the seniors' retirement accounts include.

The amendment complements other provisions that are included in the managers' amendment. Those provisions ensure that the lawful funds for the benefit of children—such as child support, disability payments, and foster care payments—would also be preserved for children and not creditors.

Again, that goes back almost 100 years in trying to see to it that innocent children are not going to be harmed and hurt as a result of this process.

In addition, we agreed that household goods exclusively and primarily for children, such as toys, children's furnishings, and items used by parents provided for their children, would also be protected.

Again, it was a consensus. I commend my colleagues for recognizing that these issues are important as well.

Taken together, the provisions of this amendment and the managers' amendment will continue the 95-year-old principle of the bankruptcy code that women and children must be first in bankrupt credit alliances.

I believe that these important improvements in the bill reinforce the historic protections that are given families in bankruptcy proceedings. Those who are innocent and most vulnerable deserve the most protection.

I am very grateful, as I said a moment ago, to the chairman of the full committee and the subcommittee and the ranking member, Senator DURBIN, who has worked hard to ensure these protections for children and families were not weakened in the pending legislation.

In the rush that was going on around here a number of weeks ago, we almost blew by these historic protections which we provide for families. As a result of their leadership, these protections have been included in legislation. I am confident that in conference they will preserve them.

This amendment would strengthen the principle that children ought to come before credit card companies. Legal proceedings, including bankruptcy proceedings, should be designed to protect against the impoverishment of children and innocent adults. Otherwise, impoverishment will produce dependency, in which case no one wins—neither the individual impoverished, nor the credit card company.

I also would like to express for the record my concern that my colleagues in conference firmly support the Senate legislation. I think it is critically important that we hold these provisions.

Again, we all recognize the importance of this legislation. There has been a flood of people taking advantage of the Bankruptcy Act. Too many have been doing that. This legislation is going to tighten that up considerably. But I think as we call for a higher degree of responsibility on the part of our citizenry when it comes to their fiscal and financial responsibility, it is also incumbent that we ask the credit card companies to exercise responsibility as well.

This legislation, I think, strikes a good balance between stopping the incredible amount of people taking advantage of the Bankruptcy Act with little or no repercussions, it would appear, and also seeing to it that the innocents—particularly children—are not going to be adversely affected by this process.

As has been noted by some of our colleagues over the last week or so, as you consider this bill, just last year alone 3 billion credit card solicitations were sent out across this country, many with already preapproved proposals.

I hope that credit card companies will exercise some restraint and responsibility in trying to slow down what is an exploding amount of consumer debt in this country. During good times, no one talks about it much. But when you get a downturn in the economy, it becomes a major problem. There is corporate debt, and consumer debt. We have to try to get a better handle on it.

I am very grateful to the managers of the legislation—I see my colleague from Iowa has arrived on the floor as well as the Senator from Utah—and for their consideration of this amendment.

As I said, it tracks Senator HATCH's very good amendment on seniors' retirement accounts to see to it that education is going to be something that we continue to support as strongly as we have for the 21st century because of rising college costs, to see to it that these educational accounts are going to be for the children that need them. I think it is a very wise decision. Indeed, I am grateful for their support.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I would like to commend my colleague, the distinguished Senator from Connecticut, for his initiative on this particular amendment, as well as his contributions to this legislation as a whole.

We have worked closely on several issues on this bankruptcy legislation, including providing for enhanced protection of domestic and child support payments in bankruptcy. And I have appreciated both his and his staff's dedication, sincerity, and cooperation on this important bankruptcy legislation.

I am sure my colleague, the chairman of the subcommittee, Senator GRASSLEY, feels the same way.

Mr. President, this amendment is well intentioned. I fully support the policy of providing enhanced protections for educational savings accounts in bankruptcy. That is why we have agreed to this amendment. However, Senator DODD is aware that I have some concerns with the amendment as currently drafted, because it may have the unintended consequence of encouraging and rewarding fraud and abuse in bankruptcy.

I thank the Senator from Connecticut for agreeing to work with us on this amendment as this legislation progresses to ensure that it will do just what it is intended to do; that is, protect funds that have been set aside for the education of the child of the debtor.

Some of my specific concerns include the fact that under the amendment as currently drafted the debtor will not have to disclose the existence of these accounts in any way in the bankruptcy case, or the schedules filed with the court because they are deemed ''not the property of the estate.'' The trustees will not even know these accounts exist, and they cannot be audited.

I would like to see these accounts to be created exempt properties of the estate of the bankrupt similar to the treatment we have given pension plans and retirement savings accounts in this legislation.

Moreover, we need to place some limits on these accounts to prevent them from becoming bankruptcy shelters for those seeking to abuse the bankruptcy system as a financial planning tool.

Again, this could be done by placing limits similar to those we have imposed on individual retirement accounts and the way we have done that.

Finally, we need to ensure that the funds protected in such accounts will actually be spent on the education of the bankrupt's child, not simply withdrawn after bankruptcy to be used as the bankruptcy wishes, leaving the future education of the child in jeopardy.

I know that the Senator from Connecticut shares my concerns that this amendment not provide a new means for fraud and abuse.

Again, I thank him and his staff for their willingness to work with us to address these concerns.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, before we accept this amendment—I understand that we will do that, and I prefer that we do—I commend the Senator from Connecticut for his hard work on this issue. I have to say that I think the Senator is on to something here. We ought to encourage parents, obviously, to save for education and to protect these savings in bankruptcies. So philosophically we are all on the same page.

The problem in a situation like this is the devil is in the details, especially when it comes to making changes to the bankruptcy code.

I want to express my concern that the amendment of the Senator from Connecticut could unintentionally open a loophole for abuse. I understand that the Senator from Connecticut is also concerned about this and that he does not want any unintended consequences of his amendment which would allow for more bankruptcy abuse.

Accordingly, I intend to continue working to improve this amendment so that it accomplishes its goal without giving crooks an opportunity to hide and shield their assets during bankruptcy proceedings.

I had similar concerns about the amendment that Senator HATCH offered to protect retirement savings. I think we worked hard and good and accomplished a lot with Senator HATCH to tighten up that amendment.

As a result, the amendment that we passed to protect the retirement accounts is better and less subject to abuse. I am sure that we can improve the amendment by Senator DODD in the same way.

I yield the floor.

Mr. DODD. Mr. President, I ask my colleague to yield for a minute on that point, if I could. Let me again thank him for his courtesies and his staff's courtesies over the last number of days in working this out. He has made a very good point. What we will certainly try to do here—and I agree with him—is to see to it that this amendment, the safeguard aspects of it, conform in many ways—exactly, if it is not the case—with the retirement savings accounts since both are parallel ideas. I have instructed my staff to work with the Senator's staff to iron out those details, to check this out thoroughly. Obviously, I think we all agree this is needed to protect the long-term education needs of families, but obviously—and I want to state it very clearly—it certainly also is our intention to see to it that people are not given an opportunity to avoid their responsibilities when it comes to their financial matters. So we think we can do that pretty effectively.

My intention and that of the Senator from Iowa is to see that it is done before this bill goes to the President for his signature. I thank him again for his support.

The PRESIDING OFFICER. Who yields time?

Mr. GRASSLEY. We will yield back the time, if there is any on this side, on this Dodd amendment.

Mr. DODD. I yield back the time.

The PRESIDING OFFICER. Under the previous order, the Dodd amendment No. 3614 is agreed to and the motion to reconsider the vote is laid upon the table.

The amendment (No. 3614) was agreed to.

AMENDMENT NO. 3599 TO AMENDMENT NO. 3559

(Purpose: To express the sense of the Senate regarding misuse of the homestead exemption to the bankruptcy laws)

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin, Mr. KOHL, is recognized to offer an amendment under a time limit of 10 minutes under his control and 5 minutes under the control of the Senator from Iowa.

Mr. KOHL. I thank the Chair.

Today I rise to offer an amendment to reaffirm the Senate's commitment to cap the homestead exemption. The Kohl-Sessions homestead cap is already in the bill, but a sense of the Senate on this issue is important. It sends a message to the House, which does not have a homestead cap in its bill, that this provision is essential to meaningful bankruptcy reform. The $100,000 cap in the homestead exemption is a bipartisan measure I offered with Senator SESSIONS which was endorsed by Senator GRASSLEY and was approved unanimously in subcommittee. It also has the endorsement of the congressionally appointed National Bankruptcy Review Commission.

Our bipartisan measure closes a loophole that allows too many debtors to keep their luxury homes while their legitimate creditors, such as children, ex-spousal alimony, State governments, universities, retailers, and banks, get left out in the cold. Currently, five States—Florida, Texas, Kansas, Iowa, and South Dakota—allow debtors to protect their homes no matter how high their value. And time after time, millionaire debtors take advantage of this loophole by moving to expensive homes in these States, especially Florida and Texas, and then declare bankruptcy, yet continue to live in a style which is not appropriate to their circumstances. Let me give you just a few examples.

A failed Ohio savings and loan owner, who was convicted of securities fraud, wrote off almost $300 million in bankruptcy claims but still held onto the multimillion-dollar ranch that he bought in Florida. A convicted Wall Street financier filed bankruptcy while owing at least $50 million in debts and fines but still kept his $5 million mansion with 11 bedrooms and 21 bathrooms. After his law firm went bankrupt and creditors were already in the process of seizing his two homes in the New York area, former Baseball Commissioner Bowie Kuhn fled to a new $1 million home in Florida although he and his partners were on the line for $100 million. This may not be the most common abuse of the bankruptcy system but it is the most egregious. And given this record, it is not surprising to hear complaints that bankruptcy is no longer used as a tool of last resort and that it has become just another kind of financial planning. If we really want to restore the stigma attached to bankruptcy, these high-profile abuses are the best places to start.

Mr. President, our $100,000 homestead cap will stop these abuses, and unless we keep it in the bill in conference we will not really have bankruptcy reform at all, in my opinion. So I urge my colleagues to support this resolution.

At this point I send my amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. KOHL] proposes an amendment numbered 3599 to Amendment No. 3559.

Mr. KOHL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. ___. SENSE OF THE SENATE REGARDING THE HOMESTEAD EXEMPTION.

(a) FINDINGS.—The Senate finds that—

(1) one of the most flagrant abuses of the bankruptcy system involves misuse of the homestead exemption, which allows a debtor to exempt his or her home, up to a certain value, as established by State law, from being sold off to satisfy debts;

(2) while the vast majority of States responsibly cap the exemption at not more than $40,000, 5 States exempt homes regardless of their value;

(3) in the few States with unlimited homestead exemptions, debtors can shield their assets in luxury homes while legitimate creditors get little or nothing;

(4) beneficiaries of the homestead exemption include convicted insider traders and savings and loan criminals, while short-changed creditors include children, spouses, governments, and banks; and

(5) the homestead exemption should be capped at $100,000 to prevent such high-profile abuses.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) meaningful bankruptcy reform cannot be achieved without capping the homestead exemption; and

(2) bankruptcy reform legislation should include a cap of $100,000 on the homestead exemption to the bankruptcy laws.

Mr. KOHL. I believe that Senator SESSIONS is prepared to come down to the floor to talk on behalf of this amendment, and while he is on his way I suggest the absence of a quorum.

Mr. GRASSLEY. Mr. President, before that happens, could I have the floor, please.

The PRESIDING OFFICER. Will the Senator withhold his request?

Mr. KOHL. I will.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. First of all, before I speak on this amendment, I want to make clear that everybody in this body ought to know that this issue is before us both as part of the bill and now on a motion to instruct because of the hard work of the Senator from Wisconsin. He is to be commended for that because there is abuse in this area and our bill reflects that.

So I say to the other 99 Members of this body—and also it would include people who are helping Senator KOHL on this amendment—Senator KOHL should be recognized as a leader in this area to bring some uniformity to our bankruptcy code among the 50 States to stop a very serious abuse. I have been trying to work with the Senator from Wisconsin, supporting his amendment to cap homesteads since he offered that amendment in the subcommittee markup. In fact, he was the very first Senator to be recognized in our subcommittee when we had the markup of this bill. He was successful there.

In the last Congress, I accepted Senator KOHL's amendment to cap homesteads at $500,000. This principle actually passed the Senate unanimously at the end of the 104th Congress, but the House failed to act on the technical corrections bill to which the homestead matter was attached.

In this Congress, the idea of capping homesteads is a genuine bipartisan one, and I know both the Senator from Wisconsin and the junior Senator from Alabama are strong supporters of the $100,000 cap currently in this bill. But the fact is that the other body has passed a bill which does not have homestead caps. In other words, we have a key difference between House and Senate bills on this point.

Obviously, I support the Senate bill, which I have worked on so hard with Senator DURBIN, but I don't want to go into the conference situation with my hands tied in any way. Some have tried to get me to do this on other provisions in this legislation, and to do so prior to conference. I have resisted all efforts in this area. I am compelled to resist this effort of instructing conferees. However, I am not going to object to this sense of the Senate going into my bill since it restates what is already in the legislation, and I think that restatement is a perfectly legitimate thing for us to do this way. And so from that standpoint, I compliment Senator KOHL for his continued hard work and his efforts.

I yield the floor.

Mr. KOHL. I yield to Senator DURBIN.

Mr. DURBIN. I thank the Chair.

I thank the Senator from Wisconsin and I rise in strong support of his resolution.

Let's understand what we are talking about. We decided long ago that if a person filed bankruptcy, we would allow them to protect certain things that we considered essential, and one of those things was a home. Now, of course, that is understandable; 50 percent of the people filing for bankruptcy are homeowners; but we left it to the States to come up with the amount of money that your home could be worth, and you could exempt it.

As a consequence, with 50 different States, we have basically 50 different approaches. Some of these approaches, unfortunately, have led to abuse. The Senator from Wisconsin described two or three cases where people literally owed millions of dollars and quickly raced out to buy a multimillion-dollar home to put everything they could into it and to basically guard it away from any creditor in bankruptcy. I do not think that is what we had in mind when we put the homestead exemption in place. It was a legitimate effort to protect someone's home.

I see the Senator from Alabama has taken the floor. I congratulate him, Senator SESSIONS, as well as Senator KOHL for their leadership here.

Let me tell you why I think this is important. The idea behind this bill was to stop the abuses in bankruptcy. Professor Elizabeth Warren of Harvard Law School, whom I have really come to respect for her knowledge of this subject, calls the disparity among State homestead exemptions ''the biggest single scandal in the consumer bankruptcy system.''

To think, in the instance of a doctor in Miami who refused to carry malpractice insurance, who was sued by four different people, one of them a person who lost a leg, and then when they went to collect against the doctor personally, because he had no insurance, he basically hid behind the homestead exemption and said, ''Everything I own is in my home and you cannot touch it''—that really is an abuse of the system. I am glad Senator SESSIONS and Senator KOHL have shown leadership on this and I am happy to support their efforts.

Mr. KOHL. Does Senator SESSIONS wish to speak?

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank Senator KOHL and Senator DURBIN for their leadership and commitment on this issue and others. This is simply a matter of fairness. The Constitution of the United States authorizes the bankruptcy system and provides for Congress to establish uniform bankruptcy laws. That is a matter that is without dispute. All bankruptcy cases are held in Federal court. It is not too much to ask, since we set every other rule involving bankruptcy, that this body would consider the abuses that arise from the disparity in treatment of homesteads throughout the country. It is really a shocking matter.

The New York Times has written about this on a number of occasions and has given some of the examples that are afoot.

The First American Bank and Trust Company in Lake Worth, FL, closed in 1989, and its chief executive, Roy Talmo, filed for personal bankruptcy in 1993. Despite owing $6.8 million, Mr. Talmo was able to exempt a bounty of assets. During the proceedings, he drove around Miami in a Rolls-Royce and tended the grounds of his $800,000 tree farm in Boynton Beach. Never one to slum it, Mr. Talmo had a 7,000 square-foot mansion with five fireplaces, 16th century European doors and a Spanish-style courtyard, all on a 30-acre lot. Yet in Mr. Talmo's estimation, this was chintzy. He also owned an adjacent 112 acres and he tried to add those acres to his homestead.

The court finally refused to allow this 112 acres, but he was able to keep his homestead, live in this huge house, and keep all this money that ought to have been shared with his creditors. Bankruptcy is to help people start over again. It is not to help them defeat their creditors and remain millionaires.

There is example after example in this New York Times article. Talmadge Wayne Tinsley maintained his house during bankruptcy and then he sold his house for $3.5 million, using the proceeds to write a check to the Internal Revenue Service and another one to pay off the mortgage. That left him $700,000 after closing costs and other expenses were deducted from the proceeds.

In other words, if you have a multimillion-dollar mansion and go into bankruptcy, you put all your money—except what is in your house—into the bankruptcy pot that trickles out to the people to whom you owe money. You keep the house. As soon as your bankruptcy is over, you can turn around and sell this multimillion-dollar house and live like a king. That is why people are moving to Florida and Texas on the eve of filing bankruptcy.

I live in Alabama. We have a very low homestead exemption, but it is only 50 miles from my home of Mobile to Pensacola, FL. Somebody from Mobile could easily move to Pensacola, buy a huge beach home, and then defraud his Alabama creditors.

Some think this is a State matter. Senator KOHL talked about this. They say it is an advantage to the State. But the truth is, 90 percent of the people who abuse this system on the homestead—90 percent of their debts are going to be debts in their own State. So really it is a situation in which we have some Senators who are supposedly protecting State interests, but really they are not. I encourage these Senators to think about it. They are not protecting State interests because what this does is allow a scandal to take place. The people who most frequent lose in this process will be the lenders in their own States. That is just not fair. I believe the Bankruptcy Commission has listed this as one of their top priorities for reform.

I can see how some Senators may not really be familiar with the bankruptcy process and might think they want to preserve their State systems. But bankruptcy is a classical Federal matter. It is set forth in the Constitution as a Federal matter. All bankruptcy cases are handled in Federal court, not State courts, and the bankruptcy court sets all the rules in almost every category. This is just one that we have, by tradition, allowed to be nonuniform. As a matter of fact, it has been challenged in the Supreme Court, on the basis that the nonuniformity violates the Constitution.

The PRESIDING OFFICER (Mr. BROWNBACK). The time of the Senator has expired.

Mr. SESSIONS. Mr. President, I thank Senator KOHL for his leadership.

Mr. KOHL. Mr. President, I end by suggesting this is a very important piece of legislation. I am concerned, if we do not have it in the final piece of legislation, that the administration will veto the Bankruptcy Reform Act. So I stress, we need to see to it that the conference report contains this homestead cap of $100,000.

The PRESIDING OFFICER. The Senator from Iowa has 1 minute 30 seconds.

Mr. GRASSLEY. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. Under the previous order, the KOHL amendment, No. 3599, is agreed to. The motion to reconsider the vote is laid upon the table.

The amendment (No. 3599) was agreed to.

AMENDMENT NO. 3615 TO AMENDMENT NO. 3559

(Purpose: To provide for a study and report by the Board of Governors of the Federal Reserve System regarding credit industry practices)

The PRESIDING OFFICER. The hour of 10 a.m. having arrived, under the previous order, the Senator from California, Mrs. FEINSTEIN, is recognized to speak for up to 10 minutes.

Mrs. FEINSTEIN. Mr. President, on behalf of Senator DURBIN, Senator JEFFORDS, and myself, I send an amendment to the desk.

The PRESIDING OFFICER. Is there objection to considering this amendment at this time?

Mr. GRASSLEY. Mr. President, reserving the right to object.

The PRESIDING OFFICER. Is there objection?

Without objection, the clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself, Mr. DURBIN and Mr. JEFFORDS, proposes an amendment numbered 3615 to amendment no. 3559.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place in title VII, insert the following:

SEC. . ENCOURAGING CREDITWORTHINESS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) certain lenders may sometimes offer credit to consumers indiscriminately, without taking steps to ensure that consumers are capable of repaying the resulting debt, and in a manner which may encourage certain consumers to accumulate additional debt; and

(2) resulting consumer debt may increasingly be a major contributing factor to consumer insolvency.

(b) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System (hereafter in this section referred to as the ''Board'') shall conduct a study of—

(1) consumer credit industry practices of soliciting and extending credit—

(A) indiscriminately;

(B) without taking steps to ensure that consumers are capable of repaying the resulting debt; and

(C) in a manner that encourages consumers to accumulate additional debt; and

(2) the effects of such practices on consumer debt and insolvency.

(c) REPORT AND REGULATIONS.—Not later than 24 months after the date of enactment of this Act, the Board—

(1) shall make public a report on its findings with respect to the credit industry's indiscriminate solicitation and extension of credit;

(2) may issue regulations that would require additional disclosures to consumers; and

(3) may take any other actions, consistent with its existing statutory authority, that the Board finds necessary to ensure responsible industrywide practices and to prevent resulting consumer debt and insolvency.

Mrs. FEINSTEIN. Mr. President, I support S. 1301, and intend to vote for its passage. It gives bankruptcy judges the tools they need to require that capable debtors take responsibility for their debts. Furthermore, it does so in a manner that empowers bankruptcy judges to seek solutions to consumer insolvency, rather than straitjacketing them with a strict formula. Finally, S. 1301 contains strengthened provisions to protect the priority of child support and spousal support, which I supported in the Judiciary Committee.

Responsibility cannot be a one-way street, however. The blame for the current record number of consumer bankruptcies lies not only with unsound consumer spending habits, but often with unwise and irresponsible lending practices that facilitate and even foster such recklessness. This amendment aims to deter such recklessness in credit practices.

It authorizes the Federal Reserve Board to conduct a study of industry practices of soliciting and extending credit indiscriminately, without taking steps to ensure that consumers are capable of repaying their debt, or in a manner that encourages consumers to accumulate additional debt. The Federal Reserve Board is further authorized to study the effects of such practices on consumer debt and insolvency.

Within two years of enactment, the Federal Reserve Board will make public a report on its findings, regarding the credit industry's indiscriminate solicitation and extension of credit.

The amendment allows the Federal Reserve Board to issue regulations that would require additional disclosures to consumers, and to take any other actions, consistent with its statutory authority, that the board finds necessary to ensure responsible industrywide practices and to prevent resulting consumer debt and insolvency.

This amendment directly addresses one of the major causes of personal bankruptcies: bad consumer debt.

It's a simple matter of arithmetic. The typical family filing bankruptcy in 1997 owed more than one-and-a-half times its annual income in short-term, high interest debt. This means that the average family in bankruptcy, with a median income of just over $17,500, had $26,500 in credit card and other short-term, high interest debt.

Studies by the Congressional Budget Office, the FDIC, and independent economists all link the rise in personal bankruptcies directly to the rise in consumer debt.

Last year, the credit card industry sent out a record 3.1 billion unsolicited offers. That's 30 solicitations to every household in America. The number of solicitations jumped 20% last year alone. Based on industry estimates, between 1992 and 1996, credit card companies offered about a million dollars of credit to every household in the United States.

There are well over a billion cards in circulation—a dozen credit cards for every household in the country. Three-quarters of all households have a least one credit card, and three out of four of them also carry credit card debt from month to month.

Not surprisingly, credit card debt has increased accordingly. Credit card debt doubled between 1993 and 1997: The amount of credit card debt outstanding at the end of 1997 was $422 billion, twice as much as the amount in 1993.

Credit card usage has grown fastest in recent years among debtors with the lowest incomes. Since the early 1990's, Americans with incomes below the poverty level nearly doubled their credit card usage, and those in the $10,000–25,000 income bracket came in a close second in the rise in debt. The result is not surprising: 27% of the under-$10,000 families have consumer debt that is more than 40% of their income. Nearly one in ten has at least one debt that is more than sixty days past due. These are the families for whom real income has actually declined since 1989.

Credit card issuers earn about 75% of their revenues from the interest paid by borrowers who do not pay in full each month. Several companies have instituted charges or even canceled credit cards for customers who pay in full each month, preferring customers with large credit balances who pay minimum monthly payments.

As bankruptcy levels have risen, total credit card profitability has grown—credit card lending is now twice as profitable as all other lending activities. In the third quarter of 1997, credit card banks showed a 2.59% return on assets, compared to a 1.22% return on assets reported by all commercial banks.

This amendment most likely would not affect the vast majority of the credit card industry, who responsibly check consumer credit history before issuing or ''pre-approving'' credit cards. Representatives of large credit card issuers such as Bank of America have assured me and my staff that they do not provide credit cards to consumers without a thorough credit history check.

However, I should note that every credit card issuer that I and my staff spoke with said that one thing they do not check is income. In other words, credit card issuers have no idea whether persons to whom they issue credit cards have the means to pay their bills each month.

Furthermore, major credit cards such as Visa and Mastercard do not require banks who issue their cards to check credit history.

This bill would affect lenders who fail to even inquire into a consumer's ability to pay, or those who specifically target consumers who can't or won't repay balances.

A growing segment of the credit industry known as ''sub-prime'' lenders increasingly searches for risky borrowers, who they know will make inappropriately low minimum monthly payments, carry large monthly balances from month to month, and pay high interest rates. Such lending has become the fastest growing, most-profitable subset of consumer lending. Although losses are substantial, interest rates of 18 to 40% on credit card debt make this lending profitable.

Many of these often relatively unsophisticated borrowers don't realize that minimum monthly payments just put them deeper in a hole, which in many cases leads to bankruptcy. For example, industry analysts estimate that, using a typical minimum monthly payment rate on a credit card, in order to pay off a $2,500 balance—assuming the consumer never used the card to charge anything else ever again—it would take 34 years to pay off the balance, and total payments would exceed 300% of the original principal.

The FDIC observes that by marketing high-risk debt to customers who are at substantial risk for non-payment, credit card issuers have contributed to the rise in consumer bankruptcies.

On May 2, 1997, the FDIC issued warnings to banks about the risks posed by increased subprime lending. Some industry analysts predict that overall loan default rates will double by the year 2001 and thus warn that ''by lowering their credit standards and saturating the market with loans, many banks will be unable to avoid potentially enormous delinquencies and write-offs.''

Subprime lending is growing even among reputable lenders. Senator LAUCH FAIRCLOTH, who notes that he ''abhors . . . constraints on the private sector,'' recently stated about the subprime market: ''We have very reputable, very fine institutions, spinning off subsidiaries to get into what I would consider very precarious, reckless, bordering on sleazebag lending.''

Since the Senate Judiciary Committee considered this bill in June, I have received examples from constituents of credit card companies who offer credit

cards to persons who are wholly unable to afford them. I have also had my staff review solicitations they have received.

I want to give you some examples of the sort of inappropriate credit card solicitations my constituents and my staff have received.

A constituent from San Ramon, CA, wrote that her 7-year old son received a ''charter membership offer'' for a Visa Signature Card. The constituent writes:

If banks are offering bankcards to small children, who else (or what else) are they offering them to. This kind of unsolicited mail is ridiculous.

This is not an isolated occurrence. Both sons of a staff member who works in my San Francisco office received credit card offers—and they're 12 and 15 years old. The 12-year-old is an eighth grader, with no income other than a $25 a month allowance and gifts from his grandmother and holiday and birthday gifts. He is a Star Trek fan, and he was offered a ''Star Trek Platinum Plus MasterCard,'' with up to $100,000 in credit. The card features discounts on Star Trek merchandise and entertainment events. The solicitation noted an introductory 3.9 percent annual percentage rate in large, bold print. The small print on the back explains that the rate applies only to initial balance transfers and cash advance checks. The actual annual percentage rate is 14.99 percent.

The 12-year-old's 15-year-old brother was also offered a credit line of up to $100,000 on the ''First USA Platinum MasterCard for Science Fiction Enthusiasts.'' This card offered a free space pen and a 9.99 percent ''fixed'' annual percentage rate. The small print explained that if payment is received ''late'' twice in any 6-month period, the annual percentage rate balloons to 19.99 percent. If payment is not received for 2 consecutive months, the rate balloons further to 22.99 percent.

It's not just children. A constituent from Lakewood, CA, wrote to me last month:

I am sending to you [a solicitation] which I received in the mail yesterday. It was addressed to my mother and was offering her a platinum credit card with a $100,000 credit line. What's wrong with this? My mother's been dead for seven years!

The constituent continues:

What really bugs me about this is that credit card companies send out these solicitations for their plastic cards and then when they get burned, they start crying foul. They want all kinds of laws passed to protect them from taking hits when it's their own practices that caused the problem.

A 22-year-old constituent from Pacifica, CA, who makes $25,000 a year, was offered 3 platinum cards with a credit limit of up to $100,000 on each card. Two of the cards advertised in large, bold print, ''introductory'' annual percentage rates of 3.9 percent for cash advance checks and balance transfers. The fine print on both cards disclosed the actual annual percentage rates on purchases of 14.99 percent. The other card offered free mileage on US Airways. The fine print disclosed its annual percentage rate as 18.4 percent; 21.9 percent if the account is in default.

Another constituent, also from Pacifica, CA, who is unemployed, was offered a platinum card with an up to $50,000 credit line. As with a number of these offers, the solicitation boldly advertised an ''introductory'' annual percentage rate of 3.9 percent for cash advance checks and balance transfers, but the fine print on both cards disclosed the actual annual percentage rate on purchases of 14.99 percent. The other card offered free mileage on US Airways.

Besides low introductory interest rates, which inevitably balloon, and frequent flier miles, the range of gifts offered to induce people to take on new credit cards is incredible. In the past couple of months that I have been asking my staff to save solicitations, ''free'' gifts offered to them—and to me—to take on new credit cards, have included everything from: free telephone calling cards, to transistor radios, attaché cases, Godiva chocolates, Waterford crystal, and electronic organizers.

And the credit card companies are anything if not persistent. Over the past couple months, one of my staff members has received 4 offers for second mortgages, totaling $75,000 in credit, one of which was sent twice; $230,000 in credit, with free gifts as incentives; and a ''college alumni'' card, offering a ''third opportunity'' to apply.

These sort of come-on's, targeting people who oftentimes are simply incapable of affording the credit card, are by no means unique to Californians.

Bankruptcy Judge John Akard of the Northern District of Texas wrote that the attorneys for one couple who filed Chapter 13 bankruptcy asked them to record solicitations received after filing for bankruptcy. The received over 50 solicitations over the next 24 months, offering cumulatively over $2 million in credit; 25 of these were ''preapproved.''

Consumer bankruptcy attorneys tell my staff that some companies send credit cards to bankruptcy filers courtesy of their bankruptcy attorneys.

In fact, a staff member informed me that when he did pro bono work for indigent people filing bankruptcy, the pro bono attorneys had to constantly tell the bankruptcy filers not to take on new credit cards, which credit card companies targeted to them, knowing that they could not disavow their debt for a period of six years following bankruptcy.

In many cases, credit cards offered to consumers who have no ability to repay them and no reason having them is a direct cause of personal bankruptcy. The U.S. Bankruptcy Trustee for the Southern District of California provided my office with some examples, taken directly from the rolls of recent bankruptcy filers in San Diego: One bankruptcy filer had $41,989 in debt, run up on 25 retail and credit cards—but only $17,520 in yearly income; another bankruptcy filer, had $23,826 in debt, run up on 6 credit cards and 7 retail cards—and only $4,320 in yearly income; still another bankruptcy filer had $28,054 in debt, run up on 6 credit cards and 9 retail cards, but only $11,520 in yearly income; and in the most egregious case, one filer had $97,372 in debt, run up on a total of 26 cards—13 credit cards and 13 retail cards—and had no yearly income. Another filer had over $50,000 in debt run up on 7 credit cards—and no yearly income.

Similarly, the United States Trustee for the Northern District of California provided my office with a case study of some of the recent bankruptcy cases filed in San Francisco; a ''naturopath'' with an annual income of $8,100, accumulated $44,690 in credit card debt, on 13 credit cards before declaring bankruptcy; a truck driver with $22,368 in annual income, accumulated $102,645 in credit card debt on 14 credit cards before declaring bankruptcy; an unemployed person with no annual income, accumulated $50,927 in debt on 14 different credit cards before declaring bankruptcy; and the list goes on.

U.S. bankruptcy trustees have also provided my office with letter after letter, originally sent by U.S. bankruptcy panel trustees to creditors, alleging ''bad faith'' on behalf of consumers, because the debtor accumulated credit card debts they could have had no realistic expectation of repaying. For example, one letter notes that the debtor accumulated over $110,635 in credit card debt, but had $500 in monthly income, and had incurred a net loss in income in 1996 and 1997.

If the consumer acted in bad faith, one wonders about the faith of the credit card companies that issued the credit cards in the first place and allowed the consumer to continue to accumulate debt.

Obviously, in each of these cases, banks kept on issuing credit cards, and kept on allowing consumers to rack up still more debt on the cards, despite clear evidence that the consumer would never be able to repay the debt.

During the debate on this bill, we have heard much about the financial burden that consumer bankruptcies levy on each of us as consumers. Clearly, part of the responsibility for that financial burden rests with the credit card companies and retailers who irresponsibly continue to issue credit in such cases. Indeed, industry consultants have estimated that credit card companies could cut their bankruptcy losses by more than 50% if they would institute minimal credit screening.

As I mentioned at the outset, I support S. 1301, which gives bankruptcy judges effective tools to require responsible behavior from debtors once bankruptcies occur. This amendment is necessary to promote the responsible behavior needed to prevent such bankruptcies from occurring in the first

place, by preventing the runaway consumer debt that is one of the principal causes of the rise in personal bankruptcies.

I urge my colleagues to vote for the adoption of this amendment.

I end my comments with one statement: Responsibility is a two-way street. And what is sauce for the gander is also sauce for the credit card company.

Mr. President, it is my understanding that the amendment has been accepted by both sides.

I yield the floor.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, this amendment will be accepted. And I would like to say, after listening to Senator FEINSTEIN's statement, as well as studying the legislation in great detail, we can enthusiastically back this and fight for its retention in conference as well. I was not that certain when I visited with the Senator privately, but I would like to state publicly that we think she has a very good idea here and that we can work to keep it in conference. I cannot guarantee anything, but at least I feel very strongly about it.

It kind of backs up some of the things that we have done on disclosure in the managers' amendment as well. Those things will probably be much more controversial in conference than what the Senator from California is trying to do. She, from my standpoint, through the year that we have worked on this legislation, and being prodded also by the Senator from Illinois about the problems that we have or the potential problems we have with credit card companies, and they not being too careful in their anticipation of who they take on to give credit to, does back up the study that the Senator from California has called for.

She does not give new statutory authority to the Federal Reserve. She does give the Federal Reserve authority, after the study, if the Federal Reserve wants to do it, to issue regulations that would require additional disclosure to consumers, then, within their existing statutory authority, if the board finds necessary, ''to ensure responsible industrywide practices and to prevent resulting consumer debt and insolvency.''

This is all based upon a study which we believe, based upon our year's consideration of this legislation, probably is a very worthwhile thing for us to have and to promote. So with those ideas in mind, we accept the amendment and congratulate the Senator from California. Most importantly, we thank her for her cooperative attitude toward our resolving a lot of differences we have had with her original legislation.

Mrs. FEINSTEIN. I thank the Senator.

The PRESIDING OFFICER. Is there any further debate on Feinstein amendment No. 3615?

Hearing none, the question is on agreeing to the amendment No. 3615.

The amendment (No. 3615) was agreed to.

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

The motion to lay on the table was agreed to.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. BROWNBACK. Mr. President, I rise to make a few remarks on the Consumer Bankruptcy Reform Act, which is the pending business at this point in time.

I commend the hard work of Senator GRASSLEY and the Senate Judiciary Committee for crafting this much-needed reform of our bankruptcy laws. Bankruptcy filings rose to almost 1.4 million last year. That is up from 172,000 in just 1978—enormous growth in bankruptcy filings. More than 70 percent of those who filed for bankruptcy last year did so under chapter 7 of the U.S. bankruptcy code, which erases most debt incurred.

The cost of these bankruptcies to the U.S. economy last year has been estimated at more than $44 billion—enormous cost. And these losses are passed on to consumers, costing every household that pays its bills $400 in hidden taxes. That is not fair to the millions of families who pay their bills—mortgages, car loans, student loans, and credit card tabs—every month.

This legislation goes a long way in addressing the fraud and abuse of our bankruptcy system while ensuring that people who are in considerable economic pain will be protected.

However, I am extremely concerned about a provision in this bill which places a cap on the homestead exemption. My State of Kansas has a homestead law in our State constitution dating back to 1859. Many farmers have used this law during times of economic hardship to protect their farms, their homes and their 160 acres. While the Consumer Bankruptcy Reform Act exempts family farmers from the homestead provision, many small farmers would not qualify under the bankruptcy code as a family farm because they or their spouse earn off-farm taxable income.

I might note for my fellow Members that over half of the people involved in agriculture today in my State and in many States across the country have considerable off-farm income from either themselves or their spouses and yet are full-time involved in agriculture. They have the outside income for various numbers of reasons, but this provision will not allow them to qualify for that agricultural exemption, the family farm exemption, if it remains as we have it in this particular act.

Many farming States have similar homestead laws dating back frequently to the time of statehood and of the settling of many places in the Midwest, where people could keep their home and 160 acres if they would just settle this land for a period of 5 years. That is the basis of this homestead law. This provision that is in the bankruptcy code and the changes that we have before us today could have a significant impact on farmers who are already faced with cash flow problems caused by low commodity prices.

This bill also does not take into consideration the vastly different property values in various States that will be affected by this particular homestead provision.

While I believe we should prevent fraud and abuse of our bankruptcy system, preempting State homestead laws and imposing a one-size-fits-all approach is not the answer. I hope that my colleagues will consider this as we look forward in dealing with this provision and working together with the House to get a fine Consumer Bankruptcy Reform Act put together. We should not penalize, we should not usurp, the States that have put forward a particular homestead exemption.

With that, Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Mr. President, I understand debate on the Harkin amendment was to begin at 11 a.m.?

The PRESIDING OFFICER. The Senator is correct.

Mr. DORGAN. I ask unanimous consent that the full 45 minutes allowed for debate on the Harkin amendment begin now.

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

Mr. DORGAN. Mr. President, Senator HARKIN is on his way. He spoke briefly on this amendment yesterday afternoon, and I would like to make a couple comments on it. This amendment is very simple. It is an amendment that expresses the sense of Congress that the Federal Reserve Board, through the Federal Open Market Committee, should reduce its Federal funds rate. The Federal Reserve Board will meet soon and consider once again what it wishes to do with monetary policy, and especially with short-term interest rates.

I would like to show a couple of charts just to describe where we are at this point with the American economy.

''Consumer Price Index.'' As we know, the Federal Reserve Board has

been chasing inflation now for, oh, 4 years or so. Every quarter they have another discussion and wring their hands and gnash their teeth and fret and worry and sweat about what is happening to inflation and when the next wave of inflation is going to hit. Of course, inflation has gone down, down, way down.

The Federal Reserve Board told us, by the way, at the start of this, that the inflation rate would jump up almost certainly if the unemployment rate went below 6 percent. Of course, the unemployment rate has been below 6 percent for over 4 years and the inflation rate keeps coming down. The Federal Reserve Board was dead wrong on that issue.

