

Families from my district have not gone unscathed by this tragedy. They suffer the pains of loss, and experience the anguish of uncertainty. William Charles Shinn from Woodland and Jerry M. Shriver from Sacramento are still unaccounted for. The status of the Hill family's father remains a mystery. We join in their families' anxiety of not knowing.

Today, my community also celebrates for the men and women who have returned. Soldiers like Michael O'Conner who was flying a UH-1 helicopter in February 1968, when he was shot down north of Hue. His three other crew members were killed. After evading capture for nearly 2 days, he was captured and held in captivity for 5 years.

Therefore, it is with this mix of sadness, joy, and apprehension, that our Nation's Capitol, the White House, the Department of State, Defense, and Veterans Affairs, the Selective System Headquarters, the Vietnam Veterans Memorial, the Korean War Veterans Memorial and national cemeteries across the Nation will raise the flag of the National League of Families of American Prisoners of War and Missing in Southeast Asia. May this black and white banner serve as a somber reminder of all those lost; a rejoicing reminder of those returned; and, a flicker of hope for the men and women whom we await their homecoming.

IN RECOGNITION OF THE 75TH ANNIVERSARY OF ST. LUKE CHURCH

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1997

Mr. KUCINICH. Mr. Speaker, I rise today to announce the 75th anniversary of St. Luke Church in Lakewood, OH. In 1922, Bishop Joseph Schrembs established the parish of St. Luke, the Evangelist.

Lacking suitable facilities in which to hold mass, a large tent was erected on the grounds of a nearby convent where Sunday masses were held. The parishioners continued to have services under the tent for 2½ months. Even though they had numerous weather problems, especially during the bitter cold winter, the determination of Fr. Nolan, the parishioners, and a group of Charity nuns was all that was needed to build the tent back up whenever it fell.

On August 24, 1922, a contract was signed to build a frame church. Fr. Nolan's prayers for a permanent church structure were answered. In 1928, it became not only a place for worship but also a place for education when a school was built around the church.

By 1950, it was apparent that larger facilities were needed to accommodate the growing St. Luke community. A new church was constructed in 13 months with much of the materials coming from Ireland, Germany, France, and Italy. The church was again remodeled in 1984. An addition was constructed on one side of the church enlarging the priests' sacristy. Improvements were made in the school as well, where a library and media center were added.

The Church of St. Luke, the Evangelist has come a long way from its humble beginnings in a tent in a field. St. Luke has grown to be a place for education, worship, and community

involvement over the past 75 years, and I wish the congregation continued success in the future.

HONORING THE ANNIVERSARY OF THE DRAFTING OF THE CONSTITUTION

HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1997

Mr. GORDON. Mr. Speaker, I rise today to call special attention to the Constitution of the United States of America. This treasured document serves as the guardian of our liberties and is a product of reflection and choice—embodying the principles of limited government in a Republic dedicated to rule by law, and not by men.

Abraham Lincoln once called the Constitution, "The only safeguard of our liberties * * *." I strongly concur. Therefore, it is important to recognize that September 17, 1997, marks the 210th anniversary of the drafting of this historic landmark by the 1787 Constitutional Convention.

It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary—as well as to the patriotic celebrations which will commemorate this grand occasion. Public law guarantees the issuing of a proclamation each year by the President of this great country designating September 17 through 23 as Constitution Week.

In observance of this important national occasion, I ask my fellow citizens to reaffirm the ideals put forth by the Framers of the Constitution over 200 years ago. Only through vigilantly protecting the freedoms guaranteed to us through the Constitution, can we offer future generations the same great inheritance of freedom we currently possess.

THE RESPONSIBLE BORROWER PROTECTION BANKRUPTCY ACT

HON. BILL MCCOLLUM

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1997

Mr. MCCOLLUM. Mr. Speaker, today I am introducing the Responsible Borrower Protection Bankruptcy Act. I am pleased to be joined by my colleague, Mr. BOUCHER. Attached to my statement is a detailed section by section explanation of the legislation.

It has become clear that reform of the existing bankruptcy system is sorely needed as our Nation witnesses an unsustainable epidemic of personal bankruptcies. Bankruptcies have increased over 400 percent since 1980. It is estimated that consumer bankruptcies will rise by over 20 percent in 1997. Last year, for the first time ever, there were more than 1 million filings. This year, that figure is expected to rise to 1.4 million filings, more than one bankruptcy in every 100 American households. This rate of increase is occurring not in the midst of a recession, but during what are by all accounts good economic times. From 1986 to 1996, real per capita annual disposable income grew by over 13 percent but personal bankruptcies more than doubled.

