billions of dollars on projects the Pentagon did not ever suggest they wanted. We have spent hundreds of millions of dollars on relocating bureaucrats and renovating or restoring Federal buildings, millions on debt forgiveness for foreign governments, tens of millions on foreign cultural exchange programs, and on top of all that, a congressional pay raise.

Surely these folks in North Carolina, whose lives have been devastated—totally innocent victims of Hurricane Floyd—are entitled to at least that level of priority. Those are things we have already done. And we ought to do things for these Third World countries. We ought to do things to help other countries that are in need. But the reality is, we have North Carolinians and Americans who are in desperate straits. They do not have anyplace to live. We have farmers who are literally out of business. Their families have, for generations, farmed the land of eastern North Carolina, and they are now out of business.

It is time for their Government to step to the plate and do the responsible thing, to give them the help they need to put our folks in eastern North Carolina back into houses, to put our farmers back on their feet and back in business.

If we cannot do that, what function do we serve as a Government? For all those people who, for all these years, we have been saying, this is your Government; this is not some foreign thing up in Washington that has nothing to do with your lives, now they are asking us to make good on that promise and to make good on our responsibility to them for all their years—year in and year out—of doing the responsible thing: Paying their taxes and being good Americans.

So I close by saying, I understand that we are nearing the end of this session. I understand the needs and priorities on which we are all focused: Education, health care, responsible fixes for the BBA, and hospitals and health care providers around this country. We have many needs that need to be addressed.

But I want to make clear that when it comes to Hurricane Floyd and my people in North Carolina who do not have a place to live and are worried about getting through this winter, and our farmers who are literally out of business, that I intend to use absolutely everything at my disposal and to take whatever action is necessary to assure that our people in North Carolina are taken care of.

Thank you, Mr. President.

The PRESIDING OFFICER. Under the previous order, the clerk will read the joint resolution for the third time.

The joint resolution was read the third time.

The PRESIDING OFFICER. Under the previous order, the joint resolution is passed, and the motion to reconsider is laid upon the table.

The joint resolution (H.J. Res. 78) was passed.

BANKRUPTCY REFORM ACT OF 1999—Continued

AMENDMENT NO. 2516, AS MODIFIED

The PRESIDING OFFICER. Under the previous order, the Kohl amendment No. 2516 is modified with the text of the amendment No. 2518.

The amendment, as modified, is as follows:

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

SEC. 3____. LIMITATION.

(a) EXEMPTIONS.—Section 522 of title 11, United States Code, as amended by sections 224 and 307 of this Act, 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:

''(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)(3)(A) by a family farmer for the principal residence of that farmer.''.

(b) ADJUSTMENT OF DOLLAR AMOUNTS.—Section 104(b) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking ''522(d),'' and inserting ''522 (d) or (n),''; and

(2) in paragraph (3), by striking ''522(d),'' and inserting ''522 (d) or (n),''.

The PRESIDING OFFICER. Under the previous order, the amendment No. 2516, as modified, is now pending.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 2778 TO AMENDMENT NO. 2516, AS MODIFIED

(Purpose: To allow States to opt-out of any homestead exemption cap)

Mrs. HUTCHISON. Mr. President, I offer a second-degree amendment to the pending amendment.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON], for herself, Mr. BROWNBACK, and Mr. GRAHAM, proposes an amendment numbered 2778 to amendment No. 2516, as modified.

Strike the period at the end and insert the following: ''. The provisions of this section shall not apply to debtors if applicable State law provides by statute that such provisions shall not apply to debtors and shall not take effect in any State before the end of the first regular session of the State legislature following the date of enactment of this Act.''

Mrs. HUTCHISON. Mr. President, if I could take a moment to explain the amendment. We have agreed to 30 minutes equally divided. I would then turn it over to Senator KOHL to explain the underlying amendment.

Basically, Senator KOHL and Senator SESSIONS are going to try to put a cap on the homestead exemption that would apply uniformly to every State. I think that is a mistake because every State is different. The valuation of property is different in every State. This does not make any allowance for those variations in property.

The Kohl-Sessions amendment has a $100,000 cap in bankruptcy proceedings on homestead exemptions, but the median value of a home in California is over $215,000; in Oklahoma it is $92,500. So right there you can see there are differences in America.

Secondly, 11 homestead exemptions around the country would be immediately overturned if we have a Federal standard for a homestead exemption. The States of Florida, Iowa, Kansas, South Dakota, Texas, Minnesota, Nevada, Oklahoma, California, Massachusetts, and Rhode Island would all have their caps lifted in favor of a Federal rule that would attempt to be one size fits all.

In my home State of Texas, it is actually a constitutional provision; it is not a statute. It does not refer to money at all. It refers to acreage. There is the urban acreage and there is the rural acreage. So I think it is very important that we have the ability to address this by every individual State.

For 130 years in our country, the Federal Government has allowed the States the ability to set its own laws in this area. The homestead exemption does differ State to State. For 130 years, the Federal Government has said the States may do this.

The Kohl-Sessions amendment would overturn the 130 years of precedence and have a national standard, a one-size-fits-all approach. That reminds me of a lot of other Federal Government programs. I am sure it rings true with other Americans because that is the Federal approach: One size fits all. We do not need one size fits all. For 130 years, we have not had it.

In this country the States have done very well in setting their own homestead exemptions—what works for them, what works for the elderly in their States, what works for families in my State of Texas—and they do not want to take homes away from the elderly who are most susceptible to having health crises. That would take away their savings. That might put them into financial difficulty. They do not want to throw the elderly people out of their homes, even if their homestead might be valued at over $100,000, the median value.

Secondly, what if it is a young family where the wage earner gets into financial difficulty? Do we want to put a family out on the streets? This has been sacrosanct in my State and in many other States; that whatever we were doing to try to make people pay their debts—and we do want people to pay their debts—we don't want to make them wards of the State. We want their families to be able to continue to have a roof over their heads while they are working out of their financial difficulties.

I support the concept of this bill. I commend Senator GRASSLEY for working hard to improve the bankruptcy laws in our country. But the amendment that is before us today would take away 130 years of preemption by the States to create their own homestead exemptions, especially rural States where farms may have a bigger valuation. They don't want to make people who are in financial difficulty wards of the State.

Let me show two very important letters from the State leaders of our country. The National Governors' Association, in a letter signed by Governor Jim Hodges and Governor John Rowland, wrote:

> We also urge you to resist efforts to impose a uniform nationwide cap on homestead exemptions. The ability to determine their own homestead exemptions has been a longstanding authority of states. Furthermore, the median price of a single family home varies widely from state to state. A one-size-fits-all approach is simply not appropriate when the median home price may be more than two-and-a-half times as high in one state as it is in another.

The second letter is from the National Conference of State Legislatures. It says:

> The [National Conference of State Legislatures] is concerned, however, that an amendment may be offered during Senate consideration that would preempt state laws by setting a cap of $100,000 on homestead exemptions, thus forcing debtors with over $100,000 in homestead equity to sell their homes and farms. Recent real estate trends have shown that in all but four states, the median price of a single family home is well over $100,000. While state legislators believe that the bankruptcy code should strongly encourage consumers to pay their debts to the extent possible, my colleagues and I would be equally concerned about the disruption to family life, particularly the harsh impact on the children of debtors that may result by the establishment of such a limit on homestead exemptions.

We have the National Conference of State Legislatures and the National Governors' Association speaking for the State leadership saying this is an area that should be left to the States. It has been left to the States for 130 years. We do not need to overturn 130 years of laws that are working in individual States.

I hope we can pass this bill. I certainly will support the Kohl amendment, if we have the State ability to opt out. That is the key. I think if we can have that kind of accommodation, then it will be a good amendment. Let the States decide for themselves if $100,000 is right for them.

Mr. President, I reserve the remainder of my time.

Mr. KOHL addressed the Chair.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Wisconsin.

Mr. KOHL. Mr. President, I ask unanimous consent that it be in order to ask for the yeas and nays on both the HUTCHISON amendment and the Kohl-Grassley-Sessions amendment.

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

Mrs. HUTCHISON. Mr. President, I was diverted. I didn't hear the unanimous consent request.

Mr. KOHL. I asked that it be in order for the yeas and nays on both the Hutchison amendment and the Kohl-Grassley-Sessions amendment.

Mrs. HUTCHISON. I thank the Chair.

The PRESIDING OFFICER. It is in order that the Senator now make that request.

Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. KOHL. Mr. President, I urge my colleagues to oppose the Hutchinson/Brownback ''opt-out'' amendment, then vote for the Kohl/Sessions/Grassley $100,000 cap. Let me tell you why; an opt-out doesn't change a thing. A few states have already basically ''opted out'' of reasonable homestead exemptions and that's a problem. This amendment would let these states continue to go on like nothing happened. The Kohl-Sessions-Grassley amendment, on the other hand, will stop this abuse, pure and simple.

You can not support our cap and also support an opt-out: It's either one or the other, Mr. President.

They say this is really just about states' rights. Nothing could be farther from the truth. Anyone who files for bankruptcy is choosing to invoke federal law in a federal court to get a ''fresh start,'' which is a uniquely federal benefit. In these circumstances, it's only fair to impose federal limits.

And don't take my word for it: just listen to one of Texas' leading newspapers, the Austin American-Statesman. It recently editorialized that: ''The U.S. Constitution gives the federal government supremacy over the states in bankruptcy matters, so arguments that the federal government should let states do as the wish on this particular fact of bankruptcy law make little sense.'' The editorial goes on to urge Congress to limit the homestead exemption.

Besides, we're only capping the homestead exemptions in states like Florida and Texas as they apply to bankruptcy and not for other purposes. That is, if you lose a multi million-dollar lawsuit in Texas and can't ''pay-up,'' you can still keep your expensive home if you don't file for bankruptcy. While that may not seem right, what state courts do is a matter of state law—and we do not touch it. On the other hand, anyone who wants to take advantage of the federal bankruptcy system should live with a federal $100,000 cap.

Now let's turn to why our proposal is so important to effective bankruptcy reform. Our proposal closes an inexcusable loophole that allows too many debtors to keep their luxury homes, while their legitimate creditors—like children owed child support, ex-spouses owned alimony, state governments, small businesses and banks—get left out in the cold. Last year, the full Senate unanimously went on record in favor of the $100,000 cap and emphasized that ''meaningful bankruptcy reform cannot be achieved without capping the homestead exemption.''

Curently, a handful of states allow debtors to protect their homes no matter how high their value. And all too often, millionaire debtors take advantage of this loophole by moving expensive homes in states with unlimited exemptions like Florida and Texas, and declaring bankruptcy—and then continue to live in style. Let me give you a few of the literally countless examples:

The owners of a failed Ohio S&L, who was convicted of securities fraud, wrote off most of $300 million in bankruptcy claims, but still held on to the multi-million dollar ranch be bought in Florida.

A convicted Wall Street financier filed bankruptcy while owning at least $50 million in debts and fines, but still kept his $5 million Florida home—with 11 bedrooms and 21 bathrooms.

And just last year, movies star Burt Reynolds wrote off over $8 million in debt through bankruptcy, but he still held into his $2.5 million Florida estate.

Unfortunately, those examples are just the tip of the iceberg. We asked the GAO to study this problem and, based on their estimates, 400 homeowners in Florida and Texas—all with over one hundred thousand dollars in home equity—profit from this unlimited exemption each and every year. While they continue to live in luxury, they wrote off annually an estimated $120 million debt owned to honest creditors.

Mr. President, this is not only wrong, I believe it is not acceptable. Without our amendment, the pending bill falls far short. Instead of a cap, it only imposes a 2-year residency requirement to qualify for a State exemption. And while that is a step, it will not deter a savvy debtor who plans ahead for bankruptcy, and it won't do anything about instate abusers such as Burt Reynolds. This $100,000 cap will stop these abuses without affecting the vast majority of States.

Let me make one final point. Some opt-out supporters have circulated misleading information about how many States would be affected by this cap. While a few States would be impacted, they are mistaken about eight States in particular; they are: Alabama, Colorado, Louisiana, Michigan, Mississippi, Nebraska, Oregon, and Rhode Island. We asked the Congressional Research Service to take a look, and CRS concluded that our cap would have ''no effect'' on these States.

I ask unanimous consent that the memorandum from CRS be printed in the RECORD.

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

MEMORANDUM

To: Sen. Subcommittee on Antitrust, Business Rights, and Competition. Attention: Brian Lee.

From: Robin Jeweler, Legislative Attorney, American Law Division.

Subject: Effect of proposed amendments to S. 625 on selected state homestead exemptions.

This responds to your request for a legal opinion on the effect of language that may be offered as an amendment to S. 625, 106th Cong., 1st Sess. 1999, the Bankruptcy Reform Act of 1999.

The proposed language would add a new subsection (n) to 11 U.S.C. §522 governing bankruptcy exemptions to provide that the aggregate value of homestead exemptions in op-out states may not exceed $100,000 in value.[1]

You have asked what effect this provision, if enacted, would have on the homestead exemptions in Alabama, Colorado, Louisiana, Michigan, Mississippi, Nebraska, Oregon and Rhode Island. For the reasons discussed below, we conclude that the proposed federal cap on state homestead exemptions would have no effect in these states.