But the Federal Reserve Board sits in that house of theirs on a hill impenetrable by the American public, closes its doors, makes its decisions in secret about interest rates. Only, and then tells us after the decisions are made what the interest rates in this country will be.

The Federal funds rate set by the Federal Reserve's Open Market Committee is much higher than it ought to be. Prior to Mr. Greenspan becoming Chairman of the Federal Reserve Board, from 1950 to 1987, the average real Federal funds rate was 1.8 percent; for 37 years on average. The real Federal funds rate, the economic rent for money, adjusted for inflation, that was set by the Federal Reserve Board, was 1.8 percent. Today that short-term interest rate, after inflation, is 3.9 percent—the highest level since just before the last recession in 1990.

One must ask the question, Why, why are the American people in effect being taxed with higher interest rates? Why is the Federal Reserve Board punishing the American people with interest rates that are higher than they should be? The answer: Because they have served their constituent interests, which are the large money center banks; they want the higher interest rates. But that moves against the interests of the American people, of the people who produce and work and borrow.

I have brought to the floor from time to time pictures of the Federal Reserve Board of Governors and the presidents of the regional Fed banks, and the reason I have done that is because they control monetary policy and nobody knows who they are. So I thought we should probably have pictures of all of them, when they were appointed, where they were educated, what their background is, and how much money they make. And so here, once again, is a picture of the Federal Reserve Board of Governors and the regional Fed bank presidents. On a rotating basis, these regional Fed bank presidents join the board of governors, they go into a room, shut the door, and in secret determine what our interest rates are going to be in this country. Here is who they are. You could put them all in a barrel, shake it up, roll it downhill, and you would always have somebody with a gray suit on top. They are economists. They all come from the same background. They all pretty much look the same, and they all pretty much think the same. There is not a person among them who represents somebody who manufactures something or fixes something or sells something, but that is the way the Fed is.

When I was a kid in a town of 300 people in southwestern North Dakota, we had a circus come to town. That circus—it was a very small circus because you do not get a big top in a town of 300 people—but that circus had an elephant. It was the first elephant I had ever seen, and the first elephant, I think, that had ever come to my hometown. The thing that interested me as a little boy is that that big old elephant would stand out there by the tent and he had a steel cuff around his foot and a chain of about 6 or 8 feet attached to a stake that was pounded into the ground. I thought to myself, how on Earth can that little stake hold that big elephant? How can that work?

Then I was told later, when I grew up, about that elephant and that chain and that stake. They say that when they capture wild elephants in Thailand, they get a wild elephant and they put a big metal cuff around the elephant's leg, put a chain on that cuff, and then they tie the other end of that chain to a big banyan tree. And for 6 days, 10 days, 12 days, maybe 2 weeks that elephant will pull and struggle and grunt and groan and try to pull that chain away from that big banyan tree. Of course the banyan tree doesn't budge an inch. After a certain period of time, the elephant understands that the elephant cannot move. Then they take the chain off the banyan tree and just put a stake in the ground and the elephant stands there with a cuff around his leg and a chain and a small stake. The elephant is chained to his habit. His habit is he knows he cannot move.

I was thinking about that the other day and I was thinking about the Federal Reserve Board. What a wonderful analogy, chained to his habit. You talk about a board chained to their habits, the Federal Reserve Board has been, for 4 or 5 years—despite all the evidence to the contrary in this country that the global economy is putting downward pressure on wages, that there are no new fires of inflation out there in the country, that the inflation rate is coming down even as the unemployment rate has come down. These gray-suited folks, chained to their old habits, have continued to insist, no, they must keep interest rates higher than they ought to be because they are worried about some future specter of inflation despite the fact that inflation is running in the opposite direction.

What does that mean? What does it mean when these folks lock their doors and in secret say, ''We are going to keep interest rates higher than what it ought to be''? What it means is everybody who owns a house, everybody who is paying off a credit card, anybody who has any debt at all of any type is paying higher interest rates than they ought to pay. In a number of cases it means some homeowners might be paying $100 or $200 a month more in interest than they ought to pay. Somebody is just taking it out of their pocket. In effect, they have taxed them—to the detriment of the individual, to the reward of the lender. That is why I asked the question earlier: Whose interest does this Fed serve?

Some say its constituent's interest is that of the big money center banks. It looks that way. How else would they justify interest rates that are more than 2 full percentage points above the real rate of inflation, when in fact for nearly 40 years prior to Mr. Greenspan joining the Federal Reserve Board the real interest rates above inflation set by the Board were 1.8 percent? How else would you justify that kind of massive overcharge of the American people through higher interest rates?

The Federal funds rate is not charged to everybody. It happens to set the fee, set the charge. The prime rate comes off the Federal funds rate. Other rates come off the prime rate. The fact is, when the Federal Reserve Board decides in secret to set interest rates that are higher than they ought to be, then everybody else ends up paying more than they should pay. And who benefits? The big money center banks.

It is interesting, these folks who will be in that room making the decision when the door is closed—the last dinosaur in America that makes decisions in secret, the last dinosaur that exists in our Government—when they go into a room and close that door and make decisions in secret, they will be representing—who? Who hired them? Their boards of directors. Who hires the regional Fed bank president? The regional board of directors. And who is that? The regional bankers. Whose interests are they going to look after in that room when the door is locked? They are not accountable. Their names did not come here for the Senate to say, yes, we would like to sanction you to go into a room and make decisions about monetary policy. They are not accountable to anybody. They were not confirmed by anybody. They are not accountable. Yet they go into a room with a locked door and make a secret decision with others and tell the American people what they are going to pay in interest rates.

We have people come here and talk about taxes forever—that is a tax. A higher interest rate than ought to be paid is a tax; it is a big tax on almost all working families in this country. So who are these people going to represent? Are they going to be sent to the Open Market Committee to make decisions that contradict the interests of their boards of directors? I don't think so. Would it be logical to assume that

they would come to this decision-making point representing the interests of those who gave them their jobs? I think so.

The amendment to be offered by Senator HARKIN and myself and a couple of others is an amendment that asks the Congress to express itself to the Federal Reserve Board. I know we have people who say, ''Oh Lord, the last thing Congress ought to be involved in is monetary policy.'' Why should we not be involved in making our views known to the Federal Reserve Board? Anybody who comes out here opposing this, I would like to ask them this: If for 40 years the real economic rent for money set by the Fed through Federal funds rate is 1.8 percent, if that is the rate for 40 years, how do you justify having a rate that is nearly 2 points higher, on average during the Greenspan years? How do you justify it? Do you think it is fine? If so, how do you justify taxing your constituents with the higher interest rate because the Fed decides it is going to represent their interests, not ours?

I am not here arguing for easy money, easy credit. I am here arguing for fairness. I am here asking the Federal Reserve Board to represent the entire public interest here, not just their interest.

Our economy, from most recent evidence, looks to be slowing down some. Our economy faces a number of international threats. We have an Asian economy that is in shreds—Korea, Japan, China, Indonesia. The difficulty in the Asian economy, a very significant difficulty, is beginning to be felt in this economy. It seems to me, when we have a Federal Reserve Board that imposes higher interest rates than are justified, much higher interest rates than we have historically had with respect to real economic rent for money, it seems to me when they do that at a time when we begin to face what appears to be some significant difficulty from external economic forces, the Fed ought to take a look at doing what it should have done long ago, and that is reduce real short-term interest rates to where they ought to be.

I know this discussion causes a lot of people just to fog out and glaze over and go to sleep because, frankly, it is in the interests of those who make monetary policy to keep the monetary policy questions outside of the purview of public discussion. A century ago you could go to a barber shop or a bar in this country and get into an aggressive, interesting, lively discussion about interest rates. All over the country they talked about interest rates. Mr. President, 35 years ago there was going to be a one-quarter percent increase in the Federal funds rate. And the fellow who was heading the Federal Reserve Board was thinking about the one-quarter of 1 percent increase. There were front page headlines all across the country. Lyndon Johnson invited this fellow, the head of the Federal Reserve Board, McChesney Martin, invited him down to the ranch at Perdinales, in Texas, and they say almost squeezed the barbecue sauce out of that guy, he was so upset the Federal Reserve was going to increase interest rates by one-quarter of 1 percent.

Interest rates used to be part of substantial discussion and lively interest in this country, but we now have a Federal Reserve Board, as I said, that is the last dinosaur. It wants to keep monetary policy outside the purview of normal public debate. It wants to do what it wants to do in a locked room behind a closed door, and decide to keep interest rates about 2 full percentage points above where they ought to be given the real rate of inflation in this country today.

The Senator from Iowa will offer an amendment. The sense of the Congress at the end is very simple. It is one short sentence:

> It is the sense of the Congress that the Federal Open Market Committee should promptly reduce the Federal funds rate.

It is very simple. That is preceded by a series of pieces of information that make the case.

Let me finish, Mr. President. I know Senator HARKIN is on his way. I know Senator DOMENICI is also scheduled to speak. We have a vacancy on the Federal Reserve Board. There is one seat vacant. The Federal Reserve Board of Governors has seven people, all appointed by the President, confirmed by the Congress. The confirmation process requires there be accountability, so that is what we have, a Presidential appointment with confirmation.

That is not the case with regional Federal bank presidents. They serve on the Open Market Committee and make decisions, but they are not confirmed by anybody.

We have one vacancy. I have come to the floor to say I would like my Uncle Joe to be considered. My Uncle Joe is retired. My Uncle Joe used to fix generators and alternators in his shop behind his house. He is pretty good with his hands. He knows how to fix things. My theory is, there is nobody on the Fed who has ever fixed anything or ever manufactured anything or ever been in a part of the business where one is actually involved in a consumptive use of credit to make a business work.

For a couple of centuries, we had tensions in this country between those who produced and those who financed production, and in some decades those who produced have had an upper hand, and in some decades those who financed production have had an upper hand. With the help of the Federal Reserve Board, in most recent years those who finance production have had the upper hand. That ought not be the case.

There is a clear and compelling case, made by Senator HARKIN yesterday, and I hope by myself, that the current Federal funds rate established by the Federal Reserve Board responds to a threat that does not exist and, as a result, keeps interest rates substantially higher than they should be on a real basis. As a result of that, the Federal Reserve overtaxes every American family that pays a higher cost for credit than can now be justified.

The Congress has every right to send a message to the Federal Reserve Board that: ''When next you meet and close that door and begin deciding in secret the fate of this country's monetary policy and interest rates, we encourage you, given all the evidence, to decide to reduce interest rates.''

Mr. President, I notice Senator HARKIN has not yet arrived on the floor. Let me go down the findings briefly while we are awaiting Senator HARKIN to come to the floor.

While interest rates, we hear on the news, continue to decline, long-term mortgage rates, and so on, the inflation rate, of course, is way, way, way down. The question is the real interest rates, the economic rent for money. And also the question is, What is happening to our economy? Is it slowing down? And if so, would paying higher interest rates, as imposed by the Federal funds rate, be beneficial to this economy?

Real interest rates are at historically high levels, the highest in 9 years—real interest rates. The Federal funds rate is 5.5 percent. It has been there since March of 1997, despite an inflation rate of 1.7 percent. Between 1992 and 1994, the Federal funds rate averaged 3.6 percent, while inflation was at 2.8 percent.

The Chairman of the Federal Reserve Board, Mr. Greenspan, said during his testimony before the House Banking and Financial Services Committee on February 24 of this year:

> Statistically, it is a fact that real interest rates are higher now than they have been on the average of post-World War II periods.

Actually, real interest rates are higher now than they have been prior to Mr. Greenspan becoming Chairman of the Fed. Inflation over the last 2 years, preceding the date of enactment of this act, was at its lowest level since the 1960s. Corporate earnings are down 1.3 percent from a year earlier, and, as I mentioned, farm debt is at its highest level since 1985. Broad commodity price indexes are extremely low. There are signs of global depression or at least severe recession and the potential of depression in parts of the economies of Asia, and there are signs that that will negatively impact this country through fewer purchases of U.S. exports and through a greater influx of cheap imports to the United States.

We, as a result of this resolution, want to put the Senate on record as saying to the Federal Reserve Board: ''You ought to do what the evidence requires you to do; you ought to do what the American people know you should do; you ought to do what most good economists would advise you do now, even though you have not done it for sometime now; you ought to reduce the Federal funds rate to a level that is

fair and fairly reflects the economic rent for money relative to the real rate of inflation.''

The Federal Reserve Board has kept the Federal funds rate artificially high because it has worried about inflation. As I indicated in the chart, the rate of inflation has come down, down, way down, even as unemployment has come down. The Federal Reserve Board, predicting new waves of inflation at every step along the way, has been consistently wrong about this. Some say the Federal Reserve Board should be given credit for the fact it is down. The Federal Reserve Board did nothing but predict this was going to be different. It requires no credit to be wrong.

So I ask, and I think Senator HARKIN would ask, the Federal Reserve Board to do the right thing when it meets in the Federal Open Market Committee, and make the reduction in interest rates that is justifiable and is important to this country.

Mr. President, I reserve the remainder of the time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I as unanimous consent that the order for the quorum call be rescinded.

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

Mr. DOMENICI. Mr. President, may I discuss with Senator DORGAN the current situation? We have a unanimous-consent agreement that says at 11:45 a.m. I am to be recognized to move to table the amendment. I am here. I only have 5 minutes to speak, and I don't choose to use that at this moment.

What is the Senator's understanding about how we are going to handle this unanimous-consent agreement that sets 11:45 a.m. as a vote time?

Mr. DORGAN. Mr. President, the 11:45 a.m. time has been extended, I think, by about 8 minutes by unanimous consent.

The PRESIDING OFFICER. By 5 minutes; the Senator is correct.

Mr. DORGAN. By 5 minutes. That would be 11:50 a.m. I am waiting for Senator HARKIN to arrive on the floor. He is the principal sponsor, along with myself, on the legislation. He wants to speak on it. I just finished speaking. I am waiting for Senator HARKIN. I suspect he will want to provide some remarks, after which the Senator from New Mexico can proceed.

Mr. DOMENICI. I appreciate that. I guess while we are in a quorum call, time is not running. I ask unanimous consent that up to 5 minutes of the quorum call not be charged and, thus, we will have 5 additional minutes before the time the Senator from New Mexico makes a motion to table.

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

Mr. DOMENICI. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HARKIN. Parliamentary inquiry. What is the floor situation right now in terms of time under the unanimous-consent agreement agreed to yesterday?

The PRESIDING OFFICER. The Senator has the right to offer an amendment and the Senator has 15 minutes remaining on his time.

Mr. HARKIN. I did not hear that. How much time?

The PRESIDING OFFICER. Fifteen minutes.

Mr. HARKIN. On our side?

The PRESIDING OFFICER. That is correct.

Mr. HARKIN. Fifteen minutes left on this side?

The PRESIDING OFFICER. That is correct.

Mr. HARKIN. Mr. President, I yield 7 minutes to the Senator from Minnesota, Senator WELLSTONE.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Parliamentary inquiry, Mr. President. Has the amendment been called up?

AMENDMENT NO. 3616 TO AMENDMENT NO. 3559

(Purpose: To express the sense of the Congress regarding the reduction of the Federal Funds rate by the Federal Open Market Committee)

Mr. HARKIN. Mr. President, before I yield to the Senator, I ask that the amendment be called up at this time.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] for himself, Mr. DORGAN, Mr. CONRAD, Mr. WELLSTONE, Mr. BRYAN and Mr. KERREY, proposes an amendment numbered 3616 to amendment No. 3559.

Mr. HARKIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . SENSE OF THE CONGRESS REGARDING INTEREST RATES.

(a) FINDINGS.—The Congress finds, as of the date of enactment of this Act, that—

(1) real interest rates are at historically high levels, the highest in 9 years;

(2) the Federal Funds rate is 5.5 percent, where it has been since March 1997, despite an inflation rate of 1.6 percent;

(3) between 1992 and 1994, the Federal Funds rate averaged 3.6 percent, while inflation was at 2.8 percent;

(4) to confirm that real interest rates are historically high, the Chairman of the Board of Governors of the Federal Reserve System, Alan Greenspan, said during his Humphrey-Hawkins testimony before the Committee on Banking and Financial Services of the House of Representatives on February 24, 1998, ''Statistically, it is a fact that real interest rates are higher now than they have been on the average of the post-World War II period.'';

(5) inflation over the 2 years preceding the date of enactment of this Act was at its lowest level since the 1960's;

(6) interest rates on 30-year Treasury bonds have sunk to record lows and are below the Federal Funds rate, a signal that the United States economy could be headed for a recession;

(7) United States corporate earnings in the second quarter of 1998 were down 1.3 percent from a year earlier;

(8) a reduction in interest rates would increase resources for business growth;

(9) the farm debt is at its highest level since 1985, and broad commodity price indexes are extremely low;

(10) there are significant, widespread signs of global deflation, to which the United States has not been exposed since the Great Depression;

(11) there has been a deterioration in a number of economies around the world, which will negatively impact the United States through fewer purchases of United States exports and a greater influx of cheap imports to the United States;

(12) the United States economy is a large, healthy economic engine, and if the United States economy does slow, it would be exceedingly difficult for the worldwide economy to recover;

(13) a decline in equity values could dampen confidence and slow consumer and business spending, which together represents four-fifths of the United States economy;

(14) a decline in United States interest rates would help bolster the currencies of countries throughout the world suffering from economic hardships; and

(15) a reduction in interest rates would strengthen the United States economy over the next year while the world's weakened economies recover.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that the Federal Open Market Committee should promptly reduce the Federal Funds rate.

Mr. HARKIN. I yield to the Senator from Minnesota 7 minutes.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I thank the Chair.

I thank my colleague from Iowa.

I do not think I am going to be able to do justice to the question that is before us. There was a bit of confusion. We were over hearing President Nelson Mandela and lost some valuable time on the floor, although I must say I would have never traded that experience to hear President Mandela.

Mr. President, for the last few months, we have been so absorbed with the crisis at the White House I am afraid we have neglected another crisis that might end up having a far greater impact on ordinary working Americans. I am talking about a global economic crisis whose effects are already being felt on our shores.

The situation in the global economy today is much more than troubling; it is dangerous. I believe we must act now to stop the world from slipping into a deflationary spiral. And by the way, I would like to give Bill Greider, and his book ''One World: Ready or Not,'' just a little bit of mention. I think Bill Greider deserves a tremendous amount of credit. That book, written about two

years ago, was really prophetic about where the international economy might go.

As I said, I believe we must act now to stop the world from slipping into a deflationary spiral. Surely part of the solution—not the whole solution—is for the Federal Reserve to cut short-term interest rates significantly.

I hope that Alan Greenspan, Chairman Greenspan, today in his testimony will, indeed, signal that he is ready to do that. This may be only one part of the solution, but it is an important part, and that is what this Sense-of-the-Congress resolution is all about.

Mr. President, this global economic crisis is unlike anything many of us have ever experienced in our lifetimes. For the first time since the 1930s, we see the GDP falling in over one-quarter of the world economy. Last week, President Clinton called this ''the greatest financial challenge in the last half-century.'' And he was right.

If we choose to do nothing, we will have little hope of escaping from this crisis unscathed. As Chairman Greenspan recently testified, we cannot forever be an oasis of growth when so much of the world's economy is contracting.

Lowering interest rates will address the global crisis in several ways. It will supply some much needed liquidity to a world economy starved by massive currency devaluations. It should help restart capital flows to crisis countries. Lower rates should also weaken the dollar, making it easier for foreign borrowers to repay their dollar-dominated debt. Boosting the yen against the dollar should make other Asian countries more competitive and help stabilize their economies. The end result should be higher world economic growth and less instability in the financial markets.

Mr. President, I cannot emphasize enough how important this Sense-of-the-Congress amendment is, because we are attempting to send a signal here. I come from the Midwest. We see a contraction in the farm economy. We see farmers driven off the land because of record-low prices. But what I also see is an absolutely impossible situation right now where what is happening in this world economy is surely going to affect us. And there is no question that, by lowering interest rates in coordination with other countries—like Germany and the G–7 countries—we can at least increase demand.

If there is one thing we must do, it is increase demand in all of our economies so that people will be able to consume, so we will have markets to sell to. Bill Greider was right. The major threat right now, not only to the international economy but to our own economy, is not inflation. It is deflation.

All the arguments about the NAIRU—the Non-Accelerating Inflation Rate of Unemployment—don't stand up. It is not true that when you have low levels of unemployment you automatically set into gear an inflationary spiral in your economy. That has not happened. There is no evidence that it will happen.

The No. 1 enemy right now is not inflation, but the whole question of deflation, the whole question of a depression in a good part of the international economy which is going to dramatically, crucially, affect the quality of our lives, our children's lives and our grandchildren's lives.

The Federal Reserve Board, led by Mr. Greenspan, must lower short-term interest rates. They are too high. It makes no sense whatever—from the point of view of the best macroeconomic management, from the point of view of economic performance, from the point of view of stimulating demand in these economies, from the point of view of coordinating with other countries like Germany—for the Federal Reserve Board not to lower the federal funds rate. That is what this resolution calls for. That is why I am pleased to join my colleague from Iowa.

This is why a rising chorus of voices is now calling for lower rates. Many of them are conservatives. They include the Wall Street Journal, Jack Kemp, the National Association of Manufacturers, the Business Roundtable, Stephen Roache, C. Fred Bergsten, Roger Altman, Steve Forbes, and many others.

But there are also many who don't share my sense of alarm. A few may simply be afraid to say anything that could trigger a panic. Others may not see any need to take precautions against a forecasted hurricane—especially when the skies directly above us are sunny and clear. Well, maybe they are right. Maybe this storm will veer off course. But what if they're wrong?

Some of my colleagues may well say, ''We already have low interest rates. The Fed hasn't raised short-term rates for a year and a half.'' True enough. But if you adjust those rates for inflation, they've actually been rising for some time. Chairman Greenspan himself testified earlier this year that ''Statistically, it is a fact that real interest rates are higher now than they have been on the average of the post World War II period.'' In fact, the inflation-adjusted federal funds rate hasn't been this high since 1989.

Unfortunately, there has been a strong bias, at the Federal Reserve and elsewhere, against lowering rates, though this may be changing as we speak. The reason for this is simple: an inordinate fear of inflation. But inflation today stands at 1.6 percent, down from 3 percent in 1996. Where is the evidence of any inflationary pressure on the horizon? This downward trend cannot be attributed solely to the Asian crisis, either: the producer price index fell for the first seven months of 1997, before the crisis even began. To quote Bruce Steinberg, chief economist at Merrill Lynch, ''People who cry about inflation are in some other universe of reality right now.''

Moreover, an expected slowdown in economic growth should douse any possible inflationary pressures. Corporate earnings in the second quarter were down 1.3 percent from the previous year. Economic growth slowed from 5.5 percent in the first quarter to 1.6 percent in the second. The OECD predicts lower U.S. growth next year. Chairman Greenspan himself has acknowledged that ''there are the first signs of erosion at the edges, especially in manufacturing.'' Manufacturing capacity utilization is at a six year low, commodity prices are falling, and farm debt is the highest it's been since 1985. And the Fed says its monetary policy must be based on forecasts of economic conditions 6 to 9 months in the future!

In his speech last week, President Clinton recognized that these new circumstances call for a reexamination of some of our most basic economic assumptions. ''For most of the last 30 years, the United States and the rest of the world has been preoccupied by inflation,'' he said. ''But clearly the balance of risks has now shifted, with a full quarter of the world's population living in countries with declining economic growth or negative economic growth. Therefore, I believe the industrial world's chief priority today, plainly, is to spur growth.''

The Federal Reserve's obsession with inflation-fighting can be traced back to the so-called NAIRU [Non-Accelerating Inflation Rate of Unemployment] theory. What NAIRU boils down to is this: it's a belief that lowering unemployment too much will cause inflation to spiral out of control. Tragically, this theory has too often stood in the way of policies that would reduce unemployment.

Yet it seems to have little, if any, correlation to our actual economic experience. For four years now we've had unemployment rates below 6 percent. They've been under 5 percent for well over a year. During that time, inflation has been falling, not rising. The fact is, there's little reason to believe low unemployment causes inflation to come unhinged. It seems to me that this NAIRU theory is about as out-moded as the Nehru jacket. And frankly, I have serious doubts whether either of these fads was ever really defensible.

In the past, the Fed has focused on fighting inflation over all other considerations, which puts it at odds with its own statutory mandate. Let me remind my colleagues, once again, that the Federal Reserve is a creature of Congress. The 1946 Employment Act directs the Fed to pursue policies of ''maximum employment, production, and purchasing power.'' The 1978 Humphrey-Hawkins Act amendments call for policies of ''full employment,'' ''balanced growth,'' and ''reasonable price stability.'' Instead, it seems the Fed sees its mandate as stifling real wage growth.

Sometimes Washington seems like a different world than the one where most Americans live, and never more

so than when it's engulfed in scandal. But it can seem like a pretty odd place even in more normal times. In testimony before Congress, Fed Chairman Greenspan has seemed to express satisfaction that job insecurity keeps workers from demanding higher wages. More recently he has voiced concern that wages are rising, despite the fact that wage growth has not kept up with productivity. I'm not sure which is more outrageous: that anybody in a position of power in this country would say such things, or that so few people would be bothered by them.

In all fairness, the Fed has resisted the temptation to raise short-term rates for some time now. That's probably because falling unemployment has not led to higher wages until very recently, and inflation has continued on its downward path. But now, in the seventh year of this economic recovery, we are finally starting to see signs of wage growth. Real wages have risen 2.6 percent annually for the typical American worker since 1996, though they have still not regained their 1989 levels. And the trend toward income inequality has also begun to slow.

This is good news, and it is a tremendous breakthrough. The mystery of falling wages and rising inequality over the past three decades turns out to be not so mysterious after all. The fact is, we know how to raise wages and reduce inequality. We do not have to reinvent the wheel. Among other things, we need to maintain low unemployment over a sustained period. We've done this before and we can do it again. Surveying the U.S. economy since World War II, economist James Galbraith finds that income inequality has generally risen when unemployment was above 5 percent and fallen when unemployment was below 5 percent.

Simply put, we need to pursue a policy of full employment. The 1998 Report of the Council of Economic Advisers hails recent trends in income inequality and concludes, ''Maintaining a full employment economy is essential if this progress is to continue.'' The experience of the last two years should drive that lesson home. It would be a tragedy if an unjustified fear of rising wages or an economic downturn kept us from continuing that progress. With economic growth falling overseas and the growing danger of deflationary aftershocks here at home, I believe the Fed needs to cut interest rates now.

There are few things, I think, that would improve the lives of ordinary working Americans more than full employment. As the 1998 Report of the Council of Economic Advisers says:

> A high employment economy brings enormous economic and social benefits. Essential to personal economic security is the knowledge that work is available to those who seek it, at wages sufficient to keep them and their families out of poverty. A tight labor market encourages the confidence of job losers that they will be able to return to work, lures discouraged workers back into the labor force, enhances the prospects of those already at work to get ahead, enables those who want or need to switch jobs to do so without a long period of joblessness, and lowers the duration of a typical unemployment spell. . . . Wasted resources from not producing at potential, together with the human cost of unemployment, are intolerable; the elimination of this waste is the principal benefit of a sustained return to full employment.

As James Galbraith argues in his powerful new book, Created Unequal, lower interest rates and full employment help sustain not only a healthy economy, but also a healthy society. Lower rates make it easier to balance the budget. They help reduce inequality by lowering unemployment and reducing poverty, by preserving a competitive dollar that doesn't destabilize wages, and by checking the unearned income of top earners. They ease social strains by pushing up wages and lifting the burden of private debt. For all these reasons, in a full employment economy, citizens are more able and willing to make necessary investments in education, training, infrastructure, research, and other public goods.

But the flip side of this picture is not so rosy. Inequality has been rising since about 1970, and today is the highest it's been since the Great Depression. Growing inequality brings out the worst in us. It eats away at middle class solidarity. It encourages those who feel secure about their life chances to disavow any connection to their brethren in need. Growing inequality finds expression in bitter struggles over issues such as affirmative action, welfare, crime, entitlements, and even intelligence. And if income inequality had not so undermined middle class solidarity, I don't think the campaign to privatize Social Security would have ever gotten off the ground.

There are specific responses to each of these challenges, but the larger issue is the erosion of solidarity among Americans of different economic circumstances. The answer, it seems to me, is clear. We must rebuild that solidarity with higher wages and lower inequality. These lessons have a direct bearing on one of the paramount issues before Congress today: an America with rising wages and declining inequality is an America that need not worry about the future of Social Security.

What is true for the American economy is equally true for the world economy. The best global citizens are countries that generate their own domestic demand, and healthy demand depends on rising wages and lower inequality. There's been a lot of talk about virtuous cycles lately. Well, when income gains are broadly shared, it creates a virtuous cycle of mass purchasing power, growth, savings, and new investment. We can promote this kind of good citizenship by helping other countries raise their wages from the bottom up—through higher minimum wages, recognition of labor rights, and fiscal and monetary stimulus.

This kind of policy would be good not only for them, but for us too. And it would be good for the global system as a whole. We cannot forever be the buyer of last resort. We cannot forever help other countries develop economically by absorbing all their manufacturing exports. They need to create their own domestic demand. Trade should be a complement to healthy demand at home, not a substitute for weak demand. Otherwise we cannot escape the trap of excess production and overcapacity, with too many goods being produced and not enough prosperous consumers to buy them. As the AFL-CIO urged back in January, ''The United States, Europe, and Japan must work together to stimulate domestic demand in the developing economies and avert a dangerous tendency toward global deflation.''

Needless to say, we haven't been doing that. It certainly hasn't helped that, working through the IMF and other multilateral institutions, we have imposed deflation on countries in Asia and the rest of the world. We have depressed foreign demand by insisting that other governments cut spending, close banks, weaken labor laws, and raise interest rates. And we've insisted that they deregulate financial markets to remove any checks on often destabilizing flows of foreign capital. As the AFL-CIO said back in February, ''These terms may solve some short-term credibility problems with foreign investors, but will necessarily exacerbate the tensions, inequality, and instability of the global economy.'' That, I believe, is exactly the problem facing us today.

This is a time for bold new thinking. In his speech last Monday, President Clinton called on Chairman Greenspan and Secretary Rubin to convene a meeting of their counterparts in the G–7 and key developing countries within the next 30 days to strengthen the international financial architecture for the 21st Century. Fifty years ago, he said, we learned to tame the cycle of booms and busts that had plagued national economies, and we must now do the same for the international economy.

But what does that entail, exactly? Countries must be able to reap the benefits of free-flowing capital in a way that is safe and sustainable, the President said. The IMF should emphasize pro-growth budget, tax, and monetary policies. The World Bank should embark on a new ''social compact'' initiative focusing on job assistance and basic needs of children and the elderly. The World Bank and the Asian Development Bank should both double their support for the social safety net in Asia.

Meanwhile, it was reported yesterday that British Prime Minister Tony Blair has joined the call to restructure the institutions and rules governing the global financial system. And the IMF just released a report endorsing the kind of capital controls Chile has maintained for years to discourage destabilizing short-term capital inflows.

This appears to represent a 180 degree about-face from its previous dogged insistence on liberalizing capital markets.

These are extraordinary developments. I believe they are a sign of the seriousness of the crisis we face. They also indicate that deeply entrenched assumptions are now being reexamined. That's something we should welcome and encourage.

I believe we can prevent the worst from happening, but we must act now. These are times that cry out for American leadership. The most pressing need, and our most immediate priority, must be to deliver a preemptive strike against deflation. At the next meeting of the FOMC, Federal Open Market Committee, on September 29, the Fed should lower interest rates significantly.

Mr. HARKIN. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 7 minutes 38 seconds remaining.

Mr. HARKIN. I yield whatever time I consume.

Mr. President, this amendment that we have offered is cosponsored by Senators DORGAN, CONRAD, WELLSTONE, ROBERT KERREY, and Senator BRYAN.

Because of the actions of the Federal Open Market Committee, real interest rates are rising. In fact, real interest rates are at historically high levels, the highest in 9 years, because inflation has fallen while the Federal Reserve failed to lower the Federal funds rate.

This chart points it out. The Federal funds rate continues to go up at about 3.9 percent. Fed Chairman Greenspan said in February of this year:

> Statistically, it is a fact that real interest rates are higher now than they have been on the average of the post-World War II period.

I have said time and again that the high interest rate policy being imposed by the Federal Reserve is a stealth tax on hard-working American families, and I believe it is a contributing factor to the near collapse of several economies worldwide.

Again, interest rates have a significant impact on virtually every family in America, every producer, business, and family farmer in this country. Lower rates have been needed for some time, but now quick action is truly crucial for our country's well-being. The economic signs not only in the U.S. economy but in economies worldwide demand swift and appropriate action.

I note in the front page of the Washington Post this morning it says, ''Signs Point to Interest Rate Cut,'' and:

> Federal Reserve Board Chairman Alan Greenspan will testify before Congress today amid growing signs that he may propose cutting interest rates when Fed policymakers meet next Tuesday.

And it goes on to say how many executives and economists have called for that.

Now, the amendment that I have at the desk reads that we ask the Federal Open Market Committee to promptly reduce interest rates. Now, the Senator from New Mexico had suggested that perhaps we might want to alter that a little bit to just say that perhaps we should advise them or urge them to do something like that.

I refer back to a congressional resolution passed by the Senate on December 18, 1982. It passed by 93–0. I believe the Senator from New Mexico may have been here at that time. I didn't check that, but I think he may have been here at that time. It passed 93–0. That resolution also called on the Fed to reduce interest rates. I will just read one sentence of it:

> It is the sense of the Congress that they should continue to take such actions as are necessary to achieve and maintain a level of interest rates low enough to generate significant economic growth, and thereby reduce the current intolerable level of unemployment.

At that time, December 18, 1982, the Senate saw fit by a vote of 93–0 to tell the Federal Open Market Committee that they should do something. That is what we are saying here in this resolution. They should promptly reduce interest rates because every sign points to the need to do so. Again, we could say that they should consider doing it, but I am just saying in 1982 we didn't say they should consider taking such actions. The resolution said, ''They should continue to take such actions.''

So there was a direction from the Senate at that time to the Fed. To those who say we shouldn't interfere with the Fed, I say where in the Constitution of the United States is the Federal Reserve system given such a standing? It is nowhere to be found in the Constitution. Article I, section 8 of the Constitution gives the power to coin and regulate the power of money to Congress. We have, of course, delegated that power to the Federal Reserve System under the Federal Reserve Act, as amended, many times. Obviously, I don't believe Congress should coin money or regulate the value it. We couldn't do it. That is why we have the Federal Reserve.

However, as policymakers, because the Federal Reserve is a creature of Congress, it exists only because of an amended law, passed by Congress. We have the right, and I believe the obligation, to tell the Federal Reserve what we feel, what we hear, what we see, what we think is happening in the economy. We are the policymakers and we should give them that guidance and direction when and if we believe that we should do so.

Again, if there are those who don't believe that we should reduce interest rates, that we shouldn't tell the Federal Reserve that they should reduce interest rates, that I can understand. That is a clear policy difference. But to say that we shouldn't tell the Fed what to do flies in the face, I believe, of our responsibilities and our obligations as policymakers here in the U.S. Senate.

Policy wise, I believe they should lower interest rates. So does the head of the National Association of Manufacturers, the president of General Motors, and a number of other economists both on the conservative side and on the liberal side. They are saying that we should lower interest rates.

I think the purpose of this resolution and why I am offering it is to back up what I understand Chairman Greenspan is attempting to do. I understand there are still some members of the Federal Open Market Committee who don't believe we should lower interest rates. I think we should send them a very strong signal. We should back up what I understand Chairman Greenspan is now saying that they probably ought to do, and that is lower interest rates. That is the purpose of this amendment.

Mr. ABRAHAM. Mr. President, although I agree with the economic case for lower interest rates made by the Senator from Iowa, I must vote to table this amendment. While Members of Congress and Senators certainly have the right to express their opinions about the conduct of monetary policy, it is highly inappropriate for the Congress as an institution to take formal legislative action designed to influence decisions made by the Federal Reserve board members. To do so would undermine the political independence of the Fed and thus the stability of our financial and monetary system.

Having said this, Mr. President, I am concerned about the volatility and uncertainty enveloping worldwide financial markets and the role that U.S. monetary policy is playing in our global financial system. There are proliferating signs of deflation that many economists suggest are at least partially responsible for the recent market turmoil.

Gold prices have fallen by more than 30% since early 1996, commodity prices have fallen to 21-year lows, the yield curve has now inverted and real interest rates remain very high. Chairman Greenspan himself has said in the past that these indicators were important signals of the direction of inflationary pressures.

Nonetheless, rather than focusing on these market indicators, some members of the Fed appear to have placed more focus on the unemployment rate, rising stock prices and wage growth. In the meantime, corporate profits have declined on a year-over-year basis for the first time in a decade, farm prices are plummeting, bankruptcies have accelerated and now the stock market is reflecting slower growth ahead.

Mr. President, in my judgment, the best environment for business is an environment of price stability. Price stability should be the Federal Reserve's number one priority. And this means avoiding both inflation and deflation. Today, it appears that the risks of deflation have risen excessively.

History clearly shows that when monetary policy is focused on managing stock markets, wages or unemployment, mistakes can be made. I do not believe that higher rates of economic growth creates inflation. In my view, rising stock prices, rising wages, and falling unemployment reflect the incredible wealth creating capacity of a free market system, not the artificial result of an easy monetary policy. In today's high-tech world of higher productivity, using discredited models of the economy, based in the Phillips Curve, seems archaic.

The recent currency devaluations in emerging economies has also increased deflationary pressures. As these currencies decline in value, the worldwide demand for U.S. dollars has dramatically increased. However, because there has been no matching increase in the supply of dollars, the global economy faces a severe liquidity squeeze. And as Mr. Greenspan said during his recent remarks at the University of California, Berkeley, '' it is just not credible that the United States can remain an oasis of prosperity unaffected by a world that is experiencing greatly increased stress.''

Given the mounting evidence of deflation and the growing global financial difficulties, I believe the Federal Reserve should seriously consider reducing short-term interest rates at this juncture. The ''real'' federal funds rate has steadily increased as inflation has declined, implying a continued tightening of monetary policy. A rate cut would provide much needed liquidity to global economy, stabilize world-wide financial markets, and ensure continued non-inflationary economic growth.

Mr. President, in summary, while I personally believe that the economic case for lower interest rates is strong, I do not believe it is the proper role of the Congress to dictate that the Fed implement a specific monetary policy action through formal legislative action.

Mrs. FEINSTEIN. Mr. President, I will vote to table this amendment to S. 1301, the Bankruptcy Reform bill, which expresses the sense of the Congress ''that the Federal Reserve Open Market Committee should promptly reduce the Federal Funds rate.'' My vote to table this amendment should not be construed as opposition to lower interest rates. Rather, I do not believe it is the duty of this body, nor do I believe that it is appropriate for this body, to tell the Federal Reserve Open Market Committee what to do.