Bankruptcy will cost our Nation \$40 billion in 1997 alone. That translates into over \$400 per household in higher costs for goods, services, and credit. That \$400 could buy every American family of four: 5 weeks of groceries, 20 tanks of unleaded gasoline, 10 pairs of shoes for the average grade-school child or more than 1 year's worth of disposable diapers.

Our Nation's bankruptcy laws play an important and necessary role in our society but we must ensure that our bankruptcy system does not unintentionally encourage those who can take responsibility for their financial obligations not to do so. Such an abuse of our bankruptcy laws is fundamentally unfair to those who play by the rules and take responsibility for their personal obligations. It has been estimated that 15 responsible borrowers are needed to cover the cost of a single bankruptcy.

The Responsible Borrower Protection Bankruptcy Act fundamentally reforms the existing bankruptcy system into a needs-based system. Only those who truly cannot repay their debts will be able to use the complete bankruptcy in chapter 7 of the Bankruptcy Code. Those who can repay their debts will have to use chapter 13 and work out a payment plan. Those who make less than 75 percent of the national median family income for a family of equal size will be presumed unable to repay their debts and may file complete bankruptcy. But those who make more than 75 percent of the national median family income for a family of equal size and, under a formula, are determined to be able to pay \$50 per month toward debt reduction of at least 20 percent of their unsecured, non-priority debt over 5 years may only file in chapter 13 and repay their debt over time.

This needs-based reform is intended to address a flaw in the bankruptcy system that encourages people to file for bankruptcy and walk away from debts, regardless of whether they are able to repay any portion of what they owe. Bankruptcy was never meant to be used as a financial planning tool or for mere convenience but it no longer carries with it the social stigma it did 20 years ago and these bankruptcies of convenience are driving the enormous increase in bankruptcies. Bankruptcy is becoming a first stop rather than a last resort.

The Responsible Borrower Protection Bankruptcy Act also makes reforms to reduce repeat filings and to prevent the gaming of the bankruptcy system, such as running up credit bills right before filing for bankruptcy or filing and dismissing a bankruptcy case as a stalling tactic. In addition, there are provisions to improve the efficient administration of bankruptcy cases, to increase oversight and to provide debtors with information about alternatives to bankruptcy, such as credit counseling services.

By ensuring that our bankruptcy laws are not abused, we also ensure that bankruptcy remains a viable last resort for those who have tried to pay their debts but were driven by circumstances to ask for judicial intervention into their personal finances. If we do not reform the system and stem the explosion in bankruptcy filings caused by bankruptcies of convenience, the cost of credit will inevitably increase while its availability will begin to decrease. Such a tightening of credit will especially impact the working poor. In addition, these reforms will protect those responsible borrowers who meet their financial obligations

but end up paying for those who abuse our bankruptcy laws.

Congress has a special responsibility to address this issue and to ensure that our bankruptcy laws operate fairly, efficiently and free of abuse. The Responsible Borrower Protection Bankruptcy Act makes an important first step in fulfilling that responsibility and I urge all my colleagues to support these reforms.

THE RESPONSIBLE BORROWER PROTECTION
BANKRUPTCY ACT

SECTION BY SECTION ANALYSIS

Title I—Consumer Bankruptcy Issues

§101. Needs Based Bankruptcy

This section of the Bill requires those who have a current monthly total income of 75 percent of the national median family income for a family of equal size or, in the case of a household of one person, 75 percent of the national median household income for one earner plus a monthly net income greater than \$50 and the ability to pay at least 20% of their unsecured, non-priority debts over five years to enter into a repayment plan under Chapter 13.

§102. Adequate Income Shall be Committed to a Plan That Pays Unsecured Creditors

This section amends the Code to substitute for "disposable income" a new concept, "monthly net income", which is determined based on expenditure levels now set by the Internal Revenue Service and used extensively throughout the country to make similar determinations. Provision is also made in a new section 111 for the adjustment of monthly net income in extraordinary cases, for example when the debtor experiences loss of income or when the debtor has unusual expenses.

§103. Notice of Alternatives

Require each consumer debtor to receive a notice containing a brief description of Chapters 7, 11, 12, and 13 of the Bankruptcy Code and a brief description of available independent non-profit debt counseling services. The notice would also contain the name, address and telephone number of each such service that registers with the clerk in that district. This provision assures that debtors receive information about debt counseling services.

§104. Fraudulent Debts Are Nondischargeable in Chapter 13 Cases

The Bill amends Code section 1328(a)(2) so as not to discharge debts fraudulently incurred.