Several of these states provide for the possible exemption of a substantial amount of real property, for example, up to 160 acres of land, which could theoretically exceed $100,000 in value. In each case, however, the scope of the exemption is limited by a monetary cap on its aggregate value:

Alabama Code §6–10–2 (1993): homestead ''with the improvements and appurtenances, not exceeding in value $5,000 and in area 160 acres[.]''

Colorado Rev. Stat. §38–41–20 (1997): homestead shall be exempt ''not exceeding in value the sum of thirty thousand dollars in actual cash value in excess of any liens or encumbrances.]''

Louisiana Rev. Stat Ann., Title 20, §1 (West. 1999 supp.): homestead consists of ''a tract of land or two or more tracts of land with a residence on one tract and a field, pasture, or garden on the other tract or tracts, not exceeding one hundred sixty acres. . . . This exemption extends to fifteen thousand dollars in value[.]''

Michigan Comp. Laws. Ann. §600.6023 (West 1999 supp): ''A homestead of not exceeding 40 acres of land and the dwelling house and appurtenances . . . not exceeding in value $3,500.''

Mississippi Code Ann. §85–3–21 (West 1999): ''[A] householder shall be entitled to hold exempt . . . the land and buildings owned and occupied as a residence by him, or her, but the quantity of land shall not exceed one hundred sixty (160) acres, nor the value thereof, inclusive of improvements, save as hereinafter provided, the sum of Seventy-five Thousand Dollars ($75,000.00[.]''

Nebraska Rev. Stat. §40–101 (1997 supp.): ''A homestead not exceeding twelve thousand five hundred dollars in value shall consist of the dwelling house in which the claimant resides . . . not exceeding 160 acres of land[.]''

Oregon Rev. Stat. Ann. (1998 supp., part 1) §§23.240, –250: ''The homestead mentioned in ORS 23.240 shall consist, when not located in any town or city laid off into blocks and lots, of any quantity of land not exceeding 160 acres, and when located in any such town or city, of any quantity of land not exceeding one block. However, a homestead under this section shall not exceed in value the sum of $25,000 or $33,000, whichever amount is applicable under ORS 23.240.''

Rhode Island Gen. Laws §9–26–4.1 (1998 supp.): In addition to exempt property, ''an estate of homestead to the extent of one hundred thousand dollars ($100,000) in the land and buildings may be acquired[.]''

Although several of the state provisions cited above couch their exemptions in terms of acreage, in all cases, the monetary cap is a limitation which qualifies the value of the land permissibly exempted. With the exception of Rhode Island, the state laws cited above have monetary caps substantially less than the proposed federal cap of $100,000.

Several states, such as Florida, Iowa, Kansas, South Dakota, and Texas define their homestead exemptions by reference to quantities of land or acreage without a monetary cap. But those states which define the exemption in terms of land and value do so conjunctively, not disjunctively. Hence, a federal cap of $100,000 on the value of a homestead exemption would not appear to have any effect on the extant state exemptions cited above.

[1] Specifically, proposed subsection (n)(1) states:

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.

Mr. KOHL. Mr. President, the facts speak for themselves. Simply put, the Hutchison-Brownback amendment is a bad idea, a backdoor way to allow rich deadbeats to continue to live as kings while their honest creditors go to the poor house. I urge my colleagues to oppose it and to support our bipartisan $100,000 cap instead.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I am proud to join with Senator KOHL on this amendment. We have spent over 2 years now working to reform the abuses in bankruptcy law. Senator KOHL has served on the Judiciary Committee. As we have gone through it, we have tried to eliminate a lot of the abuses.

The PRESIDING OFFICER. Is the Chair correct that the Senator is under time yielded by Senator KOHL?

Mr. SESSIONS. That is correct.

Mr. President, we have been trying to eliminate abuses that are in the bankruptcy system. There are many of them. We have some things in this bill that are good and true and honest and fair. It says right now that a person making $70,000 a year who owes $100,000, under Federal bankruptcy law, can go into chapter 7, wipe out all their debts, and still be living with a $100,000-a-year income and not have to pay the people from whom they receive benefits and to whom they owe money. We are saying if you have a certain level of income, then you ought to pay a part of your debt, and you would be required by the judge to develop a repayment plan for 30 percent, 50 percent, or 100 percent of the money, if you can pay it back. It is not just automatically wiping out all your debt.

Some have said this is abuse on the poor. But it would not affect anybody whose income did not fall below the median American income, which today for a family of four is $49,000. So this is for high-income people, and only if you make above that can you be required to pay back some of your debts. We think that is an abuse, and we think it ought to be ended.

Another abuse—one that may be the greatest abuse in the whole bankruptcy system—Elizabeth Warren, a Harvard professor, said is ''the single biggest scandal in the consumer bankruptcy system.'' It is the unlimited homestead exemption. She said it is a scandal, and I agree. It is an absolute scandal.

First of all, bankruptcy law is handled in Federal court. It is all done in a Federal bankruptcy court. All the laws and all the rules are Federal laws. In one area, the Federal law says, for the purpose of bankruptcy homestead exemptions, that will be left to what the State law is. But that is a Federal law.

What we found is that the Bankruptcy Commission, after 3 years of study, which included judges and other experts, recommended that we take this exemption to $100,000 and it be uniform across the country. There is no reason, or history, or logical justification for a State having an unlimited bankruptcy exemption—a fact recognized, as the Senator said, by the Austin American Statesman newspaper, which said this is clearly a matter of Federal law. The scholars do not dispute it. All other aspects of bankruptcy law are determined by the Federal law. I wanted to say that first.

Second, we are having serious problems and abuses—a Federal bankruptcy judge in Miami, FL, one of the States that has such an unlimited exemption, like Texas, has been very critical of this. The current system ''is grossly unfair,'' said A. Jay Cristol, the chief Federal bankruptcy judge in Miami. ''This law was written to give everyone a fresh start after bankruptcy, not to allow people to keep luxury homes.''

How has this abuse been playing out? Here is an article in the New York Times listing some of the examples of what we are talking about:

The First American Bank and Trust Company in Lake Worth, FL, closed in 1989.

This is in the New York Times of last year:

. . . 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.

Exempt—that means those assets could not be used to pay people to whom he lawfully owed debts. It goes on:

During much of the bankruptcy proceeding, Mr. Talmo drove around Miami in a 1960 Rolls Royce and tended the grounds of his $800,000 tree farm. . . .

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 refused.

Another example:

Talmadge Wayne Tinsley, a Dallas, TX, developer, filed for chapter 7 bankruptcy in 1996 after he incurred $60 million in debt, largely bank loans. Under Texas law, Mr. Tinsley could keep only one acre of his 3.1-acre estate.

Texas recently had laws up to change that 1-acre limitation if you live in a city to which you can exempt from 8 to 10 acres. At any rate, he wanted to exempt more than that. He wanted the whole 3.1-acre estate.

His $3.5 million, magnolia-lined estate included a five-bedroom, six-and-a-half-bath mansion with two studies, a pool and a guest house. All that fit snugly onto one acre.

Yet, when the court asked Mr. Tinsley to mark off two acres to be sold to pay off his debts, his facetious offer was for the trustee to come by and peel off two feet around his entire property.

He signed off for that debt. At any rate, he was able to sell his house for $3.5 million, and he used the proceeds of this sale, after declaring bankruptcy, to write a $659,000 check to the IRS, whose debt still continues to be owed after bankruptcy, and another for $1.8 million to pay off his mortgage. That left him $700,000 after all his expenses, and he could spend that on whatever he wanted to, without paying legitimate people to whom he owed money. That is not a fair deal, I submit.

There are other examples of this. There is Dr. Carlos Garcia-Rivera, who filed for bankruptcy protection. He lives in Florida. The State law gives him an unlimited deduction, and he was able to keep a $500,000 residence, which is pictured in the newspaper article, free and clear.

The problem is this. A lot of people can see bankruptcy coming. They can see the problems coming down the road. They live in a State such as Alabama or New Jersey, where the laws don't give them these values. In fact, two-thirds of all the States limit your homestead value to $40,000 in equity. So what do they do? They can see the bankruptcy coming. They can move to a State such as Texas or Florida, buy a beautiful home on the beach, take every asset they have, quit paying any of the people to whom they owe money, collect all their money, put it in that house, and then file bankruptcy and say: You can't take my home. It is my homestead, and I don't have to give you anything.

That is a problem. That is a national problem, and it is a growing problem. We have increased bankruptcies. Lawyers are more sophisticated. People are more willing to move today than they used to be. That is why Senator KOHL and I feel so strongly about this.

I want to mention a couple more important things. The New York Times, in an editorial in August of 1999, argued against protecting rich bankrupts and criticized this very provision in law.

There were other complaints made in previous remarks suggesting this change would require States to change their constitution or their existing State law. That is not the case. The homestead exemption in Texas or Florida would be valid for every other State law purpose the State chose to apply it for. It simply would not be valid in the Federal bankruptcy court if that law called for an exemption to exceed $100,000, the amount the Bankruptcy Commission, after 3 years' study, concluded was the appropriate amount. It certainly strikes me as a fair and legitimate amount.

This is not the sale price of the house but the equity in the house. If an individual owned a mansion with $500,000 of equity in that mansion, they would not be able to live in that mansion and stop paying their creditors, the people they duly and lawfully owed money to, but would be able to keep $100,000 of it. They could keep $100,000 in equity. They would end up better than a person who files bankruptcy in Alabama or most other States who have less than $100,000. We think that is fair, just, and appropriate and ought to be confronted. I know some believe it is somehow an advantage for a State to not have this cap, to have unlimited exemptions, but I argue it hurts local creditors in those States, too, because they are not being paid back their debts.

A man living in a mansion in downtown Dallas who is not paying his Dallas creditors and all the people he owes in Dallas, TX, he gets to live in the mansion, is not an advantage for Texas. For years, the Texas legislators, Members of Congress, have believed passionately they should defend this as being a part of their constitution.

I think that is a misunderstanding of the role of Federal bankruptcy law. The goal of a good bankruptcy law is to make sure a person who owes debts pays all he can, liquidates all his assets, is able to keep a reasonable home, and work in the future without having any debts, but that he not be able to abuse the system and defeat creditors who he could legitimately pay.

I enjoyed working with Senator KOHL.

I yield the floor.

Mr. KOHL. I thank Senator SESSIONS.

I yield 2 minutes to Senator GRASSLEY.

Mr. GRASSLEY. Mr. President, I thank the Senator for yielding. Second, I thank the Senator for being a very cooperative member of the Judiciary Committee to help Members move the bill out of committee, particularly on this very issue that he has brought to the floor. He was hoping to bring this up in committee. It would have been very divisive in committee. It probably would have kept Members from getting the bill out of committee. He cooperated fully. I said when he brought it to the floor I would speak for and support his amendment. I am here to do that. But I think it is more important I tell him and his constituents who are interested in bankruptcy reform that he has been very helpful through this process.

One of the most unfair aspects of the bankruptcy code is the ability of very wealthy people to shield large amounts of assets in homesteads. As do many parts of our bankruptcy laws, the homestead exemption has a noble purpose. I don't deny that. That noble purpose is to protect the poorest of the poor from being thrown out into the streets to pay creditors. Everybody is entitled to a roof over their head.

As so many parts of our bankruptcy laws, this noble idea has been perverted by rich scoundrels and well-paid bankruptcy lawyers. Obviously, we need to do something about any part of the law that lets people hide money while paying nothing to their creditors.

We said one of the motivations of this legislation is to make sure that the people who have the ability to pay who go into bankruptcy are not going to get off scot-free. Allowing people to shield assets while paying nothing to their creditors creates perverse incentives for wealthy scoundrels.

A recent General Accounting Office study on this subject confirms the homestead exemption is used by a select few to avoid paying their bills. Unlike other areas where Congress attempts to regulate with very little constitutional basis for doing so, the text of the Constitution in this instance gives Congress the authority to set uniform bankruptcy laws, one of the specific powers of Congress in article I.

A homestead cap with a provision allowing some States to opt out and to have unlimited homestead will continue the unfairness of current law and will run counter to our constitutional mandate to have uniform bankruptcy laws. I support a strong cap and oppose a State opt-out. I urge my colleagues to do the same.

Our colleagues should also be aware the underlying bill deals with very wealthy people in bankruptcy by pushing them in chapter 11 with special modifications designed to deal with individuals instead of corporations. Allowing the super rich to live high on the hog is a more widespread problem than homestead abuse.

I thank the Senator from Wisconsin for his leadership in this area.

Mr. KOHL. I thank Senator GRASSLEY.

I ask unanimous consent to add Senator HARKIN as a cosponsor to this amendment.

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

Mr. KOHL. I ask unanimous consent to reserve the remainder of our remaining time.

I yield the floor to Senator BROWNBACK whose time is charged to the other side.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, how much time remains?