Mr. HARKIN. How much time remains?

The PRESIDING OFFICER. The Senator has 50 seconds remaining.

Mr. HARKIN. I reserve my 50 seconds.

Mr. DOMENICI. Mr. President, the question before the U.S. Senate is not whether the Federal Reserve Board should reduce interest rates; it is whether or not the U.S. Senate should say that the Federal Open Market Committee should promptly reduce the Federal funds rate.

Any Senators who have traveled the world, including Europe, and are asked what institution that the United States has in place that is the best thing going for global success, American capitalism and prosperity, guess what they will say? They won't say the Senate, they won't say the House, they won't say the President; they will say the Federal Reserve Board and its Chairman, who have been permitted, by act of Congress, to act independently of political pressures.

Now, frankly, there is a very serious problem with global economic faltering. Nobody has an answer to it. There are many suggestions as to what we didn't do that we should do. But I submit, for the world to find out, after Alan Greenspan and this Federal Reserve Board have done a most marvelous job in controlling interest rates and monetary policy that the whole world is looking at and saying they did it perfect, absolutely right—for us to come along now and say, ''Well, look, that is really so, but we would like to tell them right now''—in a way taking away some of their independence because we want to put political pressure on them—''that they should promptly reduce interest rates,'' frankly, I believe we will send the wrong signal, because I think the signal we need is the stability of the Federal Reserve Board making decisions on behalf of America, and America in a global market. That is the kind of stability that the world is looking for.

You know, I don't think anybody believes—and I am not saying Senator HARKIN does—that we should regularly on the floor of the Senate be critiquing the Federal Reserve Board and then telling them what they ought to do. I don't think anybody thinks that. But I think we are falling right into that trap here.

I have suggested—and I give it again to the sponsor—why don't we do what we ought to do and say the Federal Open Market Committee should seriously consider reducing the Federal funds rate? That way, we would be chiming in by whatever vote occurs with many people who think that, but we would not take this time in economic history to say that we are opting to say that the U.S. Senate says you should do it promptly. That is my argument. The Senate can do what it would like. I believe we ought not adopt it. If we want to state our case in this regard, we ought to state it another way, so that we are just joining in with comments and observations, but not drawing a conclusion that says if we were doing it, we would change it right now and we urge that you do that and do it promptly.

That is essentially the issue.

Mr. President, we are in the most complicated quasi-world recession that we have been in perhaps in modern times because capitalism is faltering around the world—not because capitalism and entrepreneurship doesn't work, but there are institutions that have fallen apart in other countries that are affecting us. I have no doubt that the Federal Reserve Board is going to do the right thing. There is no doubt in my mind that they are. I also suggest that if they reduce interest rates, everybody should not expect that the world economy is going to get fixed. There are many serious problems that it won't fix.

I reserve the remainder of my time.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, this amendment does not set monetary policy. It is a nonbinding sense of the Congress. William Gaston from the Congressional Research Service writes in a CRS report that, ''Congress has enacted nonbinding language to express its monetary policy preferences to the Fed.''

The last time this Senate debated a sense-of-the-Senate resolution to ask the Fed to lower interest rates was December 18, 1982. Again, I will read—it did not say it should seriously consider, it said, ''It is declared that it is the sense of the Congress that they should continue to take such actions as are necessary.'' That is what it said in 1982. It didn't say they should ''seriously consider,'' but they should ''take such actions.''

That is what this amendment says. It says they should reduce interest rates. The Business Roundtable said, ''The President and Congress should encourage the Federal Reserve to lower U.S. interest rates. . .'' not to seriously consider it.

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

Mr. HARKIN. Mr. President, I ask unanimous consent for 1 more minute.

Mr. DOMENICI. Mr. President, it is not that I am worried about arguments, but we have been changing to accommodate. But I will not oppose the Senator having 1 more minute.

Mr. HARKIN. I thank the Senator.

The PRESIDING OFFICER. The Senator is recognized for another minute.

Mr. HARKIN. This says, ''The President and Congress should encourage the Federal Reserve to lower interest rates.'' It didn't say we should have them consider it. That time has passed. I might have agreed with the Senator from New Mexico a year ago, that they should consider it. Now the time is critical. If the Federal Open Market Committee doesn't act next week, they don't meet again until November. That is why it is so crucial that we, as policymakers, send a strong signal, not that they should consider reducing interest rates, but they ought to do it. We ought to back up what we know is right, back up what the Business Roundtable and almost every economist is saying that we have to do. Is that interfering with the Fed? Not at all. But it is telling them what we, as

policymakers, believe and feel they should do at their next meeting, and that is to promptly reduce interest rates.

I thank the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I have been here a long time and I voted on that resolution that the Senator is talking about. I didn't think I ever voted on a resolution that told the Federal Reserve Board what to do in precise terms like, ''Lower the interest rates.'' The resolution that we adopted overwhelmingly was much more in the tone and tenor and words of what I recommended. It says: ''They should continue to take such actions as are necessary to achieve and maintain interest rates low enough to generate significant economic growth.''

Frankly, that is precisely what we ought to be doing. We ought to be saying take whatever action is necessary; we should not say to them that we are saying, as a matter of policy, you should lower the interest rates. We ought not do that to the Federal Reserve. It will not do anything but discredit them over the long run and add instability where stability is needed.

Mr. HARKIN. Maybe we could reach an agreement on language here.

Mr. DOMENICI. I gave the Senator the language. I believe I am entitled to make a motion to table.

The PRESIDING OFFICER. Under the previous order, the Senator is recognized to move to table the amendment.

Mr. DOMENICI. I would like to do this, because there is a desire to talk for a minute. Without losing my right to move to table this when we come out of a quorum call, I ask unanimous consent that we can have a quorum call and that I may reserve the right to move to table. Is that language precise enough?

The PRESIDING OFFICER. Yes.

Without objection, it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DOMENICI. Mr. President, pursuant to the order, I have a right to move to table at this point.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from New Mexico to lay on the table the amendment of the Senator from Iowa. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NICKLES. I announce that the Senator from Virginia (Mr. WARNER) is necessarily absent.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 71, nays 27, as follows:

[Rollcall Vote No. 283 Leg.]

YEAS—71

Abraham	Faircloth	McCain
Allard	Feinstein	McConnell
Ashcroft	Frist	Moseley-Braun
Bennett	Graham	Moynihan
Biden	Gramm	Murkowski
Bingaman	Grams	Murray
Bond	Grassley	Nickles
Breaux	Gregg	Robb
Brownback	Hagel	Roberts
Burns	Hatch	Rockefeller
Byrd	Helms	Roth
Campbell	Hutchinson	Santorum
Chafee	Hutchison	Sessions
Coats	Inhofe	Shelby
Cochran	Jeffords	Smith (NH)
Collins	Kempthorne	Smith (OR)
Coverdell	Kerry	Snowe
Craig	Kohl	Specter
D'Amato	Kyl	Stevens
DeWine	Landrieu	Thomas
Dodd	Leahy	Thompson
Domenici	Lott	Thurmond
Durbin	Lugar	Wyden
Enzi	Mack	

NAYS—27

Akaka	Feingold	Lautenberg
Baucus	Ford	Levin
Boxer	Gorton	Lieberman
Bryan	Harkin	Mikulski
Bumpers	Hollings	Reed
Cleland	Inouye	Reid
Conrad	Johnson	Sarbanes
Daschle	Kennedy	Torricelli
Dorgan	Kerrey	Wellstone

NOT VOTING—2

Glenn	Warner

The motion to lay on the table the amendment (No. 3616) was agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico. Will the Senator from New Mexico withhold? May we have order in the Chamber, please? All conversations should be moved to the cloakrooms. The Senator from New Mexico deserves to be heard.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, a number of Senators who voted on the motion to table which I proposed indicated that they would like to see an expression regarding the interest rates, but not a mandate. I ask unanimous consent—I am not sure I will get it—but I ask unanimous consent that it be in order that I offer a similar resolution, but the resolve clause would state:

It is the sense of the Congress that the Federal Open Market Committee should consider reducing the Federal funds rate.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DOMENICI. Mr. President, I say to Senators, I will speak to the leader and maybe we can offer it somewhere else. We cannot offer it on this bill. I regret we cannot vote on it. I yield the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa. Will the Senator suspend? May we have order in the Chamber, please? All conversations in the aisle should be moved to the cloakrooms.

The Senator from Iowa.

Mr. HARKIN. Mr. President, usually when votes are cast, I don't like to revisit them. People have their reasons; we vote and we move on around here. But I heard so much in the well from people voting on this last sense-of-the-Senate resolution that I felt I should take a little bit of time to perhaps clarify a couple of things and to make an additional point.

First of all, this was a sense-of-the-Congress amendment. It was nonbinding. Someone said, ''We shouldn't be legislating what the Federal Reserve should do.'' With that I wholeheartedly agree. We were not legislating a law to tell the Federal Reserve what to do, No. 1. That is my first point. This was a nonbinding sense of the Congress—we adopt those all the time around here—basically to say, ''Here is what I, a policymaker, think should be done.''

Secondly, this is not without precedent. This body has in the past voted on sense-of-the Congress amendments and resolutions that have told the Fed what we believe they should do.

Third, I heard it said that we should not be politicizing the Fed. With that I wholeheartedly agree. But article I, section 8 of the Constitution gives the power to coin money and regulate the value thereof to the Congress of the United States. It did not give it to the Federal Reserve System.

The Congress, in its wisdom, in the past set up the Federal Reserve System to do that. We delegated our powers to the Fed to do that. Over the intervening years, we have amended the Federal Reserve Act. It is not carved in stone. It has been amended and changed several times since 1913. But the Federal Reserve System remains a creature of Congress. It exists only by the laws passed by the Congress. It is not a separate branch of Government.

It is not some kind of supreme being, some kind of item of sanctity that we can never touch. I believe it is not only our right but our responsibility as policymakers at certain times, if we feel a certain way, to be able to tell the Federal Reserve System what we believe they should do.

So on this past vote I have no quarrel with anyone who believes the Federal Reserve should not lower interest rates. I may debate that point with

them, because I believe they should lower interest rates. That is a good debating point. But if someone voted on this and said no, the Federal Reserve should not lower interest rates, that I believe is a valid position that someone might hold, of which I disagree.

Mr. REID. Would the Senator from Iowa yield for a question?

Mr. HARKIN. Let me finish this, and I will.

But to say we cannot vote to tell the Fed what to do because it would be politicizing it or we cannot interfere I believe somehow is an abdication of our responsibilities, not only our rights but our responsibilities as policymakers to tell a creature of the Congress what we believe they should do. We do not do it very often in terms of the Fed. In fact, I pointed out the last time we had a Sense of the Congress calling on the Fed to lower interest rates was in 1982. So this is not something we take lightly.

But I believe at this point in time, with the world economy being what it is, with the tremendous drop in commodities and commodity prices here and around the world, with the specter of depression and deflation facing us—almost every economist, conservative, liberal, head of the Business Roundtable, head of General Motors, head of the National Association of Manufacturers, all say the Fed should lower interest rates.

I offered this amendment, along with others, in good faith, to back them up to say, yes, you should lower interest rates. And that is what this was meant to do, to send that sense of the Congress that that is what we believe they should do. Obviously, we did not prevail. So I can only assume that most people do not believe they should lower interest rates.

I would be delighted to yield to my friend from Nevada for a question.

Mr. REID. Does the Senator from Iowa realize that Senator DORGAN and I have offered legislation on several occasions to have the Federal Reserve System audited on a yearly basis? Is the Senator aware we have done that?

Mr. HARKIN. This Senator is not aware of that specific legislation, no.

Mr. REID. Would the Senator acknowledge that the Federal Reserve Board—it would be a good idea to see how they spend their money?

Mr. HARKIN. We don't know that?

Mr. REID. The Federal Reserve System is not audited.

Mr. HARKIN. No. I ask the Senator—I am not being facetious. Is the Senator from Nevada telling me that the General Accounting Office, the GAO, does not audit——

Mr. REID. Absolutely not.

Mr. HARKIN. Can the Senator tell me why the GAO does not audit the Federal Reserve?

Mr. REID. The Senator from North Dakota and I have been wondering for a couple of years. We have offered legislation time and time again to have the Federal Reserve System audited, like every other Government entity in this country. But no. In fact, we asked for a General Accounting Office study to find out a little bit about the inner workings of the Federal Reserve System, and we found, among other things, they have what we refer to as a ''slush fund,'' what they refer to as a ''rainy day fund'' that they have kept there for 80 years, or thereabouts, 70-some-odd years. It is billions of dollars that they just keep there.

That money, we believe, should be taken out of the Federal Reserve System and applied toward the deficit to take down the debt that we owe. But no, they keep hanging on to that money year after year.

I appreciate, very much, this amendment having been offered by the Senator from Iowa, because, if nothing else, it allows me the opportunity to ask the Senator from Iowa a question: Shouldn't we audit the Federal Reserve System? The American public thinks so, but here the message is without response. We cannot get people to support us on that.

Mr. HARKIN. This Senator was not aware of that.

Is the Senator telling me that the Federal Reserve, which I have just stated is a creature of Congress, and exists by law, that the General Accounting Office, our accountant, cannot audit the Federal Reserve?

Mr. REID. Cannot, does not, and will not.

Mr. HARKIN. I would respond to the Senator by again asking the Senator a question. Have we ever tried to pass something here to have an audit done for the Federal Reserve?

Mr. REID. Yes.

Mr. DORGAN. I wonder if the Senator would yield for a question.

Mr. HARKIN. I yield to the Senator from North Dakota for a question.

Mr. DORGAN. The Senator from Nevada talked about this audit that was done of the Fed by the GAO. What the audit showed was a $3.7 billion fund accumulated at the Federal Reserve Board—$3.7 billion. And they pointed out that the Fed has not had a loss for nearly 80 years—will never have a loss. You can't lose money when you create money. So there was no reason to have a rainy day fund or some sort of provisional fund of $3.7 billion. And the GAO recommended that it be returned to the Treasury. It belongs to the American people.

Not only has it not been returned, the $3.7 billion has now been increased to $5.2 billion. So you have to say to somebody, if you think there is reason to get some of these resources to do something with it—pay down the Federal debt or to do some of the other issues—there is $5.2 billion down at the Fed that they have for a rainy day fund, and they never have rain down there. They create money. They make their own money. And they have never had an annual loss, and will never have a loss; and yet they have squirreled away $5.2 billion of resources. And we have raised this issue.

The GAO—not us—the GAO says that ought to be returned. But it will not be, I assume because this Senate—Congress says, ''Gee, we don't want to touch that house on the Hill that's got those big gates around it, the big fence. And it's an American dinosaur. We can't crawl in there and see what's going on.'' But the GAO did a 2-year study. I would commend my colleagues to take a look at what they found in that study.

There is plenty wrong down there. There is not good accounting. There is not good contracting. There is a rainy day fund of billions of dollars. So there is plenty of work to do with the Fed.

I ask the Senator from Iowa, isn't it the case that all we were doing today was to say, ''Gee, we think it's time for you to reduce interest rates the next time you meet, given all the evidence that exists''?

Several Senators addressed the Chair.

Mr. HARKIN. I yield to my friend from Nevada.

Mr. REID. I say to my friend from Iowa, I do not think the Senator from Iowa realizes, in the GAO report we also found that the governors of the Federal Reserve System, some of them fly first class, some of them fly whatever class they want. We found the most interesting things there, how they have no rules or guidance, how they travel, how their expenses are determined.

I recommend to my friend from Iowa, and everyone within the sound of our voices, that we need to take a better look at the Federal Reserve System. I commend and applaud the Senator from Iowa for bringing this amendment here today because it gives us a chance to focus, as you have said, on a creature we created. Congress created this. And we have statements here: ''Hey, we can't suggest to the Federal Reserve System because it might hurt us internationally.'' Congress created the Federal Reserve System. Can't we do a little bit about it, for example, to see how they spend their money? The answer to this point is no.

Mr. HARKIN. I hope that the Senator, then, would try again to bring up some legislation to provide for an audit of the Federal Reserve. I honestly cannot believe we are not doing that. I appreciate the Senator for his enlightenment on that issue.

I yield to the Senator from Utah for a question.

Mr. BENNETT. I cannot let this exchange go without giving a word or two of explanation. The Federal Reserve Board, as the Senator from Iowa has accurately stated, was created by the Congress, and presents to the Congress an audited statement of its financials every year. It is addressed to the Speaker of the House.

It is true that it was not done by the General Accounting Office, but they are audited by a legitimate outside auditor, and their activities, down to the penny, are reported to the Speaker

of the House in a written document every year. I will be happy to supply it to any Member of this body that may wish it.

Mr. HARKIN. I thank the Senator for this enlightenment.

I am responding to what the Senator from Nevada said, that they were not audited.

Mr. BENNETT. The Senator from Nevada is correct; they are not audited regularly by the General Accounting Office, but it is audited. A copy of the audited and exact financial activities of the Federal Reserve Board are submitted in writing to the Speaker of the House every year.

I have constituents who are constantly saying to me that the Federal Reserve Board is owned by a group of Swiss bankers or foreign interests somewhere and that it has never been audited. I always send them a copy of the audited report of the Federal Reserve Board that is submitted to the Speaker so that they can know that this creation of the Congress does not go unexamined by an appropriate auditing firm.

It is true to say that it is not audited regularly by the General Accounting Office. I think that is the point the Senator from Nevada was making. However, I think we should not let people be under the assumption that the Federal Reserve Board goes without anybody paying any attention to how they handle their money.

Mr. HARKIN. Without losing my right to the floor, I yield for a further answer from the Senator from Nevada.

Mr. REID. I say to my friend from Utah through the Senator from Iowa that I think this is something that really deserves a debate. I hope that when our bill is offered on a subsequent occasion that the Banking Committee will at least give us a hearing on this.

I say to my friend from Utah, yes, there is a document that they call an audit, but it is a self-audit. You cannot audit yourself. That is, in effect, what has happened. We think there should be oversight by the Congress of the United States which created the Federal Reserve System. They shouldn't be able to hire whoever they want to look at their books. They may do a great job, but from a perception standpoint it doesn't look great.

When the General Accounting Office tried to get the information requested by the Senator from Nevada and the Senator from North Dakota, it was extremely difficult to get. The Federal Reserve System is an island to itself. They don't like to be messed with, bothered, or give information.

Mr. HARKIN. If I might yield further without losing my right to the floor, I yield to the Senator.

Mr. BENNETT. Mr. President, I am happy to have a debate about this with the Senator from Nevada or anyone else. I think it is a legitimate issue to be aired, but I did not want to let the opportunity go by with the misimpression that some might have gathered. I know it was not intended for the Senator from Nevada to grant that misimpression, but some might have the misimpression that the Federal Reserve Board does not respond to the Congress that created it in an orderly fashion.

Mr. HARKIN. If I might say to my friend from Utah and Nevada, is it proscribed by law that the GAO cannot audit the Federal Reserve? Is that proscribed or is it just that they don't do it until we tell them to do it?

Mr. REID. I say to my friend from Iowa, I can't answer that question. I just know they don't do it. They have never done it.

When we asked for the review by the General Accounting Office of the Federal Reserve System, they fought us every step of the way. It took 2 years to get information that should have been obtained in a matter of a couple of months.

Mr. HARKIN. I ask the Senator from Utah if they do this audit that the Senator says is done what would be wrong with having the GAO do their own separate audit? What is wrong with that?

Mr. BENNETT. I don't know, either, I say to the Senator from Iowa. I have not looked into that.

Frankly, I have examined the annual report that the Fed submits to the Congress, addressed, as I say, to the Speaker of the House every year. They do it in accordance with law. They respond to the law that created them in that fashion. At least to my satisfaction, after examining that document, I haven't felt the need for any additional information.

As to whether there is a legal proscription against GAO, I have no knowledge one way or the other.

Mr. HARKIN. I thank the Senator from Utah.

Again, this raises another issue that was not in the sense-of-the-Congress amendment that I sent to the desk on which we just expressed ourselves.

I wanted to get back to the point, again, that it is a creature of Congress. I am somewhat disturbed, not so much by the outcome of the vote. I have lost votes around this place before. That is not the point. But the issue is the kind of talk that I heard among Senators after voting on this that, (a) we shouldn't politicize the Fed; (b) we shouldn't tell the Fed what to do; (c) the Fed is a separate entity and we shouldn't have anything to do with them.

I just don't understand where this comes from. I don't understand why this is the perception of so many people. I don't know why the Federal Reserve System has become so sacrosanct that we simply cannot deal with it. It is like the ''Holy of Holies.''

I find it strange that, as policymakers, we can't stand up and tell the Fed what we think they should do. That is not politicizing it. To politicize it would be for us to pass a law mandating that interest rates be at a certain level, or a law mandating that the Federal Reserve should vote this way or that. That is politicizing. That is what this Senator would even vote against.

But for the Senate to say to the Federal Reserve, a creature of the Congress, we have looked at the landscape, we see what is happening in our economy, we see what is happening worldwide, we don't like what we see. We believe that the time has come to lower interest rates. We believe something should be done.

Now, again, I see nothing wrong with this debate. I think that is part not only of our rights, but our responsibility.

I want to take a couple more minutes to say why I believe so deeply and so strongly that we should be saying to the Fed that they should lower interest rates. Sometimes you would think this is a liberal proposition. I don't define it in terms of left, right, liberal, conservative. I really don't define it in that way. I define it in terms of whether or not we believe interest rates should be lower or whether we think they shouldn't be lower; whether we think the economy is going into a recession, or whether we think the economy may be verging on inflation. If you think the economy is experiencing an acceleration of inflation, you would not want to cut interest rates; if you think the economy is verging on recession, you would want to lower interest rates.

That is where I believe we are. Don't take my word for it. I will point out what the Business Roundtable said on September 16, last week:

> The President and Congress should encourage the Federal Reserve to lower U.S. interest rates. In addition, the President, Congress and the Federal Reserve should work with our international trading partners to stimulate their domestic economies.
>
> . . .. should encourage the Federal Reserve to lower U.S. interest rates.

It doesn't say we should ask the Fed to ''consider.'' It doesn't say that. It says they should ''lower'' the rates, not ''consider.''

There is talk that the Senator from New Mexico wants an amendment to say that we would just consider, that we should tell the Fed they should consider lowering interest rates. I don't believe that language is strong enough. Again, it is as if for some reason we almost have to ask the Fed for their permission to tell them what we think they should do.

Mr. WELLSTONE. Will the Senator yield?

Mr. HARKIN. I yield for a question to my friend from Minnesota.

Mr. WELLSTONE. Mr. President, for some reason I don't understand, as well, why Senators are unwilling to speak to this issue and provide our judgment about what should be done. We don't talk about monetary policy much.

The Business Roundtable says, ''The President and Congress should encourage the Federal Reserve to lower U.S.

interest rates.'' The Business Roundtable doesn't fit into the label ''liberal,'' although I think that label is irrelevant. Why has the Business Roundtable taken that position? What is it about real interest rates that is so important to the people you represent in Iowa and the people I represent in Minnesota? Can we talk for a moment about that?

Mr. HARKIN. Sure. I thank the Senator. That is really the point. I have a chart to show that the real Federal funds rate is at its highest level in nine years. What does that mean? What that means is that real rates of interest are at a very high point. For example, even Chairman Greenspan said earlier this year that real interest rates are at a historically high level, compared to all the years from World War II until now.

What does that mean? Well, that means that the farmers in America whose commodity prices are going down all the time, our livestock producers and our farmers have to pay exorbitantly high interest rates—real interest rates—when they are already squeezed with low prices. It means that our business sector, small businesses, and others who are creating jobs, who need to borrow money for expansion or even for job training or retraining, find that they are squeezed because of high interest rates. So they don't do it. So what happens then is our economy starts to slow down.

I will point out that in the first quarter of this year, our growth was 5.5 percent; it was 1.6 percent in the last quarter. Many economic signs point to a possible recession, possibly a downward spiral in prices. Then we see what is happening in foreign economies and in foreign currencies. Because of our high interest rates, we find that their economies are going down and they, in turn, can't buy any of our products because of the excessively strong dollar that we have. So when you add it all up, because of the insistence of the Fed to keep a tight money policy, high interest rate policy, they have moved us to the brink of recession.

In further responding to the Senator's question, from 1994 to 1995 the Federal Reserve raised interest rates by 100 percent, from three percent to six percent. They raised interest rates because they were beholden—most of them, or at least the voting majority—to an economic theory called NAIRU, Non-Accelerating Inflation Rate of Unemployment. That is a fancy term. What some economists have believed in the past is if unemployment fell to a certain level, inflation would take off and it would spiral upward and accelerate—it would not just rise, it would accelerate, if unemployment got to a certain level.

Well, a couple years ago, economists said they thought that rate was 6 percent. They thought that if unemployment went below 6 percent, we would be in deep trouble. Then unemployment went below 6 percent and the Fed said, ''Oh, my gosh, we have to tighten monetary policy,'' and they started raising interest rates. Inflation never went up. Then unemployment went down. And, they said, ''Well, we changed our minds. The natural rate of unemployment is actually 5.5 percent.'' Well, then unemployment went below 5.5 percent. Now we are at 4.5 percent unemployment, and still no inflation. Yet, the Federal Reserve has continued to keep a tight money, high interest rate policy in effect, because they were afraid; they felt that because of this economic theory, inflation was going to take off.

What happened is, because of that high interest rate policy, our farmers are squeezed, our consumers are squeezed, homeowners have to pay more monthly interest on mortgages on their homes, small businesses pay more money when they borrow to expand, or they just don't do it. A larger business, whether it is General Motors or Ford, would have to pay higher interest rates. The economy starts to slow down. That is exactly what happened.

I submit further to my friend from Minnesota that because of their policies over the last couple years, because they would not move, it has helped generate the kind of economic collapse we have seen in other parts of the world. The high interest rate policy at the Fed is a contributing factor to the continual decline of the Asian economy.

Mr. WELLSTONE. If the Senator will yield, I will not take much more time. I have two quick questions, I say to my colleague from Florida, because I know he is waiting. I will ask the question to the Senator from Iowa who gives the lengthy answers. I think it is just incredible, I say to my colleague from Iowa, it is just incredible how this whole issue of real interest rates and monetary policy—which has such a critical impact on small business, on farmers, and on industry and housing—is taken off the table. We are even unwilling to give our best judgment as to what the Federal Reserve ought to do. It is amazing to me.

Let me ask you this question: Would you agree——

Mr. HARKIN. I will keep it short.

Mr. WELLSTONE. I want to hear the Senator's answer, because this is a critical issue. Would you agree that our taking the lead in lowering short-term interest rates also would be critical to what the Germans might do, what the other G–7 countries might do? Shouldn't this be put in the context of a coordinated response at an international level, dealing with this contraction of the international economy, dealing with this problem of deflation? Maybe you could spell out a little bit what you mean.

In other words, the Senator talked about the effects of high real interests rates within our country, but could we not also say another part of the argument is the effect on exchange rates? That a strong dollar ultimately means other countries will try and export their way out of crisis? That they will dump a lot of products on our market and end up competing with workers in our country?

Aren't you really saying that, in the absence of something being done through monetary policy, we are not going to be able to get enough demand going in these countries? That we are not going to have enough economic stimulus? That people are not going to have money to buy products, which would help create jobs? And that the major problem is not going to be what you were talking about—inflation, which the Fed seems to be excessively focused on—but deflation? Am I not correct that that is part of what is going on?

Mr. HARKIN. Absolutely.

Mr. WELLSTONE. Bill Greider, who wrote, ''One World: Ready or Not,'' has been talking about this for some time. In part, you are talking about the effects of monetary policy within our country. But you are also talking about our taking the lead in trying to fashion a coordinated response at an international level to deal with what has happened. We have a depression in part of the international economy.

Mr. HARKIN. The Senator is right. I wish the Fed would pay more attention to Bill Greider's writings. Monetary policy has to work for all of our people, not just a few. It has to be cognizant of what is happening to ordinary people in this country.

As the Senator spoke about what is happening internationally, I was looking through the papers. The Wall Street Journal pointed this out in an editorial on August 31, calling for the Fed to lower interest rates. They said, ''Since last year, currencies in emerging markets, from Thailand to Russia, have been collapsing like popped bubble wrap.'' This is a significant threat to us and people in those countries. Our dollar is much too strong right now. Because of that, they can't get the kinds of foodstuffs and things they need for their own people.

(Ms. COLLINS assumed the Chair.)

If we want to help the Japanese economy and the Asian economy, what we should do is lower interest rates. Many economists have noted that the value of currencies in several countries will not only reduce the rate of inflation but also sharply increase our trade deficit, eliminating many jobs and slowing growth in the process.

Again, if we don't address this because of their slowdown, because they are not buying our products, we are going to lose jobs in this country. We are going to have a drastic slowdown.

The fear I have, I say to my friend from Minnesota, is that we may have waited too long. The Fed was so frozen by this outdated, outmoded economic concept called NAIRU that they couldn't see what was really happening because they only focused on the rate of unemployment, and that caused them to be blind to everything else that was going on.

Mr. WELLSTONE. I ask my colleague, this concept that he is talking about—NAIRU—is the idea that if you reduce employment too much, you automatically set off an inflationary spiral?

Mr. HARKIN. Inflation would not only start but accelerate.

Mr. WELLSTONE. My last question, I say to my colleague—and I look forward to coming to the floor and having a further discussion about this. I hope we are wrong. But I think this discussion of political economy, both in terms of what is happening to the global economy and also what is happening in our own economy, is going to become a very, very critical issue. We are seeing it already in agriculture. But this is just the beginning.

But this is my last question. Is it not also true that, when they talk about the alleged danger of unemployment continuing to go down, that this would also bring up the bargaining power of wage earners? It wouldn't be just a matter of unemployment going down. This would also mean that people in a tight labor market would see their wages go up and would have a better chance of working at living-wage jobs? I think the Federal Reserve Board tends to be more responsive to bond holders, financial people, and the creditors, and they want to keep interest rates up.

Isn't it also true that having real interest rates so high is one of the reasons we have a maldistribution of wealth and income today in this country? We have this paradox of some people being able to purchase all the goods that make life richer in possibility. But then we also have so many families—maybe the majority of families in our country—who cannot. Maybe this is one of these hidden issues that we don't talk about, with everything swirling around in Washington, that so many families are still struggling to make ends meet and do well by their kids.

What would be the harm in moving toward full employment? What would be the harm in making sure that wage earners make better wages? What would be the harm in having more people have access to living-wage jobs? Isn't the whole question of real interest rates one piece of it?

Mr. HARKIN. I say to the Senator from Minnesota that he is absolutely correct.

Mr. WELLSTONE. I agree.

Mr. HARKIN. It is bigger by a tremendous magnitude.

We deal here in budgets in terms of billions of dollars. I know it sounds like a lot of money. But what the Fed does affects the entire $7 trillion economy.

The Senator from Minnesota is absolutely right, what the Federal Reserve System does has a more profound effect on the daily lives of our citizens—how they live, how they are able to take care of their families, what kind of jobs they have, and what they have paid—than anything that we ever vote on around here in terms of budget matters.

I thank the Senator for his inquiries and enlightenment on this issue. He has been a long-time fighter for the average working families and making sure that working people get a fair deal. I know the Senator from Minnesota understands that if you have lower interest rates, that helps working families. It helps families.

The Senator from Minnesota also knows, as most of us know, that in the last couple of years, with this tight money policy, this high interest rate policy at the Federal Reserve, some people have said, ''Well, gee, whatever they have done has been good. Our economy is great. Whatever the Fed has done is good. Look at what is happening in our economy. Look what is happening in our economy. Unemployment is down.''

That is true. But if unemployment is so low, I ask you, why is it that when I went to Sioux City last Friday and visited the food bank, or earlier on when I visited the food bank in Des Moines, I was told by the directors of those two food banks that their demand for commodity foods—that the USDA commodities plus the food they get contributed from businesses, churches, and schools—is skyrocketing higher than ever?

I did some checking. It is not only in Iowa, but in almost every State, the demand for food at our food banks has gone up in the last year or so. Why? If everyone is working, unemployment is so low, and the Fed has done such a great job, it is because, as I have been told and as I have found out, many of these people are working—usually single parents, usually single mothers with one or more children. They go to work every day. They work every day. They make a paycheck. They qualify for food stamps. They get food stamps. And then the food stamps run out before the end of the month. The only place they have to go is to the food bank to get free food.

Don't take my word for it. Ask your staffs. Go out and ask your food banks. In any State, go out and ask those food banks. Find out what is happening. You will find that it is true. The demand for food from those food banks has gone up and continues to go up, and they are concerned about what is going to happen this winter.

What has that to do with the Federal Reserve System? I am just saying, if they have done such a good job in this economy, why are they falling below the safety net? Because the high interest rate policy has ignored what is happening to the working families of America. A lower interest rate policy, everyone agrees, might mean that wages might go up and that businesses might be able to pay more in wages. I don't see anything drastically wrong with that. I think it would be a good thing for this country if wages went up. It would give people a little bit more buying power.

Again, what we are seeing happen in our country happened in the 1920s. Fewer and fewer people are making more and more money. More and more people are making less and less and having less of a stake in our economy. It is true. It is happening in the agriculture sector, too.

Neil Harroly, the distinguished agricultural economist at Iowa State, said what we are seeing in agriculture is not like the 1980s, it is like the 1920s. I think that is also what we are seeing happening in our country, too. So that is why I make the strong case that we have an obligation.

I see my friend from Florida is ready to speak. I am going to wrap up very shortly, but I just want to make a couple of points.

The Federal Open Market Committee may or may not be in a mode to lower interest rates. I quote the September 18 issue of the Christian Science Monitor, which noted that some Fed policymakers ''remain in a hawkish anti-inflation mode rather than worrying about the impact of deflation.''

These include William Poole, president of the St. Louis Regional Fed; Fed Governor Edward Gramlich; and an analyst, Jerry Gordon, president of the Cleveland Fed.

I don't say that. I am just quoting from the Christian Science Monitor.

Madam President, I ask unanimous consent that the article be printed in the RECORD.

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

[From Christian Science Monitor, September 18, 1998]

NEW SIGNS OF WEAKNESS IN U.S. ECONOMIC 'FORTRESS' FORECAST FOR SLOWDOWN

(By David R. Francis)

Concern is growing in the top echelons of Wall Street and Washington that cheap exports from overseas—everything from shovels to chopsticks—may drive down the American economy. The ''R'' word—recession—is now being heard more often.

As troubles persist in East Asia, Russia, and Latin America, US companies are finding fewer buyers for their goods overseas while foreign products are filling US shelves and showrooms. The concern was reflected on Wall Street Thursday, as stock prices plunged in early trading.

It was a ''double whammy,'' says Joel Prakken, chief economist of Macroeconomic Advisers in St. Louis. Investors were disturbed by new statistics on the American economy and by unsettling testimony to Congress by Federal Reserve Chairman Alan Greenspan and Treasury Secretary Robert Rubin Wednesday.

Though terming the United States economy strong, Mr. Greenspan noted, ''There are the first signs of erosion at the edges, especially in manufacturing.''

A plunge in prices on the Tokyo Stock Exchange to a 12-year low didn't help. In New York Thursday, the Dow Jones Industrial Average dropped more than 200 points in early trading.

Economists still are forecasting moderate economic growth in the US this year and in 1999. ''The slowdown is a little worse than we thought,'' says David Wyss, chief economist of Standard & Poor's DRI, an economic consulting firm in Lexington, Mass. ''And the risks of a recession are rising.''

Nonetheless, DRI sees growth in the national output of goods and services at about a 2.5 percent annual rate the rest of this year, helped by a rebound from the General Motors strike. Mr. Wyss predicts 1.5 percent growth next year.

He would like to see the Federal Reserve cut interest rates. Wall Street would, too. It wants interest rates lowered by other industrial nations as well. One reason for the less-than-happy face of many investors yesterday was Mr. Greenspan's testimony that, ''at the moment, there is no endeavor to coordinate interest-rate cuts'' among the major powers.

Wyss hopes for and expects lower U.S. rates by the end of the year, though not necessarily at the Fed's next gathering Sept. 29.

Some of those policymakers remain in a hawkish anti-inflation mode, rather than worrying about the impact of falling prices (deflation). These include William Poole, president of the St. Louis regional Fed, Fed Governor Edward Gramlich, and, analysts say, Jerry Jordan, president of the Cleveland Fed. ''They have got to come around,'' says Wyss. ''I'm not sure what it will take.''

Some, though, oppose a Fed rate cut at this time. They don't see the economy slowing that much. Prakken, for one, expects a 2 percent growth in gross domestic product next year.

One concern of economists is that the decline in stock prices itself will hurt growth. Wyss figures $2 trillion in paper household wealth disappeared between the July 17 peak in the stock market and the end of August. If the downturn lasts, it could trim consumer spending by as much as $50 billion.

The Asian crisis has hit U.S. exports hard, too. ''The trade data were terrible,'' says Wyss.

The U.S. trade deficit widened to $13.9 billion in July. Currency devaluations and depressed economies in Asia resulted in exports hitting a 17-month low.

So far this year, the trade deficit in goods and services is running at a record annual rate of $185 billion, 68 percent higher than last year's record deficit of $110 billion. America's deficit with Pacific Rim countries hit $87.8 billion in the first seven months—42 percent above the imbalance for the period in 1997.

''The trade balance could get a lot worse if there is another round of devaluations,'' warns C. Fred Bergsten, director of the Institute of International Economics in Washington.

The inflation news was not so bad. In August, the Consumer Price Index was up a seasonally adjusted 0.2 percent, same as in July. For the year, inflation is running at a 1.6 percent annual rate, compared with 1.7 percent for all of last year.

Prakken expresses concern that the ''core'' inflation rate—a measure that removes volatile energy and food prices—is up 2.5 percent for the past year. His partial explanation of the stock market decline is that Wall Street is finally recognizing that corporate shares have been overpriced, and that earnings will not rise nearly as much as analysts had anticipated.

He expects a ''virtual stall'' in earnings. The reasons: reduced profits from overseas operation as well as rising wages at home and difficulties in cost cutting.

Mr. HARKIN. I thank the President.

As David Wisk, chief economist of Standard & Poor's DRI, has complained, ''They have got to come around. I'm not sure what it will take.''

Let me repeat that. As David Wisk, chief economist of Standard & Poor's DRI, said, ''They''—the Federal Reserve—''have got to come around. I'm not sure what it will take.''

I thought one of the things it might take is for the Senate of the United States to clearly express itself to the members of the Federal Open Market Committee to lower interest rates now.

There are increasing signs of a possible recession. Thirty-year Treasury bond rates have sunk to record lows and are now below the short-term Federal funds rate. This is a drastic warning signal.

