Rights Award from Fairfax County, the Social Worker of the Year Award from the Virginia Council of Social Workers. He received a nomination for Northern Virginian of the Year in the area of community service. Of course, being Irish, he has also found time to write poetry. It has even been published in Poetry Ireland Review.

When Father Creedon is not busy with his pastoral duties, you will find him on the golf course. It is a game he takes very seriously and I hear he is much improved. I think we can presume that prayer on the putting green works. But most of all we love to be with him when he picks up his mandolin and sings us the Irish songs of his beloved County Cork and Dublin.

Whether he is with us for a sail at the Cape, talking about his achievements in hurling, celebrating mass, or baptizing the newest member of the Kennedy family, Father Gerry Creedon is a valued friend and a welcome spiritual presence in our lives. It is a privilege to have him here with us in the Senate today. We are grateful for his inspiring prayer as our guest Chaplain.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Alabama is recognized.

SCHEDULE

Mr. SESSIONS. Mr. President, on behalf of the leader, I announce that the Senate will immediately resume consideration of S. 420, the Bankruptcy Reform Act. The Durbin amendment regarding lending practices is the pending amendment. Further amendments will be offered during today's session, and therefore votes will occur.

Members with amendments are again urged to work with the bill managers in an effort to finish the bill in a timely manner. Senators will be notified as soon as votes are scheduled.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

BANKRUPTCY REFORM ACT OF 2001

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 420, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 420) to amend title 11, United States Code, and for other purposes.

Pending:

Durbin amendment No. 17, as modified, to discourage certain predatory lending practices.

Mr. SESSIONS. Mr. President, I ask unanimous consent that with respect to S. 420 there be debate only until 10:30 a.m.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. REID. Reserving the right to object.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. I say to my friend from Alabama, the acting leader, there are a number of people who want to speak on the bill, probably not going past 10:30 a.m. This is a very important piece of legislation. We all recognize that. There have only been a few people who have had the opportunity to speak about the bill generally. I think it is totally appropriate that we talk about the bill until 10:30 a.m. There are others who will come at a later time, not to offer amendments but to speak about the bill.

Also, we are trying to work with the other side of the aisle. Senator LEAHY has indicated to me that he will be cooperative in trying to obtain some time late this afternoon a list of amendments. We will be working on that. Maybe we can come up with a list of amendments sometime later today which will give us some idea of what we face next week on this important legislation.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. SESSIONS. I thank the Senator. I do believe we need to move toward that eventuality. I thank him for his leadership.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. DURBIN. Reserving the right to object, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. I have a pending amendment, and I wonder if the Senator from Alabama can tell me, it is my understanding someone is preparing either a second-degree amendment or a substitute; is the Senator from Alabama aware of that?

Mr. SESSIONS. I know Senator GRAMM is interested in your amendment. He has not arrived yet. We will talk with him as soon as he arrives and he can discuss that question.

Mr. DURBIN. I thank the Senator from Alabama. I continue to reserve my right to object. I am going to object to the waiving of the reading of any substitute or any second-degree amendment unless a copy is presented to me in advance. I will afford the same courtesy on any amendment which I offer on the floor. Those of us who would like to be prepared to debate this want to see the language of the amendment so we can be adequately prepared.

Mr. President, I do not object to the unanimous-consent request.

The ACTING PRESIDENT pro tempore. Is there further objection? Without objection, it is so ordered.

Several Senators addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota.

Mr. SESSIONS. Mr. President, if the Senator will yield for a second. We have not received all amendments, I say to Senator DURBIN. It would be more appropriate for people to file their amendments so we can study them and be better prepared.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I want to speak for a few moments on the bill. I will mention the amendment offered by Senator DURBIN. I wanted to come over yesterday, but I was not able to find the time to do that, given the debate occurring on the floor.

I want to talk on the subject of bankruptcy. I have supported bankruptcy reforms in the Congress. I voted for them. I felt the pendulum on bankruptcy issues had swung a little too far to one side. I still feel that way, and I hope I will be able to support the legislation as it leaves the Senate. I suspect I will. I hope to support the legislation coming out of conference again this year. It is my hope to continue to support bankruptcy reform.

We no longer have debtor prisons in this country. We do not mark people who go into debt and cannot get out of debt with some indelible mark. We provide mechanisms by which people can get some relief for themselves and their families in circumstances where, beyond their control, they run into some financial trouble. That is as it should be.

As I said, the pendulum has swung too far. We have people now using the access of bankruptcy legislation and the laws we put on the books in some circumstances for convenience and in other circumstances in ways that injure others in a significant way.

There are clearly people who have been subject to substantial medical bills and other unforeseen circumstances well beyond their control who access bankruptcy laws in a way they are intended to be accessed. There are others who abuse them. I think all of us agree with that. Some load up with credit and find ways to stick others with the debt they incur and then rush to bankruptcy to say: Let me shed myself of this burden, and I will let others hold the bag. Many of them are small business men and women. What happens in those circumstances is unfair.

There is another side to this debate that I want to talk about for a moment. While I support bankruptcy reform and believe it is necessary and sound for this Congress to proceed in this direction, there is also, with the extension of credit in this country, a fair amount of greed and a substantial amount of unsound business practices.

The other day I was on the way to the Capitol in my car and had the radio on, and I heard another advertisement from a lending company. The advertisement said the following: Bad credit? No income? No documentation? Come see us for a loan.

I will say that again because it is worth remembering. This is a company that is advertising on the radio saying if you have bad credit, if you do not have any income and you do not have any documentation, come and get a

loan from us. We have all seen the ads and heard the ads. Bad credit? No problem. Come our direction. We would like to give you a loan.

Our kids who begin college now find in their mailbox on the college campus a preapproved credit card from many companies. They just wallpaper the college campuses, offering credit cards to kids who have no job and no income and then wonder why, when some of them use those credit cards and get in trouble, they cannot pay the bill.

Companies that say if you have bad credit, we will give you credit, if you have no job, we will give you a credit card, if you have no income, we will give you a credit card—they do it by the millions—and then they get into some difficulty and say to the Congress: Relieve us, will you, of these bad business practices; we have wallpapered America with credit cards and now some of them don't pay, so please help us—I have no sympathy for those companies and do not want to do anything that gives them comfort.

My 10-year-old son about 3 years ago—he is now 13, going to turn 14 next month—received a preapproved Diners Club card in the mail. I have spoken about that on the floor previously in a discussion about bankruptcy—a 10-year-old gets a solicitation from Diners Club for a preapproved credit card. He is now living in Paris under an assumed name. Not really.

When he saw that, he said: Dad, what does this mean?

I said: It means somebody is really stupid. You do not have a job, you are 10 years old, and they did not mean you ought to have a credit card. It does not matter to them. You are a bunch of letters. They send them to everybody. It does not matter the circumstance.

Diners Club, when they heard me speak about this on the floor because I read the letter and read the name of the person who signed the letter, actually contacted me and said: Oh, this was a mistake. Yes, I am sure it was a mistake.

There are mistakes all over the country: People getting credit card applications, preapproved credit card solicitations without any thought to who they are, where they are, how old they are, how much their income is, or even if they have an income. It is evidence of something gone wrong. It is unsound business practices.

In addition, if I had taken the time—and I did not on that particular preapproved credit card application—to read the terms and the conditions—and, indeed, you need glasses to do so because it is always on the back side—what I would have found, I am sure, in that circumstance with that company, and virtually every other, is they are imposing terms and conditions for the cost of credit that are outrageous. It should be called loansharking at the interest rates they charge.

Incidentally, on the front of most of these envelopes—and I get a lot of them, and I suspect most of my colleagues do and most Americans do. You open your mailbox and every day you find a piece of mail that says: We have a preapproved credit card waiting for you, and a big circle on the front of the envelope, 1.9-percent interest rate or 2.9-percent interest rate, and you open it up and read the fine print. What you discover is, yes, there is a period of 3 months or 6 months where they are going to charge a 1.9-percent interest rate, and then it goes to 18 percent or 22 percent or whatever their percentage is. The small type takes away what the big type gives.

My point is this: I am not interested in anybody crying crocodile tears for companies that exhibit that kind of unsound business practice and for companies that are so greedy for profits that they want to load everybody up with debt by sending them plastic cards, even those who have no income and no job. Now people say, but you need to be responsible; it is your fault if you use those cards. Sure, there is fault on both sides. My point is we are headed in the wrong direction. Those who engage in these practices need no relief, in my judgment, from this Congress.

My colleague, Senator DURBIN, is offering an amendment that is fairly simple. The credit card companies are resisting this aggressively. His amendment simply says, on the statement where it states their minimum payment, creditors must have a box that says if they make this minimum payment, here is how long it will take to pay off the bill. Often, it will be an eye-popping number. Make this minimum payment, they won't pay this off for 8 or 10 years. My colleague from Illinois is saying it makes sense to provide a little more information, truth in lending. I will support that amendment.

There is an amendment that tightens up on the homestead exemption. Frankly, we need to plug the loophole that deals with the homestead exemptions. We don't want people filing for bankruptcy ending up with $1 million or $2 million in a home that cannot be touched. There is an old saying: The water ain't going to clear up until you get the hogs out of the creek.

The hogs in this circumstance are the very companies that are asking for relief because they have ''blizzarded'' this country with credit card applications, and they should have known better.

As I indicated when I started, I intend to support bankruptcy legislation. I also intend to support amendments to perfect this legislation. When we send it to conference, as I believe we will, it is my fervent hope the conference will send back a conference report that has some balance, that recommends, I hope, that people not abuse bankruptcy legislation, that bankruptcy ought not be convenient or easy, that there is a burden with bankruptcy, but recognizes that some need bankruptcy. Some who have suffered unforeseen circumstances, perhaps devastating medical bills, through no fault of their own, need to have some relief from imposing burdens. I have met people like that with tears in their eyes and their chins quiver as they talk about the $150,000 medical bill for a child with whom they are saddled. And every month, in every way, they are besieged by bill collectors saying they must make good on this debt, a debt that had to do with their child's cancer treatment.

Should we find a way to help those people? Yes, there should be bankruptcy proceedings that allow those people to be able to shed themselves of part of that burden and to start anew.

But there are other stories that represent the abuse of bankruptcy and that stick Main Street retailers and others with burdens they should not have to bear.

As we adjust this pendulum on bankruptcy, we need to do it the right way. Today, I wanted to come, as I did a year and a half ago, to say there are those in my judgment who promote financial problems for some Americans by what I think is irresponsible behavior in the development of credit instruments that they then ''wallpaper'' America with.

Frankly, I don't think they deserve much relief. They don't deserve any relief. What they deserve to know is that many of us believe they ought to change their business practices and start sending credit cards to people who can pay the bill, who have income.

I know my colleague from New Jersey wants to speak. I hope to work with my colleagues on both sides of the aisle to see if we can perfect this bill. It is my intention to want to support this going out of the Senate and also out of the conference. I hope we can, coming out of conference, keep a couple of the key provisions the Senate has already expressed its will on with respect to homestead exemptions and predatory practices and more.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, we talked a good bit about credit cards, and the companies have been beaten up. They do make an awful lot of mistakes. As the Senator understands, if a credit card is offered to a person who is a minor and they were to even use it and buy goods with it, they could not be forced to pay the debt because it would be an invalid debt, but it does indicate some concern that people have about receiving solicitations for credit cards.

You could also see they are offering competitive choices in credit cards. Actually, for the first time in recent years, it seems to me credit card companies are beginning to compete against one another in offering better opportunities. I am not sure we ought to say that is a particularly evil thing that low-income people are offered an opportunity to have a credit card that will allow them to replace the tire on their car when they may not have the

cash in their pocket, and then pay for it over the next month. It is not a particularly bad thing.