The PRESIDING OFFICER. Twenty-two minutes.

Mr. BROWNBACK. I yield myself 10 minutes.

Mr. President, I think there are a number of things that need a response. Let me first set this in the context of being from Kansas. Kansas has in its constitution a provision allowing for the homestead to be protected. That homestead is defined in Kansas law as a home in town on 1 acre or in the country on 160 acres. It is based on original Federal law. That Federal law was the Homestead Act that settled much of the Midwest. The Federal Government said the Federal Government owned this land, but if you could go out there and work those 160 acres and stay there for 5 years, the 160 acres was yours. That was the homestead.

There is a sanctity about the issue of the homestead. That is why it was built into our State constitution. That is why it has been so protected in the past and why I rise in support of the Hutchison-Brownback amendment and its amendment to what Senator KOHL would do. I will support the Kohl amendment if the Hutchison-Brownback amendment passes but not otherwise. This is an important part of our State.

What is being attempted by Senator KOHL and others—and I have great respect for them and their desires for what they are putting forward—is to take a right away from States that they have had for over 100 years. Bankruptcy law is in the Federal Constitution, but for over 100 years they have allowed States to set that homestead provision and said they would allow the States to determine the homestead issue. Now we would be taking that right that the States have had for over 100 years and federalizing it. That is wrong. It is contrary to the devolution of States' rights. It is contrary to the Homestead Act that the Federal Government set, and it is harmful to farmers.

I used to practice agricultural law. I taught agricultural law. I have written books on this subject. The homestead provision in my State and many others has helped save family farmers.

These are not cases that make the newspaper or that are quoted here on the floor. Those, unfortunately, have happened as well. But listen to some of these cases that have occurred in Kansas.

A farm couple—the husband is age 52, and the wife is age 66—are cattle ranchers in eastern Kansas. They have been farming the same ranch since 1965. In 1997, the husband was cleaning out a swine lagoon and received a staph infection in his eye. He lost nearly 80 percent of his vision and became legally blind. At this time, his wife was also forced to take her mother in for health care reasons. She had to stay with them. This brought on numerous hardships for the family. It forced them into chapter 12 bankruptcy in December 1997. It doesn't sound very glitzy or a high-profile, newspaper-type case at this point.

Under chapter 12, they were not required to sell the homestead and 160 acres because of that homestead provision. These were paid for. They had these paid for. They were entitled to them under Kansas statute and under the Kansas Constitution. If not for this exemption, this family would have been forced to sell everything and would have been forced out onto the street and from their farm for which they worked so hard. The wife's exact words describing the homestead exemption were ''a godsend.''

After an extensive reorganization, they are rebuilding their cattle herd. They are still repaying debts from the bankruptcy according to the reorganization. They have currently applied for a loan from Farm Credit to purchase more cattle and are very optimistic about the future.

That doesn't sound like a case that would make the newspaper.

This is a very practical thing that has happened throughout the history of Kansas that I can cite for you at various times. Typically, when we have the prices of farm commodities dropping and dropping substantially, farmers are caught with too much credit and too low prices. They will get in the squeeze, and the only thing they can save is the homestead. I have read abstracts of land titles across the State of Kansas, where this has been used time and time again, and none of those make the newspaper. Yet it is a part of their being able to build back. In this case, and many others, it is a part of them being able to pay their creditors in the future. This isn't about them moving to Florida or to Texas to bilk this law.

Here is another case. I will read to you about a farming couple from eastern Kansas. He is now 71. The wife is 55. They declared chapter 12 bankruptcy. They had trouble with their bank because of low commodity prices and many other typical struggles of a family farm. This is a typical case. Their homestead-exempted property consists of 160 acres valued at approximately $800 an acre, including the house and buildings. With the exemption, they were able to retain all of their property for use as equity to start farming again.

Listen to what happened. The situation 3 years later is that this couple is about to pay off all of their creditors under the chapter 12 plan within the next few months and are now able to continue profitably with their farming operation. It is a happy ending that would have sadly ended without this sort of homestead provision.

There is a lot of talk about fraud that has taken place. I want to point out something in addressing this issue.

Currently in bankruptcy law, if there is a fraudulent transaction of taking money that should go to a creditor and placing it in an exempt property, the court can come in and set that aside and get that money back. That is under current bankruptcy law.

Also, in the base bill there is a provision that if you purchase a home within 2 years of bankruptcy, that can be brought back into the creditor estate so that the creditors can get hold of that.

There is a lot already built into the bankruptcy law as it is currently practiced, and as it has been interpreted by the courts. I have practiced in front of bankruptcy courts. There is also built into this change that within 2 years of purchasing a homestead, you can come back and get those assets.

What about some of these high-profile cases? In many of those cases, I think you will find that the courts go after and later set aside the transaction as a fraudulent transaction. But particularly, let's look at the case of Burt Reynolds, who has become kind of a poster boy in this situation.

He has not filed under chapter 7 bankruptcy. He is not in chapter 7 where you have this homestead provision. He is in chapter 11, which is a reorganization in bankruptcy usually reserved for corporations. But there are also some higher income individuals who can qualify for chapter 11.

An amendment offered in the Judiciary Committee by Senator GRASSLEY would close this chapter 11 loophole for wealthy individuals. Fortunately, that much needed amendment was passed during the markup despite some opposition from the others.

Mr. President, my simple plea is on a couple of fronts.

No. 1, this is contrary to what this Congress has been committed to do, which is devolution of power and authority to States and local units of government. Here we have an area of law that has been devolved to the States for over 100 years, and we are going to grab it. And we are going to pull it up here back from the States that built it into their constitutions, such as Kansas and Texas. We are going to grab it. The Federal Government is going to say this is ours. We are taking it away. That is completely contrary to devolution.

No. 2, this is very harmful to family farmers, many of whom have used these homestead provisions during times of bad commodity prices—in my State, and in others—to protect that 160-acre homestead, which is, as I mentioned at the outset, the sacrosanct unit—the family farm, to be able to protect it.

No. 3, it is already taken care of if these are fraudulent transactions that are occurring, that can be set aside by the bankruptcy judge under current law. If they were planning to go into bankruptcy and move those assets, they can come within 2 years and still get that asset back. So this has taken care of it.

It is harmful to family farmers. It is against devolution. It is against States rights, and this is the wrong way for us to go. It is going to hurt a lot of family farmers who use this day in and day out and don't make the newspaper but are just simply trying to make a decent living and they get caught in a bad commodity cycle.

During the 1980s, I worked with a lot of family farmers who got caught in a bad commodity cycle and used this homestead provision. They did not make the newspaper. But today, many of them are still farming simply because of the possibility of doing this, and they worked extra hard to pay their creditors even over and above what was required in bankruptcy law because they felt this is the honorable thing to do.

There are abuses under bankruptcy law. I would like to be able to support this bill at the end of the day. But this is not the right way to go for us. It is harmful for us to do this to family farmers and to States.

I support strongly the Hutchison-Brownback amendment and hope that it can be added to the Kohl amendment so that we can press forward with this bankruptcy reform. Otherwise, this Senator will certainly have to oppose the amendment.

Mr. President, I reserve the remainder of our time.

Mr. President, may I inquire as to how much time remains on our side?

The PRESIDING OFFICER. The Hutchison amendment has 11 minutes 46 seconds under the control of the Senator from Texas, and Senator KOHL has 7½ minutes.

The Senator from Wisconsin.

Mr. KOHL. Mr. President, I yield 4 minutes to Senator SESSIONS.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, one thing we have raised is the situation of the farm person.

First of all, Senator GRASSLEY has been a champion of the new bankruptcy laws. And we have made those permanent in this bill to give added protections to farmers, unlike the kind of protections that are given a manager of a restaurant, a gas station, or a small factory that goes bankrupt. They have a number of good protections.

But what I want to say to you is that a person who owes a lot of debt, who has received legal benefits and owes money, and then goes into bankruptcy, will be able to keep up to $100,000 in equity. The house can be a $500,000 house. The farm can be $1 million farm—whatever. But the equity simply has to be no more than $100,000. I think that is as generous as we can possibly be. I don't see how we could be more generous than that. Why should a businessman, or any person, be able to have unlimited assets?

Let me make no mistake about it, the Hutchison amendment that is filed today would allow an individual in Texas or Florida to maintain a $50 million mansion and not pay the people they owe just debts to—$50 million in equity that they own and paid into that house, and not pay people they owe. That is the kind of disparity I do not believe we can accept and is what the Bankruptcy Commission has rejected. That is what professors have called a national scandal.

I have been pleased to work on this because I believe we owe it to the working Americans who go through bankruptcy, who will never ever have the possibility of claiming these kinds of great equities and do not live in mansions—I don't see why we need to be providing special protections for the rich in these circumstances. It is time to end this process. It is time for Congress to act.

I yield back my time and yield the floor.

Mr. KOHL. I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I would like to be notified in 5 minutes because I have two other speakers who have asked for time. I know we are running the clock down now.

Let me just refute a couple of the points that have been made. First of all, for over 100 years in this country, States have been able to determine what the homestead exemption would be. In some States a homestead would be valued at $15,000 while in other States it might be $215,000. California and Florida have higher valuations on homesteads. So I think a one-size-fits-all approach is not in anyone's best interests.

The Senator from Alabama, who is my friend, talks about a $50 million mansion. I do not know of anyone who has a $50 million mansion on one acre of land, because the standard in Texas happens to be on the number of acres rather than on valuations. That was put in our Constitution.

This would be overriding our Constitution. It would override the Kansas Constitution. There are other States that believe so strongly in the right of a person to be able to keep a homestead for children or for an elderly person that they do not put in a dollar valuation, they put in an acreage valuation. In Texas, it is one acre. That is for urban homesteads. I think you can talk about a $50 million mansion, but that is not reality here.

What I think we ought to do, when we are making policy that is this important, is say: How much damage are we going to do to people who are trying to restructure their lives in order to get a few people who may abuse the system? We have had GAO studies, we have had all kinds of studies, that have showed that maybe 1 percent of the people are not doing right by the system. But we have taken one important step to stop that abuse, which will apply in this bill if it is passed, and that is that you cannot declare a homestead exemption on a home that is bought within 2 years of declaring bankruptcy.

So the idea is if someone is going to leave all their debts in Florida and move to Alabama to buy a house and claim bankruptcy, there are safeguards against that by requiring that the person live there 2 years before they can declare bankruptcy. So they cannot flee bankruptcy to go buy a homestead and be protected. And, second, the bankruptcy laws today and in the new law always provide for fraud, that you can go after someone who has fraudulently transferred assets. I do think we have fraud addressed in this bill.

We get down, though, to the bottom line. That is, this has been a States rights issue for 132 years. People in Alabama may do it differently from people in Florida. People in Wisconsin may do it differently from the way they do it in Texas. What is wrong with that? What is wrong with people in Idaho having the ability to set their own standards for homestead exemptions? What is wrong with a rural-dominated State having a different standard from an urban-dominated State? This country was formed with the thought that States would have the right to make State laws where they are closest to the people. Only a very few laws are made at the Federal level. I think that is a good standard. I think it is good the Federal Government has allowed the States, for over 132 years, to set homestead exemptions.

I hope we will keep that 132-year precedent. I think it has worked. I would love to support this bill. I want debtors to have to pay the people they owe. I have been in a small business, and I have had people stiff me. I know what it is. I know what it is to have to pay my workers regardless of the fact that I am not being paid by people to whom I have supplied products.

I will not support this bill unless we allow the States the right to have the homestead exemption be set State by State. I want to tighten up the laws. I think that is the right thing to do. But we do not have to preempt the States rights in this area. I think it will be a better bill if we do not.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Kansas.

Mr. BROWNBACK. I inquire of the Senator from Texas if I could have just 2 minutes to explain an item that has been coming up in this debate.

Mrs. HUTCHISON. Mr. President, how many minutes remain on our side?

The PRESIDING OFFICER. The Senator has 6 and a half minutes.

Mrs. HUTCHISON. I yield 2 minutes.

Mr. BROWNBACK. Mr. President, I wanted to point out two things. No. 1, there is a recent study of U.S. bankruptcy filings by the Executive Office of the United States Trustees. The Trustees are the people who actually do the bankruptcies. They are the ones who handle the financial transactions. They concluded that the homestead abuse is—and this is their quote—''a rare phenomenon.'' That was a quote from the United States Trustees, Executive Office of the United States Trustees.

The second point I wanted to make is, my State of Kansas has a homestead provision under the State constitution that dates back to 1859. Kansans have

used this for a long time. However, in the U.S. bankruptcy code, many small family farmers would not qualify for what is defined as a family farmer because they or their spouse have earned off-farm income. Because of that, under this particular provision, in farming States such as mine with similar homestead provisions, they would be impacted because they would not be able to qualify there. I want to make the point, that adds doubly to the difficulty we have here.

I reserve the remainder of our time.

The PRESIDING OFFICER. Who yields time?

Mrs. HUTCHISON. Mr. President, let me inquire of the Senator from Wisconsin if he is ready to finish. I will go ahead and close out the debate if we are ready to close earlier. What was his intention?