Again, I would point to the chart here ''30-year Bonds'' now lower than the Federal funds rate. That should scare us all. That should point to what we have to do in terms of lowering our short-term interest rates. Wholesale prices slid a steep 0.4 percent in August. In fact, for the first 8 months of this year producer prices have fallen at a 1.4-percent annual rate, compared with a 1.2-percent rise in 1997.

Again, I have talked about our farmers at great length and about what is happening to them and what is happening to our commodity prices.

I would start to wrap up my comments again just by saying that if someone voted because they don't want to lower interest rates, that is fine. While I think they are wrong, I will be glad to debate that, if we could ever get a debate on this issue in the Senate; no one seems to want to debate that issue.

Do we say somehow we can't express ourselves in telling the Federal Open Market Committee that they should lower interest rates—our language said promptly reduce interest rates—that somehow we can't say that because the Fed is independent, because the Fed is so sacrosanct that we can't touch it, that somehow we have to couch it in weak terms such as the Fed should only ''consider'' lowering interest rates? Why do we have to beg the Federal Open Market Committee to do something? Does the Congress of the United States work for the Federal Reserve System? Are they our bosses? Are they the ones who pull the strings and tell us what we can and cannot do?

We seem very reluctant in even expressing our views, because somehow it would politicize the Fed. We were not politicizing the Fed; that would take legislation. This was a sense-of-the-Congress, a non-binding resolution.

I hope that the members of the Federal Open Market Committee will promptly reduce interest rates six days from today. Unfortunately, as the Christian Science Monitor recently reported, there are members of the Fed Open Market Committee who still believe we should worry about an acceleration in inflation. I am just hopeful that Mr. Greenspan and others do not take this vote as a vote that they should not reduce interest rates.

A number of Senators said to me, ''Well, that's what they are going to do anyway.'' Well, I am not so certain. I hope they will. They should have reduced interest rates two years ago when I took to the floor at that time and started calling on the Fed to do that because there were drastic signs in our economy, that there was little inflation in the economy, that there was no reason for them not to reduce interest rates at that time to help our farmers and our working families out there. I just hope it is not too late. I just hope that the Federal Reserve does not misinterpret this vote.

One of the reasons that I objected to the Senator from New Mexico bringing up this other sense of the Senate that would just ask them to consider lowering interest rates is that I personally believe it is beneath our dignity and our responsibility and rights as Senators to go hat in hand to the Federal Reserve and sort of beg them to do something when we ought to be able to stand on our own two feet and tell them what we believe they should do.

I yield the floor.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Florida.

PRIVILEGE OF THE FLOOR

Mr. GRAHAM. Mr. President, before proceeding with my remarks, I ask unanimous consent that Ms. Allison Morgan, of my staff, be granted floor privileges during the remaining consideration of the bankruptcy reform bill.

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

FEDERAL DISTRICT COURT JUDGES

Mr. GRAHAM. Mr. President, today I rise to discuss the issue of the congressional response, or in this case, the lack of response to the need for additional Federal district court judges. We are facing an increasing disparity between the judicial resources available at many of our Federal district courts and the workload imposed upon those judges.

The question might be asked, ''Why are you offering this amendment to a bankruptcy reform bill?'' It is interesting to note that the underlying legislation would create 18 new Federal bankruptcy judgeships. The basis of those 18 new Federal bankruptcy judgeships is that this legislation is created in response to additional workloads requiring that additional number of judges in order to discharge their responsibilities.

I suggest that, similarly, we should apply the same rationale to our Federal district court judges, and that is—that as their workload increases, either because of demographic or economic or social circumstances, or because we add to their workload by expanding their jurisdiction, it is our commensurate responsibility to increase the number of Federal district judge positions. These judge positions are responsible for handling some of the most complex civil and criminal cases in our judiciary.

In recognition of that, in March of 1997, the Judicial Conference of the

United States, chaired by the Chief Justice of the U.S. Supreme Court, recommended the creation of 24 additional permanent and 12 additional temporary Federal district court positions. The Judicial Conference also recommended the establishment of 12 additional judges to the circuit courts of appeals. However, my remarks this afternoon are confined to the needs that exist with the U.S. district court judges.

Mr. BRYAN. Will the Senator from Florida yield for a question?

Mr. GRAHAM. I will yield to my friend and colleague from Nevada.

Mr. BRYAN. I appreciate the courtesy of the senior Senator from Florida.

I note from the chart the Senator has brought to the floor that the State of Nevada is included. The Judicial Conference has recommended, as I understand, two additional district court judges for Nevada. Would it be the Senator's intention to include in the amendment that he is about to discuss with greater particularity the two additional judges that were recommended by the Conference for Nevada?

Mr. GRAHAM. Absolutely, I say to my friend. I am not proposing that this Congress insert its greater wisdom for that of the Judicial Conference. I am proposing that we accede to the wisdom of the Judicial Conference and where it, for instance, has recommended two additional permanent Federal judgeships in Nevada, that the Congress should sanction them. The reason for the recommendation of two additional judges in Nevada is that, of the 93 districts, including those in the 50 States plus the District of Columbia and Puerto Rico, of that number, the Nevada district ranks eighth in terms of caseload. Its caseload of 736 cases per judge is 171 percent of the stated standard that is used by the Judicial Conference to indicate that new judges are needed.

Mr. BRYAN. I appreciate the statesmanship my friend has provided and the information that is made available with respect to the situation in Nevada. I might just add to the comments of the Senator that, having lived in Nevada for more than 57 years and knowing each of our four district court judges personally, I do not know of a harder working bench at either the State or Federal level anywhere in America. Frankly, it required considerable statesmanship of the former chief judge in Nevada in electing to take senior status, which the Senator from Florida fully understands, that allowed a new district court judge to come on board. That senior judge, together with another colleague of his who is a senior judge, maintains an extraordinarily active caseload. So that has helped but has not eliminated the backlog to which the Senator has addressed his comments.

I must say, ''justice delayed is justice denied.'' The State of Nevada has the fastest growing population in the country over the past decade. That is reflected in the litigation in the Federal court system, based not only in the demographics but other situations which I am sure the Senator will allude to. So I want to join with the Senator from Florida in calling this very important issue to the attention of our colleagues and the American people. This is not an issue about lawyers or judges per se. What we are talking about are the needs of people who have their issues brought to the Federal court system and who are entitled to have those issues resolved in a prompt manner. With respect to those who violate Federal law, they need to have those matters addressed promptly in the interests of justice for all Americans. I think the proposal the Senator is about to unveil and explain in greater detail is entitled to the support of our colleagues. I wish him well and pledge my support in his efforts.

I thank him again for his leadership on this issue.

Mr. GRAHAM. I appreciate those very generous comments of the Senator. As my colleague knows, his State is not alone. This map indicates in blue those States that have been determined by the Judicial Conference, chaired by our chief justice, to require one or more additional Federal judges in order to keep pace with that particular judicial district's workload.

The States of Alabama, California, Florida, New Mexico, North Carolina, Texas, Arizona, Colorado, Nevada, New York, Oregon and Virginia would all receive permanent additional judges under the Judicial Conference's report.

Mr. BRYAN. I thank the Senator for his comments.

Mr. GRAHAM. As an example—I see we are joined by the Senator from Alabama. The middle district of his State happens to be the seventh busiest district in the country with a workload that is 176 percent of the standard which the Judicial Conference utilizes in assessing whether an additional Federal district judge is appropriate.

Mr. SESSIONS. Will the Senator from Florida yield?

Mr. GRAHAM. I yield to the Senator from Alabama.

Mr. SESSIONS. Mr. President, I do respect the concern of the Senator from Florida. As a Federal prosecutor for almost 15 years in Alabama, which is part of the 11th circuit, of which Florida is a part—the 11th circuit, I have come to admire and be extremely impressed with the workload and work ethic of the Florida Federal judges, as well as the Alabama Federal judges. Both groups have very high caseloads, higher than the national average. I think probably the middle district of Florida, and maybe the southern district of Florida, are two of the top districts in the country in so needing additional judges. The middle district of Alabama, as you noted, has one of the very highest caseloads.

I would share, this bankruptcy bill actually reduces the workload for Federal district judges a bit by not having them handle appeals from bankruptcy. That is the only thing it really affects for Federal district judges, because bankruptcy judges are separate.

I would just want to advise the Senator from Florida, I share his concern, but I have been working with Senator GRASSLEY, who chairs this subcommittee involving courts and administrative matters. He has been studying this. We have been having some hearings from judges, particularly courts of appeals. But we have not, in depth, analyzed this problem yet. I know Senator GRASSLEY intends to.

I would like to share some things. If a business had a court like the middle district of Florida that not only has a heavy caseload—it has complicated, big drug cases, international cases—they would probably look at the D.C. circuit that has 15 judges and they average 259 cases per judge instead of 855 in Florida and they might decide the taxpayers—or their business—would be better served if we shifted some from places that are not so busy to those that are more busy. I hope we will be able to analyze that, because a Federal judgeship, once you approve it, is a lifetime appointment. They get it for life and it costs $1 million a year for each Federal judge. What we need to begin to look at is some of those circuits that need to shift some judges to high-work districts. We could do that over the years. I think Senator GRASSLEY is committed to this. I am on that subcommittee so I am concerned about it. If we do it right, we can improve justice with a minimal cost to the taxpayer. I think that is what we are called to do and I thank the Senator from Florida for raising the problem.

Mr. GRAHAM. Mr. President, I appreciate the comments of the Senator from Alabama who, from his long experience in a variety of significant legal positions, is very familiar with the basic principle of my remarks, which is the relationship between changing workload and demand on judicial resources.

The Judicial Conference has proposed as a method of balancing that workload of judicial resources—a formula. That formula essentially takes the number of cases filed within a particular Federal district, weights those cases based on their complexity, and then divides that number by the number of judges currently assigned to the district. The standard for each Federal district judge is 430 weighted cases per year. When the caseload exceeds 430, that district is entitled to be reviewed for purposes of an additional judge. These judgeships are needed to help the Federal judiciary, a co-equal branch of our Government, to fulfill its constitutional obligations. It should be understood that Congress has not granted the Federal judiciary any additional Article III judges since 1990.

During the previous three occasions on which Congress has authorized new Federal judgeships under the standards of the Judicial Conference, the cycle

for such authorization has been six years. For instance, in September of 1976, the Judicial Conference recommended 106 permanent and 1 temporary Federal district judge. Congress considered that recommendation and, on October 20, 1978, approved 113 permanent and 4 temporary judges. That was done under a Senate which was in Democratic control.

Mr. President, 6 years later, in September of 1982, the Judicial Conference recommended 43 permanent, 8 temporary, and 2 conversions from temporary to permanent. On July 10, 1984, a Republican Senate authorized 53 permanent, 8 temporary, and 2 temporary to permanent conversions.

In 1990, June, the Judicial Conference recommended 47 permanent, 29 temporary, and various conversions. Then on December 1, 1990, a Democratic Senate approved 61 permanent and 13 temporary and various conversions.

The point of this is that on a bipartisan basis, whether it was a Republican Senate or a Democratic Senate, every 6 years since 1978, the Congress has responded to the Judicial Conference's recommendation. It is also significant that in each one of those cases, the Congress actually approved more judges than the Judicial Conference had recommended.

However, the last recommendation that was made was in March of 1997, following recommendations that were unheeded in September of 1992 and in September of 1994. There were recommendations made in March of 1996 to convert a temporary judge to a permanent judge and to convert a temporary extended to a permanent status. But there have been no new judgeships created since December 1, 1990. So we are now 2 years past the point which has been the standard for the creation of new Federal judgeships as recommended by the Judicial Conference.

Mr. President, I submit that it is high time for us to respond to the need for more U.S. district court judges in accordance with the Judicial Conference's recommendation. Today, many of our district court judges are strained beyond capacity in trying to meet the increasing caseloads which they face.

For example, in 1997, the Federal judiciary saw increases in both criminal and civil cases.

The number of cases filed in the district courts increased by 24 percent.

The most significant increases occurred in drug and immigration cases, particularly, as this chart will indicate, in many of our border States which are the front lines for drug and immigration litigation.

This growth in Federal caseloads has been coupled with a growing trend by the Congress to federalize an increasing number of laws that have traditionally been considered State responsibilities. These new laws have opened our courts to more cases without the requisite judges to meet the demand. For that reason, it is essential that we take this opportunity to eliminate the disparity between resources and workload in the Federal judiciary by an expansion in the number of judges at the earliest possible time.

I do not submit my word as being final in this matter. Let me quote the December of 1997 statement by the Chief Justice of the United States Supreme Court and the Chair of the Judicial Conference, The honorable William Rehnquist. This is what the Chief Justice had to say about the current status of our Federal judiciary:

> Fiscal year 1997 saw courts of appeals and bankruptcy filings at the highest rates in history. District courts also were very busy. In addition to a small increase in civil filings, there was a five percent increase in criminal cases in 1997, producing the largest federal criminal caseload in sixty years.

The Chief Justice went on to say:

> Many factors have produced this upward spiral, including laws enacted by Congress that expand federal jurisdiction over crimes involving drugs and firearms, Supreme Court decisions, large class-action litigation, and changes in executive prosecution policies.

I think our Chief Justice's statement is a strong message to the Congress, Mr. President.

If I can illustrate what is happening on a national basis by reference to what is happening in my home State of Florida, I have seen the strain placed on the judiciary due to lack of adequate judicial resources needed to fulfill its constitutional obligations.

Two of Florida's three districts are feeling the crushing pressure of this strain. These two districts have one of the highest caseloads per judge in the Nation. Under the Judicial Conference recommendation, Florida should receive six additional judgeships that include two additional judges in the southern district of Florida, three permanent judges in the middle district of Florida, and one temporary position in the middle district.

In the southern district of Florida, the court's weighted filings stand at 590 per judgeship. This is in contrast to the average used by the Judicial Conference of 430.

In the middle district, the story is even worse. This court's weighted filing is 809 filings per judgeship, which is 88 percent above the acceptable levels the Judicial Conference has established, and is the third highest number in the Nation.

Mr. President, if I can make reference to this chart which indicates that as recently as 1990, the number of weighted cases in the middle district of Florida were 509 as against a national average of 448. At that time, the middle district was overburdened but not in a crisis situation.

By 1993, the number had increased to 729, while the national average had dropped to 417. It is significant that there were additional judges added as a result of that December 1990 act of Congress, but it took a full 3 years before the effect of those additional judges had the consequence of reducing the average in the middle district of Florida to 575. No new judges have been added since that period, and currently, at the time of the preparation of this chart, the number was 812 weighted cases per judge in the middle district. I have heard that this figure may have now grown to 855.

As a result of this, a significant case backlog has developed. Currently, the middle district has 1,200 criminal cases pending and over 6,000 cases pending on the civil side.

In response to this growing backlog of civil cases, Florida's middle district chief judge, Elizabeth Kovachevich, was forced this summer to declare a state of emergency. She closed the Federal courthouses in Jacksonville and Orlando and reassigned these district judges to work with the Tampa district judges in an aggressive targeting and disposing of the oldest pending civil cases. While such innovative measures may be effective in the short term, Congress will need to find the long-term solution of providing adequate judicial resources.

This increase in caseload is not only a problem for the Florida courts, but nationally. This chart, again, illustrates the number of States which the Judicial Conference has found additional judicial resources are required.

The southern district of California is 100 percent above acceptable levels of the Judicial Conference; the district of Arizona, 83 percent above acceptable levels. As our friend and colleague from Alabama has already spoken, the middle district of Alabama is 76 percent over acceptable levels. The western district of North Carolina, 70 percent over acceptable levels.

The caseload in all of these districts, and all the other districts the Judicial Conference has recommended for additional judgeships, only stand to get worse until Congress acts and acts with a sense of urgency.

The U.S. Federal district courts are the first line of defense for most of our citizens involved in the Federal judicial system. Most Federal cases are disposed of at the district court level. But by not acting soon, we make it harder for thousands of crime victims and civil litigants in our district courts to receive the justice which they deserve.

Mr. President, as I have indicated, I am prepared to offer my amendment to the bankruptcy bill to authorize additional Federal judgeships. Before proceeding, however, I would like to inquire as to the plans for consideration of this issue by the Judiciary Committee next year.

I wonder if my distinguished colleague from the State of Utah, chairman of the Senate Committee on the Judiciary, which has oversight on these matters, could engage me in a discussion regarding this matter.

Mr. HATCH. Mr. President, I am pleased to engage in a discussion with the distinguished Senator from Florida on the substance of this matter.

Mr. GRAHAM. Mr. President, I thank the Senator for his time.

I ask the chairman, is it his assessment that a number of Federal district court jurisdictions face a growing disparity between resources and workload?

Mr. HATCH. I agree with the view that there appears to be a workload problem facing a number of district courts in Florida and some other areas. The Senate Judiciary Committee intends to act to review the matter and where necessary provide the additional judicial resources to those jurisdictions in need, if warranted and appropriate.

Mr. GRAHAM. In my home State of Florida, I have seen the strain placed on the Judiciary due to the lack of judicial resources needed to fulfill its constitutional obligations.

Will the Senator from Utah agree to review the Judicial Conference recommendations and the need for additional judges early next year?

Mr. HATCH. As I have indicated to my colleague, I will, as the chairman of the Judiciary Committee, review this matter early next year and work with my colleague from Iowa, Senator GRASSLEY, in a good-faith effort to consider this issue early next year.

Mr. GRAHAM. I thank Senator HATCH for his support and for his work in this area critical to the State of Florida and the Nation.

I also thank the Administrative Office of the U.S. Courts for their assistance during this process.

I look forward to working with all my Senate colleagues in considering this important issue in future.

Mr. President, in our colloquy, Senator HATCH recognizes, as he has done on many previous occasions, the importance of a strong judiciary in order to meet our Government's responsibility of equal justice to all of its citizens, and indicates that it is his intention that the Judiciary Committee consider this urgent need for additional judicial resources early in the next Congress. So I will desist from offering an amendment at this time on this legislation to that effect, and look forward to working with Senator HATCH and the other members of the Judiciary Committee to see that this important responsibility of the Congress is discharged as quickly as possible.

Thank you, Mr. President.

Mr. MACK. Mr. President, I come before the Senate in support of today's colloquy regarding Federal judgeship needs in Florida. Although I was unable to participate in the colloquy between my esteemed colleagues, Senators HATCH and GRAHAM, I wish to express my support for their position. It is my hope that the Judiciary Committee will lend serious consideration to Florida's unique and acute judgeship needs.

The pressures currently upon Florida's court system, particularly in the Middle District, are some of the most severe in the nation. The Judicial Conference of the United States has recommended three permanent district judgeships and one temporary judgeship for the Middle District. This is the most judgeships recommended for any federal district in the nation.

Statistics kept by the Administrative Office of the U.S. Courts underscore the need for additional judgeships in this district. Recent statistics place Florida's Middle District second in the nation in weighted case filings per judge, with an average of 855. This is far above the national average of 519 weighted case filings per judge. It is expected that these numbers will continue to climb, given this area's explosive population growth. Although fifty-five percent of Florida's population currently resides in the Middle District, the district is home to only one-third of the state's federal judges. According to projected population growth figures, the Middle District will comprise two-thirds of the state's population by the year 2005.

The Middle District contains some of the world's most frequently visited cities, beaches and tourist attractions, including Disney World in Orlando and Busch Gardens in Tampa. The heavy flow of both tourists and the ''snowbird'' population serve to make the needs of this judicial district unique.

Adding to this problem, what will be the nation's largest federal prison, the Coleman Prison Complex, is scheduled to be completed in 1999 in the Middle District. This will place an additional strain on the already overburdened courts of this district due to increased prisoner petitions. Further complicating the problem, a portion of the Middle District has recently been designated a High Intensity Drug Trafficking Area. An increase in drug cases will result as criminals are apprehended and prosecuted, placing additional demands upon this district.

It is not possible to provide Floridians with a safe environment and access to justice unless there is a court system in place which can handle the demands of this dynamic and growing part of our country. Increased judicial resources are integral in providing such a court system.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER (Mr. ROBERTS). The distinguished Senator from Iowa is recognized.

Mr. GRASSLEY. I listened to everything that the Senator from Florida has said and of course, have had to be considering the points of view that he makes, as well as a lot of my colleagues, and will be happy to continue working with him.

Mr. President, my subcommittee has been looking at the need for increased or decreased numbers of judges across the country.

I've been looking at the middle district of Florida for some time, and have corresponded and met with the chief judge.

At this time, I am still not clear on what the needs of the district are or how its caseload is being managed. For instance, how are the many senior judges in the district helping with the caseload? I asked the chief judge this, and all I got were the judges certification papers that didn't say much of anything about caseload. It mostly mentioned what conferences they attended. I would ask the proponents to explain to us how the senior judges and magistrates help in reducing the caseload? Do the proponents realize that the senior judges in the middle district don't even take full cases?

Nevertheless, I will continue working with my colleagues regarding judgeship needs. I will soon be releasing a subcommittee report on our efforts to review the circuit courts.

The bottom line I've been advocating is that if we increase judges, we need to also decrease judges where they're not needed. I know this is a new concept, and one that has been met with some resistance. But, I intend to continue this effort in the next Congress.

AMENDMENT NO. 3617 TO AMENDMENT NO. 3559

Mr. GRASSLEY. Mr. President, I send to the desk the manager's amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] proposes an amendment numbered 3617 to amendment No. 3559.

Mr. GRASSLEY. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . TREASURY DEPARTMENT STUDY REGARDING SECURITY INTERESTS UNDER AN OPEN END CREDIT PLAN.

(a) Within 180 days of the enactment of this Act, the Federal Reserve Board in consultation with the Treasury Department, the general credit industry, and consumer groups, shall prepare a study regarding the adequacy of information received by consumers regarding the creation of security interests under open end credit plans.

(b) FINDINGS.—This study shall include the Board's findings regarding:

(1) whether consumers understand at the time of purchase of property under an open end credit plan that such property may serve as collateral under that credit plan;

(2) whether consumers understand at the time of purchase the legal consequences of disposing of property that is purchased under an open credit plan and is subject to a security interest under that plan; and

(3) whether creditors holding security interests in property purchased under an open end credit plan use such security interests to coerce reaffirmations of existing debts under section 524 of the United States Bankruptcy Code.

In formulating these findings, the Board shall consider, among other factors it deems relevant, prevailing industry practices in this area.

(c) DISCLOSURE RECOMMENDATIONS.—This study shall also include the Board's recommendations regarding the utility and practicality of additional disclosures by credit card issuers at the time of purchase regarding security interests under open end credit plans, including, but not limited to:

(1) disclosures of the specific property in which the creditor will receive a security interest;

(2) disclosures of the consequences of nonpayment of the card balance, including how the security interest may be enforced; and

(3) disclosures of the process by which payments made on the card will be credited with respect to the lien created by the security contract and other debts on the card.

(d) The Board shall submit this report to the Senate Committee on the Judiciary, the Senate Committee on Banking, Housing, and Urban Affairs, the House Committee on the Judiciary, and the House Committee on Banking and Financial Services within the time allotted by this section.

Insert at an appropriate place:

Section 546 of title 11, United States Code, is amended by inserting at the end thereof—

''(I) Notwithstanding section 545(2) and (3) of this title, the trustee may not avoid a warehouseman's lien for storage, transportation or other costs incidental to the storage and handling of goods, as provided by Section 7–209 of the Uniform Commercial Code.''

Insert at an appropriate place:

Section 330(a) of Title 11 is amended:

(1) in subsection (3)(A) after the word ''awarded'', by inserting ''to an examiner, Chapter 11 trustee, or professional person'', and

(2) by adding at the end of subsection (3)(A) the following:

''(3)(B) In determining the amount of reasonable compensation to be awarded a trustee, the court shall treat such compensation as a commission based on the results achieved.''

On page 59 of amendment 3595, after clause ''(v)'', insert:

''(vi) not unfair because excessive in amount based upon the value of the collateral.''

On page 60 of amendment 3595, after clause ''(iii)'' insert:

''(iv) the following statement: If your current rate is a temporary introductory rate, your total costs may be higher.''

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. I urge adoption of the amendment.

The PRESIDING OFFICER. If there is no further debate on the amendment, the question is on agreeing to the amendment.

The amendment (No. 3617) was agreed to.

DEFINITION OF HOUSEHOLD GOODS

Mr. DODD. Mr. President, a provision of this bill that the Senator from Illinois and I drafted and had put into the Managers' Package would require the Federal Trade Commission to promulgate regulations to define household goods ''in a manner suitable and appropriate for cases under Title 11 of the U.S. Code.'' What would be ''suitable and appropriate'' in the bankruptcy context?

Mr. DURBIN. The Federal Trade Commission should keep in mind that the definition will define the household goods that a debtor may keep after the bankruptcy, as part of the debtor's fresh start. The defining regulations should specify any tangible personal property reasonably necessary for the support of the debtor and the debtor's dependents.

Mr. DODD. May I add something?

Mr. DURBIN. Certainly.

Mr. DODD. My concern with the definition is particularly for children, and is about personal property of little value to creditors. Would you agree that the Federal Trade Commission should promulgate regulations that will allow debtors to keep property that is commonly used by children or commonly used for the upbringing of children?

Mr. DURBIN. Are you talking about items like bicycles or toys or washing machines?

Mr. DODD. Yes. A debtor's child and parent should be allowed to keep these items. Children's property generally has no resale value, but replacement costs can be substantial.

Mr. DURBIN. I would agree. Similarly, I believe the Federal Trade Commission should keep in mind that when we talk about a dependent of the debtor we are referring to people like an elderly parent or relative, or a disabled person. Property belonging to a dependent elderly or disabled person should also figure into the definition.

Moreover, I would note that although some members of the Judiciary Committee have tried to tell the FTC what to do, this provision ultimately leaves the decision in the hands of the FTC. We have never had hearings or conducted any inquiry whatsoever into what household goods are necessary or appropriate in bankruptcy. The point of this provision is to ask the FTC to make the necessary inquiries and provide a suitable definition. As the lead Democratic co-sponsor of this bill, as the author of this provision—which I proposed during the Committee debate—and as the ranking member on the Subcommittee with jurisdiction over the bankruptcy code, I believe the FTC is much better suited to do this than we. In addition, I would note that the definition of dependent must be drawn from the bankruptcy code itself in order for any FTC definition to be at all meaningful or useful.

Mr. DODD. As the co-author of this provision, I concur.

Mr. DURBIN. Let me take this opportunity to compliment the distinguished Senator from Connecticut for all of his hard work on this issue. He identified the unique problems of children in bankruptcy before anyone else, and no one has worked harder on this problem than he. We both had different approaches to the household goods issue, and the provision in this bill blends our two approaches.

Mr. DODD. And I think we have achieved a sensible result. In light of the fact that we have taken no testimony on this issue and have no real expertise in this area, it only makes sense to have the FTC attempt to craft a definition. I compliment the Senator from Illinois for his efforts. It has been a pleasure working with him.

PATENT REFORM LEGISLATION AMENDMENT

Mr. HATCH. Mr. President, let me take a moment to speak about an amendment that has not been discussed in the last several days. Under the unanimous-consent agreement, I am permitted and had planned to offer a scaled-down version of broadly supported and bipartisan patent reform legislation, which was favorably reported to the Senate by the Judiciary Committee more than a year ago. Nevertheless, having spoken with the majority leader, and in the interest of expediting activity on pending Senate business, I have agreed to withhold my amendment.

But I want to take a moment to clarify why I believe this amendment is so important. In short, the provisions of this amendment represent the most important and most comprehensive reforms to our nation's patent system in nearly half a century. In the last 50 years, our nation has witnessed an explosion of technology growth and a tremendous expansion of the global market for American intellectual property. Yet our patent laws have remained largely unchanged. My bill would effect those changes that are necessary to bring our patent system up to speed with the growing demands of the global economy, to preserve American competitiveness into the 21st century, and to ensure adequate protection for American innovators, both at home and abroad.

In all, there have been nine days of hearings and 78 witnesses who have testified in the House and Senate on the provisions of this legislation. Seventeen of those witnesses appeared before the Senate Judiciary Committee. In addition, I have engaged in endless negotiations to address concerns regarding the effect of the bill on small businesses and independent inventors. The result of that process was a comprehensive package of amendments that was endorsed by the Judiciary Committee, including several outspoken opponents of the original bill, in an overwhelming bipartisan 17–1 vote last year. Since then, I have sought a vote on the Senate floor for this legislation, thus far without success.

The failure to bring this bill to a vote in the Senate has largely been the result of the opposition of a very few Senators who have objected to even its consideration by the full Senate. Over the past year, I have made numerous additional changes to the bill in an attempt to address their concerns. As a result of those changes, the bill now enjoys even broader support, ranging from the smallest of American entrepreneurs and innovators to Fortune 100 companies. It is endorsed by the small business community, as well as by the experts on the subject, including 5 of the past 6 commissioners of the Patent and Trademark Office and thousands of patent practitioners and patent owners. Unfortunately, despite my efforts, and despite this broad support, a vocal minority, which apparently opposes any patent reform, continues to object this bill. Repeated invitations to sit

down with them to fashion a reasonable accommodation have been rejected.

Mr. President, at some point, the interests of inventors, the continued strength of our intellectual property base, consumers, and an overwhelming majority of the Senate must prevail over the interests of the few who would oppose any patent reform. I believe that this legislation must be debated and real patent reforms enacted if America is to retain its competitive edge into the next century.

In acceding to the majority leader's request to refrain from exercising my rights in offering this bill as an amendment to the bankruptcy bill, I am relying on his assurance that this patent reform legislation will be brought up for floor consideration and a vote early next year, with the expectation being that we complete action on the measure prior to March 1999. I would reiterate my willingness and desire to work with my colleagues to resolve any outstanding concerns, and I hope any Senator who still has genuine concerns with this bill will take me up on my offer.

I look forward to working with my colleagues and to seeing reasonable patent reforms enacted by the Senate next year.

DRUNK-DRIVING VICTIMS

Mr. LAUTENBERG. Mr. President, I would like to commend the authors of this legislation, Senators DURBIN and GRASSLEY, for their efforts on this legislation and their acceptance of my amendment which will help prevent drunk drivers from escaping the debts they owe to their victims by filing for bankruptcy.

As my colleagues know, Congress has always worked in a bipartisan way when working to protect the victims of drunk-drivers under the Bankruptcy Code. In 1984, Congress passed the Bankruptcy Amendments and Federal Judgeship Act of 1984 which contained provisions to prevent drunk drivers from avoiding their debts to victims by filing for bankruptcy under Chapter 7. Although that Act closed a loophole in Chapter 7 of the Bankruptcy Code, drunk drivers began to file for bankruptcy under Chapter 13. Consequently, in 1990, Congress passed another measure to protect drunk-driving victims under Chapter 13.

As originally drafted, S. 1301 contained a number of provisions that would have diluted the ability of drunk-driving victims to receive damages. Consequently, I drafted an amendment designed to ensure that victims would be paid for their injuries when the drunk driver filed for bankruptcy. Additionally, the amendment extended protections to victims of drunk boaters. The Coast Guard reports that drunk boating continues to be a problem with more than 200 fatalities in some years, and I thought it was important that irresponsible boaters not be able to escape liability by filing for bankruptcy.

I am pleased that Senators DURBIN and GRASSLEY have incorporated my amendment into the managers' amendment. I appreciate their efforts and cooperation. We must ensure that the victims of drunk drivers and drunk boaters are protected in bankruptcy and I urge the conferees to make this issue a priority when working out differences with the House bill.

Mr. LEAHY. Mr. President, I urge my colleagues to support the Consumer Bankruptcy Reform Act, S. 1301. Senator DURBIN and Senator GRASSLEY have worked together to mold a bipartisan bill that seeks to correct abuses in the bankruptcy system while preserving access to it for honest debtors. Every American agrees with the basic principle that debts should be repaid. The vast majority of Americans are able to meet their obligations. But, for those who fall on financial hard times, bankruptcy should be available in a fair and balanced way.

Unfortunately, more and more Vermonters and more and more Americans are filing for bankruptcy. The numbers are disturbing. While the unemployment rate keeps going down and inflation remains low, the nation's personal bankruptcies keep going up. Thus, this rise in bankruptcy filings has occurred at the same time that we enjoy a robust economy. If fact, Vermont's unemployment rate hit a 10-year low just the other day. Vermont's personal bankruptcy rate increased by about 40 percent for each of the last two years.

Still, Vermont was ranked next to last among the 50 states in personal bankruptcy filings last year. In most other states, personal bankruptcy rates increased even more dramatically while unemployment rates declined. I do not know all the answers why more and more Americans are filing for bankruptcy. I think some may be abusing the system. I think most are not. My guess is that stagnant wages and more consumer credit card debt are the primary reasons.

Where there are abuses in the bankruptcy law, we should move to correct them. I believe that this bill does that by establishing standards for bankruptcy judges to consider with respect to Chapter 7 and 13 filings and by discouraging bad-faith repeat filings. This bill also includes better bankruptcy data collection procedures so that we can learn more about the root causes of the recent rise in bankruptcy filings. Accurate data will also allow us to better evaluate the impact of this reform legislation.

But we must also remember that bankruptcy serves as a safety net for many of our constituents. Those who use bankruptcy are the most vulnerable of the American middle class. They are older Americans who have lost their jobs or are unable to pay their medical debts. They are women attempting to raise their families or secure alimony and child support after a divorce. They are individuals struggling to recover from unemployment. This bankruptcy reform bill protects them.

As we move forward with reforms that are appropriate to eliminate abuses in the system, we need to remember the people who use the system, both the debtor and the creditor. We need to balance the interests of creditors with those of middle class Americans who need the opportunity to resolve overwhelming financial burdens.

Unfortunately, the House-passed consumer bankruptcy reform bill requires an arbitrary means testing of debtors to be eligible for Chapter 7 filings. Many bankruptcy practitioners and bankruptcy judges predict that the radical means-testing requirements in the House bill would swamp the bankruptcy process with a flood of new litigation over a debtor's filing status. Indeed, the Congressional Budge Office estimates that H.R. 3150 would cost taxpayers up to $16 million a year for new bankruptcy judges and other court administrative expenses. Moreover, CBO estimates that the House bill would impose new private sector mandates, as defined in the Unfunded Mandates Reform Act, of at least $100 million on our economy. We need balanced bankruptcy reform, not more unfunded mandates and costs to taxpayers.

The House bankruptcy reform bill also fails to adequately protect our most vulnerable citizens—our children. More than one-third of the one million annual bankruptcies involve spouse and child support orders. But the House bill proposes profound changes to the bankruptcy code for spouse and child support obligations by placing them on a equal footing with some consumer debt. As a result, custodial parents and ex-spouses may have to fight in court against the deep pockets of corporate lenders with little chance of success. This is unacceptable for America's children.

I believe that the Senate version of the Consumer Bankruptcy Reform Act, S. 1301, carefully balances the competing interests of debtors and creditors. The bankruptcy reform bill passed by the House of Representatives, H.R. 3150 is not a balanced piece of legislation. The Administration has promised a veto if the House bill were to be adopted by Congress.

I have already spoken to the other Senators who will serve on a House-Senate bankruptcy reform conference about holding firm to the Senate bill in conference. If we want to enact balanced bankruptcy reforms into law this year, the Senate bill is that measure. If this Congress wants to enact consumer bankruptcy reforms into law, then the conference report must be along the lines of S. 1301. I am glad to report that a majority of the Republicans who will serve on the conference with Senator DURBIN and me agree. I expect that we will strongly support the Senate position and prevail in conference.

I hope that the Senate will adopt this bipartisan bill that corrects the abuses in the bankruptcy system without unfairly penalizing women and children

who depend on child support and alimony, as well as older Americans and small business owners.

I want to take a moment to commend Senator DURBIN for his leadership and for working to reform our bankruptcy system in a fair and balanced manner. Senator DURBIN has served as a most effective manager of this important measure. He has been informed and exercised good judgment at every turn. He has met every challenge and maintained the bipartisanship that made this possible. Without his extraordinary efforts, there would be no bankruptcy reform legislation being considered for final passage by the Senate.

I also commend Senator GRASSLEY. I know that is has not always been easy for him to keep this legislation on course. I know that some in his caucus have criticized his efforts to be fair and to continue to work in a bipartisan fashion. I am glad that he did not succumb to that bad advice. Senator GRASSLEY and I have worked together for many years. We agree on many things and we have disagreed on some. I congratulate him for his outstanding efforts as the principal author, subcommittee chairman and floor manager of this bill. He has done a fine job and created a measure for which he deserves our thanks. In this effort I have tried to be constructive—even foregoing offering an important amendment to this particular bill, at Senator HATCH's request.

I also want to applaud the work of the staff on the Senate Judiciary Committee principally responsible for this bill: Victoria Bassetti and Anne McCormick with Senator DURBIN, and Kolan Davis and John McMickle with Senator GRASSLEY. Each worked hard on this very complex issue and helped craft a fine piece of bipartisan legislation. They were here late into many nights and worked ceaselessly for the public interest.

I urge my colleagues to support S. 1301, the Consumer Bankruptcy Reform Act. It is a bill that the Senate should pass.

Mr. FEINGOLD. Mr. President, although I object to numerous provisions in the underlying bill, S. 1301, the Consumer Bankruptcy Reform Act, I was pleased to work with the Chairman and Ranking Member to include provisions important to the farmers of this country.

Mr. President, everyone knows that family farming is a high risk business. One that's effected more by outside, unanticipated forces—for example, unstable markets, weather, and disease—than any other industry. To survive in such a volatile vocation, farmers are often given a bit of flexibility. This flexibility is the key to the survival of most family farms.

Unfortunately, some farmers become overburdened by the financial hazards associated with the business and seek assistance in dealing with their creditors. In 1986, Senator GRASSLEY added Chapter 12 to the bankruptcy code to satisfy the unique risks and needs of family farmers. Prior to that, farmers were forced to file for bankruptcy under Chapter 11, the Small Business specific Chapter.

Although Chapter 12 has provided much needed relief for hundreds of family farmers, through the years, Chapter 12 has become outdated; its definitions, eligibility requirements and other provisions have not kept pace with changes in agriculture or in the nation's economy. Most disturbingly, the out of date eligibility requirements of this provision have excluded many who need it most and forced many farmers into Chapter 11.

I was pleased that three amendments I authored with Senators CONRAD and Bob KERREY were accepted by Senators GRASSLEY and DURBIN and included in the manager's amendment. Two of these provision change the eligibility requirements of Chapter 12 to include those originally intended under the 1986 statute.

One provision indexes the Chapter 12 debt limit. The current maximum debt limit on Chapter 12 is $1,500,000. This limit has not been changed since the 1986 law took effect, while most other Code dollar figures have been increased for inflation and will have automatic adjustments in the future. At this point, the debt limits exclude many farmers for whom Chapter 12 was originally intended.

A second eligibility problem had been the requirement that more than 50% of a farm family's taxable income for the prior year came from a farming operation. Farm families, expecting low return on their commodities, usually seek off-farm employment for one of the household adults. A few years of low prices and negligible farm income would make many farmers ineligible under this provision. Current law assumes that farmers throw in the towel after just one bad year. I cannot think of one Wisconsin farmer that gives up that easily. They keep working and hope for better markets next year. My provision changes this requirement so that farmers have a bit more flexibility. More specifically, my amendment will allow the 50% income requirement can be satisfied in any of the past three years.