The Banking Committee has jurisdiction over these issues. That is ultimately where they should be decided. The bankruptcy bill is here to create a system of bankruptcy courts in America, Federal courts, in how they conduct their business. Those issues are not, in my view, the issues that ought to be debated here but in a consideration of banking questions.

I yield to the Senator from New Jersey.

The PRESIDING OFFICER (Mr. ALLEN). The Senator from New Jersey.

Mr. TORRICELLI. Mr. President, I thank the Senator from Alabama for yielding.

I rise in support of the bankruptcy reform bill. Indeed, for as many years as I have had the honor of serving in this institution, I have been rising in support of the bankruptcy bill. I am very honored in this cause to have worked with Senator GRASSLEY, who chaired this subcommittee when I was the ranking member on Judiciary. We worked for countless hours to craft a bill that was both balanced and fair. Indeed, this bankruptcy reform legislation already contains amendments from Senators DURBIN, SCHUMER, REID, and on both sides of the aisle Members who recognize there is a problem with the abuse of the bankruptcy system but wanted to make sure that consumers had every protection possible.

I am not here to state we have achieved the perfect legislation, nor that it is balanced in every respect. I can only suggest there is one thing upon which every Member of the Senate should be able to agree: it is that current bankruptcy laws are not working. It is an abuse to small and large business, creditors, and lenders. The system is broken. We benefit nothing by pretending otherwise.

While not perfect legislation, it is fair. And it provides for a functioning bankruptcy system for businesses and consumers alike. It is for that reason I believe after several attempts to pass this legislation, with the overwhelming support of a majority of Senators, Members of both political parties, and a President who appears now positioned to sign this bill, it is time at long last to get this done.

There are many Senators to be thanked before I go into the substance of the legislation. Having already mentioned Senator GRASSLEY, I also mention Senator BIDEN. This legislation is in some significant measure at his inspiration. He has, in my party, been my partner in crafting this bill and moving it to this position. Even before he became a Member of the Senate, Senator CARPER, then Governor CARPER of Delaware, was a major force a year ago in crafting this legislation. He is also to be thanked. Of course, all of this happened, as Senator GRASSLEY and I fashioned this legislation, under the leadership of Senator HATCH. I am grateful to him.

Indeed, although Senator LEAHY has expressed opposition to some provisions of this bill, to the extent that it has been improved in recent years, that is largely due to Senator LEAHY's own involvement.

Similarly, although Senator DURBIN has expressed reservations about many provisions, before I became the ranking member of the subcommittee Senator DURBIN was in this position. To the extent there are good consumer protection provisions in the legislation, it is largely at his design.

Those are all the hands that have touched the legislation and brought us to this point. Now Senator SESSIONS and I are here as two advocates of the bill to suggest its passage. I don't think either of us would argue that we have achieved every objective, simply that we are providing a better system that is more fair. As I think Senator SESSIONS has recognized, the reality is that in this country, no matter what provision you might like to change in the current code or in this legislation, you can broadly accept the principle: We have a problem.

In 1998 alone, nearly 1.5 million Americans sought bankruptcy protection. The United States was in the midst of the most significant large-scale economic expansion in the history of this Nation, or any nation, and 1.5 million Americans were availing themselves of bankruptcy protection. It is estimated that more than 70 percent of those bankruptcy filings were done in chapter 7, which provides relief for most unsecured debts. Conversely, only 30 percent were filed under chapter 13, which requires a repayment plan. For all the discussion and all the debate and all the delay, that, my colleagues, is the heart of the matter—the overwhelming majority of 1.5 million Americans seeking virtually complete relief from their financial obligations rather than entering into a repayment plan, although they have the means to repay some of their debts.

The Department of Justice actually reviewed these filings under chapter 7 rather than chapter 13, and came to the conclusion that 13 percent of debtors filing in chapter 7, or 182,000 people each year, actually had the financial means to repay their debts. That means $4 billion could have been paid back to creditors. It was not paid—it was lost, although there was the means to repay it—because the law was being abused.

It has been said on this floor that that was money lost to large credit card companies and huge banks, major financial institutions. No doubt there are large companies, private and public, that would have received some of this $4 billion back each year. But they do not stand alone; they were not the only ones abused. I do not rise today primarily in their interests.

How about the small business owner, the retailer on Main Street who has a small profit margin on the clothing he sells or the hardware? When some declare complete bankruptcy, although they could have repaid their debt, those small business owners have lost their product. They made a sale that they thought would go to pay their debts, only to have someone file bankruptcy, and they lose all the revenue. They have no reserves. They have no place else to go. How about their family? Their business could be lost, and indeed every year those businesses are lost, family businesses that are abused by the misuse of the bankruptcy system.

How about the small contractor, the plumber, the carpenter, or the electrician who gives his labor, the sweat of his brow, even the products he buys and resells, to have someone declare bankruptcy and walk away from all their obligations? Although their labor has been taken and the product they sold is gone, they are left with a debt, but the abuse of the bankruptcy system leaves them and their family faced with bankruptcy.

It may be true that if this bill is passed, the major banks in New York or the major credit card companies may benefit. Indeed, if the law is being abused to their disadvantage and they are losing the resources of their stockholders or their employees, I make no apologies that this bill helps them deal with an abuse. But they do not stand alone. Overwhelmingly, proportionally, the principal benefit will go to other small businesspeople.

I hear Members on this floor almost every day claiming that they stand with the small businessperson, the family company, the middle-class family, the working men. Here is your opportunity. How many of those plumbers and electricians and small retailers, mom-and-pop stores, will not make it through this year because someone takes their labors or their products falsely, declares bankruptcy, abuses the system even though they had the resources, as the Department of Justice has demonstrated, to pay their bills? Rather than words of encouragement, how about your vote in support of those small businesses?

Then the critics will argue: You may be helping small business, but surely this is a problem for the poor. I have suggested for 4 years, and I will say so again today, with all respect to my colleagues who oppose this bill we have so carefully drafted, that is simply just not true. What this legislation does is assure that those with the ability to repay a portion of their debts do so.

No Americans are so poor or undefended or powerless that they are denied access to bankruptcy under this bill. We have done this by changing the legislation through the years. This is not the legislation that began in this process 4 years ago. We accomplish this goal by establishing a flexible yet efficient screen to move debtors with the ability to repay a portion of their debt into a repayment scheme. If you are poor, if you have no ability to repay, your status will not be changed; your

debts will be discharged. The bill provides judicial discretion to assure that no one who is genuinely in need of debt relief will be prevented from receiving what every American deserves—a fresh start.

This is a second-chance society. If you fail through no fault of your own—or, indeed, even if it is your fault—and you have no ability to repay, your debts will be discharged and every bankruptcy judge in America will have the discretion to ensure that protection remains. No matter how many times a Senator comes to this floor and says to the contrary, it just is not so.

Critics have argued the bill also places an unfair burden on women and single-parent families. Not by my authorship. It is not true; it is not right; and I would not be standing here today if there were an element of truth to it. It is unfounded.

The bill contains an amendment that Senator HATCH and I offered a year ago that not only ensures women and children are not in an adverse position they are now in a superior position. The Hatch-Torricelli amendment facilitates child support collection by making it easier for the person to whom support is owed to obtain information on the debtor's whereabouts.

The ability of a father who walked out on a wife and a child under current bankruptcy law and hides will no longer be possible. Under the Hatch-Torricelli amendment, we will find you. That information is available, and you will be forced to meet your obligation.

The bill also provides that the status of women and children under the current law is further enhanced. Under current bankruptcy law, women and children seeking support are seventh in line after rent, storage, accountant fees, and tax claims. Every one of those stands before a child today in need of child support from their father. That is the current law. If you vote against this bill, that is the law you are voting to maintain.

Don't suggest that Senator GRASSLEY, Senator HATCH, or Senator BIDEN, or I will come to this floor with something that does not enhance the welfare of a wife, a parent, or a child. Indeed, it is the opposite. We take those children from seventh in line in bankruptcy under current law to first. No landlord is ahead of you, no government, no accountant, and no lawyer. You get first claim on whatever revenue remains.

In addition to these child support protections, the bill includes other provisions designed to assure protection for other vulnerable aspects of American society.

One that is the most important to me that I helped put in this legislation is for those in nursing homes. There is a plague of nursing home bankruptcies in America. When a nursing home goes bankrupt, this legislation requires that an ombudsman be appointed to act as an advocate for the patient; that those who are left vulnerable in the nursing home have someone representing them in the process. They have the greatest stake in bankruptcy. The patients are the most vulnerable. Under current law, they have no one and they have nothing. If you oppose this bill, you are voting to maintain that vulnerability. Under provisions that I helped put in this legislation, that now ends.

We provide clear and specific rules for disposing of patients' records so that in bankruptcy the records of those in the nursing home will not become the public property of creditors, but it is protected. These provisions could not be more important under current circumstances with rising bankruptcy and the vulnerability of nursing home patients.

One nursing home company alone recently with 300 homes went bankrupt leaving 37,000 people without beds, without protection, and without an advocate when it went bankrupt. That will not happen again under this legislation.

Finally, and perhaps most importantly, it was always my goal—from the original introduction of this legislation in our debates in the Judiciary Committee under Senators HATCH and LEAHY to the floor that there be consumer protection in this bankruptcy bill. It was not enough to provide fair bankruptcy protection for the industry which was losing money due to unnecessary bankruptcy. It was not enough to provide protections for the poor, for families, and for children. Real bankruptcy reform must contain consumer protection. Indeed, no aspect of the bill has been amended more or changed more significantly than the consumer protection provisions of bankruptcy reform. That is as it should be.

The credit card industry sends out some 3.5 billion solicitations a year. Senator DORGAN and Senator DURBIN have spoken about this, to their credit, at length. Much of their criticism is well founded. These solicitations by the credit card industry are more than 41 mailings for every American household—14 for every man, woman, and child in the country. It is an avalanche of solicitations with an invitation for a mountain of debt.

But it is not merely the volume of the solicitation. It is also those who are targeted for this availability of debt. High school student and college student solicitations are at record levels. What happened to Senator DORGAN is not unusual. Children everywhere are being invited to participate in the American habit of addiction to debt.

It is not surprising, therefore, that the poor, along with the young, have sometimes been victimized by these practices. Since the early nineties, Americans with incomes below the poverty line have had their credit card usage double. The result is not at all surprising. Twenty-seven percent of families earning less than $10,000 have consumer debt that is more than 40 percent of their income. These families have virtually no chance to get out of debt, and the interest payments consume what is required to maintain the lives of their families.

What is important is that we deal with these abuses by consumer information, by full disclosure; that we strike a balance that we are not unfairly denying the young or the poor credit when they need it, want it, and deserve it for business opportunities, for education, and to deal with crises in their families. That is the balance we tried to strike in this bill. We achieve nothing by denying the poor or the young the credit they need for their own means as long as we give them the information so that they understand the situation and for protecting against the abuse.

I believe we have struck a balance. It is not as I would have written the bill personally. But in legislation and in an institution where both political parties evenly share power, I believe it is the best we can do. Most importantly, it is far better than the current law.

The bill now requires lenders to prominently disclose:

One, the effect of making only the minimum payment on the account each month. That is not in the current law. If you vote against this bill, you are voting that we will continue not to give people information. We require it in this bill, and it is a significant advantage.