§105. Giving Secured Creditors Fair Treatment in Chapter 13

The Bill amends section 1325(a)(5)(B)(I) to provide that the holder of an allowed secured claim shall retain the lien securing the claim until the debtor receives a discharge.

§106. Debts Incurred to Pay Nondischargeable Debts

The Bill amends current section 523(a)(14) to make nondischargeable any new debt that is incurred to pay a prior debt that otherwise would be nondischargeable.

§107. Credit Extensions on the Eve of Bankruptcy Presumed Nondischargeable

The Bill would amend Code section 523(a)(2)(C) to create a presumption that consumer debts incurred within 90 days of bankruptcy are non-dischargeable.

§108. Stopping Abusive Conversions from Chapter 13

This section provides that when a debtor converts from Chapter 13 to Chapter 7, the cram down is not retained except for the limited purpose of redemption under section 722.

§109. Discouraging Bad Faith Repeat Filings

The section provides that the automatic stay will terminate in a consumer bank-

ruptcy case on the 30th day after the filing if, in the previous year, the same debtor filed a bankruptcy case that was dismissed. The Bill provides an exception to this provision in the event the subsequent filing is made in good faith. It gives four situations in which there is a presumption that the subsequent filing was not made in good faith: (1) if there was more than one previous case in the past year; (2) if the previous case was dismissed for the debtor's failure to comply with requirements under the Bankruptcy Code or with orders of the court; (3) if there has been no substantial change in the debtor's financial affairs; or (4) as to the application of the stay to a specific creditor, if that creditor obtained relief from the stay in the previous case or applied for such relief (and that application is still pending).

§110. Restraining Abusive Purchases on Secured Credit

The Bill would amend Code section 506 by adding a new subsection 506(e). The provision requires that the value of personal property collateral be at least equal to the outstanding balance of the purchase price, including interest and charges, where the property was purchased within 180 days of the petition.

§111. Fair Valuation of Collateral

The Bill would add a new sentence to the end of Code section 506(a). This amendment would set the value of personal property securing an individual debtor's personal property as the replacement value of the property on the petition date (without deductions for marketing or sales costs).

§112. Debtor Retention of Personal Property Security

The Bill would add a new subsection to Code section 521 to provide that a Chapter 7 individual debtor may not retain possession of personal property securing an allowed claim for the purchase price unless the debtor either (a) reaffirms the debt or (b) redeems the property within sixty (60) days of the order for relief. If the debtor takes neither action within the sixty (60) day period, then the property no longer would be considered property of the estate for purposes of the automatic stay.

§113. Bankruptcy Exemption Study Commission

The Bill creates an eight member Bankruptcy Exemption Study Commission with members appointed by the President, the Majority Leader of the Senate and the Speaker of the House to study whether the Code's use of exemptions should be revised. The Commission is directed to study and report on exemption issues under the code and on any proposals to revise the Code it may recommend. The Commission may hold hearings, and is required to report to Congress, the Chief Justice and the President within one year of enactment of the Bill.

§114. Timely Filing and Confirmation of Plans in Chapter 13

The Bill amends section 1321 to require that the debtor file a plan within 90 days of the petition date. The Bill would also amend Code section 1324 to require that the confirmation hearing be held within 45 days of the filing of the plan. Either of these time periods could be extended by court order.

§115. Definition of Substantial Abuse

The Bill would clarify Code section 707(b) to permit any party in interest to move to dismiss the bankruptcy case, and it further defines "substantial abuse" to include a situation in which it becomes apparent during the case that the debtor is not eligible for Chapter 7 under the needs based bankruptcy provisions or where the totality of circumstances demonstrate substantial abuse.

§116. Giving Debtors the Ability To Keep Lease Personal Property by Assumption

The Bill would add new Code section 365(p) to give debtors the ability to keep leased personal property by assuming the lease. This clarifies that if a Chapter 7 trustee rejects a lease of personal property, the lessor may notify the debtor that he or she has the option of assuming the lease. If the debtor then notifies the lessor that the debtor wants to assume, the debtor's lease remains enforceable according to its terms. It also clarifies that in a Chapter 11 or 13 case, if the lease is not assumed in the plan, the lease is rejected as of the date of the confirmation of the plan. The section also makes clear that once a lease is rejected, it and the leased property are no longer property of the estate, and no longer subject to stay.