The last provision simply prohibits retroactive assessment of disposable income by the courts. To have a payback schedule confirmed by the bankruptcy courts, a debtor in Chapter 12 must commit projected disposable income—over and above living expenses, operating expenses and secured debt payments—to pay unsecured debtors. Some courts have started ''adjusting'' these payments upward in hindsight, if the debtor's income was greater than projected. My amendment will make Chapter 12 consistent with Chapter 13 and prohibit the retroactive assessment and instead modifies the coming year's payment schedule to reflect the additional income.

Again, Mr. President, I wish to thank Senators KERREY, CONRAD, GRASSLEY and DURBIN for their work on these amendments. It will give family farmers across the country the flexibility they need to make good on their debts.

Mr. WELLSTONE. Mr. President, there is no doubt that more and more Americans are turning to the consumer bankruptcy system and the financial protection it offers. More than 1.3 million families filed for bankruptcy last year. Where there is fraud and abuse we must take steps to reduce and eliminate it. But this bill will not help reduce fraud. It will encourage riskier lending habits by credit companies. It will lead to more credit being extended to poor families. It will ensure that those families will file more bankruptcies. It will force these families to file different types of bankruptcies, the kind of bankruptcy that ensures that they will never be free of their debt and able to restart their lives.

This is a complex issue and I must provide some background in order to explain my stance. There are two types of bankruptcies that individuals can file: Chapter 7 and Chapter 13. Under current law, individuals can choose either type. Chapter 7 bankruptcy allows debtors to discharge all their debt (besides child support, taxes, home loans, and student loans). Chapter 13 bankruptcies discharge no debt, but allow debtors to bargain directly with their creditors on reduced debt and payment schedules. Under the bill we passed today, Chapter 7 bankruptcies, which have provided a new start to millions of families over the years, will become a thing of the past. First of all, a judge now will have discretion to reject a debtor's Chapter 7 claim, and require her to file under Chapter 13, if it can be proven that the debtor has the ability to pay off 30% of her debt over the next five years. Secondly, any of the debtor's creditors can enter the court—without legal counsel—and require the court to make a judgement as to whether the debtor can afford this 30%. Thirdly, if the judge believes that the debtor can pay off this 30%, the debtor's attorney—and this is unheard of in the law to date—will be forced to pay the cost of the Chapter 13 Trustee. This is a hugely expensive tax on bankruptcy attorneys and they will certainly avoid taking on new Chapter 7 bankruptcies.

The truth is that this bill treats all debtors as likely criminals. Yes, bankruptcies in this country are up. But debtors now wait longer to file bankruptcy and are deeper in debt than those who filed bankruptcy a decade ago. Furthermore, increased filings can be attributed to job loss, divorce, increasing health care costs, declining real wages—and most importantly—an entire industry of easy credit which ten years ago did not exist in any where near today's scale.

Harvard Business School researchers David Moss and Gibbs Johnson state ''the evidence suggests that shifts in

the volume of and distribution of consumer credit—rather than declining stigma [of bankruptcies]—are the most likely sources of the recent surge in consumer filings.'' They add that the surge of filings that began in the late 1980s can be attributed to ''consumer creditors [which] began reaching substantially further down into the income distribution beginning in the mid 1980s.'' It should also be noted that credit-card mail solicitations have skyrocketed, from 3.1 million mail solicitations in 1996 to over 881 million mail solicitations in 1997. Yet it is this consumer credit industry that benefits most from this bill; because it is this industry that will use this bill to prevent individuals from discharging their credit card debt. Simply put, this bill will increase the amount of money that credit card companies would receive from low-income bankrupt debtors. Meanwhile, opponents argue that sophisticated individuals with good legal advice will be able to get around the bill's new changes (as is often the case with financial laws).

Who will benefit from this bill? I will quote Senator Metzenbaum, Public Citizen, and Consumers Union: ''The only reason we're having this debate is because the credit industry, primarily the credit card industry, has spent well-orchestrated millions on ads and lobbyists demonizing American families in crisis.'' Even the title of a Wall Street Journal article says it all: ''As Bankruptcies Surge, Creditors Lobby Hard to Get Tougher Laws; But Whether Many People Shirk Bills They Can Pay Remains Open To Debate; Changing the Lender's Image.'' I quote from that article: ''As the legislation moves quickly through Congress, many academics, lawyers, and judges who specialize in bankruptcy question why. A government-appointed commission spent two years studying the matter and was deeply divided. Five of its nine members found no major abuse of the system or need for a crackdown: only two endorsed anything like the bills Congress is embracing. More than 100 jurists wrote lawmakers to urge them to slow down.* * * A major reason [for the bill]? A multi-million public-relations and lobbying blitz run largely by companies with the most to gain: credit card issuers and other lenders.''

Who will suffer under this bill? When job loss, divorce, or medical emergency strike, some families have no choice but to file for bankruptcy in order to stabilize themselves. Divorced women file for bankruptcy in greater proportions than divorced men. Victims of abuse file for bankruptcy, often from debt incurred entirely by those who abused them. Single parents are forced into bankruptcy after any substantial period of unemployment. African Americans and Hispanics are dramatically over-represented in bankruptcy. With health insurance in its current state, families that suffer even one major medical emergency often find themselves in need of bankruptcy protection. But this bill responds to the need of these families by basically reinstituting life-long debtor's prison. All to the benefit of easy-credit companies. I could not in good conscience support this bill.

Mr. KOHL. Mr. President, the dramatic rise in bankruptcies is very troubling, regardless of whether the blame lies with credit card companies, a culture that disparages personal responsibility, the bankruptcy code or, most probably, with all of the above. While none of us wants to return to the era of ''debtors' prison,'' we need to do something to reverse this trend.

But true ''reform'' will only occur if we prevent the most egregious abuse of the bankruptcy laws—misuse of the homestead exemption. And we will only have true reform if we target other abuses without overburdening the vast majority of debtors who truly need—and deserve—relief. And, true reform also requires a balanced approach that targets abusive practices by creditors as well as by debtors.

That is why I intend to vote for this bill. It does all three: prevents the most egregious abuses by capping the homestead exemption, uses ''means testing'' to deter other serious abuses without placing unfair burdens on honest debtors, and requires credit card companies to disclose the information consumers need to make intelligent choices.

In particular, let me focus on the cap on the homestead exemption that Senator SESSIONS and I introduced in subcommittee. This proposal, which was adopted by a unanimous 7–0 vote in subcommittee and was unanimously reaffirmed on the floor through a Sense of the Senate resolution, closes a loophole that allows too many debtors to shield their assets in luxury homes, while their creditors get left out in the cold. Currently, a handful of states allow debtors to protect their homes no matter how high their value. And time after time, millionaire debtors move to states with unlimited exemptions, like Florida and Texas, declare bankruptcy—yet continue to live like kings while their creditors get little or nothing. If we want to restore the stigma attached to bankruptcy, these high profile abuses are the best place to start.

Our proposal is simple and effective. It caps at $100,000 the maximum homestead exemption that an individual filing bankruptcy can claim. With the cap in place, bankrupt debtors will retain their right to a roof over their heads, but not to luxury accommodations.

I am concerned, however, that if this homestead cap is dropped in Conference, the President will veto the bill. That is, if it reaches him, because if the cap is removed, I'll filibuster the Conference Report myself.

But since all of the conferees support the homestead cap provision, and since the Senate has now gone on record as saying that the ''cap'' is ''essential to meaningful bankruptcy reform,'' I am confident that we won't have to go that route.

Mr. President, when people talk about bankruptcy abuse, the notion of stashing cash in a lavish Florida home is the first thing they think about. And that's not surprising. To borrow a phrase from Bill Bennett, Congress needs to act responsibly to put ''a death to this outrage.''

Overall, I commend Senators GRASSLEY and DURBIN for their hard work and close collaboration. I look forward to a final product that continues tackling the worst abuses, while still helping honest debtors.

Mr. REED. Mr. President, I voted in favor of S. 1301, the Consumer Bankruptcy Reform Act of 1998, to address certain abuses regarding consumer bankruptcy laws, while providing bankruptcy protection to those who genuinely need it. Indeed, in recent years, there have been record increases in bankruptcy filings. In 1997 alone there were 1.3 million bankruptcy filings—an all-time high. While I think this increase is in part a result of the significant rise in outstanding consumer credit, I believe it is also attributable to the reduced stigma associated with filing for bankruptcy. As such, I believe that S. 1301 will be an important tool in curtailing irresponsible debtor practices.

The version of S. 1301 passed by the Senate is the product of significant compromise by both Democrats and Republicans and is much-improved over the Judiciary Committee-passed bill. I am pleased that my amendments prohibiting certain credit card terminations, limiting consumer debit card liability, and providing greater disclosure for ''high LTV'' loans were adopted by the Senate. Nonetheless, I am concerned about the means-testing provisions in the bill and would be inclined to oppose the Conference Report if the means-testing provisions are made mandatory or if consumer credit protections are deleted.

S. 1301 signifies a fundamental change in bankruptcy policy by establishing a system of means testing for determining eligibility for Chapter 7 relief. Heretofore, debtors have had the power to determine the type of bankruptcy relief to be sought, regardless of their ability to repay. S. 1301, however, gives a bankruptcy judge the discretion to convert a Chapter 7 case to Chapter 13 upon a motion by the creditor, if the debtor can afford to repay 30 percent of his or her debts.

My concern with the provision is that it does not contemplate whether the creditor acted responsibly and in good faith in extending credit to the debtor. Statistics showing that household debt has increased to 104 percent of household income, as compared to 24 percent in 1975, suggests that some creditors may be irresponsibly extending credit. In response to my concerns, I offered an amendment to the bill that would have required creditors to act in

good faith in their dealings with debtors. Unfortunately, this amendment did not pass.

Despite my concerns with the means testing provision, I was able to support the bill because the means testing provision does not require the judge to convert a case to Chapter 13, but instead gives the judge discretion. If the Conference Report eliminates this judicial discretion and incorporates the House-passed means testing provision that requires conversion, I would have a difficult time supporting the Conference Report.

Lastly, my support for S. 1301 was in part predicated on the significant consumer credit protections incorporated in the bill. For example, the bill includes an amendment that I offered that would prohibit credit card companies from terminating a consumer's account simply because the consumer paid his or her bill in full each month. This is a detestable practice which flies in the face of the goals being promoted in S. 1301. If this provision, or other such provisions are not included in the Conference Report, I would seriously consider opposing the Conference Report.

Mr. GRAMS. Mr. President, on July 6th, the Federal Financial Institutions Examination Council (FFIEC), published for public comment in the Federal Register, its proposed changes to its Uniform Policy for Classification of Consumer Installment Credit Based on Delinquency Status. FFEIC is on the verge of adopting the changes in the proposals, with or without modifications based on the public input they received. I would like to ask my distinguished colleague, the Senator from Iowa whether the bankruptcy reform legislation currently before the Senate would significantly affect the agency's policy guidelines? My concern is that shortly after the FFIEC's new guidelines are adopted, it will have to rewrite them, according to the new bankruptcy reform legislation.

Mr. GRASSLEY. That is correct. If the bill before us is enacted this fall, it will have a substantial impact upon creditors' recovery in many consumer bankruptcy cases. It will take some time to evaluate the full impact of the new law.

Mr. GRAMS. Accordingly then, it is my view that the FFIEC should delay implementing any changes to its Uniform Policy for Classification of Consumer Installment Credit Based on Delinquency Status until it is clear whether and in what final form the bankruptcy reform is enacted.

Mr. GRASSLEY. I would agree with my colleague from Minnesota and urge FFIEC to delay implementing changes to its Uniform Policy for Classification of Consumer Installment Credit Based on Delinquency Status, in light of the pending bankruptcy reform legislation.

The PRESIDING OFFICER. Are there further amendments?

If there are no further amendments, the question is on agreeing to the substitute amendment, as amended.

The substitute amendment (No. 3559), as amended, was agreed to.

Mr. GRASSLEY. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the reported committee substitute amendment, as amended.

Without objection, the committee substitute amendment, as amended, is agreed to.

The committee substitute amendment, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

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

The PRESIDING OFFICER. If the Senator would withhold for a moment.

Under the previous order, the Senate will now proceed to the House companion bill, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3150) to amend title 11 of the United States Code, and for other purposes.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. Under the previous order, all after the enacting clause of H.R. 3150 is stricken and the text of S. 1301, as amended, is inserted in lieu thereof.

The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Virginia (Mr. WARNER), is necessarily absent.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN), is necessarily absent.

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

The result was announced—yeas 97, nays 1, as follows:

[Rollcall Vote No. 284 Leg.]

YEAS—97

Abraham	Baucus	Bond
Akaka	Bennett	Boxer
Allard	Biden	Breaux
Ashcroft	Bingaman	Brownback
Bryan	Grams	McConnell
Bumpers	Grassley	Mikulski
Burns	Gregg	Moseley-Braun
Byrd	Hagel	Moynihan
Campbell	Harkin	Murkowski
Chafee	Hatch	Murray
Cleland	Helms	Nickles
Coats	Hollings	Reed
Cochran	Hutchinson	Reid
Collins	Hutchison	Robb
Conrad	Inhofe	Roberts
Coverdell	Inouye	Rockefeller
Craig	Jeffords	Roth
D'Amato	Johnson	Santorum
Daschle	Kempthorne	Sarbanes
DeWine	Kennedy	Sessions
Dodd	Kerrey	Shelby
Domenici	Kerry	Smith (NH)
Dorgan	Kohl	Smith (OR)
Durbin	Kyl	Snowe
Enzi	Landrieu	Specter
Faircloth	Lautenberg	Stevens
Feingold	Leahy	Thomas
Feinstein	Levin	Thompson
Ford	Lieberman	Thurmond
Frist	Lott	Torricelli
Gorton	Lugar	Wyden
Graham	Mack	
Gramm	McCain	

NAYS—1

Wellstone

NOT VOTING—2

Glenn Warner

The bill (H.R. 3150), as amended, passed as follows:

Resolved, That the bill from the House of Representatives (H.R. 3150) entitled ''An Act to amend title 11 of the United States Code, and for other purposes.'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Consumer Bankruptcy Reform Act of 1998''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—NEEDS-BASED BANKRUPTCY

Sec. 101. Conversion.
Sec. 102. Dismissal or conversion.

TITLE II—ENHANCED PROCEDURAL PROTECTIONS FOR CONSUMERS

Sec. 201. Allowance of claims or interests.
Sec. 202. Exceptions to discharge.
Sec. 203. Effect of discharge.
Sec. 204. Automatic stay.
Sec. 205. Discharge.
Sec. 206. Discouraging predatory lending practices.
Sec. 207. Enhanced disclosure for credit extensions secured by dwelling.
Sec. 208. Dual-use debit card.
Sec. 209. Enhanced disclosures under an open end credit plan.
Sec. 210. Violations of the automatic stay.
Sec. 211. Discouraging abusive reaffirmation practices.
Sec. 212. Sense of the Senate regarding the homestead exemption.
Sec. 213. Encouraging creditworthiness.
Sec. 214. Treasury Department study regarding security interests under an open end credit plan.

TITLE III—IMPROVED PROCEDURES FOR EFFICIENT ADMINISTRATION OF THE BANKRUPTCY SYSTEM

Sec. 301. Notice of alternatives.
Sec. 302. Fair treatment of secured creditors under chapter 13.
Sec. 303. Discouragement of bad faith repeat filings.
Sec. 304. Timely filing and confirmation of plans under chapter 13.
Sec. 305. Application of the codebtor stay only when the stay protects the debtor.

Sec. 306. Improved bankruptcy statistics.
Sec. 307. Audit procedures.
Sec. 308. Creditor representation at first meeting of creditors.
Sec. 309. Fair notice for creditors in chapter 7 and 13 cases.
Sec. 310. Stopping abusive conversions from chapter 13.
Sec. 311. Prompt relief from stay in individual cases.
Sec. 312. Dismissal for failure to timely file schedules or provide required information.
Sec. 313. Adequate time for preparation for a hearing on confirmation of the plan.
Sec. 314. Discharge under chapter 13.
Sec. 315. Nondischargeable debts.
Sec. 316. Credit extensions on the eve of bankruptcy presumed nondischargeable.
Sec. 317. Definition of household goods and antiques.
Sec. 318. Relief from stay when the debtor does not complete intended surrender of consumer debt collateral.
Sec. 319. Adequate protection of lessors and purchase money secured creditors.
Sec. 320. Limitation.
Sec. 321. Miscellaneous improvements.
Sec. 322. Bankruptcy judgeships.
Sec. 323. Definition of domestic support obligation.
Sec. 324. Priorities for claims for domestic support obligations.
Sec. 325. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.
Sec. 326. Exceptions to automatic stay in domestic support obligation proceedings.
Sec. 327. Nondischargeability of certain debts for alimony, maintenance, and support.
Sec. 328. Continued liability of property.
Sec. 329. Protection of domestic support claims against preferential transfer motions.
Sec. 330. Protection of retirement savings in bankruptcy.
Sec. 331. Additional amendments to title 11, United States Code.
Sec. 332. Debt limit increase.
Sec. 333. Elimination of requirement that family farmer and spouse receive over 50 percent of income from farming operation in year prior to bankruptcy.
Sec. 334. Prohibit retroactive assessment of disposable income.
Sec. 335. Amendment to section 1325 of title 11, United States Code.
Sec. 336. Protection of savings earmarked for the postsecondary education of children.

TITLE IV—FINANCIAL INSTRUMENTS

Sec. 401. Bankruptcy Code amendments.
Sec. 402. Recordkeeping requirements.
Sec. 403. Damage measure.
Sec. 404. Asset-backed securitizations.
Sec. 405. Prohibition on certain actions for failure to incur finance charges.
Sec. 406. Fees arising from certain ownership interests.
Sec. 407. Bankruptcy fees.
Sec. 408. Applicability.

TITLE V—ANCILLARY AND OTHER CROSS-BORDER CASES

Sec. 501. Amendment to add a chapter 6 to title 11, United States Code.
Sec. 502. Amendments to other chapters in title 11, United States Code.

TITLE VI—MISCELLANEOUS

Sec. 601. Executory contracts and unexpired leases.
Sec. 602. Expedited appeals of bankruptcy cases to courts of appeals.
Sec. 603. Creditors and equity security holders committees.
Sec. 604. Repeal of sunset provision.
Sec. 605. Cases ancillary to foreign proceedings.
Sec. 606. Limitation.
Sec. 607. Amendment to section 546 of title 11, United States Code.
Sec. 608. Amendment to section 330(a) of title 11, United States Code.

TITLE VII—TECHNICAL CORRECTIONS

Sec. 701. Definitions.
Sec. 702. Adjustment of dollar amounts.
Sec. 703. Extension of time.
Sec. 704. Who may be a debtor.
Sec. 705. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.
Sec. 706. Limitation on compensation of professional persons.
Sec. 707. Special tax provisions.
Sec. 708. Effect of conversion.
Sec. 709. Automatic stay.
Sec. 710. Amendment to table of sections.
Sec. 711. Allowance of administrative expenses.
Sec. 712. Priorities.
Sec. 713. Exemptions.
Sec. 714. Exceptions to discharge.
Sec. 715. Effect of discharge.
Sec. 716. Protection against discriminatory treatment.
Sec. 717. Property of the estate.
Sec. 718. Preferences.
Sec. 719. Postpetition transactions.
Sec. 720. Technical amendment.
Sec. 721. Disposition of property of the estate.
Sec. 722. General provisions.
Sec. 723. Appointment of elected trustee.
Sec. 724. Abandonment of railroad line.
Sec. 725. Contents of plan.
Sec. 726. Discharge under chapter 12.
Sec. 727. Extensions.
Sec. 728. Bankruptcy cases and proceedings.
Sec. 729. Knowing disregard of bankruptcy law or rule.
Sec. 730. Rolling stock equipment.
Sec. 731. Curbing abusive filings.
Sec. 732. Study of operation of title 11 of the United States Code with respect to small businesses.
Sec. 733. Transfers made by nonprofit charitable corporations.
Sec. 734. Effective date; application of amendments.

TITLE I—NEEDS-BASED BANKRUPTCY

SEC. 101. CONVERSION.

Section 706(c) of title 11, United States Code, is amended by inserting ''or consents to'' after ''requests''.

SEC. 102. DISMISSAL OR CONVERSION.

(a) IN GENERAL.—Section 707 of title 11, United States Code, is amended—

(1) by striking the section heading and inserting the following:

''§ 707. Dismissal of a case or conversion to a case under chapter 13'';

and

(2) in subsection (b)—

(A) by inserting ''(1)'' after ''(b)''; and

(B) in paragraph (1), as redesignated by subparagraph (A) of this paragraph—

(i) in the first sentence—

(I) by striking ''but not'' and inserting ''or''; (II) by inserting '', or, with the debtor's consent, convert such a case to a case under chapter 13 of this title,'' after ''consumer debts''; and

(III) by striking ''substantial abuse'' and inserting ''abuse''; and

(ii) by striking the last sentence and inserting the following:

''(2) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall consider whether—

''(A) under section 1325(b)(1), on the basis of the current income of the debtor, the debtor could pay an amount greater than or equal to 30 percent of unsecured claims that are not considered to be priority claims (as determined under subchapter I of chapter 5); or

''(B) the debtor filed a petition for the relief in bad faith.

''(3)(A) If a panel trustee appointed under section 586(a)(1) of title 28 brings a motion for dismissal or conversion under this subsection and the court grants that motion and finds that the action of the counsel for the debtor in filing under this chapter was not substantially justified, the court shall order the counsel for the debtor to reimburse the trustee for all reasonable costs in prosecuting the motion, including reasonable attorneys' fees.

''(B) If the court finds that the attorney for the debtor violated Rule 9011, at a minimum, the court shall order—

''(i) the assessment of an appropriate civil penalty against the counsel for the debtor; and

''(ii) the payment of the civil penalty to the panel trustee or the United States trustee.

''(C) In the case of a petition referred to in subparagraph (B), the signature of an attorney shall constitute a certificate that the attorney has—

''(i) performed a reasonable investigation into the circumstances that gave rise to the petition; and

''(ii) determined that the petition—

''(I) is well grounded in fact; and

''(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1) of this subsection.

''(4)(A) Except as provided in subparagraph (B), the court may award a debtor all reasonable costs in contesting a motion brought by a party in interest (other than a panel trustee or United States trustee) under this subsection (including reasonable attorneys' fees) if—

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

''(ii) the court finds that—

''(I) the position of the party that brought the motion was not substantially justified; or

''(II) the party brought the motion solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

''(B) A party in interest that has a claim of an aggregate amount less than $1,000 shall not be subject to subparagraph (A).

''(5) However, only the judge, United States trustee, bankruptcy administrator or panel trustee may bring a motion under this section if the debtor and the debtor's spouse combined, as of the date of the order for relief, have current monthly total income equal to or less than the national median household monthly income calculated on a monthly basis for a household of equal size. However, for a household of more than 4 individuals, the median income shall be that of a household of 4 individuals plus $583 for each additional member of that household.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 7 of title 11, United States Code, is amended by striking the item relating to section 707 and inserting the following:

''707. Dismissal of a case or conversion to a case under chapter 13.''.

TITLE II—ENHANCED PROCEDURAL PROTECTIONS FOR CONSUMERS

SEC. 201. ALLOWANCE OF CLAIMS OR INTERESTS.

Section 502 of title 11, United States Code, is amended by adding at the end the following:

''(k)(1) The court may award the debtor reasonable attorneys' fees and costs if, after an objection is filed by a debtor, the court—

''(A)(i) disallows the claim; or

''(ii) reduces the claim by an amount greater than 20 percent of the amount of the initial claim filed by a party in interest; and

''(B) finds the position of the party filing the claim is not substantially justified.

''(2) If the court finds that the position of a claimant under this section is not substantially

justified, the court may, in addition to awarding a debtor reasonable attorneys' fees and costs under paragraph (1), award such damages as may be required by the equities of the case.''.

SEC. 202. EXCEPTIONS TO DISCHARGE.

Section 523 of title 11, United States Code, is amended—

(1) in subsection (a)(2)(A), by striking ''a false representation'' and inserting ''a material false representation upon which the defrauded person justifiably relied''; and

(2) by striking subsection (d) and inserting the following:

''(d)(1) Subject to paragraph (3), if a creditor requests a determination of dischargeability of a consumer debt under this section and that debt is discharged, the court shall award the debtor reasonable attorneys' fees and costs.

''(2) In addition to making an award to a debtor under paragraph (1), if the court finds that the position of a creditor in a proceeding covered under this section is not substantially justified, the court may award reasonable attorneys' fees and costs under paragraph (1) and such damages as may be required by the equities of the case.

''(3)(A) A creditor may not request a determination of dischargeability of a consumer debt under subsection (a)(2) if—

''(i) before the filing of the petition, the debtor made a good faith effort to negotiate a reasonable alternative repayment schedule (including making an offer of a reasonable alternative repayment schedule); and

''(ii) that creditor refused to negotiate an alternative payment schedule, and that refusal was not reasonable.

''(B) For purposes of this paragraph, the debtor shall have the burden of proof of establishing that—

''(i) an offer made by that debtor under subparagraph (A)(i) was reasonable; and

''(ii) the refusal to negotiate by the creditor involved to was not reasonable.''.

SEC. 203. EFFECT OF DISCHARGE.

Section 524 of title 11, United States Code, is amended by adding at the end the following:

''(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title (including a plan of reorganization confirmed under chapter 11 of this title) in the manner required by the plan (including crediting the amounts required under the plan) shall constitute a violation of an injunction under subsection (a)(2).

''(j) An individual who is injured by the failure of a creditor to comply with the requirements for a reaffirmation agreement under subsections (c) and (d), or by any willful violation of the injunction under subsection (a)(2), shall be entitled to recover—

''(1) the greater of—

''(A)(i) the amount of actual damages; multiplied by

''(ii) 3; or

''(B) $5,000; and

''(2) costs and attorneys' fees.''.

SEC. 204. AUTOMATIC STAY.

Section 362(h) of title 11, United States Code, is amended to read as follows:

''(h)(1) An individual who is injured by any willful violation of a stay provided in this section shall be entitled to recover—

''(A) actual damages; and

''(B) reasonable costs, including attorneys' fees.

''(2) In addition to recovering actual damages, costs, and attorneys' fees under paragraph (1), an individual described in paragraph (1) may recover punitive damages in appropriate circumstances.''.

SEC. 205. DISCHARGE.

Section 727 of title 11, United States Code, is amended—

(1) in subsection (c), by adding at the end the following:

''(3)(A) A creditor may not request a determination of dischargeability of a consumer debt under subsection (a) if—

''(i) before the filing of the petition, the debtor made a good faith effort to negotiate a reasonable alternative repayment schedule (including making an offer of a reasonable alternative repayment schedule); and

''(ii) that creditor refused to negotiate an alternative payment schedule, and that refusal was not reasonable.

''(B) For purposes of this paragraph, the debtor shall have the burden of proof of establishing that—

''(i) an offer made by that debtor under subparagraph (A)(i) was reasonable; and

''(ii) the refusal to negotiate by the creditor involved to was not reasonable.''; and

(2) by adding at the end the following:

''(f)(1) The court may award the debtor reasonable attorneys' fees and costs in any case in which a creditor files a motion to deny relief to a debtor under this section and that motion—

''(A) is denied; or

''(B) is withdrawn after the debtor has replied.

''(2) If the court finds that the position of a party filing a motion under this section is not substantially justified, the court may assess against the creditor such damages as may be required by the equities of the case.''.

SEC. 206. DISCOURAGING PREDATORY LENDING PRACTICES.

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

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

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

(3) by adding at the end the following:

''(10) the claim is based on a secured debt if the creditor has failed to comply with the requirements of subsection (a), (b), (c), (d), (e), (f), (g), (h), or (i) of section 129 of the Truth in Lending Act (15 U.S.C. 1639).''.

SEC. 207. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY DWELLING.

(a) OPEN-END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 127A(a)(13) of the Truth in Lending Act (15 U.S.C. 1637a(a)(13)) is amended—

(A) by striking ''CONSULTATION OF TAX ADVISOR.—A statement that the'' and inserting the following: ''TAX DEDUCTIBILITY.—A statement that—

''(A) the''; and

(B) by striking the period at the end and inserting the following: ''; and

''(B) in any case in which the extension of credit exceeds the fair market value of the dwelling, the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.''.

(2) CREDIT ADVERTISEMENTS.—Section 147(b) of the Truth in Lending Act (15 U.S.C. 1665b(b)) is amended—

(A) by striking ''If any'' and inserting the following:

''(1) IN GENERAL.—If any''; and

(B) by adding at the end the following:

''(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling shall include a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer may want to consult a tax advisor for further information regarding the deductibility of interest and charges.''.

(b) NON-OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended—

(A) in subsection (a), by adding at the end the following:

''(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer should consult a tax advisor for further information regarding the deductibility of interest and charges.''; and

(B) in subsection (b), by adding at the end the following:

''(3) In the case of a credit transaction described in paragraph (15) of subsection (a), disclosures required by that paragraph shall be made to the consumer at the time of application for such extension of credit.''.

(2) CREDIT ADVERTISEMENTS.—Section 144 of the Truth in Lending Act (15 U.S.C. 1664) is amended by adding at the end the following:

''(e) Each advertisement to which this section applies that relates to a consumer credit transaction that is secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling shall clearly and conspicuously state that—

''(1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(2) the consumer may want to consult a tax advisor for further information regarding the deductibility of interest and charges.''.

(c) EFFECTIVE DATE.—This section shall become effective one year after the date of enactment of this Act.

SEC. 208. DUAL-USE DEBIT CARD.

(a) CONSUMER LIABILITY.—

(1) IN GENERAL.—Section 909 of the Electronic Fund Transfer Act (15 U.S.C. 1693g) is amended—

(A) by redesignating subsections (b) through (e) as subsections (d) through (g), respectively;

(B) in subsection (a)—

(i) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting appropriately;

(ii) by inserting ''CARDS NECESSITATING UNIQUE IDENTIFIER.—

''(1) IN GENERAL.—'' after ''(a)'';

(iii) by striking ''other means of access can be identified as the person authorized to use it, such as by signature, photograph,'' and inserting ''other means of access can be identified as the person authorized to use it by a unique identifier, such as a photograph, retina scan,''; and

(iv) by striking ''Notwithstanding the foregoing,'' and inserting the following:

''(2) NOTIFICATION.—Notwithstanding paragraph (1),''; and

(C) by inserting before subsection (d), as so designated by this section, the following new subsections:

''(b) CARDS NOT NECESSITATING UNIQUE IDENTIFIER.—A consumer shall be liable for an unauthorized electronic fund transfer only if—

''(1) the liability is not in excess of $50;

''(2) the unauthorized electronic fund transfer is initiated by the use of a card that has been properly issued to a consumer other than the person making the unauthorized transfer as a means of access to the account of that consumer for the purpose of initiating an electronic fund transfer;

''(3) the unauthorized electronic fund transfer occurs before the card issuer has been notified that an unauthorized use of the card has occurred or may occur as the result of loss, theft, or otherwise; and

''(4) such unauthorized electronic fund transfer did not require the use of a code or other unique identifier (other than a signature), such as a photograph, fingerprint, or retina scan.

''(c) NOTICE OF LIABILITY AND RESPONSIBILITY TO REPORT LOSS OF CARD, CODE, OR OTHER

MEANS OF ACCESS.—No consumer shall be liable under this title for any unauthorized electronic fund transfer unless the consumer has received in a timely manner the notice required under section 905(a)(1), and any subsequent notice required under section 905(b) with regard to any change in the information which is the subject of the notice required under section 905(a)(1).''.

(2) CONFORMING AMENDMENT.—Section 905(a)(1) of the Electronic Fund Transfer Act (15 U.S.C. 1693c(a)(1)) is amended to read as follows:

''(1) the liability of the consumer for any unauthorized electronic fund transfer and the requirement for promptly reporting any loss, theft, or unauthorized use of a card, code, or other means of access in order to limit the liability of the consumer for any such unauthorized transfer;''.

(b) VALIDATION REQUIREMENT FOR DUAL-USE DEBIT CARDS.—

(1) IN GENERAL.—Section 911 of the Electronic Fund Transfer Act (15 U.S.C. 1693i) is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following new subsection:

''(c) VALIDATION REQUIREMENT.—No person may issue a card described in subsection (a), the use of which to initiate an electronic fund transfer does not require the use of a code or other unique identifier other than a signature (such as a fingerprint or retina scan), unless—

''(1) the requirements of paragraphs (1) through (4) of subsection (b) are met; and

''(2) the issuer has provided to the consumer a clear and conspicuous disclosure that use of the card may not require the use of such code or other unique identifier.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 911(d) of the Electronic Fund Transfer Act (15 U.S.C. 1993i(d)) (as redesignated by subsection (a)(1) of this section) is amended by striking ''For the purpose of subsection (b)'' and inserting ''For purposes of subsections (b) and (c)''.

SEC. 209. ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.

(a) AMENDMENTS TO THE TRUTH IN LENDING ACT.—

(1) ENHANCED DISCLOSURE OF REPAYMENT TERMS.—

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

''(11)(A) In a clear and conspicuous manner, repayment information that would apply to the outstanding balance of the consumer under the credit plan, including—

''(i) the required minimum monthly payment on that balance, represented as both a dollar figure and a percentage of that balance;

''(ii) the number of months (rounded to the nearest month) that it would take to pay the entire amount of that current balance if the consumer pays only the required minimum monthly payments and if no further advances are made;

''(iii) the total cost to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays only the required minimum monthly payments and if no further advances are made; and

''(iv) the following statement: 'If your current rate is a temporary introductory rate, your total costs may be higher.'.

''(B) In making the disclosures under subparagraph (A) the creditor shall apply the annual interest rate that applies to that balance with respect to the current billing cycle for that consumer in effect on the date on which the disclosure is made.''.

(B) PUBLICATION OF MODEL FORMS.—Not later than 180 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall publish model disclosure forms in accordance with section 195 of the Truth in Lending Act for the purpose of compliance with section 127(b)(11) of the Truth in Lending Act, as added by this paragraph.

(C) CIVIL LIABILITY.—Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended, in the undesignated paragraph following paragraph (4), by striking the second sentence and inserting the following: ''In connection with the disclosures referred to in subsections (a) and (b) of section 1637 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635, 1637(a), or of paragraph (4), (5), (6), (7), (8), (9), (10), or (11) of section 1637(b) or for failing to comply with disclosure requirements under State law for any term or item that the Board has determined to be substantially the same in meaning under section 1610(a)(2) as any of the terms or items referred to in section 1637(a), paragraph (4), (5), (6), (7), (8), (9), (10), or (11) of section 1637(b) of this title.''.

(2) DISCLOSURES IN CONNECTION WITH SOLICITATIONS.—

(A) IN GENERAL.—Section 127(c)(1)(B) of the Truth in Lending Act (15 U.S.C. 1637(c)(1)(B)) is amended by adding the following:

''(iv) CREDIT WORKSHEET.—An easily understandable credit worksheet designed to aid consumers in determining their ability to assume more debt, including consideration of the personal expenses of the consumer and a simple formula for the consumer to determine whether the assumption of additional debt is advisable.

''(v) BASIS OF PREAPPROVAL.—In any case in which the application or solicitation states that the consumer has been preapproved for an account under an open end consumer credit plan, the following statement must appear in a clear and conspicuous manner: 'Your preapproval for this credit card does not mean that we have reviewed your individual financial circumstances. You should review your own budget before accepting this offer of credit.'.

''(vi) AVAILABILITY OF CREDIT REPORT.—That the consumer is entitled to a copy of his or her credit report in accordance with the Fair Credit Reporting Act.''.

(B) PUBLICATION OF MODEL FORMS.—Not later than 180 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall publish model disclosure forms in accordance with section 195 of the Truth in Lending Act for the purpose of compliance with section 127(c)(1)(B) of the Truth in Lending Act, as amended by this paragraph.

(b) EFFECTIVE DATE.—The provisions of this section shall become effective on January 1, 2001.

SEC. 210. VIOLATIONS OF THE AUTOMATIC STAY.

(a) Section 362(a) is amended by adding after paragraph (8) the following:

''(9) any communication threatening a debtor, at any time after the commencement and before the granting of a discharge in a case under this title, an intention to file a motion to determine the dischargeability of a debt, or to file a motion under section 707(b) of title 11, United States Code, to dismiss or convert a case, or to repossess collateral from the debtor to which the stay applies.''.

SEC. 211. DISCOURAGING ABUSIVE REAFFIRMATION PRACTICES.

Section 524 of title 11, United States Code, is amended—

(1) in subsection (c)(2)(B) by adding at the end the following:

''(C) such agreement contains a clear and conspicuous statement which advises the debtor what portion of the debt to be reaffirmed is attributable to principal, interest, late fees, creditor's attorneys fees, expenses or other costs relating to the collection of the debt.''.

(2)(A) in subsection (c)(6)(B), by inserting after ''real property'' the following: ''or is a debt described in subsection (c)(7)''; and

(B) by adding at the end of subsection (c) the following:

''(7) in a case concerning an individual, if the consideration for such agreement is based in whole or in part on an unsecured consumer debt, or is based in whole or in part upon a debt for an item of personalty the value of which at point of purchase was $250 or less, and in which the creditor asserts a purchase money security interest, the court, approves such agreement as—

''(A) in the best interest of the debtor in light of the debtor's income and expenses;

''(B) not imposing an undue hardship on the debtor's future ability of the debtor to pay for the needs of children and other dependents (including court ordered support);

''(C) not requiring the debtor to pay the creditor's attorney's fees, expenses or other costs relating to the collection of the debt;

''(D) not entered into to protect property that is necessary for the care and maintenance of children or other dependents that would have nominal value on repossession;

''(E) not entered into after coercive threats or actions by the creditor in the creditor's course of dealings with the debtor.

''(F) not unfair because excessive in amount based upon the value of the collateral.''.

(3) in subsection (d)(2) by striking ''subsections (c)(6)'' and inserting ''subsections (c)(6) and (c)(7)'', and after ''of this section,'' by striking ''if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor'' and adding at the end: ''as applicable''.

SEC. 212. SENSE OF THE SENATE REGARDING THE HOMESTEAD EXEMPTION.