Two, when late fees will be imposed so people understand the consequences of not making their payments;

Three, the date on which an introduction or teaser rate will expire as well as what the permanent rate will be at that time.

This is potentially the greatest abuse of the consumer who believes they are getting an interest rate at a very low level only to discover that they expire quickly and they are subjected to a higher rate that they cannot pay or maintain.

In addition, the bill prohibits the cancelling of an account because the consumer pays the balance in full each month and avoids incurring the finance charge. We are, indeed, encouraging that kind of payment and avoidance of debt and interest charges. That, we believe, makes sense for the American consumer.

There is not every degree of consumer protection that all of us would like, but no one can credibly argue that current law compared with this legislation is superior. It is much superior.

Finally, let me raise the issue that was the focus of great debate in the last Congress—the question of whether debtors seek to discharge the judgment they owe because of their violence against abortion clinics.

I believe because of the efforts of Senator SCHUMER and Senator HATCH language assuring that those debts cannot be avoided is now in this bill, and in my judgment, satisfactory to warrant, for those of us who are concerned about abortion clinic violence

and the protection of women's rights, fair and balanced legislation.

So I urge the adoption, at long last, after years of work on a bipartisan basis, of this important bankruptcy reform. There are not a few Members but an overwhelming number of Senators who have amendments, changes of laws, and their considerations in this legislation.

I am, again, very indebted to Senators GRASSLEY, HATCH, LEAHY, and BIDEN for their extraordinary efforts that have brought this bill to fruition. And I am very proud to join with Senator GRASSLEY as the principal coauthor and Democratic sponsor of this important legislation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. I thank the Senator from New Jersey.

The Senator from Texas, Mr. GRAMM.

Mr. GRAMM. Mr. President, I wanted to come over this morning and talk about an amendment offered by Senator DURBIN. I am opposed to this amendment. I believe, if adopted, this amendment would do great harm to people in America who are trying to borrow money but do not have perfect credit ratings. And, as a result, this amendment would deny access to the American dream for millions of people who are fulfilling that desire today.

In addition, I do not believe that the amendment is well intended in that I sense it is really aimed at disrupting the bankruptcy bill. But, beyond that, the amendment is very dangerous. I hope my colleagues and their staffs, as we move toward a vote on this amendment, will listen to what I have to say because it is very important that we understand this amendment in context and the very real harm it would cause.

When a major piece of legislation, such as the bankruptcy bill, is before the Senate, there is a natural tendency for those opposed to the bill to just throw things into it, much as somebody would throw rocks at a car or take other action to disrupt things. But the problem is, these kinds of amendments have consequences.

No one in the Senate doubts that the bankruptcy bill is going to become law. So I would urge Senators, whether they are for this bankruptcy bill or not, to take a long, hard look at the Durbin amendment to determine whether they want to risk the possibility of such a dangerous provision becoming the law of the land.

Finally, before I explain this whole issue in some detail, let me say there are few subjects that are less well understood than subprime lending. In fact, the title ''subprime'' is counterintuitive—it creates the impression that you are borrowing below prime, when subprime means, in fact, you are paying above prime interest rates because you do not qualify for prime lending.

So let me begin by talking about the Durbin amendment and what it does. I want to explain why it is dangerous, and then I want to call on my colleagues, whether they are for the bankruptcy bill or not, to join Senator HATCH and others in tabling this amendment.

Let me make clear, this amendment is not going to become the law of the land. This amendment is not going to be ultimately in the law books of this country because it will hurt millions of people whom we should not be hurting.

First, let me begin by defining subprime lending. Subprime lending is basically lending that is made to people who do not have established credit ratings or who have problem credit ratings.

There are people who would like to pass a law, I am sure, to say you cannot lend to people above prime lending rates. If such a law were passed, the net result would be that tens of millions of people would never be able to borrow money through established channels. They would be forced to go into the sort of black market of lending where you borrow from your kin folks when you do not have access to credit. Subprime lending has a bad name, but unjustifiably so, in my opinion.

When I was a boy, my mama wanted to buy a home. She borrowed the money from a finance company, and she paid 4.5 percent interest. Gosh, that sounds low today. But in the 1950s, that was 50 percent above prime because banks were lending money at 3 percent. So you might say my mama was exploited by a subprime loan because she was forced to pay 4.5 percent interest whereas other people living in the town where I grew up were able to borrow at 3 percent.

But my mama was a single mom. She was a practical nurse who was on call but did not have an established employer. The plain truth is, in that day and time, banks did not lend money to people like my mother.

The rest of the story is that by getting this subprime loan, even though she paid 50 percent above prime, my mother became the first person in her family, I guess from Adam and Eve, ever to own the dwelling in which she lived. And I think it is interesting that all of her children have owned their own homes.

Some people look at subprime lending and see evil. I look at subprime lending, and I see the American dream in action. My mother lived it as a result of a finance company making a mortgage loan that a bank would not make.

We are getting more people involved in subprime lending in America. As a result, the margin between what people with good credit pay and what people with troubled credit or no established credit pay is beginning to narrow. The Durbin amendment would discourage people from getting into subprime lending and would make it more difficult and more expensive for people to borrow.

If you read the Durbin amendment—well, gosh, it just looks wonderful. What it says is, if you are borrowing money at a subprime rate and the person making the loan commits a material failure to comply with—and then it lists an alphabet soup of provisions—then the loan will be forgiven.

Let me explain what these provisions are. I think when you look at them, you see how dangerous this provision would be.

One of the provisions of law—if you fail to comply with it, that would mean, in essence, the loan would be free and you would not have to pay it back—says that if I am going to give you, over the telephone, information about the loan, I have to file, in writing, in advance, that such a communication is going to take place.

Do we really want a provision of law that says if I am a lender, and I am lending you money to buy a home, and I fail to file in writing that we are going to be going over some of the terms on the telephone, that you should not have to pay back the loan? Does anybody think that makes sense?

Another provision has to do with notification in advance. And under law, you are required to notify people of the terms of the loan 3 days in advance of when the actual transaction is going to occur.

Does anybody here believe that if you made a mistake in making the loan, and you notified people 2 days in advance, they should be empowered simply not to pay the loan back? Does anybody think that would be good public policy?

And finally, and perhaps most destructively, for the first time, this amendment would give the borrower an incentive to game the system and try to entice the lender into making a mistake. For example, suppose the lender makes an error in complying with any one of the numerous, different provisions of statute—either timing of notification, or notification in writing that telephone communications are going to be made—or the borrower creates, by refusing to send information back or by disrupting the normal process, a confrontation between the borrower and the lender, should the borrower benefit by having the loan forgiven?

Does anybody doubt that under these circumstances there would be an incentive for some borrowers to help create noncompliance with these provisions—or look for such noncompliance at a later date? At a time when millions of Americans now have an opportunity to own their first home, buy an automobile, send their children to college, do we really want a provision of law that will pit the borrower and the lender in a gamesmanship situation where, if the lender makes a mistake or can be enticed to do so, the loan is forgiven? Surely, no one could believe this is good public policy, whether you are for the underlying bankruptcy bill or not.

Secondly, it is not as if there are not already sufficient penalties for violating all these provisions of law. Let me read the penalties.

The penalties for violating these provisions of law that are referred to in the Durbin amendment read as follows:

Impose a civil money penalty ranging from $5,500 to more than $1 million for each day of violation.

Does $1 million a day sound like a penalty to you? It does to me. One million dollars a day would have a profound impact on every lender in my hometown in College Station. I don't know about New York, but my guess is no one anywhere would like to give up $1 million a day.

Termination of a bank's charter; subject a bank to an enforcement agreement which could include restriction on the ability of the bank to expand and grow—those are very severe penalties—subject directors and officers to removal. Finally, there is the penalty of a temporary or permanent injunction against the illegal activities.

It is not as if our truth in lending laws are toothless. The plain truth is, these are some of the more severe monetary penalties that exist in the civil laws of this country.

I urge my colleagues to reject this amendment. I ask them to reject it for the following reasons: First, it has nothing to do with the bankruptcy bill. It is an amendment aimed at derailing the bankruptcy bill.

I understand being opposed to legislation. From time to time, I have been called upon by my constituents and my conscience to try to derail legislation I thought was bad. I understand that, and I respect it.

But I urge my colleagues, whether they are for the bankruptcy bill or not, not to vote for a provision which will be very destructive of home mortgage lending for people who find the greatest difficulty in getting a mortgage; that is, people who don't have established credit or who have troubled credit.

The biggest problem of all I save for last, and that is, we wouldn't just drive up the cost of lending with this amendment, where every bank or every lending institution has to realize that a technical error—the failure to notify in writing before they talk to somebody on the phone, or the failure to give a 3-day notice, any one of these errors—could mean the loan is uncollectible. What do you think that is going to mean? It is going to mean that thousands of lenders are going to get out of the subprime lending area exactly at the moment in history when more and more lenders are getting into it.

When they get into it, rates come down; when they get out of it, rates go up. Anybody who ever took freshman economics could understand that.

Thousands of lending institutions in America are going to look at the Durbin amendment and realize that an error—and it is not required that they intended to commit the violation; there is no provision in the amendment that there be intent, but just an error that is somewhat material, such as notifying 2 days ahead of time instead of 3 days ahead of time what is going to be in a closing, for example—makes the loan uncollectible. And when that happens, thousands of lenders who are lending today to people with troubled credit, giving them an opportunity to own a home, clean up their credit record and become part of mainstream America, are going to quit lending. Nobody with good sense can argue otherwise.

If I were running a little bank in College Station, and I could have a loan made uncollectible because of an error I made where there was no intention to make the error, I would stop making those kinds of loans. There are plenty of prime loans that can be made to people with good credit.

The second thing that is going to happen is, even the financial institutions that can afford to incur these risks are going to charge higher interest rates because the risk has to be incurred.

What is the net result of the Durbin amendment, if it were adopted? The net result is fewer institutions will be making subprime loans, fewer Americans with no established credit or with troubled credit will be able to get mortgages, and when they do, there will be higher costs to get those mortgages. That is what this amendment is about.

Finally, let me address the vast majority of Members of the Senate who are for the bankruptcy bill. This amendment is not going to become law. If this amendment is adopted, we are going to have a conference, and we are going to have to go through this long process which could end up derailing the bankruptcy bill. I am sure many people who are for this amendment hope that happens. My guess is we can fix it but only after a tremendous amount of work. In addition, we voted on this very amendment when we considered this bill last year, and we rejected it.

We have written many provisions into the bill to try to satisfy those who really blame lenders for bankruptcy instead of borrowers, some of which are not good public policy. However, in terms of trying to satisfy people, which is necessary to pass a big bill such as this, as chairman of the Banking Committee, I have tried to reach an accommodation.

This amendment, A, is dangerous; B, it would hurt people who want to own their own homes; C, it will mean we will have a lot more bad amendments offered that won't be offered if we reject this amendment.

It is my understanding that Senator HATCH or Senator GRASSLEY intends to move to table this amendment. I urge my colleagues to look at this amendment very carefully, look at the points I have made, and reject this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The Chair advises that the pending business is the Durbin amendment No. 17.

Mr. BROWNBACK. Mr. President, I rise to address the bankruptcy bill that is before the Senate, and in particular a provision that is in this overall compromise language that is being brought in front of the body, something I want to point out to a number of my colleagues.

Overall, I believe this legislation is a good piece of legislation. We have worked hard on it. We have worked for a number of years on it. We have worked to be able to craft this bill. The conference report passed with over 70 votes, which is a substantial vote, and the agreement of a number of people.

One of the pieces of the compromise was the homestead compromise and matters regarding the homestead provisions.