Mr. KOHL. I say to the Senator from Texas, we have, I think, 5 minutes. I will not use all of it. If the Senator wants to conclude, I will speak for a couple of minutes, Senator SESSIONS for 1 minute, and then we are finished. If the Senator would like to go first.

Mrs. HUTCHISON. Would it be possible for the Senator to let me have 2 minutes, perhaps, toward the end, in case Senator GRAHAM of Florida and Senator GRAMS from Minnesota, who have both requested time, arrive? We are getting down to the end, so I do not want to foreclose them if they do show. If they do not, I think we should go forward.

Mr. KOHL. I will be happy to wait.

The PRESIDING OFFICER. Is the Senator requesting an additional 2 minutes at the end reserved from her time?

Mrs. HUTCHISON. No. I am only saying I will stop 2 minutes ahead in order to reserve that time for the Senator from Florida or the Senator from Minnesota. If they are not able to come, then I think we should close the debate because Members are waiting to vote.

The PRESIDING OFFICER. The Chair will notify the Senator when 2 minutes remain.

Mrs. HUTCHISON. Mr. President, let me say, the Governors of our country have written a very powerful letter saying: Do not do this. Do not set a Federal standard for homestead exemptions. The Governors wrote very clearly:

> We urge you to resist efforts to impose a uniform nationwide cap on homestead exemptions. The ability to determine their homestead exemptions has been a longstanding authority of States. Furthermore, the median price of a single family home varies from State to State.

This is not something that should be a Federal approach. It has not been a Federal approach. Every Governor in our country is saying: Let us handle it.

If the people of Wisconsin do not like the way they handle it in Texas, that does not hurt the people of Wisconsin. That should be a decision made at the local level based on local value, local traditions, and local law.

Secondly, the National Conference of State Legislatures has written a letter along the same lines saying they are concerned that setting a law that would preempt State laws on homestead exemptions would not be in the best interest of the American people.

I hope our Members will not break 130 years of precedent in this country to set yet another one-size-fits-all Federal solution. This is something very important to States, so important that some States have put it in their constitutions, and today voting against the Hutchison amendment for the Kohl-Sessions amendment will most certainly damage our ability to let the States make these determinations.

Senator BROWNBACK, Senator GRAHAM of Florida, and Senator Rod GRAMS from Minnesota are cosponsors of this amendment. Many people are very concerned about this 130 years of precedent being overturned.

I yield 2 minutes to Senator GRAMS.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 2 minutes.

Mr. GRAMS. Mr. President, I thank the Senator from Texas and also the Senator from Kansas for their work on this issue.

Mr. President, I rise today to speak in opposition to the bankruptcy homestead cap proposed as an amendment to the bankruptcy bill. I appreciate the fact that the sponsors of this amendment are attempting to curb abuse of the system, but I fear that in these difficult times for family farmers the homestead cap amendment could disproportionately impact struggling producers.

I will remind my colleagues that the Senate recently unanimously approved extension of chapter 12 of the bankruptcy code, which in part allows farmers to stay on their land if they are able to make rental payments to creditors. Just as farmers have needed extension of chapter 12 to weather the current economic downturn, they also need an adequate bankruptcy homestead exemption that will protect their homes and livelihoods from foreclosure as well.

I am aware that the Sessions/Kohl amendment exempts ''family farmers'' from the homestead provision, but many farmers will not qualify because of off-farm income earned by the family. This off-farm income has become necessary for survival for may farm families, and as long as such families are not eligible for the exclusion, I must oppose the amendment.

As the Senator from Texas mentioned, in Minnesota, the current homestead exemption is $200,000 property value and 160 acres. This is a reasonable, time-tested level of protection. We must remember that this property is not merely where the farmers make their home, but also where they earn their living. Congress recently passed $8.7 billion in emergency farm assistance to help family farmers continue the tradition of producing America's most basic needs, and we should not simultaneously undermine the position of these same farm families by denying them important bankruptcy protections.

Again, I know that the amendment sponsors are trying to stop abuse of the system by those who have irresponsibly accumulated debt, but I am afraid many hard working Minnesota farmer who are barely covering their families necessities may be adversely impacted.

I urge my colleagues to support the Hutchison-Brownback amendment allowing states to affirmatively opt out of the cap on the homestead exemption.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, I do not think we should be misled by the Hutchison-Brownback amendment that it will save the family farm. No one has done more for family farmers, as we all know, than Senator GRASSLEY and Senator HARKIN, and they are supportive and cosponsors of our amendment.

Our amendment does have a specific exemption for farmers in each State so that the family farmer, whether they come from Texas, Iowa, or Wisconsin, can be specifically dealt with in that State in the event of a bankruptcy.

If we are serious about reform, now is the time to stop the most egregious abuse of our bankruptcy laws—by capping the homestead exemption and supporting the Kohl-Sessions-Grassley amendment. But don't take my word for it. Listen to voices from across the country.

For example, the New York Times recently editorialized that: ''Like a bill that passed the House, [the Senate bill] would do nothing to limit the ways that the formerly wealthy have of stiffing creditors, of which the unlimited homestead exemption is only the best known. . . . [If the bill] is to be passed, it should at least be amended to keep Texas and Florida from providing such blatant protection to once-wealthy deadbeats.''

Of course, the New York Times may not be the most unbiased source. So I took a look at my home state paper, the Wisconsin State Journal. That newspaper says the same thing. According to its recent editorial, the House and Senate bankruptcy bills: ''deserve criticism for what they fail to include. Neither bill took a step toward closing the loophole that allows bankrupt' wealthy to shelter assets in an expensive home. Irresponsible but shrewd debtors sneak assets through bankruptcy via a provision permitting them to take advantage of state homestead exemptions.'' It adds that our $100,000 cap is a ''sound'' measure.

Finally, even leading papers from Texas and Florida—the two states most invested in this issue—find the case for reigning in the unlimited homestead exemption compelling. In an editorial earlier this year, the Austin American-Statesman praised the recent GAO report for pointing out

that the unlimited homestead exemption: ''[p]rimarily . . . is the refuge of a few high-living debtors, not the schoolteachers and small farmers it was intended to protect.''

The Austin newspaper went on to dismiss appeals to states' rights as a false defense for the unlimited exemption, explaining that: ''The U.S. Constitution gives the federal government supremacy over the states in bankruptcy matters, so arguments that the federal government should let states do as they wish on this particular facet of bankruptcy law makes little sense.''

Indeed, even this Texas opinion-maker is supportive of reform, declaring that: ''State officials in Austin and Washington should be at least willing to discuss limiting homestead protection. A few well-heeled and clever bankruptcy filers shouldn't be able to mess over a state law designed to protect average Texans. That mocks the state's much-celebrated populist image.''

And the Tampa Tribune echoed these sentiments, complaining that the Senate bill does not go ''far enough toward closing the loophole that allows debtors unlimited homestead exemptions that protect the wealthiest from having to repay a significant portion of their debt.''

Everyone recognizes that this abuse must be stopped, including leading papers from the two states that traditionally have stood by the unlimited exemption. I ask unanimous consent that these editorials be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered. (See Exhibit 1.)

Mr. KOHL. Mr. President, indeed, even Senator GRASSLEY and Senator HARKIN, who have cosponsored our $100,000 cap, also recognize that we are in the right, even though their home state of Iowa is one of the few states with an unlimited exemption.

Let me make one final point: some opt-out supporters, especially those from Texas, cite history as a justification for their position. But just because something has historical ''significance'' doesn't mean it's right. For example, we don't have debtors' prison anymore. We don't have sweatshops for children anymore. And Texas, as a matter of fact, is no longer part of Mexico. All of these changes altered something of ''historical significance;'' all were for the better. And getting rid of the unlimited homestead exemption in bankruptcy would also be a change—a dramatic change—for the better.

Mr. President, you can't support our cap and also support an opt-out: It's one or the other. I urge my colleagues to oppose the Hutchison/Brownback amendment and to support our bipartisan $100,000 cap instead.

I yield the floor.

EXHIBIT 1

[From the New York Times, Aug. 13, 1999]

PROTECTING RICH BANKRUPTS

If you are going to go bankrupt in America, the best places to do it are in Florida and Texas. Both states have unlimited homestead exemptions, meaning that bankrupts can protect their homes from creditors no matter how much they are worth.

Now, with the little public debate, Texas is on the verge of making its bankruptcy protections even more generous. Currently a bankrupt person can shelter from creditors a home and no more than one acre of land in an urban area. But a proposed amendment to the Texas Constitution would raise that limit to 10 acres. The limit would remain at 200 acres in rural areas.

Even more generously, the amendment, which has passed the Texas legislature and goes to the voters in November, provides that if you operate your business from your home, the business property is also protected. Advocates say that would protect small family businesses, but it is written so broadly that it could allow a Houston property developer to shelter a huge office building, so long as he lived in an apartment in it.

In Washington, the Senate is expected to consider a bankruptcy reform bill next month. Like a bill that passed the House, it would do nothing to limit the ways that the formerly wealthy have of stiffing creditors, of which the unlimited homestead exemptions is only the best known. But the bill would be a boon to the credit card companies, which have pushed hard to get it enacted. It would help them by making it much harder for bankrupts to get our from under credit card debt. That would primarily affect middle-income and poor people forced into bankruptcy by a job loss or large medical bills.

The bill deserves to be defeated, but if it is to be passed, it should be at least be amended to keep Texas and Florida from providing such blatant protection to once-wealthy deadbeats.

[From the Wisconsin State Journal, Sept. 7, 1999]

BANKRUPTCY BILL NEEDS WORK

If credit card issuers want to protect themselves from deadbeats, let them do it with sound lending practices—not by rigging federal bankruptcy law in their favor. It's time for Congress to stop letting the credit card industry call the shots on legislation to reform federal bankruptcy law.

It's time instead to listen to a couple of guys from Wisconsin: Senator Herb Kohl, sponsor of an amendment to the reform bill that would close an outrageous loophole, and Madison lawyer Brady Williamson, chairman of the National Bankruptcy Review Commission, which spent two years studying the state of bankruptcy.

Unless Congress pays attention to Kohl, Williamson and others who speak up for balance in bankruptcy law, Americans are going to get a law tilted to give the credit card industry carte blanche.

The House already has passed such a proposal, and the Senate is to consider its version this month.

The campaign to reform bankruptcy law is based on evidence showing that the number of people filing for protection from creditors under bankruptcy law has been skyrocketing, despite a strong economy. In 1981 about 300,000 consumers filed petitions for bankruptcy. Last year the total was 1.4 million.

Furthermore, there is evidence that a few people are abusing the law to escape debts while they live it up on wealth protected from creditors' reach.

In response, Congress began work on bankruptcy reform legislation. For guidance, the House and Senate had before them 172 recommendations from the National Bankruptcy Review Commission, led by Madison's Williamson. But the senators and representatives were also heavily influenced by the lobbying of the credit card industry.

The industry's goal was selfish. The banks and retailers that issue credit cards make money when their card holders run up large balances and pay the cards' high interest rates. That's why the card issuers try to put their cards in the hands of as many people as possible, even people who are poor credit risks.

But there's a consequence for credit card issuers: Sometimes people file for bankruptcy protection, and their debts are reduced or discharged.

The credit card industry wants to escape that consequence. Card issuers want to design the law to keep people out of bankruptcy court, so the debts can be collected and, moreover, so the issuers can escape the expense of being careful about whom they issue cards to.

To satisfy the credit industry, the House and Senate included in their bills provisions to make it harder for people to file under Chapter 7 of the bankruptcy law, which basically allows a filer to wipe away debts and start fresh, or harder to file for bankruptcy at all.

By caving in to the credit card industry, the Senate and House violated a principle of bankruptcy law that Williamson of the Bankruptcy Review Commission has championed: Balance. The law must work for creditors and debtors. It should not become a creditors' collection aid.

For including the pet provisions of the credit card industry, the House and Senate bills deserve rebuke. But the bills also deserve criticism for what they fail to include. Neither bill took a step toward closing the loophole that allows the ''bankrupt'' wealthy to shelter assets in an expensive home.

Irresponsible but shrewd debtors sneak assets through bankruptcy via a provision permitting them to take advantage of state homestead exemptions. Wisconsin's homestead exemption is a modest $40,000. But five states—Texas, Florida, Iowa, Kansas and South Dakota—have unlimited exemptions. That's how actor Burt Reynolds, former Major League Baseball Commissioner Bowie Kuhn and others have held on to luxurious homes while leaving millions in unpaid bills.

Sen. Kohl, D–Wis., has offered an amendment to limit homestead exemptions to $100,000. The amendment allows states to offer an exception for family farms.

Kohl's provision is sound. The Senate ought to take its bankruptcy bill back to the drawing board, incorporate the homestead exemption limit and revise other provisions until the result is balanced between the interests of creditors and debtors.

If credit card issuers want to protect themselves, let them do it with sound lending practices, not by rigging the law in their favor.