§117. Chapter 13 Plans To Have a Five Year Duration

The Bill would amend Code sections 1322(d) and 1329(c) to allow confirmation of plans with a life span of five years if the debtor's current monthly income is 75 percent of the national median family income for a family of equal size or 75 percent of the national median household income for one earner or more on the date of confirmation. In such cases, it would also permit the court to approve a plan longer than five years up to a maximum of seven years. Otherwise, the debtor would be restricted to the three year and five year periods of present law.

§118. Apply the Co-Debtor Stay Only When It Protects the Debtor

The Bill would amend section 1301 so that the co-debtor stay would continue to be available when the debtor who borrowed the money sought Chapter 13 relief, but if a guarantor or other co-debtor who did not receive the consideration for the creditor's claim filed for relief, the debtor who borrowed the money would not be protected by a stay unless he or she also filed a bankruptcy protection. Also the stay would terminate as to the debtor's interest in personal property if the debtor surrendered or abandoned that property.

§119. Definition of Household Goods

The Bill would add a new subparagraph to Code section 522(f)(1) to define the phrase "household goods" as it now appears in section 522(f) of the Code. The Bill defines "household goods" by using the definition already used in similar context by the Federal Trade Commission in the Trade Regulations Rule on Credit Practices, 16 CFR §444.1(I).

§120. Protection of Holders of Claims Secured by Debtor's Principal Residence

This section clarifies that the inclusion of incidental property in a mortgage on the debtor's principal residence will not disqualify that mortgage from protection under section 1322(b)(2). It also makes clear that if the debtor resided in the house during the six months previous to filing and still owns it, or if the residence is a mobile home, condominium or cooperative apartment, technically treated as personalty in a number of states, the protection of section 1322(2)(b) applies.

The section also provides that the stay under section 362 will not be violated if a prepetition foreclosure proceeding is postponed during the pendency of a Chapter 13 proceeding so long as any prepetition default remains uncured by actual payment in full according to the plan.

§121. Extend Period Between Bankruptcy Discharges

The Bill would expand the amount of time that must pass before a debtor may receive another discharge. The time period would expand to ten for Chapter 7 individual cases and five years for Chapter 13 cases.

Title II—Improved Bankruptcy Administration

§201. Improved Bankruptcy Statistics

The Bill would create a new 28 U.S.C. §159 that would require the clerks of the various bankruptcy courts to compile statistics on bankruptcy cases involving individual debtors, and report these statistics annually to Congress.

§202. Audit Procedures

This section amends title 28 to delegate to the Attorney General the responsibility for establishing random audits of individual bankruptcy cases under title 11.

§203. Docket of Individuals Who File Under Title 11

This section amends title 28 to delegate to the Administrative Office of the Courts the responsibility for creating and maintaining a central docket of those who have filed for bankruptcy relief.

§204. Adequate Preparation Time for Creditors Before the First Meeting of Creditors in Individual Cases

This section amends the Bankruptcy Code to specify that in an individual voluntary case, the first meeting of creditors be convened between sixty (60) and ninety (90) days following the order for relief.

§205. Creditor Representation at First Meeting of Credits.

This section amends Code section 341(c) to provide that non-attorney representatives can attend and participate in the first meeting of creditors.

§206. Giving Creditors Fair Notice in Chapter 7 and Chapter 13 Cases.

This section provides that the debtor include in any notice to the creditor, the creditor's account number if it is reasonably available, and to send any notices to an address which the creditor has previously specified.

§207. Prompt Relief From Stay in Individual Cases.

This section amends Code section 362(e) to provide that unless the court finally decides the relief from stay request, the parties agree to take a longer time, or the court orders additional time, the stay shall automatically terminate sixty days after a request for relief from it is made.

§208. Relief From Stay When the Debtor Does Not Complete Intended Surrender of Consumer Debt Collateral.

This section amends section 362 to provide that if individual debtors do not file a timely statement of intention with respect to property securing the creditor's claim or to act in accordance with that statement of intention, a secured creditor may seek relief from the stay.

§209. Filing of Proofs of Claim.

In Chapter 11 cases, if a creditor is listed in the schedules, no proof of claim need to be filed unless it is listed as disputed, contingent or unliquidated. This provision extends this Chapter 11 provision to cases under Chapters 7 and 13.

§210. Debtor to Provide Tax Returns and Other Information.

This section amends Code section 521 to require that the debtor provide financial information about income and expenses, such as copies of its tax returns for the three most recent tax years, its current pay stubs, and other proof of income. Also, a conformed copy of the petition, schedules and statement of financial affairs and any corresponding amendments as well as of any Chapter 13 plan must be provided upon request.

§211. Dismissal for Failure to File Schedules Timely or Provide Required Information.