This is when you go into bankruptcy, what amount of property that is considered your homestead can be protected in bankruptcy, if you do not have a direct loan against it or purchase money loan against your house and a contiguous acreage, or in the case of a farm home and 160 contiguous acres. This is a very important compromise in the current bill, and I seek to keep this compromise language and not for that to be changed.

Kansas, along with other States, has within our State constitution the protection of homesteads. It dates back to the days when we had the Homestead Act, when you could go out West and settle, and if you farmed it for 5 years, 160 acres, you could keep it. It was yours. The way we settled much of the West was if you tame the 160 acres for 5 years, it was yours. Built within our constitution is the statement that if you don't borrow directly against this land, if you keep it clear and free of other loans and you go through bankruptcy, you can keep this.

Back in a prior lifetime, I was a practicing lawyer. I examined a number of abstracts. We would go through farm cycles where prices would be good and they would go down. Then a number of people would borrow and they would lose everything they had except their homestead. They could rebuild the farm based on that.

You could go through abstracts of land titles and find that here was a case where a guy borrowed this, this, and this, and he didn't borrow against the homestead. He lost everything else but not the homestead. He rebuilt from that. It almost followed the farm cycle with farm prices.

So the homestead provision within the bankruptcy code in allowing States to have their homestead provision, as opposed to a federalized homestead provision, is very important to my State, to me, and to a number of States that have this type of homestead provision in their State law or, more so, in

my home State constitution. This has been in Kansas's constitution—or a provision of this—dating back to 1859, and going back even to territorial days in Kansas. Many farmers have used this law during economic hardship to protect their farms, their homes.

We worked hard last year and this year to get a compromise because a number of people don't like each State having its own homestead. They think there was fraud from some people who were moving to another State to take advantage of the homestead laws that might be easier in one State or another. We worked to get a compromise to work this out.

I want to put this out. Other people want to speak on this, and this is a very important point to me and my State. The compromise we put into the bill, some people wanted to change this and others wanted to protect States rights. The current bill provides that within the 2 years prior to bankruptcy, no one may protect more than $100,000 worth of new equity obtained in one's homestead. You have 2 years, $100,000. This would prevent debtors from shifting assets into their homes to avoid creditors.

Studies have shown that abuse of State homestead laws is very rare. Yet we are overturning over 130 years of bankruptcy law by imposing Federal standards—this would be the first time we have done Federal standards on homestead in bankruptcy law. In 130 years of bankruptcy law, this would be the first time we have done it. We should not do that, particularly based on such scant evidence.

Seven States have constitutional provisions that are different from the $100,000 homestead cap that may be offered by someone on the floor, just across the board. Somebody was saying a $125,000 homestead cap. Either one would take and federalize State law, State constitutional law—constitutional law—if we go with this homestead cap that some propose, based upon anecdotal evidence of some abuse of this.

If there is fraud involved in moving from one State to another one, and taking money to put it into a bigger homestead to protect it, that can be set aside now by the bankruptcy court under a fraudulent practice, and it frequently is. That is the way that is done.

I urge my colleagues not to federalize this area that has been under the control of the States, that is in State constitutional law in my State and in seven other States. If this is passed, a number of us will say this is not something we can tolerate or work with at all. This is something that would cause a number of us to work against the bill. Some want to get the bill off and don't want it to pass anyway. Maybe that makes this a better provision to them, but I don't think this is one that we ought to be doing at all for the first time ever. It is one that I vigorously oppose—if an amendment is proposed to change the compromise that is in the bankruptcy bill currently on the floor.

I urge my colleagues to vote against any change in this homestead provision away from what is crafted in this carefully balanced legislation we have before us.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I will be very brief.

All Members of the Senate have, by nature, two residences—in our home States, of course, and wherever they reside during the time we are in session serving in the Senate.

I feel very fortunate to have my residence in Vermont, a beautiful State. It is out in the country on a dirt road with a gorgeous view. I also am fortunate that my residence here is in the Commonwealth of Virginia. In that regard, I believe I am represented, at least temporarily, by two friends from Virginia, the distinguished senior Senator, Mr. WARNER, whom I have known for decades and with whom I have been close personal friends, and the current occupant of the Chair, the newest Senator from Virginia, a former Governor, Mr. ALLEN. In that regard, I wish a happy birthday to the current occupant of the Chair, Senator ALLEN, and wish him many more such birthdays. I realize that he is in a difficult position. Under the rule, he cannot respond to this. But I did want to do that and tell him how much my family and I enjoy our temporary residence in the beautiful Commonwealth of Virginia.

Mr. President, I am going to offer, at some appropriate point, two amendments. I understand that the distinguished chairman and others have adopted this basically no-amendment posture. They can always vote these down. But one of my amendments would clarify when a debtor's current monthly income should be measured. The current monthly income is a cornerstone of the bill's controversial means test provision. No matter whether one is for or against the means test, the provision should be at least as clearly drafted as possible. My amendment would avoid unnecessary future litigation by clarifying that current monthly income is measured from the last day of the calendar month immediately preceding the bankruptcy filing.

Under section 102 of the bill, a presumption of abuse—requiring dismissal of the bankruptcy case or conversion to chapter 13—arises when a chapter 7 debtor has a defined level of ''current monthly income'' available, after necessary expenses, to pay general unsecured debt. ''Current monthly income'' is defined in the bill as the debtor's ''average monthly income . . . derived during the 6-month period preceding the date of determination.'' It is ambiguous in defining what that 6-month period is.

Since accuracy of the schedule is of vital importance, and subject to audit, it is important that we know exactly what it is. My amendment would resolve the ambiguity and deal with full calendar months of income data, and to give a cutoff date prior to the bankruptcy filing.

My other amendment would be on the separated spouse and the means test safe harbor. On page 17, line 8, the language should mirror the other safe harbor provisions in the bill. The way it is set up in the bill, as currently drafted, is provided by the distinguished chairman, the distinguished senior Senator from Delaware, and others. Even though parents might legally be separated, if one spouse files for bankruptcy, the income of the other spouse would count to determine whether the parent's income exceeds the means test for the purposes of the safe harbor, for access to chapter 7.

What this means is if a battered spouse flees her home with her children, she can be denied bankruptcy relief regardless of her circumstances because in the Hatch-Biden, et al, bill, her husband's income would be counted, even though she receives no money from him.

I cannot think of anything that is more antiwoman, antichild, or antifamily.

I ask unanimous consent that my two amendments be filed and be available for consideration at the appropriate time and in the appropriate sequence because I do want to correct this antiwoman, antichild, and antifamily result, something I do not think is intended by the drafters of the bankruptcy law, but it is just one more example of some of the things that should be corrected in this bill.

The PRESIDING OFFICER. The Senator has the right to submit those amendments.

The Senator from Illinois, Mr. DURBIN.

AMENDMENT NO. 17, AS MODIFIED

Mr. DURBIN. Mr. President, I join the Senator from Vermont in wishing the Presiding Officer a happy birthday and say this great opportunity you have to sit as Presiding Officer of the Senate and listen to these wonderful speeches has to be the greatest gift we can offer you. We wish you the very best in the years to come.

The pending amendment is an amendment to the bankruptcy reform bill relative to the practice of predatory lending. Predators, you may recall from having watched a few movies, are those who prey on other things. In this case, we have people offering credit in a predatory fashion.

Who are these folks? You have heard about them. They are the people who look for the retirees, the widows who are living by themselves in the home they saved up for their entire lives, who are brought into some mortgage scheme or second mortgage scheme and end up signing papers that are, frankly, a very bad deal. They end up paying interest rates far above the market rate. They face the possibility of balloon

payments that are impossible for them to make so they can secure a few dollars for perhaps consolidating some other loans or home improvements.

Time after time, these predatory lenders look for the elderly. They look for low-income people. They go to poor neighborhoods and seek out folks with limited knowledge of the law or a limited understanding of English. They have them sign these papers, and literally they watch their lives disappear. Everything they have saved up for in a lifetime ends up disappearing because of these con artists who claim to be creditors offering them money under terms which are not reasonable by any standard in America.

Is this a rare situation? Unfortunately, it is a growing phenomenon in this country. We see these people going forward offering what is known as subprime lending and subprime mortgages.

They argue in the industry that these people are not good credit risks, so you cannot give them the ordinary interest rates and terms; you have to make it a little tougher. I understand that. We do not want to close out the market for people who are on the edges of credit availability. We want to make certain they have access, too.

Believe me, the cases that have been documented time and again in the Senate and the House of Representatives, in State after State, are not those cases. The creditors are not lending to folks on the edge. These are people who are pushing these poor elderly and retired folks over the edge. A lifetime of savings for a home that a widow is living in absolutely vanishes when these con artists get a chance.

Where do they finally get their relief? If not through foreclosure in civil courts, in bankruptcy court. When that elderly widow has lost everything, cannot make any payments whatsoever, and finally goes to bankruptcy court and says, I just cannot do it anymore, guess who is standing first in line to get paid in full? These sharks, these people who time and again have taken advantage of the poor and the elderly across America.

A lot of people have come to me since I offered this amendment and have said: We just got contacted by the finance industry. The banks of this country are worried about your amendment. They are opposed to your amendment. They think you are going to create some real hardship in their industry.

The answer is, yes, I am going to create hardship in their industry with this amendment, hardship for the people who are giving their industry a bad name. If it is a good bank, if it is a good mortgage lender, if it is following the law of our country, they need not fear the Durbin amendment. The Durbin amendment is going after the bad actors and bad players, and the people who are opposing it in so many different ways are trying to shield the people who are violating the law and making these bad loans.

The people who are opposing my amendment and want to table it in a vote later today are those who want to make certain that the people taking advantage of the poorest and most vulnerable Americans are protected in bankruptcy court.

My amendment says explicitly that in order to be stopped from recovering in bankruptcy court, you must have violated the law—a material violation of the law, not something technical—a material violation of the law. I happen to believe that before you can walk into a court, you have to have clean hands, and the clean hands suggest that if I am coming into court and I want to recover under my contract, I have obeyed the law and followed it in all of my dealings.

It sounds pretty basic to me. It is a threshold question that should be asked of anyone in bankruptcy court, but if you listen to the opponents of my amendment, they say: No way. You may have violated every law on the book to get into bankruptcy court, but once you are there, you are under the protective shield of the U.S. Government. You are able to use our bankruptcy laws and our bankruptcy courts to reach miserable ends when it comes to the poor people who have been exploited.

It is amazing to me that at this stage in this prosperity we have enjoyed in our economy and all the things that have happened in America, we still have Members of the Senate and House of Representatives who are coming to the rescue of these bottom feeders in the credit industry. They are standing here defending them and giving them a chance to continue to exploit some of the poorest people, some of the most vulnerable people, in America.

Some say: DURBIN, there you go again; you are exaggerating this; it is not such a big problem. Let me tell you a few things I have learned in the course of preparing this amendment.

A group in Chicago—I represent the State of Illinois—I take a look at their information from time to time. It is called the National Training and Information Center. In September 1999, they took a look at the mortgage foreclosures in my home State. The Chicagoland home loan foreclosures doubled, increasing from 2,074 in 1993 to 3,964 in 1998. In a 5-year period of time, a prosperous time in America, mortgage foreclosures doubled in the Chicagoland area. The greatest percentage was in the suburbs, not in the inner city.

The increase in foreclosures in my State corresponds to the increase in originations by subprime lenders, not home loan originations. Loans by subprime lenders, the people about whom I am talking, increased from 3,137 in 1991 to 50,953 in 1997, a 1,524-percent increase.