[From the Austin American-Statesman, July 25, 1999]

HOMESTEAD PROTECTION POPULAR, NOT POPULIST

When it comes to their homesteads, don't mess with Texans.

Texas congressional leaders vigorously oppose federal attempts to limit an unusual state law that prevents debtors from losing the equity in their homes in bankruptcy proceedings.

Texas is one of five states that offers unlimited homestead protection to the bankrupt. The century-old constitutional exemption reflects Texas' historic support of private property rights and its populist past.

But a recent federal study by the federal General Accounting Office indicates that the exemption is more popular than populist. Primarily it is the refuge of a few high-living debtors, not the schooteachers and small farmers it was intended to protect.

Texas political leaders need to heed the report and consider some limits.

Last year, the Task Force congressional delegation helped defeat a $100,000 limit on the home equity (market value minus mortgage debt) that could be sheltered during bankruptcy. A uniform limit, of $100,000, is being proposed in the U.S. Senate. Such a limit would adequately protect all but a tiny percentage of Texas debtors.

Of the approximately 14,000 Chapter 7 bankruptcy cases closed in the Northern District of Texas in 1998, about half involved a homestead exemption claim, GAO found. But only 83 of those claims, or just over 1 percent, involved more than $100,000 in home equity.

Texas' unlimited protection is subject to abuses, such as the case of a bankruptcy attorney who protected $386,000 in homestead assets while seeking to escape $1.5 million in debts. Some debtors who plan to file for bankruptcy preemptively shield assets from seizure by investing in an expensive home.

While even the bankrupt need and deserve a roof over their heads, gross abuses of the bankruptcy system shouldn't be tolerated. Besides the unfairness, overly generous state laws threaten lenders, who then raise lending rates for other consumers.

The U.S. Constitution gives the federal government supremacy over the state in bankruptcy matters, so arguments that the federal government should let states do as they wish on this particular facet of bankruptcy law make little sense.

Congress has long declared reform of federal bankruptcy laws, which debt-happy consumers have been using in large numbers. American consumer debt totals more than $1 trillion, according to the Federal Reserve. And uncollected debt is rising.

Consumer advocates have criticized bankruptcy reform legislation for being skewed in favor of creditors and high-rolling debtors.

Though he supports the state exemption for homesteads, Sen. Phil Gramm, R–Texas, says it should be modernized to prevent abuses. ''I do not support allowing people to go by real estate office to buy a $7 million house before they go by the law office to declare bankruptcy,'' he said in an interview with the American-Statesman last week.

Gramm says one solution would be to allow the exemption only if the home purchase preceded the bankruptcy filing by a certain length of time.

The state's homestead protection law has bipartisan support, from Gov. George W. Bush to U.S. Rep. Sheila Jackson Lee, D–Houston.

State officials in Austin and Washington should at least be willing to discuss limiting homestead protection. A few well-heeled and clever bankruptcy filers shouldn't be able to mess over a state law designed to protect average Texans.

That mocks the state's much celebrated populist image.

[From the Tampa Tribune, July 6, 1999]

CONGRESS IS ON THE RIGHT TRACK IN ACTING TO REFORM BANKRUPTCY LAW

Even during the unprecedented economic good times of the past year, some 1.39 million individuals and 44,000 businesses have sought protection from creditors in federal bankruptcy courts—more than ever before. The majority of these debtors, faced with medical emergencies or other crisis, had no other choice. Others, however, used the system to escape debts they knowingly built up, costing the average family $550 a year and American companies billions.

That's why it is time to reform the nation's bankruptcy laws and return the concepts of fairness and responsibility to the system. Last year, with elections looming, Congress failed to reach an agreement. This year, however, it looks like Congress will finally act, potentially by a veto-proof margin. The House passed its version of reform in May, and the Senate is scheduled to take up its bill this month. There is bipartisan support among the senators for reform, and compromise with the House is likely to result in new law. That is good news for all of us.

Those supporting reform include retailers, banks and other lenders, as well as many responsible consumers sick of having to pick up the tab for those who default on their debts. Those opposed include some in the bankruptcy bar, who contend the legislation favors big business at the expense of consumers who truly need help, and consumer groups, which blame the ease with which consumers receive credit for increased bankruptcy filings.

Much has been written and said about who is to blame for this ''bankruptcy crisis.'' Consumer groups blame banks, credit card companies and retailers who tempt borrowers to live beyond their means. Indeed most Americans, whether they can afford credit cards or not, know what it's like to open a mailbox filled with applications guaranteeing lines of credit.

''Credit-card issuers are shameless to lobby for personal bankruptcy restrictions while they aggressively market and extend credit,'' says Stephen Brobeck, the Consumer Federation's executive director.

But access to credit has not been altogether bad. For decades the federal government has encouraged industry to make credit and financial services available to a broader segment of society. As a result, strapped Americans have been able to buy what they need when they need it. It has allowed for emergency purchases and long-term investments. Ultimately it has benefited the American economy.

But the benefits of credit are not free, and that is what Congress has recognized in pushing reform of the bankruptcy system.

Consumers share the blame. Filings are up in part because bankruptcy no longer carries with it a sense of shame, and debtors have failed to act fiscally responsible. Too many of these debtors equate plastic with money-in-hand. They use one credit card to pay off another or play a continuing and sloppy game with balance transfers, all the while watching their debts increase. For them, walking away from their responsibilities is an easy answer.

The parallel bills making their way through Congress would make it harder for debtors to escape scot-free. Both encourage personal responsibility by requiring those who are able to pay their debts to do so. At the same time no suggested changes are so drastic as to crush hard-working debtors who have had a run of bad luck.

The most controversial part of the House bill would block most middle- and upper-income debtors from using the bankruptcy courts to walk away from their debts. Those with annual family incomes above $51,000 who have the resources to pay at least 20 percent of what they owe over five years would be prohibited from wiping the slate clean. This means they would have to restructure their debts under Chapter 13 of the bankruptcy code rather than the more lenient Chapter 7, which erases debts.

Significantly, the bill allows bankruptcy judges to take into account a debtor's account a debtor's ''extraordinary circumstances,'' such as a decline in income or unexpected medical expenses, before making the decision to shift a debtor into Chapter 13.

Nevertheless, opponents say the provision is unfair because the debtor has the burden of proving those circumstances exist. In our view that is not unfair. The debtor is the one receiving the benefit of the bankruptcy.

The Senate bill is less stringent and would give greater discretion in the matter to the bankruptcy judge, who would have to consider a debtor's ability to repay his debts. The Senate's version requires only a showing of ''special circumstances'' for a debtor to avoid a transfer to Chapter 13.

Both bills recognize the obligation of a parent to pay child support. Both make sure a debtor cannot put off collection efforts or delay making child support payments simply by filing for bankruptcy. And child support payments have been made a top priority when determining which debts will be paid first.

Unfortunately, neither bill goes far enough toward closing the loophole that allows debtors unlimited homestead exemptions that protect the wealthiest from having to repay a significant portion of their debt. Last year's Senate bill would have made it impossible for states to let a bankrupt person keep more than $100,000 equity in a home, which would certainly hurt a lot of debtors who headed to Florida to live in their multi-million-dollar mansions.

But the conference committees threw out the provision and instead said simply that states could let a bankrupt person retain any house owned for at least two years before filing, no matter what its value. Both 1999 versions retain this language. We would prefer Congress cap the amount of equity a debtor can retain in a home.

In a consumer-friendly mode, House lawmakers adopted an amendment requiring credit-card companies to clearly disclose their fees for late payments and how long it would take customers to pay off balances when they make only minimum monthly payments. The House would also require companies to clearly reveal the expiration dates of introductory ''teaser rates'' and the higher interest rates replacing them.

Although we have only mentioned some of the proposed changes, the basic thrust of the legislation in both the House and Senate is the same—requiring at least some repayment by those who have the ability to pay. The differences in the two measures are not beyond compromise, and either approach would be an improvement over current law.

As we said last year, the goal of the bankruptcy system is to match bankruptcy relief to debtor need. Chapter 13 repayment plans accomplish this objective and restore personal responsibility to the system.

The PRESIDING OFFICER. Who yields time?

Mr. KOHL. I yield 1 minute to Senator SESSIONS.

The PRESIDING OFFICER. One minute remains.

Mr. SESSIONS. Mr. President, Senator KOHL and I asked earlier this year for a GAO report on these cases. According to the Washington Post, ''Homestead exemptions aid well-off feud'':

Findings suggest the unlimited homestead exemption is not the popular shield it has often been cracked up to be but a convenient protection for a few affluent people.

Judge Edith Jones on the Fifth Circuit Court of Appeals from Texas said recently as a member of the Bankruptcy Commission:

I agree with cap supporters that debtors have used liberal homestead laws, like that of my home State Texas, to shelter large amounts of wealth from their creditors.

She went on to add:

In principle, I do not oppose a $100,000 cap on homestead exemptions, particularly if it were indexed to account for inflation.

This will be indexed, and I think Judge Jones is correct.

I yield the floor.

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

Mrs. HUTCHISON. How much time is on our side?

The PRESIDING OFFICER. One minute 8 seconds.

Mrs. HUTCHISON. Mr. President, let me make a statement and then I am going to yield the remainder of my time to the cosponsor of the amendment, Senator GRAHAM of Florida.

The GAO report said that 1 percent may be trying to use the bankruptcy laws. Are we going to throw seniors out on the streets? Eighty-one percent of Americans 65 years or older are homeowners. Are we going to throw them out on the streets to try to get one person who is not using the system fairly? I do not think that is good policy.

I yield the remainder of my time to the Senator from Florida.

The PRESIDING OFFICER. The Senator is recognized for 30 seconds.

Mr. GRAHAM. Mr. President, it has been said that the core issues in politics are: Who wins, who loses, and who decides. Historically, the decision as to the level of exemption of a person's homestead has been set by the States.

In my State, it has been set in a constitutional amendment which required a vote of a majority of the citizens of Florida. I believe that is where the decision should continue to rest.

The amendment that is being offered by the Senator from Texas, and her supporters, would provide for the States to continue to exercise that authority, by making an affirmative election to opt out of the arbitrary $100,000 limit which is being proposed by the advocates of the underlying amendment.

I urge adoption of the second-degree amendment.

The PRESIDING OFFICER. All time has expired.

VOTE ON AMENDMENT NO. 2778

The PRESIDING OFFICER. Under the previous order, the question now is on agreeing to the Hutchison second-degree amendment No. 2778. The yeas and nays have been ordered. The clerk will call the roll.

The legislative assistant called the roll.

Mr. FITZGERALD (when his name was called). Present.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN) is necessarily absent.

The result was announced—yeas 29, nays 69, as follows:

[Rollcall Vote No. 363 Leg.]

YEAS—29

Allard	Gramm	Roberts
Bennett	Grams	Shelby
Brownback	Gregg	Smith (NH)
Bunning	Hagel	Specter
Burns	Helms	Stevens
Campbell	Hutchison	Thomas
Craig	Inhofe	Thompson
Crapo	Lautenberg	Thurmond
Domenici	Mack	Torricelli
Graham	Nickles	

NAYS—69

Abraham	Edwards	Lincoln
Akaka	Enzi	Lott
Ashcroft	Feingold	Lugar
Baucus	Feinstein	McConnell
Bayh	Frist	Mikulski
Biden	Gorton	Moynihan
Bingaman	Grassley	Murkowski
Bond	Harkin	Murray
Boxer	Hatch	Reed
Breaux	Hollings	Reid
Bryan	Hutchinson	Robb
Byrd	Inouye	Rockefeller
Chafee, L.	Jeffords	Roth
Cleland	Johnson	Santorum
Cochran	Kennedy	Sarbanes
Collins	Kerrey	Schumer
Conrad	Kerry	Sessions
Coverdell	Kohl	Smith (OR)
Daschle	Kyl	Snowe
DeWine	Landrieu	Voinovich
Dodd	Leahy	Warner
Dorgan	Levin	Wellstone
Durbin	Lieberman	Wyden

ANSWERED ''PRESENT''—1

Fitzgerald

NOT VOTING—1

McCain

The amendment (No. 2778) was rejected.

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 3516

The PRESIDING OFFICER (Mr. BUNNING). The question is on agreeing to amendment No. 2516. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN) is necessarily absent.

The result was announced—yeas 76, nays 22, as follows:

[Rollcall Vote No. 364 Leg.]