(a) FINDINGS.—The Senate finds that—

(1) one of the most flagrant abuses of the bankruptcy system involves misuse of the homestead exemption, which allows a debtor to exempt his or her home, up to a certain value, as established by State law, from being sold off to satisfy debts;

(2) while the vast majority of States responsibly cap the exemption at not more than $40,000, 5 States exempt homes regardless of their value;

(3) in the few States with unlimited homestead exemptions, debtors can shield their assets in luxury homes while legitimate creditors get little or nothing;

(4) beneficiaries of the homestead exemption include convicted insider traders and savings and loan criminals, while shortchanged creditors include children, spouses, governments, and banks; and

(5) the homestead exemption should be capped at $100,000 to prevent such high-profile abuses.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) meaningful bankruptcy reform cannot be achieved without capping the homestead exemption; and

(2) bankruptcy reform legislation should include a cap of $100,000 on the homestead exemption to the bankruptcy laws.

SEC. 213. ENCOURAGING CREDITWORTHINESS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) certain lenders may sometimes offer credit to consumers indiscriminately, without taking steps to ensure that consumers are capable of repaying the resulting debt, and in a manner which may encourage certain consumers to accumulate additional debt; and

(2) resulting consumer debt may increasingly be a major contributing factor to consumer insolvency.

(b) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System (hereafter in this section referred to as the ''Board'') shall conduct a study of—

(1) consumer credit industry practices of soliciting and extending credit—

(A) indiscriminately;

(B) without taking steps to ensure that consumers are capable of repaying the resulting debt; and

(C) in a manner that encourages consumers to accumulate additional debt; and

(2) the effects of such practices on consumer debt and insolvency.

(c) REPORT AND REGULATIONS.—Not later than 24 months after the date of enactment of this Act, the Board—

(1) shall make public a report on its findings with respect to the credit industry's indiscriminate solicitation and extension of credit;

(2) may issue regulations that would require additional disclosures to consumers; and

(3) may take any other actions, consistent with its existing statutory authority, that the Board finds necessary to ensure responsible industrywide practices and to prevent resulting consumer debt and insolvency.

SEC. 214. TREASURY DEPARTMENT STUDY REGARDING SECURITY INTERESTS UNDER AN OPEN END CREDIT PLAN.

(a) STUDY.—Within 180 days of the enactment of this Act, the Federal Reserve Board in consultation with the Treasury Department, the general credit industry, and consumer groups, shall prepare a study regarding the adequacy of information received by consumers regarding the creation of security interests under open end credit plans.

(b) FINDINGS.—This study shall include the Board's findings regarding—

(1) whether consumers understand at the time of purchase of property under an open end credit plan that such property may serve as collateral under that credit plan;

(2) whether consumers understand at the time of purchase the legal consequences of disposing of property that is purchased under an open end credit plan and is subject to a security interest under that plan; and

(3) whether creditors holding security interests in property purchased under an open end credit plan use such security interests to coerce reaffirmations of existing debts under section 524 of the United States Bankruptcy Code.

In formulating these findings, the Board shall consider, among other factors it deems relevant, prevailing industry practices in this area.

(c) DISCLOSURE RECOMMENDATIONS.—This study shall also include the Board's recommendations regarding the utility and practicality of additional disclosures by credit card issuers at the time of purchase regarding security interests under open end credit plans, including, but not limited to—

(1) disclosures of the specific property in which the creditor will receive a security interest;

(2) disclosures of the consequences of nonpayment of the card balance, including how the security interest may be enforced; and

(3) disclosures of the process by which payments made on the card will be credited with respect to the lien created by the security contract and other debts on the card.

(d) SUBMISSION OF REPORT.—The Board shall submit this report to the Senate Committee on the Judiciary, the Senate Committee on Banking, Housing, and Urban Affairs, the House Committee on the Judiciary, and the House Committee on Banking and Financial Services within the time allotted by this section.

TITLE III—IMPROVED PROCEDURES FOR EFFICIENT ADMINISTRATION OF THE BANKRUPTCY SYSTEM

SEC. 301. NOTICE OF ALTERNATIVES.

(a) IN GENERAL.—Section 342 of title 11, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, that individual shall be given or obtain (as required in section 521(a)(1), as part of the certification process under subchapter 1 of chapter 5) a written notice prescribed by the United States trustee for the district in which the petition is filed pursuant to section 586 of title 28. The notice shall contain the following:

''(1) A brief description of chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters.

''(2) A brief description of services that may be available to that individual from a credit counseling service that is approved by the United States trustee or the bankruptcy administrator for that district.''.

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

(1) by inserting ''(a)'' before ''The debtor shall—'';

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

''(1) file—

''(A) a list of creditors; and

''(B) unless the court orders otherwise—

''(i) a schedule of assets and liabilities;

''(ii) a schedule of current income and current expenditures;

''(iii) a statement of the debtor's financial affairs and, if applicable, a certificate—

''(I) of an attorney whose name is on the petition as the attorney for the debtor or any bankruptcy petition preparer signing the petition pursuant to section 110(b)(1) indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b); or

''(II) if no attorney for the debtor is indicated and no bankruptcy petition preparer signed the petition, of the debtor that such notice was obtained and read by the debtor;

''(iv) copies of any Federal tax returns, including any schedules or attachments, filed by the debtor for the 3-year period preceding the order for relief;

''(v) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days prior to the filing of the petition;

''(vi) a statement of the amount of projected monthly net income, itemized to show how calculated; and

''(vii) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of filing;''; and

(3) by adding at the end the following:

''(b)(1) At any time, a creditor, in the case of an individual under chapter 7 or 13, may file with the court notice that the creditor requests the petition, schedules, and a statement of affairs filed by the debtor in the case and the court shall make those documents available to the creditor who requests those documents.

''(2) At any time, a creditor, in a case under chapter 13, may file with the court notice that the creditor requests the plan filed by the debtor in the case and the court shall make that plan available to the creditor who requests that plan.

''(c) An individual debtor in a case under chapter 7 or 13 shall file with the court—

''(1) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, with respect to the period from the commencement of the case until such time as the case is closed;

''(2) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, that were not filed with the taxing authority when the schedules under subsection (a)(1) were filed with respect to the period that is 3 years before the order for relief;

''(3) any amendments to any of the tax returns, including schedules or attachments, described in paragraph (1) or (2); and

''(4) in a case under chapter 13, a statement subject to the penalties of perjury by the debtor of the debtor's income and expenditures in the preceding tax year and monthly income, that shows how the amounts are calculated—

''(A) beginning on the date that is the later of 90 days after the close of the debtor's tax year or 1 year after the order for relief, unless a plan has been confirmed; and

''(B) thereafter, on or before the date that is 45 days before each anniversary of the confirmation of the plan until the case is closed.

''(d)(1) A statement referred to in subsection (c)(4) shall disclose—

''(A) the amount and sources of income of the debtor;

''(B) the identity of any persons responsible with the debtor for the support of any dependents of the debtor; and

''(C) the identity of any persons who contributed, and the amount contributed, to the household in which the debtor resides.

''(2) The tax returns, amendments, and statement of income and expenditures described in paragraph (1) shall be available to the United States trustee, any bankruptcy administrator, any trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (e).

''(e)(1) Not later than 30 days after the date of enactment of the Consumer Bankruptcy Reform Act of 1998, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.

''(2) The procedures under paragraph (1) shall include restrictions on creditor access to tax information that is required to be provided under this section.

''(3) Not later than 1 year after the date of enactment of the Consumer Bankruptcy Reform Act of 1998, the Director of the Administrative Office of the United States Courts shall prepare, and submit to Congress a report that—

''(A) assesses the effectiveness of the procedures under paragraph (1); and

''(B) if appropriate, includes proposed legislation—

''(i) to further protect the confidentiality of tax information; and

''(ii) to provide penalties for the improper use by any person of the tax information required to be provided under this section.

''(f) If requested by the United States trustee or a trustee serving in the case, the debtor provide a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor and such other personal identifying information relating to the debtor that establishes the identity of the debtor.''.

(c) TITLE 28.—Section 586(a) of title 28, United States Code, is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(7) on or before January 1 of each calendar year, and also not later than 30 days after any change in the nonprofit debt counseling services registered with the bankruptcy court, prescribe and make available on request the notice described in section 342(b)(3) of title 11 for each district included in the region.''.

SEC. 302. FAIR TREATMENT OF SECURED CREDITORS UNDER CHAPTER 13.

(a) RESTORING THE FOUNDATION FOR SECURED CREDIT.—Section 1325(a) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking the matter preceding subparagraph (A) and inserting the following:

''(5) with respect to an allowed claim provided for by the plan that is secured under applicable nonbankruptcy law by reason of a lien on property in which the estate has an interest or is subject to a setoff under section 553—''; and

(2) by adding at the end of the subsection the following flush sentence:

''For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph.''.

(b) PAYMENT OF HOLDERS OF CLAIMS SECURED BY LIENS.—Section 1325(a)(5)(B)(i) of title 11, United States Code, is amended to read as follows:

''(B)(i) the plan provides that the holder of such claim retain the lien securing such claim

until the debt that is the subject of the claim is fully paid for, as provided under the plan; and''.

(c) DETERMINATION OF SECURED STATUS.—Section 506 of title 11, United States Code, is amended by adding at the end the following:

''(e) Subsection (a) shall not apply to an allowed claim to the extent attributable in whole or in part to the purchase price of personal property acquired by the debtor during the 90-day period preceding the date of filing of the petition.''.

SEC. 303. DISCOURAGEMENT OF BAD FAITH REPEAT FILINGS.

Section 362(c) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' before ''Except as'';

(2) by striking ''(1) the stay'' and inserting ''(A) the stay'';

(3) by striking ''(2) the stay'' and inserting ''(B) the stay'';

(4) by striking ''(A) the time'' and inserting ''(i) the time'';

(5) by striking ''(B) the time'' and inserting ''(ii) the time''; and

(6) by adding at the end the following:

''(2) Except as provided in subsections (d) through (f), the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case if—

''(A) a single or joint case is filed by or against an individual debtor under chapter 7, 11, or 13; and

''(B) a single or joint case of that debtor (other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)) was pending during the preceding year but was dismissed.

''(3) If a party in interest so requests, the court may extend the stay in a particular case with respect to 1 or more creditors (subject to such conditions or limitations as the court may impose) after providing notice and a hearing completed before the expiration of the 30-day period described in paragraph (2) only if the party in interest demonstrates that the filing of the later case is in good faith with respect to the creditors to be stayed.

''(4) A case shall be presumed to have not been filed in good faith (except that such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(A) with respect to the creditors involved, if—

''(i) more than 1 previous case under any of chapters 7, 11, or 13 in which the individual was a debtor was pending during the 1-year period described in paragraph (1);

''(ii) a previous case under any of chapters 7, 11, or 13 in which the individual was a debtor was dismissed within the period specified in paragraph (2) after—

''(I) the debtor, after having received from the court a request to do so, failed to file or amend the petition or other documents as required by this title; or

''(II) the debtor, without substantial excuse, failed to perform the terms of a plan that was confirmed by the court; or

''(iii)(I) during the period commencing with the dismissal of the next most previous case under chapter 7, 11, or 13 there has not been a substantial change in the financial or personal affairs of the debtor;

''(II) if the case is a chapter 7 case, there is no other reason to conclude that the later case will be concluded with a discharge; or

''(III) if the case is a chapter 11 or 13 case, there is not a confirmed plan that will be fully performed; and

''(B) with respect to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor, if, as of the date of dismissal of that case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay with respect to actions of that creditor.

''(5)(A) If a request is made for relief from the stay under subsection (a) with respect to real or personal property of any kind, and the request is granted in whole or in part, the court may, in addition to making any other order under this subsection, order that the relief so granted shall be in rem either—

''(i) for a definite period of not less than 1 year; or

''(ii) indefinitely.

''(B)(i) After an order is issued under subparagraph (A), the stay under subsection (a) shall not apply to any property subject to such an in rem order in any case of the debtor.

''(ii) If an in rem order issued under subparagraph (A) so provides, the stay shall, in addition to being inapplicable to the debtor involved, not apply with respect to an entity under this title if—

''(I) the entity had reason to know of the order at the time that the entity obtained an interest in the property affected; or

''(II) the entity was notified of the commencement of the proceeding for relief from the stay, and at the time of the notification, no case in which the entity was a debtor was pending.

''(6) For purposes of this section, a case is pending during the period beginning with the issuance of the order for relief and ending at such time as the case involved is closed.''.

SEC. 304. TIMELY FILING AND CONFIRMATION OF PLANS UNDER CHAPTER 13.

(a) FILING OF PLAN.—Section 1321 of title 11, United States Code, is amended to read as follows:

''§ 1321. Filing of plan

''The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.''.

(b) CONFIRMATION OF HEARING.—Section 1324 of title 11, United States Code, is amended by adding at the end the following: ''That hearing shall be held not later than 45 days after the filing of the plan, unless the court, after providing notice and a hearing, orders otherwise.''.

SEC. 305. APPLICATION OF THE CODEBTOR STAY ONLY WHEN THE STAY PROTECTS THE DEBTOR.

Section 1301(b) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)''; and

(2) by adding at the end the following:

''(2)(A) Notwithstanding subsection (c) and except as provided in subparagraph (B), in any case in which the debtor did not receive the consideration for the claim held by a creditor, the stay provided by subsection (a) shall apply to that creditor for a period not to exceed 30 days beginning on the date of the order for relief, to the extent the creditor proceeds against—

''(i) the individual that received that consideration; or

''(ii) property not in the possession of the debtor that secures that claim.

''(B) Notwithstanding subparagraph (A), the stay provided by subsection (a) shall apply in any case in which the debtor is primarily obligated to pay the creditor in whole or in part with respect to a claim described in subparagraph (A) under a legally binding separation or property settlement agreement or divorce or dissolution decree with respect to—

''(i) an individual described in subparagraph (A)(i); or

''(ii) property described in subparagraph (A)(ii).

''(3) Notwithstanding subsection (c), the stay provided by subsection (a) shall terminate as of the date of confirmation of the plan, in any case in which the plan of the debtor provides that the debtor's interest in personal property subject to a lease with respect to which the debtor is the lessee will be surrendered or abandoned or no payments will be made under the plan on account of the debtor's obligations under the lease.''.

SEC. 306. IMPROVED BANKRUPTCY STATISTICS.

(a) AMENDMENT.—Chapter 6 of part I of title 28, United States Code, is amended by adding at the end the following:

''§ 159. Bankruptcy statistics

''(a) The clerk of each district shall compile statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a form prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the 'Office').

''(b) The Director shall—

''(1) compile the statistics referred to in subsection (a);

''(2) make the statistics available to the public; and

''(3) not later than October 31, 1998, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.

''(c) The compilation required under subsection (b) shall—

''(1) be itemized, by chapter, with respect to title 11;

''(2) be presented in the aggregate and for each district; and

''(3) include information concerning—

''(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by those debtors;

''(B) the current total monthly income, projected monthly net income, and average income and average expenses of those debtors as reported on the schedules and statements that each such debtor files under sections 111, 521, and 1322 of title 11;

''(C) the aggregate amount of debt discharged in the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;

''(D) the average period of time between the filing of the petition and the closing of the case;

''(E) for the reporting period—

''(i) the number of cases in which a reaffirmation was filed; and

''(ii)(I) the total number of reaffirmations filed;

''(II) of those cases in which a reaffirmation was filed, the number in which the debtor was not represented by an attorney; and

''(III) of those cases, the number of cases in which the reaffirmation was approved by the court;

''(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

''(i)(I) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and

''(II) the number of final orders determining the value of property securing a claim issued;

''(ii) the number of cases dismissed for failure to make payments under the plan; and

''(iii) the number of cases in which the debtor filed another case within the 6 years previous to the filing; and

''(G) the extent of creditor misconduct and any amount of punitive damages awarded by the court for creditor misconduct.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 6 of title 28, United States Code, is amended by adding at the end the following:

''159. Bankruptcy statistics.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 307. AUDIT PROCEDURES.

(a) AMENDMENTS.—Section 586 of title 28, United States Code, is amended—

(1) in subsection (a), as amended by section 301 of this Act, by striking paragraph (6) and inserting the following:

''(6) make such reports as the Attorney General directs, including the results of audits performed under subsection (f); and''; and

(2) by adding at the end the following:

''(f)(1)(A) The Attorney General shall establish procedures to determine the accuracy and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11, and, if applicable, section 111 of title 11, in individual cases filed under chapter 7 or 13 of such title.

''(B) Those procedures shall—

''(i) establish a method of selecting appropriate qualified persons to contract to perform those audits;

''(ii) establish a method of randomly selecting cases to be audited, except that not less than 1 out of every 500 cases in each Federal judicial district shall be selected for audit;

''(iii) require audits for schedules of income and expenses which reflect greater than average variances from the statistical norm of the district in which the schedules were filed; and

''(iv) establish procedures for providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

''(2) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee according to the procedures established under paragraph (1).

''(3)(A) The report of each audit conducted under this subsection shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case where a material misstatement of income or expenditures or of assets has been reported, the clerk of the bankruptcy court shall give notice of the misstatement to the creditors in the case.

''(B) If a material misstatement of income or expenditures or of assets is reported the United States trustee shall—

''(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18, United States Code; and

''(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's discharge pursuant to section 727(d) of title 11, United States Code.''.

(b) AMENDMENTS TO SECTION 521 OF TITLE 11, U.S.C.—Section 521 of title 11, United States Code, is amended in paragraphs (3) and (4) by adding ''or an auditor appointed pursuant to section 586 of title 28, United States Code'' after ''serving in the case''.

(c) AMENDMENTS TO SECTION 727 OF TITLE 11, U.S.C.—Section 727(d) of title 11, United States Code, is amended—

(1) by deleting ''or'' at the end of paragraph (2);

(2) by substituting ''; or'' for the period at the end of paragraph (3); and

(3) adding the following at the end of paragraph (3)—

''(4) the debtor has failed to explain satisfactorily—

''(A) a material misstatement in an audit performed pursuant to section 586(f) of title 28, United States Code; or

''(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files and all other papers, things, or property belonging to the debtor that are requested for an audit conducted pursuant to section 586(f) of title 28, United States Code.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 308. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.

Section 341(c) of title 11, United States Code, is amended by inserting after the first sentence the following: ''Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than one creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.''.

SEC. 309. FAIR NOTICE FOR CREDITORS IN CHAPTER 7 AND 13 CASES.

Section 342 of title 11, United States Code, is amended—

(1) in subsection (c), by striking '', but the failure of such notice to contain such information shall not invalidate the legal effect of such notice''; and

(2) by adding at the end the following:

''(d)(1) If the credit agreement between the debtor and the creditor or the last communication before the filing of the petition in a voluntary case from the creditor to a debtor who is an individual states an account number of the debtor that is the current account number of the debtor with respect to any debt held by the creditor against the debtor, the debtor shall include that account number in any notice to the creditor required to be given under this title.

''(2) If the creditor has specified to the debtor, in the last communication before the filing of the petition, an address at which the creditor wishes to receive correspondence regarding the debtor's account, any notice to the creditor required to be given by the debtor under this title shall be given at such address.

''(3) For purposes of this section, the term 'notice' shall include—

''(A) any correspondence from the debtor to the creditor after the commencement of the case;

''(B) any statement of the debtor's intention under section 521(a)(2);

''(C) notice of the commencement of any proceeding in the case to which the creditor is a party; and

''(D) any notice of a hearing under section 1324.

''(e)(1) At any time, a creditor, in a case of an individual under chapter 7 or 13, may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case.

''(2) If the court or the debtor is required to give the creditor notice, not later than 5 days after receipt of the notice under paragraph (1), that notice shall be given at that address.

''(f) An entity may file with the court a notice stating its address for notice in cases under chapter 7 or 13. After the date that is 30 days following the filing of that notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (e) with respect to a particular case.

''(g)(1) Notice given to a creditor other than as provided in this section shall not be effective notice until that notice has been brought to the attention of the creditor.

''(2) If the creditor has designated a person or department to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that bankruptcy notices received by the creditor will be delivered to that department or person, notice shall not be brought to the attention of the creditor until that notice is received by that person or department.''.

SEC. 310. STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.

Section 348(f)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking ''and'' at the end;

(2) in subparagraph (B)—

(A) by striking ''in the converted case, with allowed secured claims'' and inserting ''only in a case converted to chapter 11 or 12 but not in a case converted to chapter 7, with allowed secured claims in cases under chapters 11 and 12''; and

(B) by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(C) with respect to cases converted from chapter 13, the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of that claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the chapter 13 proceeding.''.

SEC. 311. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.

Section 362(e) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(e)''; and

(2) by adding at the end the following:

''(2) Notwithstanding paragraph (1), in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

''(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

''(B) that 60-day period is extended—

''(i) by agreement of all parties in interest; or

''(ii) by the court for such specific period of time as the court finds is required for good cause.''.

SEC. 312. DISMISSAL FOR FAILURE TO TIMELY FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION.

Section 707 of title 11, United States Code, as amended by section 102 of this Act, is amended by adding at the end the following:

''(c)(1) Notwithstanding subsection (a), and subject to paragraph (2), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under section 521(a)(1) within 45 days after the filing of the petition commencing the case, the case shall be automatically dismissed effective on the 46th day after the filing of the petition.

''(2) With respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. The court shall, if so requested, enter an order of dismissal not later than 5 days after that request.

''(3) Upon request of the debtor made within 45 days after the filing of the petition commencing a case described in paragraph (1), the court may allow the debtor an additional period of not to exceed 50 days to file the information required under section 521(a)(1) if the court finds justification for extending the period for the filing.''.

SEC. 313. ADEQUATE TIME FOR PREPARATION FOR A HEARING ON CONFIRMATION OF THE PLAN.

Section 1324 of title 11, United States Code, as amended by section 304 of this Act, is amended—

(1) by striking ''After'' and inserting the following:

''(a) Except as provided in subsection (b) and after''; and

(2) by adding at the end the following:

''(b) If not later than 5 days after receiving notice of a hearing on confirmation of the plan, a creditor objects to the confirmation of the plan, the hearing on confirmation of the plan may be held no earlier than 20 days after the first meeting of creditors under section 341(a).''.

SEC. 314. DISCHARGE UNDER CHAPTER 13.

Section 1328(a) of title 11, United States Code, is amended by striking paragraphs (1) through (3) and inserting the following:

''(1) provided for under section 1322(b)(5);

''(2) of the kind specified in paragraph (2), (4), (5), (8), or (9) of section 523(a);

''(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

''(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.''.

SEC. 315. NONDISCHARGEABLE DEBTS.

Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14) the following:

''(14A) incurred to pay a debt that is nondischargeable by reason of section 727, 1141, 1228 (a) or (b), or 1328(b), or any other provision of this subsection, where the debtor incurred the debt to pay such a nondischargeable debt with the intent to discharge in bankruptcy the newly-created debt.''.

SEC. 316. CREDIT EXTENSIONS ON THE EVE OF BANKRUPTCY PRESUMED NONDISCHARGEABLE.

Section 523(a)(2) of title 11, United States Code, as amended by section 202 of this Act, is amended—

(1) in subparagraph (A), by striking the semicolon at the end and inserting the following: ''(and, for purposes of this subparagraph, consumer debts owed in an aggregate amount greater than or equal to $400 incurred for goods or services not reasonably necessary for the maintenance or support of the debtor or a dependent child of the debtor to a single creditor that are incurred during the 90-day period preceding the date of the order for relief shall be presumed to be nondischargeable under this subparagraph); or'';

(2) in subparagraph (B), by striking ''or'' at the end; and

(3) by striking subparagraph (C).

SEC. 317. DEFINITION OF HOUSEHOLD GOODS AND ANTIQUES.

Not later than 180 days after the date of enactment of this Act, the Federal Trade Commission shall promulgate regulations defining ''household goods'' under section 522(c)(3) in a manner suitable and appropriate for cases under title 11 of the United States Code. If new regulations are not effective within 180 days of enactment of this Act, then ''household goods'' under section 522(c)(3) shall have the meaning given that term in section 444.1(i) of title 16, of the Code of Federal Regulations, except that the term shall also include any tangible personal property reasonably necessary for the maintenance or support of a dependent child.

SEC. 318. RELIEF FROM STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.

(a) AUTOMATIC STAY.—Section 362 of title 11, United States Code, as amended by section 303, is amended—

(1) in subsection (c)(1), in the matter preceding subparagraph (A), by striking ''(e) and (f)'' and inserting ''(e), (f), and (h)'';

(2) by redesignating subsection (h) as subsection (i); and

(3) by inserting after subsection (g) the following:

''(h) In an individual case under chapter 7, 11, or 13 the stay provided by subsection (a) is terminated with respect to property of the estate securing in whole or in part a claim that is in an amount greater than $3,000, or subject to an unexpired lease with a remaining term of at least 1 year (in any case in which the debtor owes at least $3,000 for a 1-year period), if within 30 days after the expiration of the applicable period under section 521(a)(2)—

''(1)(A) the debtor fails to timely file a statement of intention to surrender or retain the property; or

''(B) if the debtor indicates in the filing that the debtor will retain the property, the debtor fails to meet an applicable requirement to—

''(i) either—

''(I) redeem the property pursuant to section 722; or

''(II) reaffirm the debt the property secures pursuant to section 524(c); or

''(ii) assume the unexpired lease pursuant to section 365(d) if the trustee does not do so; or

''(2) the debtor fails to timely take the action specified in a statement of intention referred to in paragraph (1)(A) (as amended, if that statement is amended before expiration of the period for taking action), unless—

''(A) the statement of intention specifies reaffirmation; and

''(B) the creditor refuses to reaffirm the debt on the original contract terms for the debt.''.

(b) DEBTOR'S DUTIES.—Section 521(a)(2) of title 11, United States Code, as redesignated by section 301(b) of this Act, is amended—

(1) in the matter preceding subparagraph (A), by striking ''consumer'';

(2) in subparagraph (B)—

(A) by striking ''forty-five days after the filing of a notice of intent under this section'' and inserting ''30 days after the first meeting of creditors under section 341(a)''; and

(B) by striking ''forty-five-day period'' and inserting ''30-day period''; and

(3) in subparagraph (C), by inserting '', except as provided in section 362(h)'' before the semicolon.

SEC. 319. ADEQUATE PROTECTION OF LESSORS AND PURCHASE MONEY SECURED CREDITORS.

(a) IN GENERAL.—Chapter 13 of title 11, United States Code, is amended by adding after section 1307 the following:

''§ 1307A. Adequate protection in chapter 13 cases

''(a)(1)(A) On or before the date that is 30 days after the filing of a case under this chapter, the debtor shall make cash payments in an amount determined under paragraph (2)(A), to—

''(i) any lessor of personal property; and

''(ii) any creditor holding a claim secured by personal property to the extent that the claim is attributable to the purchase of that property by the debtor.

''(B) The debtor or the plan shall continue making the adequate protection payments until the earlier of the date on which—

''(i) the creditor begins to receive actual payments under the plan; or

''(ii) the debtor relinquishes possession of the property referred to in subparagraph (A) to—

''(I) the lessor or creditor; or

''(II) any third party acting under claim of right, as applicable.

''(2) The payments referred to in paragraph (1)(A) shall be determined by the court.

''(b)(1) Subject to the limitations under paragraph (2), the court may, after notice and hearing, change the amount and timing of the dates of payment of payments made under subsection (a).

''(2)(A) The payments referred to in paragraph (1) shall be payable not less frequently than monthly.

''(B) The amount of a payment referred to in paragraph (1) shall not be less than the reasonable depreciation of the personal property described in subsection (a)(1), determined on a month-to-month basis.

''(c) Notwithstanding section 1326(b), the payments referred to in subsection (a)(1)(A) shall be continued in addition to plan payments under a confirmed plan until actual payments to the creditor begin under that plan, if the confirmed plan provides—

''(1) for payments to a creditor or lessor described in subsection (a)(1); and

''(2) for the deferral of payments to such creditor or lessor under the plan until the payment of amounts described in section 1326(b).

''(d) Notwithstanding sections 362, 542, and 543, a lessor or creditor described in subsection (a) may retain possession of property described in that subsection that was obtained in accordance with applicable law before the date of filing of the petition until the first payment under subsection (a)(1)(A) is received by the lessor or creditor.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 13 of title 11, United States Code, is amended by inserting after the item relating to section 1307 the following:

''1307A. Adequate protection in chapter 13 cases.''.

SEC. 320. LIMITATION.

Section 522 of title 11, United States Code, as amended by section 207(a), is amended—

(1) in subsection (b)(3)(A), by inserting ''subject to subsection (n),'' before ''any property''; and

(2) by adding at the end the following new subsection:

''(n)(1) Except as provided in paragraph (2), as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that exceeds in the aggregate $100,000 in value in—

''(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

''(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

''(C) a burial plot for the debtor or a dependent of the debtor.

''(2) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(2)(A) by a family farmer for the principal residence of that farmer.''.

SEC. 321. MISCELLANEOUS IMPROVEMENTS.

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

''(h)(1) Subject to paragraphs (2) and (3) and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless that individual has, during the 90-day period preceding the date of filing of the petition of that individual, received credit counseling, including, at a minimum, participation in an individual or group briefing that outlined the opportunities for available credit counseling and assisted that individual in performing an initial budget analysis, through a credit counseling program (offered through an approved credit counseling service described in section 111(a)) that has been approved by—

''(A) the United States trustee; or

''(B) the bankruptcy administrator for the district in which the petition is filed.''.

''(2)(A) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved credit counseling services for that district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from those programs by reason of the requirements of paragraph (1).

''(B) Each United States trustee or bankruptcy administrator that makes a determination described in subparagraph (A) shall review that determination not later than one year after the date of that determination, and not less frequently than every year thereafter.

''(3)(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply

with respect to a debtor who submits to the court a certification that—

''(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

''(ii) states that the debtor requested credit counseling services from an approved credit counseling service, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and

''(iii) is satisfactory to the court.

''(B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case may the exemption apply to that debtor after the date that is 30 days after the debtor files a petition.''.

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

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

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

(3) by adding at the end the following:

''(11) after the filing of the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111 that was administered or approved by—

''(A) the United States trustee; or

''(B) the bankruptcy administrator for the district in which the petition is filed.''.

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

''(f) The court shall not grant a discharge under this section to a debtor, unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111 that was administered or approved by—

''(1) the United States trustee; or

''(2) the bankruptcy administrator for the district in which the petition is filed.''.

(d) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 301(b) and 318(b) of this Act, is amended by adding at the end the following:

''(e) In addition to the requirements under subsection (a), an individual debtor shall file with the court—

''(1) a certificate from the credit counseling service that provided the debtor services under section 109(h); and

''(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the credit counseling service referred to in paragraph (1).''.

(e) EXCEPTIONS TO DISCHARGE.—Section 523(d) of title 11, United States Code, as amended by section 202 of this Act, is amended by striking paragraph (3)(A)(i) and inserting the following:

''(i) within the applicable period of time prescribed under section 109(h), the debtor received credit counseling through a credit counseling program in accordance with section 109(h); and''.

(f) GENERAL PROVISIONS.—

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

''§ 111. Credit counseling services; financial management instructional courses

''(a) The clerk of each district shall maintain a list of credit counseling services that provide 1 or more programs described in section 109(h) and that have been approved by—

''(1) the United States trustee; or

''(2) the bankruptcy administrator for the district.

''(b) The United States trustee or each bankruptcy administrator referred to in subsection (a)(1) shall—

''(1) make available to debtors who are individuals an instructional course concerning personal financial management, under the direction of the bankruptcy court; and

''(2) maintain a list of instructional courses concerning personal financial management that are operated by a private entity and that have been approved by the United States trustee or that bankruptcy administrator.''.

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

''111. Credit counseling services; financial management instructional courses.''.

(g) DEFINITIONS.—Section 101 of title 11, United States Code, as amended by section 317 of this Act, is amended—

(1) by inserting after paragraph (13) the following:

''(13A) 'debtor's principal residence'—

''(A) means a residential structure, including incidental property, without regard to whether that structure is attached to real property; and

''(B) includes an individual condominium or co-operative unit;''; and

(2) by inserting after paragraph (27A), as added by section 318 of this Act, the following:

''(27B) 'incidental property' means, with respect to a debtor's principal residence—

''(A) property commonly conveyed with a principal residence in the area where the real estate is located;

''(B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance proceeds; and

''(C) all replacements or additions;''.

SEC. 322. BANKRUPTCY JUDGESHIPS.

(a) SHORT TITLE.—This section may be cited as the ''Bankruptcy Judgeship Act of 1998''.

(b) TEMPORARY JUDGESHIPS.—

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

(A) One additional bankruptcy judgeship for the eastern district of California.

(B) Four additional bankruptcy judgeships for the central district of California.

(C) One additional bankruptcy judgeship for the southern district of Florida.

(D) Two additional bankruptcy judgeships for the district of Maryland.

(E) One additional bankruptcy judgeship for the eastern district of Michigan.

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

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

(H) One additional bankruptcy judgeship for the eastern district of New York.

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

(J) One additional bankruptcy judgeship for the southern district of New York.

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

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

(M) One additional bankruptcy judgeship for the western district of Tennessee.

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

(2) VACANCIES.—The first vacancy occurring in the office of a bankruptcy judge in each of the judicial districts set forth in paragraph (1) that—

(A) results from the death, retirement, resignation, or removal of a bankruptcy judge; and

(B) occurs 5 years or more after the appointment date of a bankruptcy judge appointed under paragraph (1);

shall not be filled.

(c) EXTENSIONS.—

(1) IN GENERAL.—The temporary bankruptcy judgeship positions authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, the district of South Carolina, and the eastern district of Tennessee under section 3(a) (1), (3), (7), (8), and (9) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) are extended until the first vacancy occurring in the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring—

(A) 8 years or more after November 8, 1993, with respect to the northern district of Alabama;

(B) 10 years or more after October 28, 1993, with respect to the district of Delaware;

(C) 8 years or more after August 29, 1994, with respect to the district of Puerto Rico;

(D) 8 years or more after June 27, 1994, with respect to the district of South Carolina; and

(E) 8 years or more after November 23, 1993, with respect to the eastern district of Tennessee.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 remain applicable to such temporary judgeship position.

(d) TECHNICAL AMENDMENT.—The first sentence of section 152(a)(1) of title 28, United States Code, is amended to read as follows: ''Each bankruptcy judge to be appointed for a judicial district as provided in paragraph (2) shall be appointed by the United States court of appeals for the circuit in which such district is located.''.

(e) TRAVEL EXPENSES OF BANKRUPTCY JUDGES.—Section 156 of title 28, United States Code, is amended by adding at the end the following new subsection:

''(g)(1) In this subsection, the term 'travel expenses'—

''(A) means the expenses incurred by a bankruptcy judge for travel that is not directly related to any case assigned to such bankruptcy judge; and

''(B) shall not include the travel expenses of a bankruptcy judge if—

''(i) the payment for the travel expenses is paid by such bankruptcy judge from the personal funds of such bankruptcy judge; and

''(ii) such bankruptcy judge does not receive funds (including reimbursement) from the United States or any other person or entity for the payment of such travel expenses.

''(2) Each bankruptcy judge shall annually submit the information required under paragraph (3) to the chief bankruptcy judge for the district in which the bankruptcy judge is assigned.

''(3)(A) Each chief bankruptcy judge shall submit an annual report to the Director of the Administrative Office of the United States Courts on the travel expenses of each bankruptcy judge assigned to the applicable district (including the travel expenses of the chief bankruptcy judge of such district).

''(B) The annual report under this paragraph shall include—

''(i) the travel expenses of each bankruptcy judge, with the name of the bankruptcy judge to whom the travel expenses apply;

''(ii) a description of the subject matter and purpose of the travel relating to each travel expense identified under clause (i), with the name of the bankruptcy judge to whom the travel applies; and

''(iii) the number of days of each travel described under clause (ii), with the name of the bankruptcy judge to whom the travel applies.

''(4)(A) The Director of the Administrative Office of the United States Courts shall—

''(i) consolidate the reports submitted under paragraph (3) into a single report; and

''(ii) annually submit such consolidated report to Congress.

''(B) The consolidated report submitted under this paragraph shall include the specific information required under paragraph (3)(B), including the name of each bankruptcy judge with respect to clauses (i), (ii), and (iii) of paragraph (3)(B).''.

SEC. 323. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.

Section 101 of title 11, United States Code, as amended by section 321(g) of this Act, is amended—

(1) by striking paragraph (12A); and

(2) by inserting after paragraph (14) the following:

''(14A) 'domestic support obligation' means a debt that accrues before or after the entry of an order for relief under this title that is—

''(A) owed to or recoverable by—

''(i) a spouse, former spouse, or child of the debtor or that child's legal guardian; or

''(ii) a governmental unit;

''(B) in the nature of alimony, maintenance, or support (including assistance provided by a govermental unit) of such spouse, former spouse, or child, without regard to whether such debt is expressly so designated;

''(C) established or subject to establishment before or after entry of an order for relief under this title, by reason of applicable provisions of—

''(i) a separation agreement, divorce decree, or property settlement agreement;

''(ii) an order of a court of record; or

''(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

''(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child, or parent solely for the purpose of collecting the debt.''.

SEC. 324. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.

Section 507(a) of title 11, United States Code, is amended—

(1) by striking paragraph (7);

(2) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively;

(3) in paragraph (2), as redesignated, by striking ''First'' and inserting ''Second'';

(4) in paragraph (3), as redesignated, by striking ''Second'' and inserting ''Third'';

(5) in paragraph (4), as redesignated, by striking ''Third'' and inserting ''Fourth'';

(6) in paragraph (5), as redesignated, by striking ''Fourth'' and inserting ''Fifth'';

(7) in paragraph (6), as redesignated, by striking ''Fifth'' and inserting ''Sixth'';

(8) in paragraph (7), as redesignated, by striking ''Sixth'' and inserting ''Seventh''; and

(9) by inserting before paragraph (2), as redesignated, the following:

''(1) First, allowed claims for domestic support obligations to be paid in the following order on the condition that funds received under this paragraph by a governmental unit in a case under this title be applied:

''(A) Claims that, as of the date of entry of the order for relief, are owed directly to a spouse, former spouse, or child of the debtor, or the parent of such child, without regard to whether the claim is filed by the spouse, former spouse, child, or parent, or is filed by a governmental unit on behalf of that person.

''(B) Claims that, as of the date of entry of the order for relief, are assigned by a spouse, former spouse, child of the debtor, or the parent of that child to a governmental unit or are owed directly to a governmental unit under applicable nonbankruptcy law.''.

SEC. 325. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.

Title 11, United States Code, is amended—

(1) in section 1129(a), by adding at the end the following:

''(14) If the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order or statute for such obligation that become payable after the date on which the petition is filed.'';

(2) in section 1325(a)—

(A) in paragraph (5), by striking ''and'' at the end;

(B) in paragraph (6), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(7) if the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order for such obligation that become payable after the date on which the petition is filed.''; and

(3) in section 1328(a), as amended by section 314 of this Act, in the matter preceding paragraph (1), by inserting '', and with respect to a debtor who is required by a judicial or administrative order to pay a domestic support obligation, certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before or after the petition was filed) have been paid'' after ''completion by the debtor of all payments under the plan''.

SEC. 326. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.