Subprime lenders and services were responsible for 30 foreclosures in 1993. This number skyrocketed to 1,417 in 1998, a 4,623-percent increase.

Subprime lenders and services were responsible for 1.4 percent of foreclosures in 1993 and 35.7 percent in 1998.

The people who oppose my amendment say: Let the free market work; let the buyer beware; there are plenty of laws on the books. But these statistics tell the story. The people who are taking advantage of the most vulnerable—the widows, the elderly—are doing quite well, thank you. What do they end up with after they have gone through their nefarious scheme? The home a person has worked a lifetime to own, to live in, to retire in, to feel safe in.

The people who oppose my amendment say we need to protect these subprime lenders. The opponents of my amendment want to ignore the reality of what is happening. Subprime lending increases dramatically, mortgage foreclosures increase dramatically, and these subprime lenders go into bankruptcy courts and take homes away from Americans, and the people who oppose my amendment on the Senate floor say: Look the other way, this is the market at work, Senator; don't stick your nose into it.

I think this Senate ought to come to the aid of people who don't have the lobbyists sitting in the lobby of the Senate just outside that door. We ought to be considering people who can't afford to bring lobbyists to the Senate. We ought to consider the people who worked hard to make America a great nation, obeyed the laws, paid their taxes, had their small savings account and looked forward to their security and retirement in that little home, and then they were preyed upon and exploited by these people. These people want to walk into our bankruptcy courts and use the laws of the bankruptcy system in order to recover that home and take it away from someone.

Watch the vote on the motion to table the Durbin amendment and you will see a long line of Senators who will stand up and say these subprime lenders deserve the protection of the law. The Durbin amendment says pointblank they will be disqualified from using the bankruptcy court if they have materially violated the law in order to obtain this mortgage. That is what this debate is all about. This is a test of a number of things about the Senate: How many people care about consumers in this place? How many people are dedicated to business interests, regardless of whether they are unethical and unscrupulous?

Mr. GRAMM. Point of order.

Is the Senator suggesting that Members of the Senate are not voting their conscience on this bill? Is the Senator suggesting that there are Members who are voting for special interests instead of what they believe in? If so, that is a violation of the rules of the Senate.

Mr. DURBIN. I would like to respond to the Senator from Texas. Those who want to take the side of the financial industry in opposition to this amendment should be held accountable for

the fact that they are turning their backs on consumers. I do not question the motive of any Senator and his vote, but the Senator knows as well as I do how this is lined up: Consumers on one side, banks on the other side.

Let me state what is at stake here are credit practices that no one in the Senate should condone; frankly, no reputable bank or financial institution should condone. If you are a bank or an institution following the law of this Nation, making certain your people issue loans that are reasonable and in compliance with the law, you have nothing to fear from this amendment. But if you are a fly-by-night storefront operation exploiting poor people and the elderly in this country, you bet this amendment makes you nervous, and it should. Because it means that ultimately the bankruptcy court will not be there as your court of last resort.

The subprime mortgage industry offers home mortgage loans to high-risk borrowers—I acknowledge that—loans carrying far greater interest rates and fees than conventional and carrying extremely high profit margins. Yesterday I went through some of the cases which you would not believe, cases where they took people on a modest Social Security income of $500 a month, lured them into signing up for second mortgages and mortgages on their home with payments they could never afford to make, with balloon payments down the line of $40,000 and $50,000, impossible for these poor people to make, and then when they get in so deeply they couldn't see daylight, they said, we have a new idea, we are going to refinance your original loan. And guess what. They dug a deeper hole for these poor people, and ultimately they lost everything. They went into the bankruptcy court saying, we want you as a judge in bankruptcy, to give us a right to take this home away.

According to the Mortgage Market Statistical Annual for 2000, subprime loan originations increased from $35 billion in 1994 to $160 billion in 1999. As a percentage of all mortgage originations, the subprime market share increased from less than 5 percent in 1994 to almost 13 percent in 1999. By 1999, outstanding subprime mortgages amounted to $370 billion. The data also shows a substantial growth in subprime lending. The number of home purchase and refinance loans that have been reported by lenders specializing in subprime lending increased almost tenfold between 1993 and 1998, from 104,000 to 997,000. The number of subprime refinance loans also increased during that period from 80,000 to 790,000.

The growth of this type of lending should be of concern to every person in America, not just on the issue but because the victims involved are our parents, our grandparents, the neighbor down the block, the widow trying to make a meager living. They are being preyed on by these people.

The growth of the subprime lending industry is of concern first, because of the reprehensible tactics called predatory lending practices which some of the companies use to conduct their business; and second, because of the people, the senior citizens and the low income, the financially vulnerable, who they often target with loans.

According to the 1998 data, low-income borrowers accounted for 41 percent of subprime refinance mortgages. African-American borrowers accounted for 19 percent of all subprime refinance loans.

I would like to give some additional information about the situation in my home State of Illinois and in the city of Chicago. In an April 2000 study released by the Department of Housing and Urban Development, subprime loans were over eight times as likely to be in predominantly black neighborhoods in Chicago than in white neighborhoods. In predominantly black neighborhoods in Chicago, subprime lending accounted for 52 percent of home refinance loans originated during 1998, compared with 6 percent in predominantly white neighborhoods.

Now, subprime somehow sounds as if it is a deal. If it is a subprime loan, it is under conditions, interest rates, and terms far worse than any people would face in the normal course of business. Homeowners in middle-income predominantly black neighborhoods in Chicago are six times as likely as homeowners in middle-income white neighborhoods to have subprime loans. In 1998, only 8 percent of the borrowers in middle-income white neighborhoods obtained subprime refinance loans; 48 percent of borrowers in middle-income black neighborhoods refinanced in the subprime market.

We had a hearing recently on Capitol Hill in one of the Senate subcommittees of the Governmental Affairs Committee and brought in people and let them tell the story. Imagine the situation with which we were presented. A young woman came in and said: My mother and I decided we would buy a home—an African-American mother and her daughter. She said: I had a nice job but it was our first chance in the history of our family to own a home. She said to the Senators: You can't imagine how exciting it was, the idea we were finally going to have our little home.

I know what it meant to my family when we bought our first home. I know what it means to families across America. This is the American dream. This is your chance. Sadly, she got hooked up with one of these outfits. She wasn't a business major. She didn't have a lawyer to turn to and an accountant to ask questions. She was an average American trying to do the right thing for her mom and herself. She ended up getting into one of these nightmare situations where the home she bought was over-appraised, where she ended up with a mortgage she could never possibly pay, with terms and conditions that, frankly, guaranteed failure. And that is what happened. As a result of that second mortgage on her home, there was a foreclosure that led her to bankruptcy court, and the bankruptcy court basically said the company that ripped her off could take her home away. End of the American dream for someone who was trying to do the right thing.

In 1998, my colleague, Senator CHARLES GRASSLEY, Republican from Iowa, chaired the Special Committee on Aging, on predatory lending practices. William Brennan, director of the Home Defense Program of Atlanta, GA, Legal Aid Society, put a human face on the issue. He told us the story of Genie McNab, a 70-year-old woman living in Decatur, GA.

Mrs. McNab is retired and lives alone on Social Security retirement benefits. In November of 1996, with the ''help'' —I use that word advisedly—of a mortgage broker, she obtained a 15-year mortgage loan for $54,300 from a large national finance company. Her annual rate of interest is 12.85 percent. Under the terms of the mortgage, she will pay $596 a month until the year 2011, when she will be required to make a final payment of $47,599. By the time she is done, her $54,200 loan will have cost $154,967. When Mrs. McNab turns 83 years old, under the terms of this wonderful deal offered to her, she will be saddled with a balloon payment which will be impossible for her to make. She will face foreclosure. She will be forced to consider bankruptcy. And when she walks into the bankruptcy court, if the Durbin amendment is not adopted, the person who fleeced her out of her home and her life savings, with a big grin on his face and a lawyer at his side, is going to recover. He is going to take away everything this poor lady has. She will face the loss of her home and her financial security, not to mention her dignity and her sense of well-being.

Ironically, Mrs. McNab paid a mortgage broker $700 to find this wonderful arrangement, a mortgage broker who also collected a $1,100 fee from the mortgage lender. Sadly, Mrs. McNab is the typical target of the high-cost mortgage lender, an elderly person living alone on a fixed income. We can have all the hearings we want on Capitol Hill in the Select Committee on Aging, we can talk about the greatest generation ever that served in World War II, we can talk about our respect for our seniors—and we should. But this amendment will be a test of respect for senior citizens who were the victims of so many of these lenders.

This lady, living alone on a fixed income, was just the target these companies look for. The death of a spouse, the loss of a spouse's income, a large medical bill, an expensive home repair, mounting credit card debt, and many of these people are pushed right over the edge, right into bankruptcy court.

These are real life circumstances that make Mrs. McNab and others an irresistible target for these loan sharks and for members of the subprime mortgage industry.

According to a former career employee of the industry who testified before the Senate Special Committee on Aging, he told the story about what they are looking for when they go out trying to find people to sign up for these loans. Incidentally, the man was so confident that he had to testify anonymously, behind a screen. He was afraid some of the companies that were involved in some of these practices would figure out who he is. So anonymously he testified before the Senate behind a screen so no one would see him, and here is what he said about his experience in the subprime mortgage industry:

My perfect customer would be an uneducated woman who is living on a fixed income—hopefully from her deceased husband's pension and Social Security—who has her house paid off, is living off of credit cards, but having a difficult time keeping up with payments, and who must make a car payment in addition to her credit card payments.

That is the perfect target. That is what he is looking for. This industry professional candidly acknowledged that unscrupulous lenders specifically marketed their loans to elderly widows, blue-collar workers, people who have not attended college, people on fixed incomes, non-English-speaking people, and people who have significant equity in their homes. These are people who have worked a lifetime and made the mortgage payments, finally burned the mortgage in a little family celebration, sitting in that home looking forward to comfortable years, and in come these sharks swimming around in the waters of their home. When it is all over, they are devoured in bankruptcy court. We are talking about reforming this court.

They targeted another such person in the District of Columbia, Washington DC, Helen Ferguson. She came before the Senate Aging Committee, Senator GRASSLEY's committee. She was 76 years old when she testified. She told us as a result of predatory lending practices, she was about to lose her home. In 1991, Mrs. Helen Ferguson had a total monthly income of $504 from Social Security. With the help of her family, she made a $229 monthly mortgage payment on her house—certainly a modest lifestyle by any measure. However, on her fixed income she could not keep up with needed home repairs. She began hearing and seeing these radio and TV ads for low-interest home improvement loans, so she called one. Mrs. Ferguson thought she had signed up for a $25,000 loan. In reality, this lender collected over $5,000 in fees and settlement charges from her on a $15,000 loan. The interest rate he charged her? 17 percent. Her mortgage payments went up to $400 a month, almost twice what they were before.

Over the next few years, the lender repeatedly tried to convince Mrs. Ferguson the answer to her concerns was to take out more loans. He called her—even called her sister at home and at work, trying to encourage them to sign up for more loans—what a nice gesture. He sent Christmas cards to the family, and letters expressing real concern about the problems they were facing.