YEAS—76

Abraham	Domenici	Leahy
Akaka	Dorgan	Levin
Ashcroft	Durbin	Lieberman
Baucus	Edwards	Lincoln
Bayh	Enzi	Lott
Biden	Feingold	Lugar
Bingaman	Feinstein	McConnell
Bond	Frist	Mikulski
Boxer	Gorton	Moynihan
Breaux	Grassley	Murkowski
Bryan	Harkin	Murray
Bunning	Hatch	Reed
Burns	Hollings	Reid
Byrd	Hutchinson	Robb
Campbell	Inhofe	Rockefeller
Chafee, L.	Inouye	Roth
Cleland	Jeffords	Santorum
Cochran	Johnson	Sarbanes
Collins	Kennedy	Schumer
Conrad	Kerrey	Sessions
Coverdell	Kerry	Shelby
Daschle	Kohl	Smith (OR)
DeWine	Kyl	Snowe
Dodd	Landrieu	Voinovich
Dorgan	Levin	Wellstone
Durbin	Lieberman	Wyden
Edwards	Lincoln	
Enzi	Lott	
Feingold	Lugar	
Feinstein	McConnell	
Frist	Mikulski	
Gorton	Moynihan	
Grassley	Murkowski	
Harkin	Murray	
Hatch	Reed	
Hollings	Reid	
Hutchinson	Robb	
Inhofe	Rockefeller	
Inouye	Roth	
Jeffords	Santorum	
Johnson	Sarbanes	
Kennedy	Schumer	
Kerrey	Sessions	
Kerry	Shelby	
Kohl	Smith (OR)	
Kyl	Snowe	
Landrieu	Voinovich	
Leahy	Warner	
Levin	Wellstone	
Lieberman	Wyden	
Lincoln		

NAYS—22

Allard	Gregg	Smith (NH)
Bennett	Hagel	Specter
Brownback	Helms	Thomas
Craig	Hutchison	Thompson
Crapo	Lautenberg	Thurmond
Graham	Mack	Torricelli
Gramm	Nickles	
Grams	Roberts	

ANSWERED ''PRESENT''—1

Fitzgerald

NOT VOTING—1

McCain

The amendment (No. 3514) was agreed to.

Mr. LOTT. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. SESSIONS). Under the previous order, the Senator from Minnesota, Mr. WELLSTONE, is recognized to offer an amendment relative to agriculture, and there are 4 hours of debate provided.

Mr. WELLSTONE. Mr. President, my understanding is—let me see if I get this right—that we are in the process of trying to work out some kind of arrangement which may work better for colleagues in terms of their schedules, in which case soon we would start on this debate. We might very well finish up when we come back with a final vote.

If that is the case, I would agree to Senator ASHCROFT speaking now for 7 minutes while we are working out this agreement; with the understanding that after Senator ASHCROFT speaks for 7 minutes, then the pending business would be this amendment.

The PRESIDING OFFICER. Is there objection?

Mr. GRASSLEY. Reserving the right to object, and when people understand what we are up to, there will not be any objection. We have a unanimous consent request on the managers' amendment that will take 30 seconds. I would like to get that out of the way.

Mr. REID. Mr. President, I ask unanimous consent that the Wellstone amendment be set aside for purposes of this managers' amendment.

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

The Senator from Iowa is recognized to offer his amendment.

AMENDMENT NO. 2515, AS MODIFIED

(Purpose: To make technical and conforming amendments, and for other purposes)

Mr. GRASSLEY. Mr. President, I will be somewhat repetitive of what Senator REID has said, but I ask unanimous consent that the pending amendment be laid aside, and that the Senate now proceed to amendment No. 2515, and following the reporting by the clerk, the amendment be modified with the text I now send to the desk, and that the amendment be agreed to, and the motion to reconsider be laid upon the table.

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

The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] for himself, Mr. TORRICELLI, and Mr. LEAHY, proposes an amendment numbered 2515, as modified.

The amendment, as modified, is as follows:

On page 6, line 12, insert ''11 or'' after ''chapter''.

On page 6, line 24, insert ''11 or'' after ''chapter''.

On page 12, lines 21 and 22, strike ''was not substantially justified'' and insert ''was frivolous''.

On page 14, strike lines 8 through 14 and insert the following:

''(C)(i) No judge, United States trustee, panel trustee, bankruptcy administrator, or other party in interest shall bring a motion under section 707(b)(2) 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 or applicable State median household monthly income calculated (subject to clause (ii)) on a semiannual basis of a household of equal size.

''(ii) 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.''.

On page 14, in the matter between lines 18 and 19, insert ''11 or'' after ''chapter''.

On page 14, after the matter between lines 18 and 19, insert the following:

SEC. 103. FINDINGS AND STUDY.

(a) FINDINGS.—Congress finds that the Secretary of the Treasury has the inherent authority to alter the Internal Revenue Service standards established to set guidelines for repayment plans as needed to accommodate their use under section 707(b) of title 11, United States Code.

(b) STUDY.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Secretary of the Treasury, in consultation with the Director of the Executive Office of United States Trustees, shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing the findings of the Secretary concerning the utilization of Internal Revenue Service standards for determining—

(A) the current monthly expenses of a debtor under section 707(b) of title 11, United States Code; and

(B) the impact that the application of those standards has had on debtors and on the bankruptcy courts.

(2) RECOMMENDATION.—The report under paragraph (1) may include recommendations for amendments to title 11, United States Code, that are consistent with the findings of the Secretary of the Treasury under paragraph (1).

On page 14, line 19, strike ''103'' and insert ''104''.

On page 15, line 12, strike ''104'' and insert ''105''.

On page 15, lines 9 and 10, strike ''credit counseling service'' and insert ''nonprofit budget and credit counseling agency''.

On page 17, line 19, strike ''105'' and insert ''106''.

On page 18, lines 3 and 4, strike ''credit counseling service'' and insert ''budget and credit counseling agency''.

On page 18, line 5, insert ''(including a briefing conducted by telephone)'' after ''briefing''.

On page 18, line 12, strike ''credit counseling services'' and insert ''budget and credit counseling agency''.

On page 18, line 12, strike ''are'' and insert ''is''.

On page 18, line 15, strike ''those programs'' and insert ''that agency''.

On page 18, line 21, insert after the period the following: ''Notwithstanding the preceding sentence, a nonprofit budget and credit counseling service may be disapproved by the United States trustee or bankruptcy administrator at any time.''.

On page 19, lines 4 and 5, strike ''credit counseling service'' and insert ''budget and credit counseling agency''.

On page 21, lines 6 and 7, strike ''credit counseling service'' and insert ''approved nonprofit budget and credit counseling agency''.

On page 21, lines 10 and 11, strike ''credit counseling service'' and insert ''approved nonprofit budget and credit counseling agency''.

On page 21, line 16, strike ''**Credit counseling services**'' and insert ''**Nonprofit budget and credit counseling agencies**''.

On page 21, line 19, strike ''credit counseling services'' and insert ''nonprofit budget and credit counseling agencies''.

On page 21, line 25, strike the quotation marks and the final period.

On page 21, after line 25, insert the following:

''(b) For inclusion on the approved list under subsection (a), the United States trustee or bankruptcy administrator shall require the credit counseling service, at a minimum—

''(1) to be a nonprofit budget and credit counseling agency, the majority of the board of directors of which—

''(A) are not employed by the agency; and

''(B) will not directly or indirectly benefit financially from the outcome of a credit counseling session;

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

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

''(4) to provide full disclosures to clients, including funding sources, counselor qualifications, and possible impact on credit reports;

''(5) to provide adequate counseling with respect to client credit problems that includes an analysis of their current situation, what brought them to that financial status, and how they can develop a plan to handle the problem without incurring negative amortization of their debts; and

''(6) to provide trained counselors who receive no commissions or bonuses based on the counseling session outcome.

''(c)(1) In this subsection, the term 'credit counseling service'—

''(A) means—

''(i) a nonprofit credit counseling service approved under subsection (a); and

''(ii) any other consumer education program carried out by—

''(I) a trustee appointed under chapter 13; or

''(II) any other public or private entity or individual; and

''(B) does not include any counseling service provided by the attorney of the debtor or an agent of the debtor.

''(2)(A) No credit counseling service may provide to a credit reporting agency information concerning whether an individual debtor has received or sought instruction concerning personal financial management from the credit counseling service.

''(B) A credit counseling service that willfully or negligently fails to comply with any requirement under this title with respect to a debtor shall be liable for damages in an amount equal to the sum of—

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

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

On page 22, strike the matter between lines 3 and 4, and insert the following:

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

On page 30, line 11, insert '', including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title,'' after ''under this title''.

On page 30, lines 14 and 15, strike ''or legal guardian; or'' and insert '', legal guardian, or responsible relative; or''.

On page 30, line 21, strike ''or legal guardian''.

On page 31, line 10, strike ''or legal guardian'' and insert '', legal guardian, or responsible relative''.

On page 32, line 9, strike all through line 3 on page 33 and insert the following:

''(1) First:

''(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such child, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of that person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

''(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date the petition was filed are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a government unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.''.

On page 33, line 4, strike all through page 37, line 6 and insert the following:

SEC. 213. 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 first become payable after the date on which the petition is filed.'';

(2) in section 1208(c)—

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

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

(C) by adding at the end the following:

''(10) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.'';

(3) in section 1222(a)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period, beginning on the date that the first payment is due under the plan, will be applied to make payments under the plan.'';

(4) in section 1222(b)—

(A) by redesignating paragraph (10) as paragraph (11); and

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

''(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims;'';

(5) in section 1225(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 first become payable after the date on which the petition is filed.'';

(6) in section 1228(a), in the matter preceding paragraph (1), by inserting '', and in the case of a debtor who is required by a judicial or administrative order to pay a domestic support obligation, after such debtor 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 the petition was filed, but only to the extent provided for in the plan) have been paid'' after ''completion by the debtor of all payments under the plan'';

(7) in section 1307(c)—

(A) in paragraph (9), by striking ''or'' at the end;

(B) in paragraph (10), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.'';

(8) in section 1322(a)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding in the end the following:

''(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.'';

(9) in section 1322(b)—

(A) in paragraph (9), by striking ''; and'' and inserting a semicolon;

(B) by redesignating paragraph (10) as paragraph (11); and

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

''(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and'';

(10) 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 amounts payable after the date on which the petition is filed.''; and

(11) in section 1328(a), in the matter preceding paragraph (1), by inserting '', and in the case of a debtor who is required by a judicial or administrative order to pay a domestic support obligation, after such debtor 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 the petition was filed, but only to the extent provided for in the plan) have been paid'' after ''completion by the debtor of all payments under the plan''.

On page 37, strike lines 10 and 11 and insert ''amended by striking paragraph (2) and inserting the''.

On page 37, lines 14 and 15, strike ''of an action or proceeding for—'' and insert ''or continuation of a civil action or proceeding—''.

On page 37, line 16, insert ''for'' after ''(i)''.

On page 37, line 19, insert ''for'' after ''(ii)''.

On page 37, line 21, strike ''or''.

On page 37, between lines 21 and 22, insert the following:

''(iii) concerning child custody or visitation;

''(iv) for the dissolution of a marriage except to the extent that such a proceeding seeks to determine the division of property which is property of the estate; or

''(v) regarding domestic violence;

On page 37, line 24, strike the quotation marks and second semicolon.

On page 37, after line 24, add the following:

''(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation pursuant to a judicial or administrative order;

''(D) the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses under State law, as specified in section 466(a)(16) of the Social Security Act (42 U.S.C. 666(a)(16));

''(E) the reporting of overdue support owed by a 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));

''(F) 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 under an analogous State law; or

''(G) the enforcement of medical obligations as specified under title IV of the Social Security Act (42 U.S.C. 601 et seq.).'';

On page 38, line 12, strike all through page 39, line 25.

On page 40, between lines 13 and 14, insert the following:

(i) by inserting ''to a spouse, former spouse, or child of the debtor and'' before ''not of the kind''.

On page 40, line 14, strike ''(i)'' and insert ''(ii)''.

On page 40, line 16, strike ''(ii)'' and insert ''(iii)''.

On page 40, insert between lines 18 and 19 the following:

(C) by striking paragraph (18); and

On page 41, line 4, strike ''(5)'' and insert ''(4)''.

On page 41, line 7, strike ''(5)'' and insert ''(4)''.

On page 41, line 12, strike ''(5)'' and insert ''(4)''.

On page 43, strike lines 16 through 20 and insert the following: Section 1225(b)(2)(A) of title 11, United States Code, is amended by inserting ''or for a domestic support obligation that first becomes payable after the date on which the petition is filed'' after ''dependent of the debtor''.

On page 43, strike line 22 through page 44, line 2, and insert the following:

Section 1325(b)(2)(A) of title 11, United States Code, is amended by inserting ''or for a domestic support obligation that first becomes payable after the date on which the petition is filed'' after ''dependent of the debtor''.

On page 44, line 14, strike ''for support'' through line 16, and insert ''for a domestic support obligation,''.

On page 45, line 23, strike ''and''.

On page 45, between lines 23 and 24, insert the following:

''(III) the last recent known name and address of the debtor's employer; and

On page 45, line 24, strike ''(III)'' and insert ''(IV)''.

On page 46, strike lines 6 through 11 and insert the following:

''(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.

On page 46, line 19, strike ''(b)'' and insert ''(a)''.

On page 46, line 20, strike ''(5)'' and insert ''(6)''.

On page 46, line 22, strike ''(6)'' and insert ''(7)''.

On page 47, strike lines 1 through 6 and insert the following:

''(8) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (c).''; and

On page 47, line 8, strike ''(b)(7)'' and insert ''(a)(7)''.