Section 362(b) of title 11, United States Code, is amended—

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

''(2) under subsection (a)—

''(A) of the commencement or continuation of an action or proceeding for—

''(i) the establishment of paternity as a part of an effort to collect domestic support obligations; or

''(ii) the establishment or modification of an order for domestic support obligations; or

''(B) the collection of a domestic support obligation from property that is not property of the estate;'';

(2) in paragraph (17), by striking ''or'' at the end;

(3) in paragraph (18), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(19) under subsection (a) with respect to the withholding of income pursuant to an order as specified in section 466(b) of the Social Security Act (42 U.S.C. 666(b)); or

''(20) under subsection (a) with respect to—

''(A) the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses pursuant to State law, as specified in section 466(a)(16) of the Social Security Act (42 U.S.C. 666(a)(16)) or with respect to the reporting of overdue support owed by an absent parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act (42 U.S.C. 666(a)(7));

''(B) the interception of tax refunds, as specified in sections 464 and 466(a)(3) of the Social Security Act (42 U.S.C. 664 and 666(a)(3)); or

''(C) the enforcement of medical obligations as specified under title IV of the Social Security Act (42 U.S.C. 601 et seq.).''.

SEC. 327. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

Section 523 of title 11, United States Code, as amended by section 202 of this Act, is amended—

(1) in subsection (a), by striking paragraph (5) and inserting the following:

''(5) for a domestic support obligation;'';

(2) in subsection (c), by striking ''(6), or (15)'' and inserting ''or (6)''; and

(3) in paragraph (15), by striking ''governmental unit'' and all through the end of the paragraph and inserting a semicolon.

SEC. 328. CONTINUED LIABILITY OF PROPERTY.

Section 522 of title 11, United States Code, is amended—

(1) in subsection (c), by striking paragraph (1) and inserting the following:

''(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in section 523(a)(5);''; and

(2) in subsection (f)(1)(A), by striking the dash and all that follows through the end of the subparagraph and inserting ''of a kind that is specified in section 523(a)(5); or''.

SEC. 329. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.

Section 547(c)(7) of title 11, United States Code, is amended to read as follows:

''(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation; or''.

SEC. 330. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY.

(a) IN GENERAL.—Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2)—

(i) by striking ''(2)(A) any property'' and inserting:

''(3) Property listed in this paragraph is—

''(A) any property'';

(ii) in subparagraph (A), by striking ''and'' at the end;

(iii) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(iv) by adding at the end the following:

''(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986 and which has not been pledged or promised to any person in connection with any extension of credit.'';

(B) by striking paragraph (1) and inserting:

''(2) Property listed in this paragraph is property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (3)(A) of this subsection specifically does not so authorize.'';

(C) in the matter preceding paragraph (2)—

(i) by striking ''(b)'' and inserting ''(b)(1)'';

(ii) by striking ''paragraph (2)'' both places it appears and inserting ''paragraph (3)'';

(iii) by striking ''paragraph (1)'' each place it appears and inserting ''paragraph (2)''; and

(iv) by striking ''Such property is—''; and

(D) by adding at the end of the subsection the following:

''(4) For purposes of paragraph (3)(C), the following shall apply:

''(A) If the retirement funds are in a retirement fund that has received a favorable determination pursuant to section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the commencement of the case under section 301, 302, or 303, those funds shall be presumed to be exempt from the estate.

''(B) If the retirement funds are in a retirement fund that has not received a favorable determination pursuant to such section 7805, those funds are exempt from the estate if the debtor demonstrates that—

''(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

''(ii)(I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

''(II) the retirement fund fails to be in substantial compliance with such applicable requirements, the debtor is not materially responsible for that failure.

''(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, pursuant to section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) by reason of that direct transfer.

''(D)(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) by reason of that distribution.

''(ii) A distribution described in this clause is an amount that—

''(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

''(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of that amount.''; and

(2) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking ''subsection (b)(1)'' and inserting ''subsection (b)(2)''; and

(B) by adding at the end the following:

''(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.''.

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

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period and inserting ''; or'';

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, pursuant to the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986 that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

''(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan that satisfies the requirements of section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)); or

''(B) in the case of a loan from a thrift savings plan described in subchapter III of title 5, that satisfies the requirements of section 8433(g) of that title.''; and

(4) by adding at the end of the flush material following paragraph (19) the following: ''Paragraph (19) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year period preceding the filing of a petition. Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d) of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.''.

(c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of title 11, United States Code, as amended by section 202, is amended—

(1) by striking ''or'' at the end of paragraph (17);

(2) by striking the period at the end of paragraph (18) and inserting ''; or''; and

(3) by adding at the end the following:

''(19) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, pursuant to—

''(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)); or

''(B) a loan from the thrift savings plan described in subchapter III of title 5, that satisfies the requirements of section 8433(g) of that title. Paragraph (19) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year period preceding the filing of a petition. Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d) of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.''.

(d) PLAN CONTENTS.—Section 1322 of title 11, United States Code, is amended by adding at the end the following:

''(f) A plan may not materially alter the terms of a loan described in section 362(b)(19).''.

SEC. 331. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED STATES CODE.

(a) Section 507(a) of title 11, United States Code, is amended by inserting after paragraph (9) the following:

''(10) Tenth, allowed claims for death or personal injuries resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug or another substance.''.

(b) Section 523(a)(9) of title 11, United States Code, is amended by inserting ''or vessel'' after ''vehicle''.

SEC. 332. DEBT LIMIT INCREASE.

Section 104(b) of title 11, United States Code, is amended by adding at the end the following:

''(4) The dollar amount in section 101(18) shall be adjusted at the same times and in the same manner as the dollar amounts in paragraph (1) of this subsection, beginning with the adjustment to be made on April 1, 2001.''.

SEC. 333. ELIMINATION OF REQUIREMENT THAT FAMILY FARMER AND SPOUSE RECEIVE OVER 50 PERCENT OF INCOME FROM FARMING OPERATION IN YEAR PRIOR TO BANKRUPTCY.

Section 101(18)(A) of title 11, United States Code, is amended by striking ''the taxable year preceding the taxable year'' and inserting ''at least one of the three calendar years preceding the year''.

SEC. 334. PROHIBITION OF RETROACTIVE ASSESSMENT OF DISPOSABLE INCOME.

(a) Section 1225(b) of title 11, United States Code, is amended by adding at the end the following:

''(3) If the plan provides for specific amounts of property to be distributed on account of allowed unsecured claims as required by paragraph (1)(B) of this subsection, those amounts equal or exceed the debtor's projected disposable income for that period, and the plan meets the requirements for confirmation other than those of this subsection, the plan shall be confirmed.

(b) Section 1229 of title 11, United States Code, is amended by adding at the end the following:

''(d)(1) A modification of the plan under this section may not increase the amount of payments that were due prior to the date of the order modifying the plan.

''(2) A modification of the plan under this section to increase payments based on an increase in the debtor's disposable income may not require payments to unsecured creditors in any particular month greater than the debtor's disposable income for that month unless the debtor proposes such a modification.

''(3) A modification of the plan in the last year of the plan shall not require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed unless the debtor proposes such a modification.''.

SEC. 335. AMENDMENT TO SECTION 1325 OF TITLE 11, UNITED STATES CODE.

Section 1325(b)(2) of title 11, United States Code, is amended by inserting after ''received by the debtor'', ''(other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law and which is reasonably necessary to be expended)''.

SEC. 336. PROTECTION OF SAVINGS EARMARKED FOR THE POSTSECONDARY EDUCATION OF CHILDREN

Section 541(b) of title 11, United States Code, as amended by section 404 of this Act, is amended—

(1) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(2) by inserting after paragraph (6) the following:

''(7) except as otherwise provided under applicable State law, any funds placed in a qualified State tuition program (as described in section 529(b) of the Internal Revenue Code of 1986) at least 180 days before the date of entry of the order for relief; or

''(8) any funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) at least 180 days before the date of entry of the order for relief.''.

TITLE IV—FINANCIAL INSTRUMENTS

SEC. 401. BANKRUPTCY CODE AMENDMENTS.

(a) DEFINITIONS OF SWAP AGREEMENT, SECURITIES CONTRACT, FORWARD CONTRACT, COMMODITY CONTRACT, AND REPURCHASE AGREEMENT.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(i) by striking ''means a contract'' and inserting ''means—

''(A) a contract'';

(ii) by striking '', or any combination thereof or option thereon;'' and inserting '', or any other similar agreement;''; and

(iii) by adding at the end the following new subparagraphs:

''(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

''(C) any option to enter into any agreement or transaction referred to in subparagraph (A) or (B);

''(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B) or (C), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that the master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B) or (C); or

''(E) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C) or (D);'';

(B) by amending paragraph (47) to read as follows:

''(47) the term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(A) means—

''(i) an agreement, including related terms, which provides for the transfer of 1 or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds; or any other similar agreement; and

''(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

''(iii) any option to enter into any agreement or transaction referred to in clause (i) or (ii);

''(iv) a master agreement that provides for an agreement or transaction referred to in clauses (i), (ii) or (iii), together with all supplements, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this subparagraph, except that the master agreement shall be considered to be a repurchase agreement under this subparagraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii) or (iii); or

''(v) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clauses (i), (ii), (iii) or (iv); and

''(B) does not include any repurchase obligation under a participation in a commercial mortgage loan,

and, for purposes of this paragraph, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development.''; and

(C) by amending paragraph (53B) to read as follows:

''(53B) the term 'swap agreement'—

''(A) means—

''(i) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement;

''(ii) any agreement similar to any other agreement or transaction referred to in this subparagraph that—

''(I) is presently, or in the future becomes, regularly entered into in the swap agreement market (including terms and conditions incorporated by reference therein); and

''(II) is a forward, swap, future, or option on 1 or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value;

''(iii) any combination of agreements or transactions referred to in this subparagraph;

''(iv) any option to enter into any agreement or transaction referred to in this subparagraph;

''(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is described in any of such clause, except that the master agreement shall be considered to be a swap agreement only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

''(C) is applicable for purposes of this title only and shall not be construed or applied to challenge or affect the characterization, definition, or treatment of any swap agreement or any instrument defined as a swap agreement herein, under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations prescribed by the Securities and Exchange Commission or the Commodity Futures Trading Commission.'';

(2) by amending section 741(7) to read as follows:

''(7) the term 'securities contract'—

''(A) means—

''(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, or a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index or option;

''(ii) any option entered into on a national securities exchange relating to foreign currencies;

''(iii) the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interest therein, or group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index or option;

''(iv) any margin loan;

''(v) any other agreement or transaction that is similar to any agreement or transaction referred to in this subparagraph;

''(vi) any combination of the agreements or transactions referred to in this subparagraph;

''(vii) any option to enter into any agreement or transaction referred to in this subparagraph;

''(viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that the master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); and

''(ix) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this subparagraph; and

''(B) does not include any purchase, sale, or repurchase obligation under a participation in or servicing agreement for a commercial mortgage loan.''; and

(3) in section 761(4)—

(A) by striking ''or'' at the end of subparagraph (D); and

(B) by adding at the end the following new subparagraphs:

''(F) any other agreement or transaction that is similar to any agreement or transaction referred to in this paragraph;

''(G) any combination of the agreements or transactions referred to in this paragraph;

''(H) any option to enter into any agreement or transaction referred to in this paragraph;

''(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G) or (H), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G) or (H); or

''(J) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph;''.

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, AND FORWARD CONTRACT MERCHANT.—Section 101 of title 11, United States Code, is amended—

(1) by amending paragraph (22) to read as follows:

''(22) the term 'financial institution' means a Federal reserve bank, or a person that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such person and, when any such Federal reserve bank, receiver, or conservator or person acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741(7) of this title, such customer;'';

(2) by inserting after paragraph (22) the following new paragraph:

''(22A) the term 'financial participant' means any entity that, at the time it enters into a securities contract, commodity contract or forward contract, or at the time of the filing of the petition, has 1 or more agreements or transactions that is described in section 561(a)(2) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of at least $1,000,000,000 in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of at least $100,000,000 (aggregated across counterparties) in 1 or more such agreements or transactions with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period;''; and

(3) by amending paragraph (26) to read as follows:

''(26) the term 'forward contract merchant' means a Federal reserve bank, or a person whose business consists in whole or in part of entering into forward contracts as or with merchants or in a commodity, as defined or in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing or in the forward contract trade;''.

(c) DEFINITION OF MASTER NETTING AGREEMENT AND MASTER NETTING AGREEMENT PARTICIPANT.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

''(38A) the term 'master netting agreement' means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or closeout, under or in connection with 1 or more contracts that are described in any 1 or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to 1 or more of the foregoing. If a master netting agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), the master netting agreement shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any 1 or more of the paragraphs (1) through (5) of section 561(a);

''(38B) the term 'master netting agreement participant' means an entity that, at any time before the filing of the petition, is a party to an outstanding master netting agreement with the debtor;''.

(d) SWAP AGREEMENTS, SECURITIES CONTRACTS, COMMODITY CONTRACTS, FORWARD CONTRACTS, REPURCHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS UNDER THE AUTOMATIC-STAY.—

(1) IN GENERAL.—Section 362(b) of title 11, United States Code, is amended—

(A) in paragraph (6), by inserting '', pledged to, and under the control of,'' after ''held by'';

(B) in paragraph (7), by inserting '', pledged to, and under the control of,'' after ''held by'';

(C) by amending paragraph (17) to read as follows:

''(17) under subsection (a), of the setoff by a swap participant of any mutual debt and claim under or in connection with 1 or more swap agreements that constitute the setoff of a claim against the debtor for any payment due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property of the debtor held by, pledged to, and under the control of, or due from such swap participant to guarantee, secure, or settle any swap agreement;'';

(D) in paragraph (20), by striking ''or'' at the end;

(E) in paragraph (21), by striking the period and inserting ''; or''; and

(F) by inserting after paragraph (18) the following new paragraph:

''(22) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with

1 or more master netting agreements to the extent such participant could offset the claim under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue.''.

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

''(i) LIMITATION.—The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (22) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.''.

(e) LIMITATION OF AVOIDANCE POWERS UNDER MASTER NETTING AGREEMENT.—Section 546 of title 11, United States Code, is amended—

(1) in subsection (g) (as added by section 103 of Public Law 101–311)—

(A) by striking ''under a swap agreement'';

(B) by striking ''in connection with a swap agreement'' and inserting ''under or in connection with any swap agreement'';

(2) by redesignating subsection (g) (as added by section 222(a) of Public Law 103–394) as subsection (i); and

(3) by inserting before subsection (i) (as redesignated) the following new subsection:

''(h) Notwithstanding sections 544, 545, 547, 548(a)(2), and 548(b) of this title, to the extent that under subsection (e), (f), or (g), the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with each individual contract covered by any master netting agreement that is made before the commencement of the case, the trustee may not avoid a transfer made by or to such master netting agreement participant under or in connection with the master netting agreement in issue, except under section 548(a)(1) of this title.''.

(f) FRAUDULENT TRANSFERS OF MASTER NETTING AGREEMENTS.—Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (C), by striking ''and'';

(2) in subparagraph (D), by striking the period and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement takes for value to the extent of such transfer, but only to the extent that such participant would take for value under paragraph (B), (C), or (D) for each individual contract covered by the master netting agreement in issue.''.

(g) TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.—Section 555 of title 11, United States Code, is amended—

*(1) by amending the section heading to read ''**Contractual right to liquidate, terminate, or accelerate a securities contract**''; and*

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(h) TERMINATION OR ACCELERATION OF COMMODITIES OR FORWARD CONTRACTS.—Section 556 of title 11, United States Code, is amended—

*(1) by amending the section heading to read ''**Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract**''; and*

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(i) TERMINATION OR ACCELERATION OF REPURCHASE AGREEMENTS.—Section 559 of title 11, United States Code, is amended—

*(1) by amending the section heading to read ''**Contractual right to liquidate, terminate, or accelerate a repurchase agreement**''; and*

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(j) LIQUIDATION, TERMINATION, OR ACCELERATION OF SWAP AGREEMENTS.—Section 560 of title 11, United States Code, is amended—

*(1) by amending the section heading to read ''**Contractual right to liquidate, terminate, or accelerate a swap agreement**''; and*

(2) in the first sentence, by striking ''termination of a swap agreement'' and inserting ''liquidation, termination, or acceleration of 1 or more swap agreements''; and

(3) by striking ''in connection with any swap agreement'' and inserting ''in connection with the termination, liquidation, or acceleration of 1 or more swap agreements''.

(k) LIQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT AND ACROSS CONTRACTS.—Title 11, United States Code, is amended by inserting after section 560 the following new section:

''§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts

''(a) IN GENERAL.—Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset, or net termination values, payment amounts or other transfer obligations arising under or in connection with the termination, liquidation, or acceleration of 1 or more—

''(1) securities contracts, as defined in section 741(7);

''(2) commodity contracts, as defined in section 761(4);

''(3) forward contracts;

''(4) repurchase agreements;

''(5) swap agreements; or

''(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

''(b) EXCEPTION.—

''(1) A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.

''(2)(A) A party may not exercise a contractual right described in subsection (a) to offset or to net obligations arising under, or in connection with, a commodity contract against obligations arising under, or in connection with, any instrument listed in subsection (a) if the obligations are not mutual.

''(B) If a debtor is a commodity broker subject to subchapter IV of chapter 7 of this title, a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract against any claim arising under, or in connection with, other instruments listed in subsection (a) if the party has no positive net equity in the commodity account at the debtor, as calculated under subchapter IV.

''(c) DEFINITION.—As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right whether or not evidenced in writing arising under common law, under law merchant, or by reason of normal business practice.''.

(l) MUNICIPAL BANKRUPTCIES.—Section 901 of title 11, United States Code, is amended—

(1) by inserting '', 555, 556'' after ''553''; and

(2) by inserting '', 559, 560, 561, 562'' after ''557''.

(m) ANCILLARY PROCEEDINGS.—Section 304 of title 11, United States Code, is amended by adding at the end the following new subsection:

''(d) Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case ancillary to a foreign proceeding under this section or any other section of this title so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any proceeding under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).''.

(n) COMMODITY BROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 766 the following new section:

''§ 767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights or affect the provisions of this subchapter IV regarding customer property or distributions.''.

(o) STOCKBROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 752 the following new section:

''§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of rights or affect the provisions of this subchapter regarding customer property or distributions.''.

(p) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(3)(C), by inserting ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 555, 556, 559, 560, or 561 of this title)'' before the period; and

(2) in subsection (b)(1), by striking ''362(b)(14),'' and inserting ''362(b)(17), 555, 556, 559, 560, 561''.

(q) SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.—Title 11, United States Code, is amended—

(1) in section 362(b)(6), by striking ''financial institutions,'' each place such term appears and inserting ''financial institution, financial participant'';

(2) in section 546(e), by inserting ''financial participant'' after ''financial institution,'';

(3) in section 548(d)(2)(B), by inserting ''financial participant'' after ''financial institution,'';

(4) in section 555—

(A) by inserting ''financial participant'' after ''financial institution,''; and

(B) by inserting before the period '', a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice''; and

(5) in section 556, by inserting '', financial participant'' after ''commodity broker''.

(r) TECHNICAL AND CONFORMING AMENDMENT.—Section 104 of title 11, United States Code, is amended by adding at the end the following new subsection:

''(c) EXCEPTION FOR CERTAIN DEFINED TERMS.—No adjustments shall be made under this section to the dollar amounts set forth in the definition of the term 'financial participant' in section 101(22A).''.

SEC. 402. RECORDKEEPING REQUIREMENTS.

Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended by adding at the end the following new subparagraph:

SEC. 403. DAMAGE MEASURE.

(a) Title 11, United States Code, is amended by inserting after section 561 (as added by section 7(k)) the following new section:

''§561. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements

''If the trustee rejects a swap agreement, securities contract as defined in section 741 of this title, forward contract, repurchase agreement, or master netting agreement pursuant to section 365(a) of this title, or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates any such contract or agreement, damages shall be measured as of the earlier of—

''(1) the date of such rejection; or

''(2) the date of such liquidation, termination, or acceleration.''.

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by designating the existing text as paragraph (1); and

(2) by adding at the end the following new paragraph:

''(2) A claim for damages calculated in accordance with section 562 of this title shall be allowed under subsection (a),(b), or (c) of this section or disallowed under subsection (d) or (e) of this section as if such claim had arisen before the date of the filing of the petition.''.

SEC. 404. ASSET-BACKED SECURITIZATIONS.

Section 541 of title 11, United States Code, is amended—

(1) in subsection (b), by striking ''or'' at the end of paragraph (4);

(2) by redesignating paragraph (5) of subsection (b) as paragraph (6);

(3) by inserting after paragraph (4) of subsection (b) the following new paragraph:

''(5) any eligible asset (or proceeds thereof), to the extent that such eligible asset was transferred by the debtor, before the date of commencement of the case, to an eligible entity in connection with an asset-backed securitization, except to the extent such asset (or proceeds or value thereof) may be recovered by the trustee under section 550 by virtue of avoidance under section 548(a); or''; and

(4) by adding at the end the following new subsection:

''(e) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) ASSET-BACKED SECURITIZATION.—The term 'asset-backed securitization' means a transaction in which eligible assets transferred to an eligible entity are used as the source of payment on securities, the most senior of which are rated investment grade by 1 or more nationally recognized securities rating organizations, issued by an issuer;

''(2) ELIGIBLE ASSET.—The term 'eligible asset' means—

''(A) financial assets (including interests therein and proceeds thereof), either fixed or revolving, including residential and commercial mortgage loans, consumer receivables, trade receivables, and lease receivables, that, by their terms, convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;

''(B) cash; and

''(C) securities.

''(3) ELIGIBLE ENTITY.—The term 'eligible entity' means—

''(A) an issuer; or

''(B) a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and transferring eligible assets directly or indirectly to an issuer and taking actions ancillary thereto;

''(4) ISSUER.—The term 'issuer' means a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and holding eligible assets, issuing securities backed by eligible assets, and taking actions ancillary thereto.

''(5) TRANSFERRED.—The term 'transferred' means the debtor, pursuant to a written agreement, represented and warranted that eligible assets were sold, contributed, or otherwise conveyed with the intention of removing them from the estate of the debtor pursuant to subsection (b)(5), irrespective, without limitation of—

''(A) whether the debtor directly or indirectly obtained or held an interest in the issuer or in any securities issued by the issuer;

''(B) whether the debtor had an obligation to repurchase or to service or supervise the servicing of all or any portion of such eligible assets; or

''(C) the characterization of such sale, contribution, or other conveyance for tax, accounting, regulatory reporting, or other purposes.''.

SEC. 405. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.

Section 106 of the Truth in Lending Act (15 U.S.C. 1605) is amended by adding at the end the following:

''(g) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor may not, solely because a consumer has not incurred finance charges in connection with an extension of credit—

''(1) refuse to renew or continue to offer the extension of credit to that consumer; or

''(2) charge a fee to that consumer in lieu of a finance charge.''.

SEC. 406. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.

Section 523(a)(16) of title 11, United States Code, is amended—

(1) by striking ''dwelling'' the first place it appears;

(2) by striking ''ownership or'' and inserting ''ownership,'';

(3) by striking ''housing'' the first place it appears; and

(4) by striking ''but only'' and all that follows through ''such period,'', and inserting ''or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot,''.

SEC. 407. BANKRUPTCY FEES.

Section 1930 of title 28, United States Code, is amended—

(1) in subsection (a), by striking ''Notwithstanding section 1915 of this title, the parties'' and inserting ''Subject to subsection (f), the parties''; and

(2) by adding at the end the following:

''(f)(1) The Judicial Conference of the United States shall prescribe procedures for waiving fees under this subsection.

''(2) Under the procedures described in paragraph (1), the district court or the bankruptcy court may waive a filing fee described in paragraph (3) for a case commenced under chapter 7 of title 11 if the court determines that an individual debtor is unable to pay that fee in installments.

''(3) A filing fee referred to in paragraph (2) is—

''(A) a filing fee under subsection (a)(1); or

''(B) any other fee prescribed by the Judicial Conference of the United States under subsection (b) that is payable to the clerk of the district court or the clerk of the bankruptcy court upon the commencement of a case under chapter 7 of title 11.

''(4) In addition to waiving a fee described in paragraph (3) under paragraph (2), the district court or the bankruptcy court may waive any other fee prescribed under subsection (b) or (c) if the court determines that the individual is unable to pay that fee in installments.''.

SEC. 408. APPLICABILITY.

The amendments made by this title shall apply with respect to cases commenced or appointments made under any Federal or State law after the date of enactment of this Act.

TITLE V—ANCILLARY AND OTHER CROSS-BORDER CASES

SEC. 501. AMENDMENT TO ADD A CHAPTER 6 TO TITLE 11, UNITED STATES CODE.

(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 5 the following:

''CHAPTER 6—ANCILLARY AND OTHER CROSS-BORDER CASES

''Sec.
''601. Purpose and scope of application.
''SUBCHAPTER I—GENERAL PROVISIONS
''602. Definitions.
''603. International obligations of the United States.
''604. Commencement of ancillary case.
''605. Authorization to act in a foreign country.
''606. Public policy exception.
''607. Additional assistance.
''608. Interpretation.
''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT
''609. Right of direct access.
''610. Limited jurisdiction.
''611. Commencement of bankruptcy case under section 301 or 303.
''612. Participation of a foreign representative in a case under this title.
''613. Access of foreign creditors to a case under this title.
''614. Notification to foreign creditors concerning a case under this title.
''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF
''615. Application for recognition of a foreign proceeding.
''616. Presumptions concerning recognition.
''617. Order recognizing a foreign proceeding.
''618. Subsequent information.
''619. Relief that may be granted upon petition for recognition of a foreign proceeding.
''620. Effects of recognition of a foreign main proceeding.
''621. Relief that may be granted upon recognition of a foreign proceeding.
''622. Protection of creditors and other interested persons.
''623. Actions to avoid acts detrimental to creditors.
''624. Intervention by a foreign representative.
''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES
''625. Cooperation and direct communication between the court and foreign courts or foreign representatives.
''626. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.
''627. Forms of cooperation.
''SUBCHAPTER V—CONCURRENT PROCEEDINGS
''628. Commencement of a case under this title after recognition of a foreign main proceeding.
''629. Coordination of a case under this title and a foreign proceeding.

''630. Coordination of more than 1 foreign proceeding.
''631. Presumption of insolvency based on recognition of a foreign main proceeding.
''632. Rule of payment in concurrent proceedings.

''§ 601. Purpose and scope of application

''(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

''(1) cooperation between—

''(A) United States courts, United States Trustees, trustees, examiners, debtors, and debtors in possession; and

''(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

''(2) greater legal certainty for trade and investment;

''(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

''(4) protection and maximization of the value of the debtor's assets; and

''(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

''(b) This chapter applies where—

''(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

''(2) assistance is sought in a foreign country in connection with a case under this title;

''(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or

''(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

''(c) This chapter does not apply to—

''(1) a proceeding concerning an entity identified by exclusion in subsection 109(b); or

''(2) a natural person or a natural person and that person's spouse who have debts within the limits specified in under section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States.

''SUBCHAPTER I—GENERAL PROVISIONS

''§ 602. Definitions

''For the purposes of this chapter, the term—

''(1) 'debtor' means an entity that is the subject of a foreign proceeding;

''(2) 'establishment' means any place of operations where the debtor carries out a nontransitory economic activity;

''(3) 'foreign court' means a judicial or other authority competent to control or supervise a foreign proceeding;

''(4) 'foreign main proceeding' means a foreign proceeding taking place in the country where the debtor has the center of its main interests;

''(5) 'foreign nonmain proceeding' means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

''(6) 'trustee' includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapters 9 or 13 of this title; and

''(7) 'within the territorial jurisdiction of the United States' when used with reference to property of a debtor refers to tangible property located within the territory of the United States and intangible property deemed to be located within that territory, including any property that may properly be seized or garnished by an action in a Federal or State court in the United States.

''§ 603. International obligations of the United States

''To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with 1 or more other countries, the requirements of the treaty or agreement prevail.

''§ 604. Commencement of ancillary case

''A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 615.

''§ 605. Authorization to act in a foreign country

''A trustee or another entity designated by the court may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

''§ 606. Public policy exception

''Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

''§ 607. Additional assistance

''(a) Nothing in this chapter limits the power of the court, upon recognition of a foreign proceeding, to provide additional assistance to a foreign representative under this title or under other laws of the United States.

''(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

''(1) just treatment of all holders of claims against or interests in the debtor's property;

''(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

''(3) prevention of preferential or fraudulent dispositions of property of the debtor;

''(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

''(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

''§ 608. Interpretation

''In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

''§ 609. Right of direct access

''(a) A foreign representative is entitled to commence a case under section 604 by filing a petition for recognition under section 615, and upon recognition, to apply directly to other Federal and State courts for appropriate relief in those courts.

''(b) Upon recognition, and subject to section 610, a foreign representative has the capacity to sue and be sued.

''(c) Recognition under this chapter is prerequisite to the granting of comity or cooperation to a foreign proceeding in any State or Federal court in the United States. Any request for comity or cooperation in any court shall be accompanied by a sworn statement setting forth whether recognition under section 615 has been sought and the status of any such petition.

''(d) Upon denial of recognition under this chapter, the court may issue appropriate orders necessary to prevent an attempt to obtain comity or cooperation from courts in the United States without such recognition.

''§ 610. Limited jurisdiction

''The sole fact that a foreign representative files a petition under sections 604 and 615 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

''§ 611. Commencement of bankruptcy case under section 301 or 303

''(a) Upon filing a petition for recognition, a foreign representative may commence—

''(1) an involuntary case under section 303; or

''(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

''(b) The petition commencing a case under subsection (a) of this section must be accompanied by a statement describing the petition for recognition and its current status. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) of this section prior to such commencement.

''(c) A case under subsection (a) shall be dismissed unless recognition is granted.

''§ 612. Participation of a foreign representative in a case under this title

''Upon recognition of a foreign proceeding, the foreign representative in that proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

''§ 613. Access of foreign creditors to a case under this title

''(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

''(b)(1) Subsection (a) of this section does not change or codify law in effect on the date of enactment of this chapter as to the priority of claims under section 507 or 726, except that the claim of a foreign creditor under those sections shall not be given a lower priority than the class of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

''(2)(A) Subsection (a) of this section and paragraph (1) of this subsection do not change or codify law in effect on the date of enactment of this chapter as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

''(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

''§ 614. Notification to foreign creditors concerning a case under this title

''(a) Whenever in a case under this title, notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

''(b) The notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other similar formality is required.

''(c) When a notification of commencement of a case is to be given to foreign creditors, the notification shall—

''(1) indicate the time period for filing proofs of claim and specify the place for their filing;

''(2) indicate whether secured creditors need to file their proofs of claim; and

''(3) contain any other information required to be included in such a notification to creditors pursuant to this title and the orders of the court.

''(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

''§ 615. Application for recognition of a foreign proceeding

''(a) A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

''(b) A petition for recognition shall be accompanied by—

''(1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

''(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

''(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

''(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

''(d) The documents referred to in paragraphs (1) and (2) of subsection (b) must be translated into English. The court may require a translation into English of additional documents.

''§ 616. Presumptions concerning recognition

''(a) If the decision or certificate referred to in section 615(b) indicates that the foreign proceeding is a foreign proceeding within the meaning of section 101(23) and that the person or body is a foreign representative within the meaning of section 101(24), the court is entitled to so presume.

''(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether the documents have been subjected to legal processing under applicable law.

''(c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

''§ 617. Order recognizing a foreign proceeding

''(a) Subject to section 606, an order recognizing a foreign proceeding shall be entered if—

''(1) the foreign proceeding is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 602 and is a foreign proceeding within the meaning of section 101(23);

''(2) the person or body applying for recognition is a foreign representative within the meaning of section 101(24); and

''(3) the petition meets the requirements of section 615.

''(b) The foreign proceeding shall be recognized—

''(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or

''(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 602 in the foreign country where the proceeding is pending.

''(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding shall constitute recognition under this chapter.

''(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the granting of recognition. The foreign proceeding may be closed in the manner prescribed for a case under section 350.

''§ 618. Subsequent information

''From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

''(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and

''(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

''§ 619. Relief that may be granted upon petition for recognition of a foreign proceeding

''(a) From the time of filing a petition for recognition until the petition is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

''(1) staying execution against the debtor's assets;

''(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person designated by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

''(3) any relief referred to in paragraph (3), (4), or (7) of section 621(a).

''(b) Unless extended under section 621(a)(6), the relief granted under this section terminates when the petition for recognition is decided upon.

''(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

''§ 620. Effects of recognition of a foreign main proceeding

''(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

''(1) section 362 applies with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States; and

''(2) transfer, encumbrance, or any other disposition of an interest of the debtor in property within the territorial jurisdiction of the United States is restrained as and to the extent that is provided for property of an estate under sections 363, 549, and 552.

Unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the powers of a trustee under section 549, subject to sections 363 and 552.

''(b) The scope, and the modification or termination, of the stay and restraints referred to in subsection (a) of this section are subject to the exceptions and limitations provided in subsections (b), (c), and (d) of section 362, subsections (b) and (c) of section 363, and sections 552, 555 through 557, 559, and 560.

''(c) Subsection (a) of this section does not affect the right to commence individual actions or proceedings in a foreign country to the extent necessary to preserve a claim against the debtor.

''(d) Subsection (a) of this section does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

''§ 621. Relief that may be granted upon recognition of a foreign proceeding

''(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

''(1) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 620(a);

''(2) staying execution against the debtor's assets to the extent it has not been stayed under section 620(a);

''(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 620(a);

''(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

''(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, designated by the court;

''(6) extending relief granted under section 619(a); and

''(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

''(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, designated by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

''(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''§ 622. Protection of creditors and other interested persons

''(a) In granting or denying relief under section 619 or 621, or in modifying or terminating relief under subsection (c) of this section, the court must find that the interests of the creditors and other interested persons or entities, including the debtor, are sufficiently protected.

''(b) The court may subject relief granted under section 619 or 621 to conditions it considers appropriate.

''(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 619 or 621, or at its own motion, modify or terminate such relief.

''§ 623. Actions to avoid acts detrimental to creditors

''(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a pending case under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, and 724(a).

''(b) When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) of this section relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

''§ 624. Intervention by a foreign representative

''Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

''§ 625. Cooperation and direct communication between the court and foreign courts or foreign representatives

''(a) In all matters included within section 601, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.

''(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.

''§ 626. Cooperation and direct communication between the trustee and foreign courts or foreign representatives

''(a) In all matters included in section 601, the trustee or other person, including an examiner, designated by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

''(b) The trustee or other person, including an examiner, designated by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

''(c) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322(a).

''§ 627. Forms of cooperation

''Cooperation referred to in sections 625 and 626 may be implemented by any appropriate means, including—

''(1) appointment of a person or body, including an examiner, to act at the direction of the court;

''(2) communication of information by any means considered appropriate by the court;

''(3) coordination of the administration and supervision of the debtor's assets and affairs;

''(4) approval or implementation of agreements concerning the coordination of proceedings; and

''(5) coordination of concurrent proceedings regarding the same debtor.

''SUBCHAPTER V—CONCURRENT PROCEEDINGS

''§ 628. Commencement of a case under this title after recognition of a foreign main proceeding

''After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of that case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 625, 626, and 627, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) and 1334(e), to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

''§ 629. Coordination of a case under this title and a foreign proceeding

''Where a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 625, 626, and 627, and the following shall apply:

''(1) When the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—

''(A) any relief granted under sections 619 or 621 must be consistent with the case in the United States; and

''(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 620 does not apply.

''(2) When a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—

''(A) any relief in effect under sections 619 or 621 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

''(B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 620(a) shall be modified or terminated if inconsistent with the case in the United States.

''(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(4) In achieving cooperation and coordination under sections 628 and 629, the court may grant any of the relief authorized under section 305.

''§ 630. Coordination of more than 1 foreign proceeding

''In matters referred to in section 601, with respect to more than one foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 625, 626, and 627, and the following shall apply:

''(1) Any relief granted under section 619 or 621 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

''(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 619 or 621 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

''(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

''§ 631. Presumption of insolvency based on recognition of a foreign main proceeding

''In the absence of evidence to the contrary, recognition of a foreign main proceeding is for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts.

''§ 632. Rule of payment in concurrent proceedings

''Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.''.

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

''6. Ancillary and Other Cross-Border Cases ..... 601''.

SEC. 502. AMENDMENTS TO OTHER CHAPTERS IN TITLE 11, UNITED STATES CODE.

(a) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: ''and this chapter, sections 307, 555 through 557, 559, and 560 apply in a case under chapter 6''; and

(2) by adding at the end the following:

''(j) Chapter 6 applies only in a case under that chapter, except that section 605 applies to trustees and to any other entity designated by the court, including an examiner, under chapters 7, 11, and 12, to debtors in possession under chapters 11 and 12, and to debtors or trustees under chapters 9 and 13 who are authorized to act under section 605.''.

(b) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraphs (23) and (24) and inserting the following:

''(23) 'foreign proceeding' means a collective judicial or administrative proceeding in a foreign state, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

''(24) 'foreign representative' means a person or body, including 1 appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;''.

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking ''and'' at the end;

(B) in subparagraph (O), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(P) recognition of foreign proceedings and other matters under chapter 6.''.

(2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1334(c) of title 28, United States Code, is amended by striking ''Nothing in'' and inserting ''Except with respect to a case under chapter 6 of title 11, nothing in''.

(3) DUTIES OF TRUSTEES.—Section 586(a)(3) of title 28, United States Code, is amended by inserting ''6,'' after ''chapter''.

TITLE VI—MISCELLANEOUS

SEC. 601. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

Section 365(d)(4) of title 11, United States Code, is amended to read as follows:

''(4)(A) Subject to subparagraph (B), in any case under any chapter of this title, an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected and the trustee shall immediately surrender that nonresidential real property to the lessor if the trustee does not assume or reject the unexpired lease by the earlier of—

''(i) the date that is 120 days after the date of the order for relief; or

''(ii) the date of the entry of an order confirming a plan.

''(B) The court may extend the period determined under subparagraph (A) only upon a motion of the lessor.''.

SEC. 602. EXPEDITED APPEALS OF BANKRUPTCY CASES TO COURTS OF APPEALS.

(a) IN GENERAL.—Section 158 of title 28, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e);

(2) by inserting after subsection (c) the following new subsection:

''(d)(1) Any final judgment, decision, order, or decree of a bankruptcy judge entered for a case in accordance with section 157 may be appealed by any party in such case to the appropriate court of appeals if—

''(A) an appeal from such judgment, decision, order, or decree is first filed with the appropriate district court of the United States; and

''(B) the decision on the appeal described under subparagraph (A) is not filed by a district court judge within 30 days after the date such appeal is filed with the district court.