In March of 1993, Mrs. Ferguson finally gave in to this lender, borrowing money to make home repairs. By March of 1994, she couldn't keep up with the mortgage payments. She signed up for a loan with another lender, unaware that it had a variable interest rate and terms that would cause her payments to rise to $600, eventually $723 a month. Remember, this lady started off back in 1991 with a $229 monthly mortgage payment. She is now up to $723 a month, thanks to the helping hand and assistance of these subprime lenders who are looking at this great target—Mrs. Ferguson's home. For this loan, this next loan, she paid another $5,000 in broker's fees. She is putting an additional mortgage on this little home, and $5,000 of the new mortgage is going straight to the broker; it isn't going back to her, more than 14 percent in total fees and settlement charges on the front end of this subprime mortgage.

The first lender also continued to solicit her. She eventually signed up for more loans. She could not get out from under. They kept saying one more loan and she would be just fine. Each time, the lender persuaded her that refinancing would enable her to meet her monthly payments. Mrs. Ferguson was the target of a predatory loan practice known as loan flipping. The Durbin amendment specifically cites that type of practice as a violation, a material violation of the law that should make certain they cannot go to bankruptcy court and take Mrs. Ferguson's home away from her after they have been engaged in this kind of conduct for over a decade. She was the target of this practice of loan flipping, and in such cases, lenders purposely structure the loans with monthly payments they know the homeowner cannot afford so that at the point of default, it provides the lender with additional points and fees. They make money on these every single time, and in the case of some of Mrs. Ferguson's loans, not only did the lender prepare two sets of documents and rush the signing, but the lender's representatives took with them all the papers from the mortgage closing and mailed them to her only after the 3-day rescission period was expired, and the check for home repairs was spent.

You have heard about that. If you make a bad deal, you have 3 days to change your mind. They took the papers away at the closing and said they would mail them to her. She got them 3 days later. They knew what they were doing.

Some opposed say Mrs. Ferguson just needs a good lawyer. A good lawyer for a lady making $500 a month on Social Security, who has seen her monthly mortgage go from $229 to $723? She has to go find a good lawyer to fight these folks?

That is what they think is the recourse here, that is the remedy. They are going to argue we do not need the Durbin amendment; Mrs. Ferguson can get her day in court. Let her come down on K Street in Washington, DC, and find a nice law firm to take care of her. We know better than that. People such as Mrs. Ferguson around America are going to be those who don't ever want to have been seen in a courtroom. They come into bankruptcy court ashamed.

After a lifetime of saving and sacrifice, they are forced into this predicament, and the people opposed to my amendment tell us once they get to bankruptcy court let the buyer beware. Let the people take her home if they want.

Eventually, Mrs. Ferguson was obligated to make monthly payments of more than $800, although her income was still $504 a month, and the lenders knew it. That is another provision in the Durbin amendment. If they knowingly make loans to people who cannot afford to repay them, they have violated the law. It is a material violation of the law to drag these people into debt so deeply they can never get out again and to know it walking in the front door.

In 5 years, the debt on her home increased from $20,000 to $85,000. For some wealthy people in America that may not sound like much, but for a lady living on $500 a month, it is a mountain she will never be able to climb. She felt helpless and overwhelmed. She contacted AARP. She didn't know where to turn. She realized these lenders had violated the Federal law in what they had done.

Lump-sum balloon payments on short-term loans, loan flipping, the extension of credit with the complete disregard for a borrower's ability to repay—these are not the only abusive mortgage practices. Lenders on these second mortgages sometime include harsh repayment penalties in the loan terms, rollover fees, charges into the loan, or negatively amortize the loan payments so the principal actually increases over time.

You can never catch up with it. It just keeps growing, all of which is prohibited by law, although many ordinary homeowners do not know what the law says.

Some of these homeowners will not make it to a lawyer or other source of help before financial meltdown occurs. When they realize what has happened, these consumers are often on the brink of foreclosure and bankruptcy.

There are some protections built into current law. I have no quarrel with this. But you cannot call these protections ''ample'' when they permit a gross injustice. There exist out there lenders who illegally trap families into insurmountable debt, force the families into bankruptcy, and then actually continue to pursue their greed by staking their claim in bankruptcy proceedings.

The debate on the bankruptcy reform bill before us started I guess about 5

years ago. The argument from the people who wanted to change the law is that too many people were coming to bankruptcy court and filing for bankruptcy and they really shouldn't, they should pay back their debt. They argued that the people who were filing for bankruptcy had forgotten the moral stigma of declaring bankruptcy in America. Yet when I look at this situation, where is the moral stigma? Shouldn't the moral stigma be on the conscience of these lenders who have dragged these poor unsuspecting people into a situation where they have no hope and nowhere else to turn? When it comes to that moral stigma, it will be interesting on the vote on the Durbin amendment as to whether the people believe, in voting in the Senate, there is any moral culpability on the part of those who have taken advantage so many times.

Yesterday, Senator HATCH said that my amendment ''will adversely affect the availability of credit to certain consumers, many of whom may be low-income and minorities whom this amendment purports to protect. Moreover, the secondary market for such mortgages will also be affected thereby placing an upward pressure on the pricing of such loans.''

Well, if Senator HATCH really feels that way, then he should be joining me in supporting this amendment. This amendment will not affect available credit for anyone. Nor will it affect the secondary market. The only ones affected by this amendment are the low-life lenders who are breaking the law, and ruining people's lives in the process. They are the only ones who should be concerned. Because they will no longer be able to profit from their unscrupulous practices.

And the finance industry ought to think twice about harboring and protecting these people. It doesn't give their industry a good name or a good reputation.

Senator HATCH also said yesterday that my amendment ''does not require any finding that such a violation was the cause of the debtor going into bankruptcy. Now that's just not good law. That's not the way we should be making law. Nor does it require that a violation of the Home Ownership and Equity Protection Act had to have been found for this draconian remedy to take place.''

Mr. HATCH. Mr. President, will the Senator yield?

Mr. DURBIN. I am happy to yield for a question.

Mr. HATCH. Could the Senator give me some indication when he is willing to go to a vote on this amendment?

Mr. DURBIN. I am hoping to in just a few moments.

Mr. HATCH. When the Senator has concluded, I will move to table.

Mr. DURBIN. I only yielded for the purpose of a question.

Mr. HATCH. I understand. I am just wondering if we can have some idea when we can go to a vote, and then I would be able to give people some sort of notice.

Mr. DURBIN. I think that is reasonable. I would say no more than 20 minutes.

Mr. HATCH. On your amendment, and then Senator GRAMM.

Mr. GRAMM. I think I can do it in 10 minutes.

Mr. HATCH. Then about 10 until 12; is that all right? I will make a motion to table. Could I ask unanimous consent?

Mr. GRAMM. Could we divide the time so the Senator would have his time and I would have mine? I sense that the Senator is somewhat caught up in this and would like to speak. And I want to be sure I get the opportunity.

Mr. DURBIN. The Senator from Texas is correct, I am caught up in this. I think we have 40 minutes remaining. I will take 15, if the Senator from Texas would like to take 15. How is that?

Mr. GRAMM. That is all right.

Mr. HATCH. If I could move to table at 10 until 12, and let everybody know, is that OK?

Mr. DURBIN. I want to make sure I understand what the Senator is saying. If we could have the time between now and 11:50 evenly divided, that would be fine.

Mr. HATCH. I ask unanimous consent that be the case, and I will move to table at the conclusion of that time.

No second degree will be in order.

Mr. DURBIN. That is right.

Mr. HATCH. Before the vote—in other words, we will divide the time up until 10 until 12, equally divided with no further amendments before the vote, and I will move to table at that time, and we will have a vote.

The PRESIDING OFFICER (Mr. ALLARD). Is there objection?

Mr. DURBIN. The point made by the staff is well taken. If the motion does not prevail, the amendment will still be pending and open for debate and amendment; is that correct?

Mr. HATCH. That is right.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DURBIN. I thank the Senator from Utah.

What is interesting from the parliamentary side is, once you have made a motion to table, it is not debatable and it all comes to an end.

I will make a few comments in closing, and Senator GRAMM will have his opportunity, and the Senate will vote on whether to table the Durbin amendment.

For those who have not heard the Durbin amendment, it says if you are going to go to bankruptcy court and claim protection to try to pursue a mortgage foreclosure, you have to walk into bankruptcy court with clean hands. You cannot be an unscrupulous, illegal lender taking advantage and exploiting poor people, elderly, and widows, and walk into bankruptcy court and say I want the protection of the law.

The people who oppose it will say folks just have to come to understand the conditions of these mortgages; they have to learn a little bit about the law; they have to understand this is an industry that is out to make a profit, too.

I think there is truth to that. I think people have to come into these transactions with some basic understanding of the law. But think about the people we are talking about here. These are 70- and 80-year-old retirees who are losing their homes to these loan sharks who know the law inside and out. These are people with limited understanding of the law, maybe limited education, and maybe limited understanding of the English language. These are the victims. These are the targets. And to argue that these are the people who should understand the great law of America is to suggest that each one of us knows what the backs of our monthly statements from the credit card companies really mean.

I am a lawyer. I haven't flipped over to see the faint type and small letters on the back side of a page to determine the conditions of my credit card. How many times have you stopped to read it? I haven't. I am not sure I could understand it if I did. That is the reality. I am a lawyer; these folks are not. These are people who have done the right thing in America, and they are the victims.

Senator HATCH also said yesterday that my amendment ''does not require any finding that such a violation was the cause of the debtor going into bankruptcy. Now that's just not good law. That's not the way we should be making law. Nor does it require that a violation of the Home Ownership and Equity Protection Act had to have been found for this draconian remedy to take place.''

Now let me get this straight. If a lender breaks the law, if it's been demonstrated that they clearly violated the Truth-in-Lending Act, the portion dealing with predatory mortgages and burdened a family with an outrageous, morally indefensible loan, if they have done all that, then the bankrupted family still has to prove that is why they went bankrupt.

Think about that. After they have lost their homes to this unscrupulous lender, some of the critics of this amendment say the burden is still on the borrower: You have to prove I was unscrupulous. You have to prove this lender did illegal things. If they can't, then the lawbreaker can still sit down at the table and take the family's assets.

I can think of no better example than that of what a bad law really looks like. My amendment addresses it.

Yesterday, we learned from Jodie Bernstein, Director of the FTC Bureau of Consumer Protection that a lending arm of Citigroup ''hid essential information from consumers, misrepresented loan terms, flipped loans [repeatedly offering to consolidate debt

into home loans] and packed optional fees to raise the costs of the loans.'' And that the ''primarily victimized'' . . . were the most vulnerable, hard-working people who had to borrow to meet emergency needs and often had no other access to capital.

The FTC lawsuit comes after almost 3 years of investigation. Well we have an opportunity to help curb these predatory lending practices today by passing my amendment.

Why do we need my amendment to deal with predatory lending practices? Because of: the statistics I mentioned earlier; because of victims of predatory lending like Ms. McNab and Ms. Ferguson; and because of suits like that filed by the FTC against a lending arm of Citigroup—predatory lending is an epidemic.

We can end this epidemic with this amendment. Current law is not sufficient to deal with it. If current law were enough, we wouldn't be standing here today; we wouldn't have seen the dramatic increase in these loans nor the dramatic increase in mortgage foreclosures directly attributable to these loans.

The problem of predatory financial practices in the high-cost mortgage industry is relevant to bankruptcy because it is driving vulnerable people into bankruptcy.

These people are not entering bankruptcy in order to abuse the system, they are filing bankruptcy because the reprehensible tactics of unscrupulous lenders have driven them into insolvency and threatens their homes, cars, and other necessities.

The question is whether my colleagues in the Senate want to vote to protect these victims by voting for the Durbin amendment.

My amendment prohibits a high-cost mortgage lender that extended credit in violation of the provisions of the Truth in Lending Act from collecting its claim in bankruptcy.