On page 48, line 7, strike ''and''.

On page 48, insert between lines 7 and 8 the following:

''(III) the last recent known name and address of the debtor's employer; and''

On page 48, line 8, strike ''(III)'' and insert ''(IV)''.

On page 48, line 11, strike ''(4), or (14A)'' and insert ''(3), or (14)''.

On page 48, strike lines 15 through 20 and insert the following:

''(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.

On page 49, strike lines 9 through 14 and insert the following:

''(6) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (c).''; and

On page 50, line 16, strike ''and''.

On page 50, insert between lines 16 and 17 the following:

''(III) the last recent known name and address of the debtor's employer; and''.

On page 50, line 17, strike ''(III)'' and insert ''(IV)''.

On page 50, line 20, strike ''(4), or (14A)'' and insert ''(3), or (14)''.

On page 50, strike line 24 and all that follows through page 51, line 4 and insert the following:

''(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.

On page 51, strike lines 19 through 24 and insert the following:

''(6) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (d).''; and

On page 52, line 24, strike ''and''.

On page 52, after line 24, add the following:

''(III) the last recent known name and address of the debtor's employer; and''.

On page 53, line 1, strike ''(III)'' and insert ''(IV)''.

On page 53, line 4, strike ''(4), or (14A)'' and insert ''(3), or (14)''.

On page 53, strike lines 8 through 12 and insert the following:

''(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.

On page 76, line 15, strike ''523(a)(9)'' and insert ''523(a)(8)''.

On page 82, strike lines 4 through 9 and insert ''title 11, United States Code, is amended by adding at the end the following:''.

On page 82, line 10, strike ''(19)'' and insert ''(18)''.

On page 83, between lines 4 and 5, insert the following:

SEC. 225. PROTECTION OF EDUCATION SAVINGS.

(a) EXCLUSIONS.—Section 541 of title 11, United States Code, as amended by section 903, is amended—

(1) in subsection (b)—

(A) by redesignating paragraph (6) as paragraph (8); and

(B) by inserting after paragraph (5) the following:

''(6) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of filing of the petition, but—

''(A) only if the designated beneficiary of such account was a son, daughter, stepson, stepdaughter, grandchild, or step-grandchild of the debtor for the taxable year for which funds were placed in such account;

''(B) only to the extent that such funds—

''(i) are not pledged or promised to any entity in connection with any extension of credit; and

''(ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

''(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;

''(7) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of filing of the petition, but—

''(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a son, daughter, stepson, stepdaughter, grandchild, or step-grandchild of the debtor for the taxable year for which funds were paid or contributed;

''(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(7) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

''(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000; or''; and

(2) by adding at the end the following:

''(g) In determining whether any of the relationships specified in paragraph (6)(A) or (7)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child has as the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 105(d), 304(c)(1), 305(2), 315(b), and 316 of this Act, is amended by adding at the end the following:

''(k) In addition to meeting the requirements under subsection (a), a debtor shall file with the court a record of any interest that a debtor has in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) or under a qualified State tuition program (as defined in section 529(b)(1) of such Code).''.

On page 91, between lines 18 and 19, insert the following:

(c) MODIFICATION OF A RESTRICTION RELATING TO WAIVERS.—Section 522(e) of title 11, United States Code, is amended—

(1) in the first sentence, by striking ''subsection (b) of this section'' and inserting ''subsection (b), other than under paragraph (3)(C) of that subsection''; and

(2) in the second sentence—

(A) by inserting ''(other than property described in subsection (b)(3)(C))'' after ''property'' each place it appears; and

(B) by inserting ''(other than a transfer of property described in subsection (b)(3)(C))'' after ''transfer'' each place it appears.

On page 91, line 23, strike ''105(d)'' and insert ''106(d)''.

On page 92, line 17, strike ''(C)'' and insert ''(D)''.

On page 92, line 18, strike ''(b)'' and insert ''(c)''.

On page 94, line 25, strike ''105(d)'' and insert ''106(d)''.

On page 95, line 16, strike ''(c)'' and insert ''(d)''.

On page 109, line 13, strike ''by adding at the end'' and insert ''by inserting after subsection (e)''.

On page 111, line 18, insert ''(a) IN GENERAL.—'' before ''Section''.

On page 112, line 14, insert a dash after the period.

On page 112, line 19, strike ''(4)'' and insert ''(3)''.

On page 112, line 20, strike ''(3)(B), (5), (8), or (9) of section 523(a)'' and insert ''(4), (7), or (8) of section 523(a)''.

On page 116, line 16, strike ''(d)(1)'' and insert ''(e)(1)''.

On page 117, line 5, strike ''(e)'' and insert ''(f)''.

On page 118, line 1, strike ''(A) beginning'' and insert the following:

''(A) beginning''.

On page 118, line 5, strike ''(B) thereafter,'' and insert the following:

''(B) thereafter,''.

On page 118, line 8, strike ''(f)(1)'' and insert ''(g)(1)''.

On page 118, strike line 23 and insert the following: ''subsection (h)''.

On page 118, line 24, strike ''(g)(1)'' and insert ''(h)(1)''.

On page 119, line 21, strike ''(h)'' and insert ''(*i*)''.

On page 120, line 11, strike ''(*i*)'' and insert ''(j)''.

On page 124, strike lines 7 through 14 and insert the following:

SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.

(a) PROPERTY OF THE ESTATE.—

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

''§ 1115. Property of the estate

''In a case concerning an individual, property of the estate includes, in addition to the property specified in section 541—

''(1) all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first; and

''(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first.''.

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

''1115. Property of the estate.''.

(b) CONTENTS OF PLAN.—Section 1123(a) of title 11, United States Code, is amended—

(1) in paragraph (6), by striking ''and'' at the end;

(2) in paragraph (7), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(8) in a case concerning an individual, provide for the payment to creditors through the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.''.

(c) CONFIRMATION OF PLAN.—

(1) REQUIREMENTS RELATING TO VALUE OF PROPERTY.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

''(14) In a case concerning an individual in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

''(A) the value of the property to be distributed under the plan on account of such claim is, as of the effective date of the plan, not less than the amount of such claim; or

''(B) the value of the property to be distributed under the plan is not less than the debtor's projected disposable income (as that term is defined in section 1325(b)(2)) to be received during the 3-year period beginning on the date that the first payment is due under the plan, or during the term of the plan, whichever is longer.''.

(2) REQUIREMENT RELATING TO INTERESTS IN PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11, United States Code, is amended by inserting before the period at the end the following: '', except that in a case concerning an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14)''.

(d) EFFECT OF CONFIRMATION—Section 1141(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking ''The confirmation of a plan does not discharge an individual debtor'' and inserting ''A discharge under this chapter does not discharge a debtor''; and

(2) by adding at the end the following:

''(5) In a case concerning an individual—

''(A) except as otherwise ordered for cause shown, the discharge is not effective until completion of all payment under the plan; and

''(B) at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

''(i) for each allowed unsecured claim, the value as of the effective date of the plan, of property actually distributed under the plan on account of that claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

''(ii) modification of the plan under 1127 of this title is not practicable.''.

(e) MODIFICATION OF PLAN.—Section 1127 of title 11, United States Code, is amended by adding at the end the following:

''(e) In a case concerning an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—

''(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

''(2) extend or reduce the time period for such payments; or

''(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

''(f)(1) Sections 1121 through 1128 of this title and the requirements of section 1129 of this title apply to any modification under subsection (a).

''(2) The plan, as modified, shall become the plan only after there has been disclosure under section 1125, as the court may direct, notice and a hearing, and such modification is approved.''.

Beginning on page 135, strike line 19 and all that follows through page 136, line 2, and insert the following:

SEC. 406. CREDITORS AND EQUITY SECURITY HOLDERS COMMITTEES.

(a) APPOINTMENT.—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. The court may increase the number of members of a committee to include a creditor that is a small business concern (as described in section 3(a)(1) of the Small Business Act (15 U.S.C. 632(a)(1))), if the court determines that the creditor holds claims (of the kind represented by the committee) the aggregate amount of which, in comparison to the annual gross revenue of that creditor, is disproportionately large.''.

(b) INFORMATION.—Section 1102(b) of title 11, United States Code, is amended by adding at the end the following:

''(3) A committee appointed under subsection (a) shall—

''(A) provide access to information for creditors who—

''(i) hold claims of the kind represented by that committee; and

''(ii) are not appointed to the committee;

''(B) solicit and receive comments from the creditors described in subparagraph (A); and

''(C) be subject to a court order that compels any additional report or disclosure to be made to the creditors described in subparagraph (A).''.

On page 145, between lines 15 and 16, insert the following:

SEC. 420. MORE COMPLETE INFORMATION REGARDING ASSETS OF THE ESTATE.

(a) IN GENERAL.—

(1) DISCLOSURE.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States, after consideration of the views of the Director of the Executive Office for the United States Trustees, shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms directing debtors under chapter 11 of title 11, United States Code, to disclose the information described in paragraph (2) by filing and serving periodic financial and other reports designed to provide such information.

(2) INFORMATION.—The information referred to in paragraph (1) is the value, operations, and profitability of any closely held corporation, partnership, or of any other entity in which the debtor holds a substantial or controlling interest.

(b) PURPOSE.—The purpose of the rules and reports under subsection (a) shall be to assist parties in interest taking steps to ensure that the debtor's interest in any entity referred to in subsection (a)(2) is used for the payment of allowed claims against debtor.

On page 147, line 15, strike ''title)'' and insert ''title and excluding a person whose primary activity is the business of owning and operating real property and activities incidental thereto)''.

On page 150, line 14, insert ''and other required government filings'' after ''returns''.

On page 150, line 19, insert ''and other required government filings'' after ''returns''.

On page 152, strike lines 19 through 21 and insert the following:

(a) DUTIES IN CHAPTER 11 CASES.—Subchapter I of title 11, United States Code, as amended by section 321 of this Act, is amended by adding at the end the following:

On page 153, line 1, strike ''1115'' and insert ''1116''.

On page 153, line 7, strike ''3'' and insert ''7''.

On page 154, line 9, strike the semicolon and insert ''and other required government filings; and''.

On page 154, strike lines 14 through 25.

On page 155, strike line 7 and all that follows through the matter between lines 9 and 10 and insert the following:

(b) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, United States Code, is amended by adding at the end of the matter relating to subchapter I the following:

''1116. Duties of trustee or debtor in possession in small business cases.

On page 156, line 19, strike ''150'' and insert ''175''.

On page 156, line 20, strike ''150-day'' and insert ''175-day''.

On page 162, strike lines 14 through 20 and insert the following:

''(A) a plan with a reasonable possibility of being confirmed will be filed within a reasonable period of time; and

On page 162, line 21, strike ''reason is'' and insert ''grounds include''.

On page 162, line 22, strike ''that''.

On page 162, line 23, insert ''for which'' before ''there exists''.

On page 163, line 1, strike ''(ii)(I)'' and insert ''(ii)''.

On page 163, line 1, strike ''that act or omission'' and insert ''which''.

On page 163, line 3, strike '', but not'' and all that follows through line 8 and insert a period.

On page 163, line 22, insert after ''failure to maintain appropriate insurance'' the following: ''that poses a risk to the estate or to the public''.

On page 164, line 3, insert ''repeated'' before ''failure''.

On page 165, line 2, strike ''and''.

On page 165, line 3, insert ''confirmed'' before ''plan''.

On page 165, line 4, strike the period and insert ''; and''.

On page 165, between lines 4 and 5, insert the following:

''(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.

On page 165, line 23, insert ''or an examiner'' after ''trustee''.

On page 167, after line 21, insert the following:

SEC. 435. TECHNICAL CORRECTION.

Section 365(b)(2)(D) of title 11, United States Code, is amended by striking ''penalty rate or provision'' and inserting ''penalty rate or penalty provision''.

On page 183, line 20, strike all through line 13 on page 187.

On page 187, line 14, strike ''703'' and insert ''702''.

On page 187, line 20, strike ''704'' and insert ''703''.

On page 189, line 9, strike ''705'' and insert ''704''.

On page 190, line 13, strike ''706'' and insert ''705''.

On page 190, line 17, strike ''707'' and insert ''706''.

On page 190, line 22, strike ''708'' and insert ''707''.

On page 191, line 8, strike ''709'' and insert ''708''.

On page 192, line 3, strike ''710'' and insert ''709''.

On page 193, line 13, strike ''711'' and insert ''710''.

On page 193, line 21, strike ''712'' and insert ''711''.

On page 196, line 1, strike ''713'' and insert ''712''.

On page 196, line 11, strike ''714'' and insert ''713''.

On page 197, line 12, strike ''715'' and insert ''714''.

On page 197, line 15, strike ''703'' and insert ''702''.

On page 197, line 18, strike ''716'' and insert ''715''.

On page 201, line 3, insert a semicolon after ''following''.

On page 202, line 4, strike ''717'' and insert ''716''.

On page 202, line 18, strike ''718'' and insert ''717''.

On page 248, line 15, strike ''718'' and insert ''717''.