''(2) On the date that an appeal is filed with a court of appeals under paragraph (1), the chief judge for such court of appeals shall issue an order to the clerk for the district court from which the appeal is filed. Such order shall direct the clerk to enter the final judgment, decision,

order, or decree of the bankruptcy judge as the final judgment, decision, order, or decree of the district court.''; and

(3) in subsection (e), (as redesignated by paragraph (1) of this section) by striking ''subsections (a) and (b)'' and inserting ''subsections (a), (b), and (d)''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 305(c) of title 11, United States Code, is amended by striking ''section 158(d)'' and inserting ''section 158(e)''.

(2) Section 1334(d) of title 28, United States Code, is amended by striking ''section 158(d)'' and inserting ''section 158(e)''.

(3) Section 1452(b) of title 28, United States Code, is amended by striking ''section 158(d)'' and inserting ''section 158(e)''.

SEC. 603. CREDITORS AND EQUITY SECURITY HOLDERS COMMITTEES.

Section 1102(a)(2) of title 11, United States Code, is amended by inserting before the first sentence the following: ''On its own motion or on request of a party in interest, and after notice and hearing, the court may order a change in the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders.''.

SEC. 604. REPEAL OF SUNSET PROVISION.

Section 302 of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended by striking subsection (f).

SEC. 605. CASES ANCILLARY TO FOREIGN PROCEEDINGS.

Section 304 of title 11, United States Code, as amended by section 410 of this Act, is amended by adding at the end the following:

''(e)(1) In this subsection—

''(A) the term 'domestic insurance company' means a domestic insurance company, as that term is used in section 109(b)(2);

''(B) the term 'foreign insurance company' means a foreign insurance company, as that term is used in section 109(b)(3);

''(C) the term 'United States claimant' means a beneficiary of any deposit referred to in paragraph (2)(A) or any multibeneficiary trust referred to in subparagraph (B) or (C) of paragraph (2);

''(D) the term 'United States creditor' means, with respect to a foreign insurance company—

''(i) a United States claimant; or

''(ii) any business entity that operates in the United States and that is a creditor; and

''(E) the term 'United States policyholder' means a holder of an insurance policy issued in the United States.

''(2) Notwithstanding subsections (b) and (c), the court may not grant relief under subsection (b) to a foreign insurance company that is not engaged in the business of insurance or reinsurance in the United States with respect to any claim made by a United States creditor against—

''(A) a deposit required by an applicable State insurance law;

''(B) a multibeneficiary trust required by an applicable State insurance law to protect United States policyholders or claimants against a foreign insurance company; or

''(C) a multibeneficiary trust authorized under an applicable State insurance law to allow a domestic insurance company that cedes reinsurance to the debtor to reflect the reinsurance as an asset or deduction from liability in the ceding insurer's financial statements.''.

SEC. 606. LIMITATION.

Section 546(c)(1)(B) of title 11, United States Code, is amended by striking ''20'' and inserting ''45''.

SEC. 607. AMENDMENT TO SECTION 546 OF TITLE 11, UNITED STATES CODE.

Section 546 of title 11, United States Code, is amended by inserting at the end thereof:

''(I) Notwithstanding section 545 (2) and (3) of this title, the trustee may not avoid a warehouseman's lien for storage, transportation or other costs incidental to the storage and handling of goods, as provided by section 7–209 of the Uniform Commercial Code.''.

SEC. 608. AMENDMENT TO SECTION 330(a) OF TITLE 11, UNITED STATES CODE.

Section 330(a) of title 11, United States Code, is amended—

(1) in subsection (3)(A) after the word ''awarded'', by inserting ''to an examiner, chapter 11 trustee, or professional person''; and

(2) by adding at the end of subsection (3)(A) the following:

''(3)(B) In determining the amount of reasonable compensation to be awarded a trustee, the court shall treat such compensation as a commission based on the results achieved.''.

TITLE VII—TECHNICAL CORRECTIONS

SEC. 701. DEFINITIONS.

Section 101 of title 11, United States Code, as amended by section 317, is amended—

(1) by striking ''In this title—'' and inserting ''In this title:'';

(2) in each paragraph, by inserting ''The term'' after the paragraph designation;

(3) in paragraph (35)(B), by striking ''paragraphs (21B) and (33)(A)'' and inserting ''paragraphs (23) and (35)'';

(4) in each of paragraphs (35A) and (38), by striking ''; and'' at the end and inserting a period;

(5) in paragraph (51B)—

(A) by inserting ''who is not a family farmer'' after ''debtor'' the first place it appears; and

(B) by striking ''thereto having aggregate'' and all that follows through the end of the paragraph;

(6) by amending paragraph (54) to read as follows:

''(54) The term 'transfer' means—

''(A) the creation of a lien;

''(B) the retention of title as a security interest;

''(C) the foreclosure of a debtor's equity of redemption; or

''(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

''(i) property; or

''(ii) an interest in property;'';

(7) in each of paragraphs (1) through (35), in each of paragraphs (36) and (37), and in each of paragraphs (40) through (56A) (including paragraph (54), as amended by paragraph (6) of this section), by striking the semicolon at the end and inserting a period; and

(8) by redesignating paragraphs (4) through (56A) in entirely numerical sequence, so as to result in numerical paragraph designations of (4) through (77), respectively.

SEC. 702. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104 of title 11, United States Code, is amended by inserting ''522(f)(3), 707(b)(5),'' after ''522(d),'' each place it appears.

SEC. 703. EXTENSION OF TIME.

Section 108(c)(2) of title 11, United States Code, is amended by striking ''922'' and all that follows through ''or'', and inserting ''922, 1201, or''.

SEC. 704. WHO MAY BE A DEBTOR.

Section 109(b)(2) of title 11, United States Code, is amended by striking ''subsection (c) or (d) of''.

SEC. 705. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.

Section 110(j)(3) of title 11, United States Code, is amended by striking ''attorney's'' and inserting ''attorneys' ''.

SEC. 706. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS.

Section 328(a) of title 11, United States Code, is amended by inserting ''on a fixed or percentage fee basis,'' after ''hourly basis,''.

SEC. 707. SPECIAL TAX PROVISIONS.

Section 346(g)(1)(C) of title 11, United States Code, is amended by striking '', except'' and all that follows through ''1986''.

SEC. 708. EFFECT OF CONVERSION.

Section 348(f)(2) of title 11, United States Code, is amended by inserting ''of the estate'' after ''property'' the first place it appears.

SEC. 709. AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, as amended by sections 326 and 401 of this Act, is amended—

(1) in paragraph (21), by striking ''or'' at the end;

(2) in paragraph (22), by striking the period at the end and inserting a semicolon; and

(3) by inserting after paragraph (22) the following:

''(23) under subsection (a) of this section of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;

''(24) under subsection (a)(3) of this section, of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement and the debtor has not paid rent to the lessor pursuant to the terms of the lease agreement or applicable State law after the commencement and during the course of the case;

''(25) under subsection (a)(3) of this section, of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement that has terminated pursuant to the lease agreement or applicable State law;

''(26) under subsection (a)(3) of this section, of any eviction, unlawful detainer action, or similiar proceeding, if the debtor has previously filed within the last year and failed to pay postpetition rent during the course of that case; or

''(27) under subsection (a)(3) of this section, of eviction actions based on endangerment to property or person or the use of illegal drugs.''.

SEC. 710. AMENDMENT TO TABLE OF SECTIONS.

The table of sections for chapter 5 of title 11, United States Code, is amended by striking the item relating to section 556 and inserting the following:

''556. Contractual right to liquidate a commodities contract or forward contract.''.

SEC. 711. ALLOWANCE OF ADMINISTRATIVE EXPENSES.

Section 503(b)(4) of title 11, United States Code, is amended by inserting ''subparagraph (A), (B), (C), (D), or (E) of'' before ''paragraph (3)''.

SEC. 712. PRIORITIES.

Section 507(a) of title 11, United States Code, as amended by section 323 of this Act, is amended—

(1) in paragraph (3)(B), by striking the semicolon at the end and inserting a period; and

(2) in paragraph (7), by inserting ''unsecured'' after ''allowed''.

SEC. 713. EXEMPTIONS.

Section 522 of title 11, United States Code, as amended by section 320 of this Act, is amended—

(1) in subsection (f)(1)(A)(ii)(II)—

(A) by striking ''includes a liability designated as'' and inserting ''is for a liability that is designated as, and is actually in the nature of,''; and

(B) by striking '', unless'' and all that follows through ''support''; and

(2) in subsection (g)(2), by striking ''subsection (f)(2)'' and inserting ''subsection (f)(1)(B)''.

SEC. 714. EXCEPTIONS TO DISCHARGE.

Section 523 of title 11, United States Code, is amended—

(1) in subsection (a)(3), by striking ''or (6)'' each place it appears and inserting ''(6), or (15)'';

(2) as amended by section 304(e) of Public Law 103–394 (108 Stat. 4133), in paragraph (15), by transferring such paragraph so as to insert it after paragraph (14) of subsection (a);

(3) in subsection (a)(9), by inserting '', watercraft, or aircraft'' after ''motor vehicle'';

(4) in subsection (a)(15), as so redesignated by paragraph (2) of this subsection, by inserting ''to a spouse, former spouse, or child of the debtor and'' after ''(15)'';

(5) in subsection (a)(17)—

(A) by striking ''by a court'' and inserting ''on a prisoner by any court'';

(B) by striking ''section 1915 (b) or (f)'' and inserting ''subsection (b) or (f)(2) of section 1915''; and

(C) by inserting ''(or a similar non-Federal law)'' after ''title 28'' each place it appears; and

(6) in subsection (e), by striking ''a insured'' and inserting ''an insured''.

SEC. 715. EFFECT OF DISCHARGE.

Section 524(a)(3) of title 11, United States Code, is amended by striking ''section 523'' and all that follows through ''or that'' and inserting ''section 523, 1228(a)(1), or 1328(a)(1) of this title, or that''.

SEC. 716. PROTECTION AGAINST DISCRIMINATORY TREATMENT.

Section 525(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by inserting ''student'' before ''grant'' the second place it appears; and

(2) in paragraph (2), by striking ''the program operated under part B, D, or E of'' and inserting ''any program operated under''.

SEC. 717. PROPERTY OF THE ESTATE.

Section 541(b)(4)(B)(ii) of title 11, United States Code, is amended by inserting ''365 or'' before ''542''.

SEC. 718. PREFERENCES.

Section 547 of title 11, United States Code, is amended—

(1) in subsection (b), by striking ''subsection (c)'' and inserting ''subsections (c) and (h)''; and

(2) by adding at the end the following:

''(h) If the trustee avoids under subsection (b) a security interest given between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such security interest shall be considered to be avoided under this section only with respect to the creditor that is an insider.''.

SEC. 719. POSTPETITION TRANSACTIONS.

Section 549(c) of title 11, United States Code, is amended—

(1) by inserting ''an interest in'' after ''transfer of'';

(2) by striking ''such property'' and inserting ''such real property''; and

(3) by striking ''the interest'' and inserting ''such interest''.

SEC. 720. TECHNICAL AMENDMENT.

Section 552(b)(1) of title 11, United States Code, is amended by striking ''product'' each place it appears and inserting ''products''.

SEC. 721. DISPOSITION OF PROPERTY OF THE ESTATE.

Section 726(b) of title 11, United States Code, is amended by striking ''1009,''.

SEC. 722. GENERAL PROVISIONS.

Section 901(a) of title 11, United States Code, as amended by section 408, is amended by inserting ''1123(d),'' after ''1123(b),''.

SEC. 723. APPOINTMENT OF ELECTED TRUSTEE.

Section 1104(b) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)''; and

(2) by adding at the end the following:

''(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election. Upon the filing of a report under the preceding sentence—

''(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and

''(ii) the service of any trustee appointed under subsection (d) shall terminate.

''(B) In the case of any dispute arising out of an election under subparagraph (A), the court shall resolve the dispute.''.

SEC. 724. ABANDONMENT OF RAILROAD LINE.

Section 1170(e)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

SEC. 725. CONTENTS OF PLAN.

Section 1172(c)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

SEC. 726. DISCHARGE UNDER CHAPTER 12.

Subsections (a) and (c) of section 1228 of title 11, United States Code, are amended by striking ''1222(b)(10)'' each place it appears and inserting ''1222(b)(9)''.

SEC. 727. EXTENSIONS.

Section 302(d)(3) of the Bankruptcy, Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended—

(1) in subparagraph (A), in the matter following clause (ii), by striking ''or October 1, 2002, whichever occurs first''; and

(2) in subparagraph (F)—

(A) in clause (i)—

(i) in subclause (II), by striking ''or October 1, 2002, whichever occurs first''; and

(ii) in the matter following subclause (II), by striking ''October 1, 2003, or''; and

(B) in clause (ii), in the matter following subclause (II)—

(i) by striking ''before October 1, 2003, or''; and

(ii) by striking '', whichever occurs first''.

SEC. 728. BANKRUPTCY CASES AND PROCEEDINGS.

Section 1334(d) of title 28, United States Code, is amended—

(1) by striking ''made under this subsection'' and inserting ''made under subsection (c)''; and

(2) by striking ''This subsection'' and inserting ''Subsection (c) and this subsection''.

SEC. 729. KNOWING DISREGARD OF BANKRUPTCY LAW OR RULE.

Section 156(a) of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by inserting ''(1) the term'' before '' 'bankruptcy''; and

(B) by striking the period at the end and inserting ''; and''; and

(2) in the second undesignated paragraph—

(A) by inserting ''(2) the term'' before '' 'document''; and

(B) by striking ''this title'' and inserting ''title 11''.

SEC. 730. ROLLING STOCK EQUIPMENT.

(a) IN GENERAL.—Section 1168 of title 11, United States Code, is amended to read as follows:

''§ 1168. Rolling stock equipment.

''(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court, except that that right to take possession and enforce those other rights and remedies shall be subject to section 362, if—

''(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and

''(B) any default, other than a default of a kind described in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

''(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period;

''(ii) that occurs or becomes an event of default after the date of commencement of the case and before the expiration of such 60-day period is cured before the later of—

''(I) the date that is 30 days after the date of the default or event of the default; or

''(II) the expiration of such 60-day period; and

''(iii) that occurs on or after the expiration of such 60-day period is cured in accordance with the terms of such security agreement, lease, or conditional sale contract, if cure is permitted under that agreement, lease, or conditional sale contract.

''(2) The equipment described in this paragraph—

''(A) is rolling stock equipment or accessories used on rolling stock equipment, including superstructures or racks, that is subject to a security interest granted by, leased to, or conditionally sold to a debtor; and

''(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, that is to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.

''(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

''(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

''(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(2), if at any time after the date of commencement of the case under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession of the trustee.

''(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(2), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.

''(d) With respect to equipment first placed in service on or prior to October 22, 1994, for purposes of this section—

''(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

''(2) the term 'security interest' means a purchase-money equipment security interest.

''(e) With respect to equipment first placed in service after October 22, 1994, for purposes of this section, the term 'rolling stock equipment' includes rolling stock equipment that is substantially rebuilt and accessories used on such equipment.''.

(b) AIRCRAFT EQUIPMENT AND VESSELS.—Section 1110 of title 11, United States Code, is amended to read as follows:

''§ 1110. Aircraft equipment and vessels

''(a)(1) Except as provided in paragraph (2) and subject to subsection (b), the right of a secured party with a security interest in equipment described in paragraph (3), or of a lessor or conditional vendor of such equipment, to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies, under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court.

''(2) The right to take possession and to enforce the other rights and remedies described in paragraph (1) shall be subject to section 362 if—

''(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the approval of the court, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and

''(B) any default, other than a default of a kind specified in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

''(i) that occurs before the date of the order is cured before the expiration of such 60-day period;

''(ii) that occurs after the date of the order and before the expiration of such 60-day period is cured before the later of—

''(I) the date that is 30 days after the date of the default; or

''(II) the expiration of such 60-day period; and

''(iii) that occurs on or after the expiration of such 60-day period is cured in compliance with the terms of such security agreement, lease, or conditional sale contract, if a cure is permitted under that agreement, lease, or contract.

''(3) The equipment described in this paragraph—

''(A) is—

''(i) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 40102 of title 49) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that, at the time such transaction is entered into, holds an air carrier operating certificate issued pursuant to chapter 447 of title 49 for aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo; or

''(ii) a documented vessel (as defined in section 30101(1) of title 46) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that, at the time such transaction is entered into, holds a certificate of public convenience and necessity or permit issued by the Department of Transportation; and

''(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.

''(4) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

''(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the approval of the court, to extend the 60-day period specified in subsection (a)(1).

''(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(3), if at any time after the date of the order for relief under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession to the trustee.

''(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(3), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.

''(d) With respect to equipment first placed in service on or before October 22, 1994, for purposes of this section—

''(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

''(2) the term 'security interest' means a purchase-money equipment security interest.''.

SEC. 731. CURBING ABUSIVE FILINGS.

(a) IN GENERAL.—Section 362(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real estate, if the court finds that the filing of the bankruptcy petition was part of a scheme to delay, hinder, and defraud creditors that involved either—

''(A) transfer of all or part ownership of, or other interest in, the real property without the consent of the secured creditor or court approval; or

''(B) multiple bankruptcy filings affecting the real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered pursuant to this subsection shall be binding in any other case under this title purporting to affect the real property filed not later than 2 years after that recording, except that a debtor in a subsequent case may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 709, is amended—

(1) in paragraph (24), by striking ''or'' at the end;

(2) in paragraph (25) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(26) under subsection (a) of this section, of any act to enforce any lien against or security interest in real property following the entry of an order under section 362(d)(4) as to that property in any prior bankruptcy case for a period of 2 years after entry of such an order. The debtor in a subsequent case, however, may move the court for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing; or

''(27) under subsection (a) of this section, of any act to enforce any lien against or security interest in real property—

''(A) if the debtor is ineligible under section 109(g) to be a debtor in a bankruptcy case; or

''(B) if the bankruptcy case was filed in violation of a bankruptcy court order in a prior bankruptcy case prohibiting the debtor from being a debtor in another bankruptcy case.''.

SEC. 732. STUDY OF OPERATION OF TITLE 11 OF THE UNITED STATES CODE WITH RESPECT TO SMALL BUSINESSES.

Not later than 2 years after the date of the enactment of this Act, the Administrator of the Small Business Administration, in consultation with the Attorney General, the Director of the Administrative Office of United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—

(1) conduct a study to determine—

(A) the internal and external factors that cause small businesses, especially sole proprietorships, to become debtors in cases under title 11 of the United States Code and that cause certain small businesses to successfully complete cases under chapter 11 of such title; and

(B) how Federal laws relating to bankruptcy may be made more effective and efficient in assisting small businesses to remain viable; and

(2) submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report summarizing that study.

SEC. 733. TRANSFERS MADE BY NONPROFIT CHARITABLE CORPORATIONS.

(a) SALE OF PROPERTY OF ESTATE.—Section 363(d) of title 11, United States Code, is amended—

(1) by striking ''only'' and all that follows through the end of the subsection and inserting ''only—

''(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and

''(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362''.

(b) CONFIRMATION OF PLAN FOR REORGANIZATION.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

''(14) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.''.

(c) TRANSFER OF PROPERTY.—Section 541 of title 11, United States Code, is amended by adding at the end the following:

''(e) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.''.

(d) APPLICABILITY.—The amendments made by this section shall apply to a case pending under title 11, United States Code, on the date of enactment of this Act, except that the court shall not confirm a plan under chapter 11 of this title without considering whether this section would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the petition. The parties who may appear and be heard in a proceeding under this section include the attorney general of the State in which the debtor is incorporated, was formed, or does business.

SEC. 734. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect on the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this title shall apply only with respect to cases commenced under title 11, United States Code, on or after the date of enactment of this Act.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senate insists

on its amendments and requests a conference with the House, and the Chair appoints conferees.

Thereupon, the Presiding Officer (Mr. THOMAS) appointed Mr. HATCH, Mr. GRASSLEY, Mr. SESSIONS, Mr. LEAHY, and Mr. DURBIN conferees on the part of the Senate.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, first of all I want to thank everyone in this body for the overwhelming vote of confidence on the work that Senator DURBIN and I have done on this bankruptcy bill. Getting to this point has been a very tough process involving a lot of compromise and a lot of refinement.

You heard me say on the first day of debate that for the entire time that I have been in the Senate and on this subcommittee on the subject of bankruptcy—maybe not on every subject, but the subject of bankruptcy—there has been a great deal of bipartisan cooperation, first of all between Senator Heflin of Alabama, now retired, and myself. Sometimes I was chairman when Republicans were in the majority. When we were in the minority, I was ranking member and he was chairman. But this legislation has always passed with that sort of tradition.

So I want to say to all of my colleagues that I not only thank them for their support but, more importantly, thank Senator DURBIN, who worked so closely with me on this legislation, and that tradition has continued. I thank him for carrying on that tradition, because I don't think we would have had the vote that we had today if it had not been for the bipartisanship that has been expressed since he first took over leadership for his party on our subcommittee.

I also want to give commendation to his staff, Victoria Bassetti and Ann McCormick; and also to Senator HATCH's staff, Maken Delrahim and Rene Augustine; and also my staff, John McMickle and Kolan Davis, because without the long hours of staff work that went into this bill, we would not have had the great compromise that we had to make this vote possible.

Mr. President, I'm pleased that we've come to the point where the Senate has passed the Grassley-Durbin consumer bankruptcy bill. Getting to this point has been a tough process involving a lot of compromise and refinement. Of course, I thank Senator DURBIN for his help and suggestions for improving the bill. I think that Chairman HATCH also deserves a great deal of credit as well.

The bill we voted is a very fair and balanced piece of legislation with broad support. The administration, in its ''statement of administration policy,'' encourages the Senate to pass this bill. The Judiciary Committee was almost unanimous in passing the bill, and many changes have been made to the version of the bill reported by the committee to accommodate the concerns of the minority. So, this is a bill I think we can all support regardless of party. Again, Senator DURBIN has been instrumental in making this bill truly bi-partisan.

As I've said numerous times on the floor during the debate on bankruptcy reform, the American people are four-square in support of meaningful bankruptcy reform. The fact is that some people use bankruptcy as a convenient financial planning tool to skip out on debts they could repay. This has to stop.

Mr. President, there's no such thing as a free lunch. Bankruptcies of convenience are like shoplifting. Honest consumers have to pick up the tab for losses due to bankruptcy just as they pick up the tab for shoplifting. Bankruptcies of convenience impose a hidden bankruptcy tax of $400 per family of four. My bill will cut that tax.

Mr. President, it's not just consumers paying higher prices who stand to lose from bankruptcy abuse. Small businesses, a vital component of our healthy economy, can be crippled by bankruptcy losses. That's why the National Federation of Independent Business supports bankruptcy reform.

Let's cut the bankruptcy tax. Let's restore personal responsibility to the bankruptcy system. Let's help protect American consumers and small businesses.

Mr. President, I want to thank the people from the administration, because they have followed the course of this legislation. They have issued a statement of administrative policy in support of this legislation.

I ask unanimous consent that it be printed in the RECORD.

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

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, September 17, 1998.

STATEMENT OF ADMINISTRATION POLICY

S. 1301—CONSUMER BANKRUPTCY REFORM ACT OF 1998

(Grassley (R) Iowa and Durbin (D) Illinois)

The Administration encourages Senate passage of S. 1301 as an important step toward balanced bankruptcy reform; however, the Administration ultimately would support enactment of bankruptcy legislation only if the essential reforms incorporated by the Senate managers' amendment are preserved and strengthened and the unbalanced and arbitrary elements of the current House bill are omitted.

The Administration supports bankruptcy reform that asks both debtors and creditors to act more responsibly. Debtors who genuinely have the ability to repay a portion of their debts should remain responsible for those debts. But creditors must also be responsible for treating debtors fairly, recognizing creditors' superior information and bargaining power.

As reported from Committee, S. 1301 focused heavily on perceived debtor abuse, with little to curtail abuses by creditors. However, if changes incorporated in the manager's amendment are adopted, the Senate bill will take significant steps to address abusive practices by both debtors and creditors. Essential changes included in the managers' amendments include: (1) new disclosure requirements to ensure that credit card companies provide consumers with the information about their accounts that they need to manage their budgets; (2) procedural protections to avoid inappropriate and unwise reaffirmations of unsecured and certain secured consumer debts; and (3) modifications made to the nondischargeability provisions in the bill so that the bill no longer inappropriately puts credit card debt in competition with child support, alimony, and other societal priorities like education loans and taxes.

The Administration also strongly prefers the discretionary approach to limiting access to Chapter 7 used in S. 1301 over the rigid and arbitrary approach in the House bill. We support changes made by the Senate bill to ensure that those debtors denied access to Chapter 7 under Section 707(b) of the Bankruptcy Code are those that have a strong likelihood of successfully completing a Chapter 13 plan.

More can and should be done to produce a truly balanced bill. The bill must address the potentially coercive effect of allowing creditors to bring 707(b) motions based on any allegation of abuse and strengthen the protections against coercive reaffirmations.

The Administration also supports financial contract netting provisions in the bill, which are important to reducing systemic risk in our financial markets and are based on a proposal from the President's Working Group on Financial Markets.

The Administration supports Senate passage of the ''Omnibus Patent Act of 1998'' as an amendment to S. 1301 because that bill supports American innovation through needed patent law reforms. While the Administration is disappointed that the bill does not include all of the performance based organization reforms it proposed, the provision's inclusion of the annual performance agreement is welcome.

Finally, the Senate is expected to vote on an amendment to raise wages of 12 million Americans and help ensure that parents who work hard and play by the rules do not have to raise their children in poverty. Two years ago, the President signed into law a moderate increase in the minimum wage. The results of that action are clear: it raised the wages of the lowest paid workers and did not cost jobs. Now we must continue to take actions to ensure that all Americans are benefitting from our prospering economy. That is why the Administration strongly supports raising the minimum wage by $1 over two years.

Mr. GRASSLEY. Mr. President, I thank Senator DURBIN very much for his cooperation.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Thank you, Mr. President.

I would like to echo the comments of Senator GRASSLEY. I really believe this vote of 97 to 1 is a tribute to his patience, endurance, and hard work. It has been a joy to be with him as part of this process. We have serious differences on many aspects of this bill. I am sure we will continue to debate them. But the core bill is a bill which I was happy to support because I think it is a more reasonable approach to reforming bankruptcy. We attempt to reform it in the responsible way, trying to stop the abuses in filing in the bankruptcy court and at the same time calling on the credit industry to accept

some responsibility for those risky credit practices which lure unwitting consumers into a trap from which they cannot escape.

I want to give acknowledgment as well to staff who have made this bill possible. Seated to my left is Victoria Bassetti, my staff attorney on the Judiciary Committee, who has spent more time looking at the bankruptcy code than almost anything else in the past year; Anne McCormick, who is with us as a detailee from the Department of Justice, who has done an extraordinary job; on the majority side, John McMickle and Kolan Davis have become friends during the course of this debate and have added greatly to the work product; Makan Delrahim and Rene Augustine of Senator HATCH's staff; Kara Stein and Brooke Byers of Senator DODD's staff; Ed Pagano of Senator LEAHY's staff; Kristi Lee of Senator SESSIONS' staff; and Brian Lee of Senator KOHL's staff; as well as Joel Wiginton, who once worked on my staff and now serves Senator FEINGOLD. They all have added to the value of this bill. I thank each and every one of them.

I would like to just note four or five things that I am particularly proud of in this legislation.

We have worked back and forth in the banking industry, as well as with experts in the law, to come to a good conclusion about the ways to reduce abuse when it comes to bankruptcy filings.

We have added some provisions here which I think many consumers will appreciate because it really does bring more balance to this endeavor.

With the help of Senator DODD, who is in the Chamber today, as well as Senator SARBANES of Maryland, we have added some disclosure provisions to this bill which will make credit card statements clearer and make it more understandable when credit card companies solicit your business as to what you are going to have to do, how much you will have to pay in interest rates and what other conditions might be important to your relationship.

We have an amendment here I am particularly proud of on predatory home lending. These are those unscrupulous credit practices where lenders prey particularly on senior citizens, forcing them into a situation where they sign second mortgages on their home without any real understanding of what they are getting into. They lose the most important asset in their life because of these unscrupulous practices. This bill comes down hard on that kind of conduct.

We also have increased court supervision on reaffirmation. A person files for bankruptcy and says, Here is a debt which I will keep; I will continue to pay on it. For instance, a car loan because you need an automobile, or with a company that your family has done business with for generations. You reaffirm the debt. That is perfectly acceptable. It is something which should be encouraged where it works. But we say the court should look at it to make certain it is fair.

I salute Senator SESSIONS and Senator KOHL for the homestead exemption cap. The unlimited homestead exemption in a few states is the single worst abuse in the bankruptcy system. Our friends in the House saw it differently on a floor vote. It is up to us in conference to convince them that ours is a better way. We protect retirement income in bankruptcy, a concept which I pushed for and was happy to join with Senator HATCH in finally passing in this Chamber.

I thank Senator FEINGOLD for his efforts to protect the poorest of the poor who file in bankruptcy. I also salute Senator FEINSTEIN and others who have asked for studies which we think will improve credit practices in this country. And, finally, this bill provides for the creation of 18 new bankruptcy judgeships sorely needed in the States which will receive them.

This is the first major legislation I have had in the Chamber. I don't expect every one of them to pass 97 to 1, but it really is a good feeling to know that all of this work over this time has resulted in a truly bipartisan response to this important issue.

Thank you, Mr. President. I yield the floor.

Mr. HATCH. Mr. President, S. 1301, the Consumer Bankruptcy Reform Act of 1998, was reported out of the Judiciary Committee with strong bipartisan support and is one of the most important legislative efforts to reform the bankruptcy laws in 20 years.

I would like to begin by commending my colleagues, Senators GRASSLEY and DURBIN, respectively, the chairman and ranking minority member of the Subcommittee on Administrative Oversight and the Courts, for their tireless efforts in crafting this much needed legislation. I also want to thank them for conducting numerous important hearings at the subcommittee level on the complex issue of bankruptcy reform. I particularly appreciate the dedication they have shown to making the passage of this bill an inclusive and bipartisan process.

The compelling need for reform is underscored by the dramatic rise in bankruptcy filings each year. The Bankruptcy Code was liberalized back in 1978, and ever since that time, consumer bankruptcy filings have gone up at an unprecedented rate. Even during the economic boom years of 1994 to 1997, consumer bankruptcy filings almost doubled.

Mr. President, the bankruptcy system was intended to provide a ''fresh start'' for those who need it. We need to preserve the bankruptcy system within limits to allow individuals to emerge from financial ruin, which may have been precipitated by unforeseen events such as medical problems or unemployment. What we don't need is to preserve those elements of the system that allow it to be abused, and that allow some debtors to use bankruptcy as a financial planning tool rather than as a last resort. I firmly believe that by allowing people to escape from their financial obligations, we are doing them a great disservice by not encouraging them to manage their finances and control their debt.

It always has been my view that individuals should take personal responsibility for their debts, and repay them to the extent possible. Under the present system, it is too easy for debtors who have the ability to repay some of what they owe to file for Chapter 7 bankruptcy. Under Chapter 7, debtors can liquidate their assets and discharge all debt, while protecting certain assets from liquidation, irrespective of their income. Mr. President, I believe that the complete extinguishing of debt should be reserved for debtors who truly cannot repay their debts.

According to the Wall Street Journal (Nov. 8, 1996) bankruptcy protection laws give an alarming number of ''obscure, but perfectly legal places for anyone to hide assets.'' For instance, one Virginia multimillionaire incurred massive debt, but under State law was entitled to keep certain household goods, farm equipment, and ''one horse.'' This particular individual opted to keep a $640,000 race horse, noting that the law only limits the number of horses, but not the individual value of a horse.

While this is a particularly egregious example, these kinds of loopholes exist in the Bankruptcy Code, and people are using them to avoid paying their debts. As a result, the rest of us end up footing the bill through higher prices and higher interest rates.

S. 1301 provides a remedy for these abuses by adopting a needs-based approach to bankruptcy reform.

It is important to note that the administration has urged that bankruptcy law should ''discourage bad faith repeat filings and other attempts to abuse the privilege accorded by access to bankruptcy.''

This bipartisan legislation, created by Senators GRASSLEY and DURBIN, is carefully structured to achieve an appropriate balance between debtor and creditor rights. The legislation maintains the aspects of the bankruptcy system that serve those in need of a ''fresh start.'' At the same time, S. 1301 reforms current bankruptcy laws to prevent the system from being abused at the expense of all Americans.

The impact of this important legislation will not only be to curb the rampant number of frivolous bankruptcy filings, but also to give a boost to our economy.

Mr. President, again I would like to applaud the bipartisan efforts of my colleagues who have made S. 1301 a broadly supported bill.

Mr. SARBANES. Mr. President, I would like to take this opportunity to congratulate Senator DURBIN, the Ranking Member of the Courts Subcommittee, on passage of S.1301, the

Consumer Bankruptcy Reform Bill of 1998.

I especially want to thank him for insisting that S.1301 address not only the need for greater responsibility on the part of debtors, but also the need for greater responsibility on the part of creditors. In particular, this bill takes notice of the fact that credit card companies often act as enablers to individuals who end up in bankruptcy after falling prey to one too many promises of easy credit from these companies. S.1301 requires that credit card companies provide consumers with the information they need to behave in a responsible manner, rather than luring them into tighter financial straits with false promises of easy credit.

The bill that passed out of the Judiciary Committee did not take such an evenhanded approach, and I, among others both on and off the Judiciary Committee, noted the need to bring greater balance to this issue on the floor. Thanks to Senator DURBIN's leadership, the efforts of several other Democratic Senators, and the cooperation of Senator GRASSLEY and other Republicans, the bill we will soon pass is a product that, as amended, acknowledges the shared responsibility for the rise in bankruptcies between creditors and debtors, and strives to discourage reckless behavior on both sides of credit transactions.

Mr. DURBIN. I thank my colleague from Maryland for his kind words, and for his assistance in making S.1301 a bill that the Senate can be proud of.

As Ranking Member of the Senate Committee on Banking, Housing and Urban Affairs, Senator SARBANES has long been interested in the issue of consumer lending practices, and his efforts were invaluable in drawing the necessary connection between increased bankruptcy filings and the lending practices of credit card companies.

Due to the efforts of a number of Democratic Senators, including Senator SARBANES, we were able to have inserted into the managers amendment to this bill a number of important provisions dealing with consumer credit information. These provisions require credit card companies to provide in their monthly statements and initial solicitation materials information that will help consumers manage their finances in a way that will, I believe, obviate the need for bankruptcy in many cases. The bill also now provides for studies regarding (1) the extension of credit to individuals with a high debt-to-income ratio and (2) the use of credit card security interests to coerce reaffirmations of debt in bankruptcy.

In short, we now have before us a bill that is balanced and that is not simply the wish list of the credit card companies. I thank Senator SARBANES for helping to make this possible.

Mr. SARBANES. I thank Senator DURBIN for his kind words. I also note, however, that we still have much work to do in this area. None of the consumer-oriented provisions that we have succeeded in adding to S.1301 are in the House-passed bankruptcy bill, and I daresay that the credit card companies are less than thrilled with even the modest steps we have taken on behalf of consumers here in the Senate. I ask my colleague from Illinois, is it not safe to expect that there will be efforts during the bankruptcy conference to strip out some of these provisions from the conference report, and to bring to the Senate a bankruptcy bill that is, once again, merely a wish list of the credit card companies?

I further ask my colleague, will we not need to be vigilant in our efforts to preserve these consumer-oriented provisions during the conference?

Mr. DURBIN. My colleague from Maryland sadly may be correct. Neither our Republican colleagues in the House nor the credit card companies are likely to be as enthusiastic as he or I about the efforts at cooperation and compromise that went into crafting the Senate bill.

We will, indeed, have to be vigilant in regard to the consumer-oriented provisions in S.1301, and I hope that we will be joined in this effort both by our Senate Republican colleagues, who have agreed to accept most of these provisions without any debate, as well as by the White House, which has indicated the importance of preserving the Senate managers' amendment to its own consideration of bankruptcy reform legislation. We have our work cut for us, but I commit to my colleague from Maryland that I will do my utmost to ensure that the bankruptcy conference report contains the vital consumer protections we worked so hard to add to the Senate bill.

Mr. SARBANES. I thank my distinguished colleague from Illinois, and pledge my support for his efforts in this regard. Only if we are able to preserve our hard-fought gains in the Senate in conference will we be able to pass bankruptcy reform legislation that will stand the tests of time and fairness.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

UNANIMOUS CONSENT REQUEST—S. 442

Mr. MCCAIN. Mr. President, on behalf of the leader, I ask unanimous consent that it be in order for the majority leader, after consultation with the Democratic leader, to proceed to the consideration of Calendar No. 509, S. 442, and it be considered under the following limitations:

The Commerce Committee amendment be agreed to, and the Finance substitute then be agreed to, and the substitute then be considered as original text for the purpose of further amendment. I further ask unanimous consent that the only other amendments in order to the bill be the following:

A managers' amendment; McCain-Wyden amendment extending length of moratorium; Coats, Internet porn, 1 hour equally divided; Bennett amendment, relevant; Senator Kay Bailey Hutchison amendment, relevant; Bond amendment, relevant; Bumpers amendment, mail order; three Enzi relevant amendments; Domenici, an amendment on interest rates; Graham, relevant; Abraham, Government paperwork; and Bumpers, a commission amendment.

I further ask unanimous consent that relevant second-degree amendments be in order to all amendments other than the Coats amendment.

I further ask unanimous consent that there be 2 hours of general debate equally divided on the bill. I finally ask that following the disposition of the above-listed amendments and the expiration of time, the bill be read a third time and the Senate proceed to a vote on passage of the bill with no other intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. I object on behalf of a number of colleagues.

The PRESIDING OFFICER. Objection is heard.

Mr. DASCHLE. Mr. President, let me just explain.

I support this legislation, and I hope we can come to some resolution here. Obviously, this is an important bill that ought to be passed. The problem is that, once again, we are presented with an untenable circumstance. Colleagues on this side of the aisle, certainly through no fault of the distinguished Senator from Arizona, have been precluded, to date, from offering our Patients' Bill of Rights. We are running out of time. We are running out of vehicles. We are running out of opportunities for us to have the kind of debate that we all have asked for and expected to have by this day.

Because we are again put into a difficult position of not knowing how we are going to resolve that outstanding question, recognizing that it is at least as important as this issue, in spite of the fact that I do support S. 442, we are compelled to object today.

My hope is that at some point in the not-too-distant future we can resolve the issue of how we will debate the Patients' Bill of Rights, and we will then resolve our ability to bring up the request made by the Senator from Arizona. So I object at this time with the hope that we can find some resolution at some point soon.

Mr. MCCAIN addressed the Chair.

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

Mr. MCCAIN. I ask unanimous consent that the Senate turn to the immediate consideration of S. 442 and that only amendments in order to the bill be relevant amendments.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.