For people, such as Genie McNab, Helen Ferguson, Goldie Johnson, and the Mason family, about whom I talked yesterday, if they go to the bankruptcy court seeking last-resort help for the financial distress that an unscrupulous lender has caused them, the claim of the predatory home lender will not be allowed if the Durbin amendment passes. If those who move to table my amendment—if Senator HATCH or Senator GRAMM prevail—these predatory lenders, guilty of abusive practices, will have the protection of the bankruptcy court. If my amendment passes, they will not.

My amendment is narrowly drawn. It simply says that a creditor who violates the law cannot then ask for the law to protect them in bankruptcy court. I do not think my colleagues, in their effort to create a bankruptcy system more favorable to creditors, want to protect these unscrupulous people in the process.

Congress has seen fit to pass laws to protect consumers from some of the egregious practices of predatory lenders, including the Home Ownership Equity Protection Act and the Truth in Lending Act.

And I might say, just briefly, my first exposure to Capitol Hill came as a college student in this town. I worked for a Senator from Illinois whose name was Paul Douglas. He served from 1948 to 1966. He was an extraordinary man who fought for consumers during his entire career. Maybe some of that has rubbed off in the way I view politics.

But one of things he pushed for his entire career—and he did not serve long enough to see happen—was the passage of the Truth In Lending Act, which said that instead of ''buyer beware,'' the consumer should be informed. I think that is a good law for America. People who are abusing that law, a law that has been the law of America now for 33 years, should not have the protection of bankruptcy law when they go to court.

If this bankruptcy legislation is enacted into law, it will force all debtors, including those who fall below median income, to jump through all sorts of new hoops so we can be satisfied the debtor is not abusing the bankruptcy system. Cumbersome and burdensome new requirements are being placed on all debtors to weed out the abusers of the system.

In this case, we are not talking about debtors who are acting illegally; we are simply talking about abusive creditors whom I believe are acting illegally and should be held accountable.

My amendment does address their illegal practices. We don't live in a perfect world. We live in a world where predatory lending is all too common and growing in America. Think about how it has grown. Now put it in the context of a slowed-down economy, perhaps a recession—people finding they are losing their jobs; they don't have as much income, but their debts are growing. People will then, in desperation, turn to second mortgages for repairs at home or to overcome a family crisis. These will be the new class and the new array of victims of these predatory lending practices. Those are the ones about whom I am most concerned. If this Durbin amendment does not pass, you will see these numbers continue to increase.

We know many of the victims of predatory lending end up in bankruptcy court. This Congress should not allow these people to be victimized twice—first by the predatory lenders, and second, in the bankruptcy court.

Close the loophole that now exists. Shut the bankruptcy courthouse doors to creditors who illegally prey on the most vulnerable in our society, including older Americans, minorities, and low-income families. If the lender has failed to follow the law with the requirements of the Truth in Lending Act for high-cost second mortgages, the lender should have absolutely no claim against the bankruptcy estate. Bankruptcy courts always consider creditors' claims and whether they are fraudulent or not. They make this decision before they can go forward and pursue them in the bankruptcy court. All I am saying is, they should also say if they have violated the law in illegally offering these mortgages, they cannot use bankruptcy court.

My amendment is not aimed at all subprime lenders. If they are following the law, they have nothing to fear. If they are not following the law, they are going to hate the Durbin amendment. Indeed, it is aimed at the worst and most predatory of these subprime lenders.

My provision is aimed only at practices that are already illegal and, as the amendment says, materially illegal. It does not deal with technical or immaterial violations of the Truth in Lending Act.

Disallowing the claims of predatory lenders and bankruptcy cases will not end these predatory practices altogether. Yet it is a valuable step to curb creditor abuse in a situation where the lender bears primary responsibility for the deterioration of a consumer's financial situation.

I have supported bankruptcy reform laws. I hope I can support this one. But if we are going to take a no-amendment strategy on the floor of the Senate, if we will not hold abusive and unscrupulous creditors accountable for their activity, you cannot say this is a balanced bill. It is tipped to make sure the credit industry always wins and the consumer always loses.

This Congress, this Senate, represents not only bankers and lenders, it represents ordinary American families, retirees, people who vote, and people who care. We have to make certain the amendments we consider, the bankruptcy law we pass, remembers those people who cannot afford a lobbyist, those people who, frankly, have found themselves at a tragedy they never envisioned in their lives. They have to be remembered on the floor of the Senate.

I urge my colleagues on both sides of the aisle to think twice about this. The last time I offered this amendment, one Republican Senator voted against it who later told me: I wish I would have known what was in there. I wish I would have read some of the stories I heard about in my State about predatory lending. That Senator is going to reconsider the vote that is cast today.

I hope some of my friends on the Republican side will not take an automatic reaction against every amendment. This is a good-faith amendment. And when you go home and hear about these practices in your home State, and about families who are exploited, you will be able to say—if you vote for the Durbin amendment—I did what I could to stop these people who are taking advantage and exploiting these poor people across America. But if you vote down this amendment—business as usual, what a banner day for the subprime loan industry, for the sharks on the street who will go out looking—

as this person said here in closed testimony, anonymously—for that elderly woman who is on Social Security, who has a home with a value to it that you can extend into a loan she can never pay back, so that the subprime lender will realize his version of the American dream—he will own the home; it will be the home of the person who saved their entire life, hoping they could retire there in peace and tranquility.

Mr. President, I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, as always, our colleague has done an excellent job. He begins by telling us that only people who ruin people's lives could be opposed to the amendment. He tells us the amendment has to do with people who won World War II. He tells us the sharks on the street are the subprime lenders who are affected. And then he tells us it is a choice between those who respond to special interests and his choice in defending the individual, people who do not have lobbyists.

I think we have heard an excellent speech, but it has no relevance to the amendment that is before us.

The amendment before us, paradoxically, would hurt the very people our colleague appears to champion. I wonder how many Members of the Senate are members of families who have received a subprime loan.

As I mentioned earlier, when I was a boy, my mama bought a home on Dogwood Avenue in Columbus, GA, for $9,300. She borrowed the money from a subprime lender. She paid 4.5 percent interest. The going market rate was 3 percent. She paid a premium of 50 percent. What incredible exploitation. The problem is, there is another side to that story.

She was a practical nurse. She did not have a full-time job. She worked on call. She had three children. Banks did not make loans to people like my mother. As a result of that loan, at a 50-percent premium, so far as I am aware, she was the first person in her family, from Adam and Eve, ever to own her own home. It profoundly affected her life, and it affected my life too. None of her children have ever failed to own their own home.

So our colleague would have us believe that because you are paying a premium, because you have no established credit, or because you have troubled credit, that somehow this kind of lending is illegitimate, or in today's terms, it is predatory.

The Senator from Illinois's amendment has nothing to do with predatory lending. Is our colleague not aware that Fannie Mae and Freddie Mac are now moving into subprime lending, that the premium that people with no credit ratings or poor credit ratings are paying is declining because of increased competition? Is our colleague suggesting that because every lender in America opposes this amendment, they are, by definition, people who ruin other people's lives?

Let me explain this amendment. When you cut through all of the wonderful rhetoric and every horror story ever recorded, where hundreds of laws have been broken and where remedy is available and is being undertaken, in every case that was cited by our colleague the lender violated dozens of Federal statutes that have nothing to do with this amendment.

What this amendment says, basically, is the following: If in any material way you violate roughly a dozen provisions of the Truth in Lending Act, the loan is not enforceable and lenders can't collect.

Let me give three examples of what constitutes a violation or would be subject to a bankruptcy judge's determination as being a material violation. You are now required under truth in lending to give written notice to a borrower that you are going to give them information over the telephone. If you failed to do that in writing 3 days before you actually gave the information and judged to be in violation, you would not be able to collect on the loan.

You are required before a transaction is entered into to give 3 days' notice. What if you gave 2 days' notice? You would be subject to not being able to collect a loan. You are required to provide the notice in a certain typeset. Under the amendment of the Senator from Illinois, if you were judged by a bankruptcy judge to have typeset that was too small, then the loan would be uncollectible.

Now what do you think is going to happen if these provisions become law? Thousands of reputable lenders who are making loans to people who otherwise could not own their own home will get out of the mortgage-making business. Millions of people who could have the dream of home ownership would lose it because of this amendment.

Our colleague tells us that remedy is needed. It is as if he didn't know we have just undertaken, with every financial regulator, promulgation of new regulations related to so-called predatory lending. One of the areas they are rulemaking on is balloon payments, the very thing about which he talks.

Over and over again, basically what we are being asked to do is something that will hurt not the lender—there are plenty of prime loans to be made but the people who do not have established credit or who have marred credit. The net result is that millions of people will not be able to get loans.

There is one other problem. There are very strict penalties for violating the provisions of law referred to in this amendment. You can be fined $1 million a day. You can have your bank charter terminated. You can have the directors and officers removed. You can have an injunction. Those are all penalties imposed on the bank.

Imagine if we actually had a provision of law which said that if an error is made—and there is nothing about intent in this amendment—then the loan is forgiven.

Can you imagine a situation where we are going to pit the borrower and the lender against each other, where the borrower would have an incentive not to respond, not to send in information, to try to find a way to produce an error so the loan would have to be forgiven? The net result is that while Fannie Mae and Freddie Mac are now getting into subprime lending, these kinds of provisions would drive them out. These provisions would end up driving people who want to own their own home into the hands of the very unscrupulous lenders about which our colleague talks.

We have heard a wonderful speech. It talks about horror stories that have existed and do exist. We have legislated over and over to deal with those problems. The idea of saying that because an error was made which was unintentional in areas related to type size, notification in advance of telephone discussions, notification prior to a transaction, that those kinds of changes could render the loan uncollectible would mean thousands of lending institutions that today are making home ownership possible would get out of that kind of lending. That is why every lender in America is opposed to this amendment.

I urge my colleagues to let the Federal Reserve and our bank regulators, who are looking right at this moment at predatory lending, come up with regulations that make sense and will help more than they hurt. I am moved, and I know anybody is moved who listened to the speech in advocating this amendment. But I urge my colleagues to get beyond the speech and look at the amendment.

Can you imagine putting lenders in a situation where technical errors, unintentionally made, could result in a loan's not being collectible? Banks in cities such as my hometown of College Station would get out of subprime lending under those circumstances in droves. And the cost of the loans that would be made would go up.

The problem our colleague talks about is real. The emotion he presents is real and well intended. The remedy he proposes makes all of the problems worse. It drives out not the bad lender but the good lender. It drives out not the loan shark but the legitimate lender who is getting into this area of lending and driving down interest rates and helping people own their own home.

I wish we could pass a law that would say that everybody had good credit, that everybody had established patterns of behavior paying back debt, and that somehow that could change behavior. Such a law could not be passed and would not be reasonable. It would violate human nature.

To pass a law that basically says you can't collect a loan based on an unintentional error is to assault the whole foundation of the credit system of the

United States of America and greatly undercut the ability of moderate-income people, people who have checkered credit ratings, people who have no credit ratings, from ever getting a loan.

I urge my colleagues to support tabling this amendment. I yield the remainder of my time to Senator HATCH.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, how much time do we have?

The PRESIDING OFFICER. One minute.

Mr. HATCH. I ask unanimous consent that I have 1 additional minute.