The Bill would amend Code section 707 to require the dismissal of the bankruptcy case

for failure to file schedules within 45 days after filing the petition.

§212. Adequate Protection of Lessors and Purchase Money Secured Creditors.

This section adds a new section 1307 to the Code to provide that adequate protection payments be made during the "gap" that occurs between the time the debtor files a Chapter 13 case and the stay goes into effect and the time the debtor resumes making payments under the plan.

§213. Adequate Time to Prepare for Hearing on Confirmation of the Plan.

The Bill amends Code section 1324 to require that a Chapter 13 confirmation hearing cannot be held less than twenty days after the first meeting of creditors if there is an objection.

REVOKE PAY ADJUSTMENT FOR MEMBERS OF CONGRESS

HON. MAX SANDLIN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1997

Mr. SANDLIN. Mr. Speaker, I rise today to introduce legislation to revoke the COLA for Members of Congress should it become law. The manner in which the COLA was approved by this body yesterday is appalling. Americans deserve to know if their Representative is voting to increase his or her pay. It should not be hidden in the parliamentary process. We must be honest enough with ourselves and with the American people to support openly or oppose openly this increase. My legislation will require us to make an honest, forthright statement about our pay.

I hope events of the next few days will render my legislation unnecessary. I hope that once Members have had an opportunity to discuss with their constituents yesterday's attempt to sneak in a pay raise they will join the efforts of Congresswoman LINDA SMITH, myself, and others and support an amendment to prevent Members of Congress from receiving a COLA. If such an amendment is ruled out of order, Members should support a motion to appeal the ruling of the chair. If our amendment prevails, and I sincerely hope it does, my legislation will not be necessary. However, I believe we must make every effort to overturn yesterday's action and for that reason, I am introducing this bill today.

As Members of Congress, I strongly believe that we should not talk about cutting important programs like Medicare and Social Security and then turn around and give ourselves a pay raise. During the appropriations process, we have forced many worthy programs to tighten their belts "for the good of the country" so we can meet our goal of a balanced budget by the year 2002. Why, then, not tighten our own belts?

As I have said on many other occasions, it is irresponsible for us to increase our own pay at a time when we have not met our obligation to the American people to balance the Federal budget. We cannot continue to tell our constituents to tighten their belts while we loosen our own. We must first make Medicare solvent. We must first fully fund our veterans' benefits. We must first ensure that every student has an opportunity for a college education. We must first rebuild our crumbling infrastructure. We must first eliminate the estate tax. We must first take care of the people.

I hope the leadership will see to it that this legislation receives a fair hearing and is brought to the floor with all due speed.

TRIBUTE TO MARK AND DIANE KROEKER

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1997

Mr. BERMAN. Mr. Speaker, I am honored to pay tribute to Mark and Diane Kroeker, who this year are being saluted by Bridge Focus, a social service agency in the San Fernando Valley. The Kroekers are receiving an award for being exemplary parents and for a long tradition of helping their community. I cannot think of two people who better fit this description than Mark and Diane.

I have had a warm personal and professional relationship with Mark for many years, particularly during the time he served as commander of the San Fernando Valley Bureau of the Los Angeles Police Department.

Like many others, I have tremendous respect and admiration for Mark's work. The LAPD could have not picked a more ideal representative in the valley. Mark was constantly looking for ways to improve relations between the Department and community. He spent hundreds of hours meeting with local leaders. It was a sad day for all of us when Mark was transferred to another bureau.

Mark's reputation for compassion and concern extends beyond the workplace. He is widely known as the founder and chairman of the board of the World Children's Transplant Fund. He rarely misses an opportunity to tell people of the organization and its wonderful work.

Mark and Diane are active supporters of the World Children's Transplant Fund, which in 1994 presented Mark with its Man of the Year Award. There are children around the world who literally owe their lives to Mark and Diane Kroeker.

I ask my colleagues to join me today in saluting Mark and Diane Kroeker, proud and loving parents of Kent, Kirk, and Katrina. Mark and Diane's dedication to their community and their love for the children of the world inspires us all.

SALUTE TO THE 50TH ANNIVERSARY OF THE AIR NATIONAL GUARD

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1997

Mr. GALLEGLY. Mr. Speaker, I would like to pay a special tribute to the 50th anniversary of the U.S. Air Force and the Air National Guard, especially the 146th Airlift Wing based in my California congressional district.

The 146th is California's largest Air National Guard unit and has been recognized by both the Air Force Association and the National Guard Association of the United States as the best flying unit in the Air National Guard. These prestigious awards have not come easily. During World War II, as part of the 115th