On page 266, line 13, insert ''and family fishermen'' after ''farmers''.

On page 268, insert between lines 16 and 17 the following:

SEC. 1005. FAMILY FISHERMEN.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

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

''(7A) 'commercial fishing operation' includes—

''(A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products; and

''(B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A);'';

''(7B) 'commercial fishing vessel' means a vessel used by a fisherman to carry out a commercial fishing operation;'';

(2) by inserting after paragraph (19) the following:

''(19A) 'family fisherman' means—

''(A) an individual or individual and spouse engaged in a commercial fishing operation (including aquiculture for purposes of chapter 12)—

''(i) whose aggregate debts do not exceed $1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

''(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

''(B) a corporation or partnership—

''(i) in which more than 50 percent of the outstanding stock or equity is held by—

''(I) 1 family that conducts the commercial fishing operation; or

''(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

''(ii)(I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation;

''(II) its aggregate debts do not exceed $1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

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

(3) by inserting after paragraph (19A) the following:

''(19B) 'family fisherman with regular annual income' means a family fisherman whose annual income is sufficiently stable and regular to enable such family fisherman to make payments under a plan under chapter 12 of this title;''.

(b) WHO MAY BE A DEBTOR.—Section 109(f) of title 11, United States Code, is amended by inserting ''or family fisherman'' after ''family farmer''.

(c) CHAPTER 12.—Chapter 12 of title 11, United States Code, is amended—

(1) in the chapter heading, by inserting ''**OR FISHERMAN**'' after ''**FAMILY FARMER**'';

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

''(e)(1) Notwithstanding any other provision of law, for purposes of this subsection, a guarantor of a claim of a creditor under this section shall be treated in the same manner as a creditor with respect to the operation of a stay under this section.

''(2) For purposes of a claim that arises from the ownership or operation of a commercial fishing operation, a co-maker of a loan made by a creditor under this section shall be treated in the same manner as a creditor with respect to the operation of a stay under this section.'';

(3) in section 1203, by inserting ''or commercial fishing operation'' after ''farm'';

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

(5) by adding at the end the following:

''§ 1232. Additional provisions relating to family fishermen

''(a)(1) Notwithstanding any other provision of law, except as provided in subsection (c), with respect to any commercial fishing vessel of a family fisherman, the debts of that family fisherman shall be treated in the manner prescribed in paragraph (2).

''(2)(A) For purposes of this chapter, a claim for a lien described in subsection (b) for a commercial fishing vessel of a family fisherman that could, but for this subsection, be subject to a lien under otherwise applicable maritime law, shall be treated as an unsecured claim.

''(B) Subparagraph (A) applies to a claim for a lien resulting from a debt of a family fisherman incurred on or after the date of enactment of this chapter.

''(b) A lien described in this subsection is—

''(1) a maritime lien under subchapter III of chapter 313 of title 46, United States Code, without regard to whether that lien is recorded under section 31343 of title 46, United States Code; or

''(2) a lien under applicable State law (or the law of a political subdivision thereof).

''(c) Subsection (a) shall not apply to—

''(1) a claim made by a member of a crew or a seaman including a claim made for—

''(A) wages, maintenance, or cure; or

''(B) personal injury; or

''(2) a preferred ship mortgage that has been perfected under subchapter II of chapter 313 of title 46, United States Code.

''(d) For purposes of this chapter, a mortgage described in subsection (c)(2) shall be treated as a secured claim.''.

(d) CLERICAL AMENDMENTS.—

(1) TABLE OF CHAPTERS.—In the table of chapters for title 11, United States Code, the item relating to chapter 12, is amended to read as follows:

''12. Adjustments of Debts of a Family Farmer or Family Fisherman with Regular Annual Income ..... 1201''.

(2) TABLE OF SECTIONS.—The table of sections for chapter 12 of title 11, United States Code, is amended by adding at the end the following new item:

''1232. Additional provisions relating to family fishermen.''.

On page 277, line 22, insert ''(a) IN GENERAL.—'' before ''Section''.

On page 281, line 21, strike ''714'' and insert ''713''.

Beginning on page 292, strike line 10 and all that follows through page 294, line 11.

On page 294, insert between lines 11 and 12 the following:

(d) RIGHTS AND POWERS OF THE TRUSTEE.—Section 546(c) of title 11, United States Code, is amended to read as follows:

''(c)(1) Except as provided in subsection (d) of this section, and except as provided in subsection (c) of section 507, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of the business of the seller, to reclaim such goods if the debtor has received such goods within 45 days prior to the commencement of a case under this title, but such seller may not reclaim any such goods unless the seller demands in writing the reclamation of such goods—

''(A) before 45 days after the date of receipt of such goods by the debtor; or

''(B) if such 45-day period expires after the commencement of the case, before 20 days after the date of commencement of the case.

''(2) Notwithstanding the failure of the seller to provide notice in a manner consistent with this subsection, the seller shall be entitled to assert the rights established in section 503(b)(7) of this title.''.

(e) ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, 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) the invoice price of any goods received by the debtor within 20 days of the date of filing of a case under this title where the goods have been sold to the debtor in the ordinary course of such seller's business.''.

On page 147, line 19 strike ''4,000,000'' and insert ''3,000,000''.

The PRESIDING OFFICER. Without objection, the amendment is agreed to and the motion to reconsider is laid upon the table.

The amendment (No. 2515), as modified, was agreed to.

Mr. REED. Mr. President, I rise in strong support of the Reed-Sessions amendment to the manager's amendment to S. 625, the bankruptcy reform legislation we have been considering over the past few days. I urge my colleagues to support the passage of this important amendment.

The Reed-Sessions amendment deals with the reaffirmation of one's debt, and it reflects a compromise that has been worked out at length between myself, Senator SESSIONS, the Treasury Department and consumers. I believe it is a fair and balanced amendment that seeks to treat those who enter into reaffirmation agreements with their creditors in a fair and just manner, and to provide them—as well as the bankruptcy courts—with the greatest amount of information they need in order to make the wisest decisions possible.

For those of my colleagues unfamiliar with these agreements, a reaffirmation is an agreement between a debtor and a creditor in which the debtor reaffirms his or her debt and willingness to pay the creditor back, even after many of the other debts may have been discharged during bankruptcy. The creditor must then file this reaffirmation agreement with the bankruptcy court. The court then has the opportunity to review this agreement, but in most cases, for one reason or another, does not.

Recently, there have been some documented cases in which creditors have used coercive and abusive tactics with consumers in order to persuade them to reaffirm their debt, when in many of these cases there is no question that the individual can in no way afford to do so. The most visible of these cases occurred with Sears, in which the company did not even file these reaffirmation agreements with the court, therefore negating even the option of the court to review these cases.

The Reed-Sessions amendment would essentially provide for clear and concise disclosures when a debtor chooses to enter into a reaffirmation agreement with a creditor. Our amendment would create a uniform disclosure form, whereby everyone who is filing a

reaffirmation agreement must fill this form out. Based on the information provided on the form, certain situations will then obligate the court to review such agreements in order to determine if the reaffirmation agreement is truly within the debtor's best interests.

In constructing this compromise amendment, I think we have achieved some very important goals. First and foremost, we want everyone to recognize that a reaffirmation agreement is a very weighty decision, and that the individual needs to understand—whether they are represented by counsel or not—all the ramifications of the agreement into which he or she is entering. In fact, the individual needs to understand that they in no way need to file a reaffirmation agreement.

Another vital issue is to have the court review such cases in which the debtor wants to reaffirm his or her debt, but in calculating the difference between the person's income and all their monthly expenses, it remains impossible for the debtor to do so. In other words, there exists a presumption of undue hardship upon the person. It is at that point that we want the court to have the ability to step in and say to this person, that either they have the ability to repay some of this debt because of other sources of funds—such as a gift from the family—or that they do not, and therefore the reaffirmation cannot be approved by the court.

Without this amendment, we are concerned that the abuses in the reaffirmation system that we have seen will continue to occur, and the courts may continue to be left in the dark with respect to the existence of these agreements, let alone have the option to review them. This amendment is not perfect, and if given the choice, I probably would have preferred to go even further than we have in our language. With that said, I think it's still important to note that with this amendment, we have given our courts and consumers the appropriate tools that will provide them with the necessary information to make decisions that are in the individual's best interests, not the creditor's. That is a crucial point that I wanted to emphasize.

I appreciate all the efforts of those involved in the process that went into constructing this compromise amendment, and I am confident that it strengthens the hands of our courts, and more importantly, the minds of our consumers as they make decisions that will weigh upon them for the rest of their lives.

The PRESIDING OFFICER. Without objection, the Senator from Minnesota yields to the Senator from Missouri for 7 minutes.

Mr. WYDEN. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I would like to ask unanimous consent to speak for up to 5 minutes after the Senator from Missouri has spoken.

Mr. WELLSTONE. Mr. President, I am going to have to object. I am willing to let some people speak, but I have been waiting for 3 days to get this amendment up and to get this debated.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, if I could direct an inquiry, through the Chair, to the manager of the bill, it is my understanding that the majority leader has asked—and he has spoken to the Senator from Minnesota—that his amendment be set aside for purposes of the senior Senator from Connecticut to offer an amendment. The debate time on that would be——

Mr. GRASSLEY. Five minutes on our side and 5 minutes on the other side.

Mr. REID. Following the disposition and a vote on the Dodd amendment, Senator WELLSTONE, who has been waiting all week to offer his amendment, would get the floor to which he is now entitled.

The PRESIDING OFFICER. At the present time, there is a unanimous consent agreement for the Senator from Missouri to speak for 7 minutes.

Mr. REID. Objection. I object, and I do so, Mr. President, on the basis of——

The PRESIDING OFFICER. That was already agreed to.

Mr. REID. No, it wasn't.

The PRESIDING OFFICER. I am afraid it was. Senator ASHCROFT has 7 minutes.

Mr. REID. OK, the Senator from Missouri.

Following that, is Senator DODD going to be recognized? Has the unanimous consent request been accepted?

The PRESIDING OFFICER. There has not been an agreement to that effect. The Chair will entertain one.

Mr. WELLSTONE. I would object. The only thing I agreed to is Senator ASCHROFT being allowed to speak for 7 minutes; then I retain the floor.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Missouri is recognized for 7 minutes.

Mr. ASHCROFT. I thank the Chair. And I thank my colleagues for allowing me this time.

DAKOTA WATER RESOURCES ACT

Mr. ASHCROFT. Mr. President, I am here on the floor today to talk about one of Missouri's most important natural resources, and that is the Missouri River. There is a bill that another Member is trying to pass by unanimous consent that would threaten the Missouri River. I am making it clear that I have an objection to this bill, and I am firm on this issue.

On Friday around 4 p.m., 52 bills were hot-lined to be passed by unanimous consent in the Senate. Most of the time, Members pass bills by unanimous consent that are noncontroversial. However, buried in this list of 52 bills was one that I am opposed to, S. 623, the Dakota Water Resources Act. I am opposed to it because it would divert a substantial amount of water out of the Missouri River. The bill that I am objecting to authorizes $200 million to divert additional water from the Missouri River system to the Cheyenne River and the Red River systems. This is an inter-basin transfer of water which could have substantial impacts all along the Missouri River basin. I do not blame the North Dakota Senators for fighting for this, but it hurts my State and it hurts other States, and I cannot consent to its approval by unanimous consent. Apparently, this bill has broad opposition by many different parties along the Missouri River. It is a very controversial provision and should not be passed in the dead of night on a consent calendar with a lot of noncontroversial bills.

This is opposed strongly by the Governor and the Department of Natural Resources in Missouri. It is opposed by Taxpayers for Common Sense. It is opposed by a host of environmental groups—including the National Wildlife Federation, the National Audubon Society, Friends of the Earth, and American Rivers. The Canadian Government opposes this bill and has opposed the program it authorizes for decades, claiming that it violates a 1909 United States-Canada Boundary Waters Treaty. The Governor of Minnesota opposes this measure. The Minnesota State Department of Natural Resources opposes it, and the list goes on.

It is too early in the process for me to clear this bill. There are too many questions that remain to be answered. There are too many related issues that the States are negotiating at this time. We are awaiting the recommendations of the Corps of Engineers on how much additional water they intend to reserve for Dakota purposes. The senior Senator from Missouri and I will continue to object. As a result of our objections, the sponsor of the bill is holding up 51 other unrelated bills.

Let me be clear. These 51 holds are not related to the longstanding dispute between North Dakota and Missouri and many other parties over the water allocation in the Missouri River. Therefore, Senator BOND and I will not be pressured into lifting our hold on a bill that will harm the livelihood of the people of Missouri. These types of interstate river disputes that have been going on for years simply should not be resolved without all interested parties involved and without adequate consideration given to the ecological and commercial effects.

From the farm to the factory, the Missouri River creates jobs in the Midwest. The Missouri River is a stable water supply and a source of hydro power for major cities. We must be very cautious about changing water levels along the Missouri River in order to maintain the recreational opportunities for local communities, as well as hatcheries for fish and flyways for migratory birds.