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

Mr. HATCH. Mr. President, the Home Ownership and Equity Protection Act, HOEPA, already gives borrowers numerous protections and built-in ''super-remedies'' including the consumer's right to rescind the loan, actual and statutory damages, class action law suits, attorneys fees and costs. This amendment imposes a drastic and unnecessary new penalty on lenders by taking away their right to get paid in bankruptcy—and thus gives the debtor a ''free house''—in the event of a violation of HOEPA. This amendment will create litigation within litigation. Also, the amendment as written would make any secured loan, whether or not subject to HOEPA, even if fully compliant with all other banking laws, subject to the draconian remedies of this amendment for a violation of the Home Ownership and Equity Protection Act.

This provides a major disincentive, as the distinguished Senator from Texas, the chairman of the Banking Committee, has made the case, for making loans to people on the margin, taking the American dream of home ownership out of reach for them. I join with the distinguished Senator from Texas in making it clear that this amendment does precisely the opposite.

That is what our very effective colleague, with all of the horror stories he mentioned, has been advocating. Frankly, I hope we vote this amendment down because it will be a disaster in bankruptcy law. I think it will be a disaster for those folks who currently benefit from fair lending. Where there is unfair lending, I have no doubt the laws will take care of that. This amendment will work exactly to the contrary.

Mr. President, I will move to table the amendment following the closing statement of Senator DURBIN.

The PRESIDING OFFICER. The time of the Senator from Utah has expired. There remains 41 seconds for the Senator from Illinois.

Mr. DURBIN. Mr. President, this amendment says that if you have materially violated the law, if you have exploited the poor victims in America who can lose their homes because of predatory lending, you cannot have the protection of the bankruptcy court. Senator GRASSLEY from Iowa, who is on the floor, held hearings on this in State after State.

This is a scourge on retired people and people on fixed incomes. Will we come to their rescue? Watch the vote.

The PRESIDING OFFICER. The Senator from Utah.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to table.

The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 50, nays 49, as follows:

[Rollcall Vote No. 18 Leg.]

YEAS—50

Allard	Gramm	Nelson (NE)
Allen	Grassley	Nickles
Bennett	Gregg	Roberts
Bond	Hagel	Santorum
Brownback	Hatch	Sessions
Bunning	Helms	Shelby
Burns	Hutchinson	Smith (NH)
Campbell	Hutchison	Smith (OR)
Chafee	Inhofe	Snowe
Cochran	Johnson	Stevens
Craig	Kyl	Thomas
Crapo	Lott	Thompson
DeWine	Lugar	Thurmond
Domenici	McCain	Torricelli
Ensign	McConnell	Voinovich
Enzi	Miller	Warner
Frist	Murkowski	

NAYS—49

Akaka	Dayton	Levin
Baucus	Dodd	Lieberman
Bayh	Dorgan	Lincoln
Biden	Durbin	Mikulski
Bingaman	Edwards	Murray
Boxer	Feingold	Nelson (FL)
Breaux	Feinstein	Reed
Byrd	Graham	Reid
Cantwell	Harkin	Rockefeller
Carnahan	Hollings	Sarbanes
Carper	Inouye	Schumer
Cleland	Jeffords	Specter
Clinton	Kennedy	Stabenow
Collins	Kerry	Wellstone
Conrad	Kohl	Wyden
Corzine	Landrieu	
Daschle	Leahy	

ANSWERED ''PRESENT''—1

Fitzgerald

The motion was agreed to.

Mr. GRASSLEY. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New York is recognized.

AMENDMENT NO. 25

Mr. SCHUMER. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 25.

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

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

The amendment is as follows:

(Purpose: To make an amendment with respect to the preservation of claims and defenses upon the sale or transfer of a predatory loan)

At the end of subtitle A of title II, add the following:

SEC. 204. PRESERVATION OF CLAIMS AND DEFENSES UPON SALE OR TRANSFER OF PREDATORY LOANS.

Section 363 of title 11, United States Code, is amended by adding at the end the following:

''(p) Notwithstanding subsection (f), the sale by a trustee or transfer under a plan of reorganization of any interest in a consumer credit transaction that is subject to the Truth In Lending Act (15 U.S.C. 1601 et seq.), or a consumer credit contract as defined by the Federal Trade Commission Preservation of Claims Trade Regulation, is subject to all claims and defenses which the consumer could assert against the debtor.''.

Amend the table of contents accordingly.

Mr. KERRY. Mr. President, I ask my colleague if he will yield for a question?

Mr. SCHUMER. I am happy to yield to my colleague.

Mr. KERRY. I ask unanimous consent I be recognized after the Senator has completed his amendment for the purposes of submitting an amendment.

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

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

Mr. KERRY. I believe it was ordered.

The PRESIDING OFFICER. The Senator from Utah, I believe you are a little tardy.

Mr. KERRY. I thank the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I am offering a very limited amendment to the bankruptcy code relating to subprime lenders that engage in predatory lending practices and then declare bankruptcy as a way to avoid liability for their role in destroying the lives of decent, hard-working American families.

Let me state, while I supported the amendment of my good friend from Illinois, this is a much narrower amendment. In fact, it conforms to what the Senator from Texas has said.

The PRESIDING OFFICER. The Senator will suspend. Let's see if we can get order in the Senate Chamber.

Mr. SCHUMER. Thank you, Mr. President.

The PRESIDING OFFICER. Will our guests and all others be in order, please. The Senator from New York.

Mr. SCHUMER. Mr. President, my good friend from Texas, Senator GRAMM, had mentioned that the previous amendment went way beyond the scope of the bankruptcy bill dealing with RESAP and TILA. This amendment does not. It limits things strictly to the bankruptcy code and it is an amendment that is needed to ensure that the bankruptcy code is not used to exacerbate the effects of illegal predatory lending practices.

In the past decade we have had remarkable prosperity. More than half of

all Americans invested in the stock market. Unemployment figures hit all-time lows. Despite a recent slowing, more families than ever own their own homes.

While we have made enormous progress towards providing all of our citizens with the opportunity to achieve the American dream of home ownership, the invidious practice of predatory lending is stripping hard-working individuals and families of their savings, and it is sinking them into debt and devastating them financially. For many, it has turned the American dream into the American nightmare.

Nowhere is the problem more prevalent than in my home State of New York. Now there are some who would argue, despite the evidence to the contrary, that there is no such thing as predatory lending, but I know we all know better. We know the costs that predatory lending has caused to people. When borrowers encounter a predatory lender, they are manipulated and deceived through a barrage of aggressive and misleading tactics, stripped of the equity in their homes, robbed of their life savings, led into foreclosure, often forced into bankruptcy, and, of course, the predators as a matter of practice target the most vulnerable: unsophisticated first-time home buyers, elderly, minority community, low-income neighborhoods.

We have a new problem with these predatory lenders. That is what this amendment seeks to avoid. In recent months, several large subprime lenders have obtained orders from bankruptcy courts, providing for the sale of their loans or the servicing rights associated with them under section 363 of the bankruptcy code. Consumers who have attempted to challenge these loans or their servicing obligations based on violations of fair lending laws have been told by the purchasers of these loans they were sold free and clear of any consumer claims and defenses. The fact that innocent borrowers can be left in the lurch is flatout wrong.

Here you have the situation where a predatory lender has come in, gotten a loan, and then declared bankruptcy, shielding that predatory lender from a claim that the innocent homeowner is making. That is wrong. All this amendment does, staying within the confines of the bankruptcy code, not dealing with banking issues—I am a member of the Banking Committee but I agree that is the place where we should deal with those issues—is seek to prevent the bankruptcy code from shielding these lenders from the rightful claims of innocent borrowers who have their life savings at stake.

It is heartbreaking and maddening to hear how decent, hard-working people have had their lives destroyed because of predatory lenders when they sought little more than to obtain their piece of the rock, the American dream—home ownership. It is frustrating when the bankruptcy code is used to help these predatory lenders hide from the law.

By adopting this amendment, we can take a very small but important step against predatory lending. We will prevent predatory lenders from being able to use bankruptcy as a means by which to shield themselves from liability and cut off consumer claims and defenses.

Let me repeat that because that is the nub of this limited but important amendment which I hope we will accept without controversy. We will prevent predatory lenders from being able to use the bankruptcy code as a means by which to shield themselves from liability and cut off consumer claims and defenses. And we will protect consumers from those who seek to purchase predatory loans with the knowledge that the consumer's right has been undermined.

In short, we can send a powerful message that we are committed to protecting individuals and their families from those who rob them of their dreams and then seek to cloak themselves behind the veil of the bankruptcy law.

I sincerely hope we can accept this amendment. It is fair. It is limited to the bankruptcy code. It was intended to and it makes the code immune from the practices of predatory lenders that the code was never intended to protect from the homeowners they rip off.

I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment of the Senator from New York?

Mr. SCHUMER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Does the Senator from New York seek the yeas and nays?

Mr. SCHUMER. I will be happy, before I do, to yield to my colleague from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Let me state the situation for the Senator from New York. We can have the yeas and nays, but we cannot have a vote on this right away.

Mr. SCHUMER. That is OK. Unless the Senator from Iowa would accept this amendment?

Mr. GRASSLEY. We are not prepared to make that decision yet.

Mr. SCHUMER. I will be happy to ask for the yeas and nays and delay the vote until a time auspicious to the floor manager.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. GRASSLEY. Mr. President, I agree to temporarily lay aside the amendment of the Senator from New York so we can proceed to the amendment of the Senator from Massachusetts.

Mr. SCHUMER. If the Senator from Iowa will yield, as long as we get the yeas and nays on this amendment in due course.

The PRESIDING OFFICER. We had the sufficient second.

Mr. GRASSLEY. The point is we can assure the Senator from New York the yeas and nays on his amendment. We can't assure the Senator from New York when we are going to vote on the amendment.

Mr. SCHUMER. That is fine.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, thank you very much.

AMENDMENT NO. 26

Mr. KERRY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KERRY] proposes an amendment numbered 26.

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

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

The amendment is as follows:

(Purpose: To strike certain provisions relating to small businesses, and for other purposes)

On page 187, strike lines 4 and 5.

On page 202, strike line 9 and all that follows through page 223, line 12, and insert the following:

SEC. 420. STUDY OF OPERATION OF TITLE 11, UNITED STATES CODE, WITH RESPECT TO SMALL BUSINESSES.

Not later than 2 years after the date of enactment of this Act, the Administrator of the Small Business Administration, in consultation with the Attorney General, the Director of the Administrative Office of United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—

(1) conduct a study to determine—

(A) the internal and external factors that cause small businesses, especially sole proprietorships, to become debtors in cases under title 11, United States Code, and that cause certain small businesses to successfully complete cases under chapter 11 of such title;

(B) how Federal laws relating to bankruptcy may be made more effective and efficient in assisting small businesses to remain viable;

(C) what factors, if any, would indicate the need for any additional procedures or reporting requirements for small businesses that file petitions for bankruptcy under chapter 11 of title 11, United States Code;

(D) what length of time is appropriate for small business debtors and entrepreneurs to file and confirm a reorganization plan under title 11, United States Code, including the factors considered to arrive at that conclusion; and

(E) how often a small business debtor files separate petitions for bankruptcy protection within a 2-year period; and

(2) submit a report summarizing the study required by paragraph (1) to the President pro tempore of the Senate and the Speaker of the House of Representatives, and the Committees on Small Business of the Senate and the House of Representatives.

Mr. KERRY. Mr. President, I come to the floor today with this amendment

as the ranking member of the Small Business Committee of the Senate, a committee which we all know is designed to try to help empower America's small businesses to do what they do best, which is to create jobs.

Everyone in the Senate knows that almost all of the job growth of our country comes from small businesses, and, frankly, I think it is about 80 percent of the jobs in the Nation that come from small businesses.

We have tried to do as much as possible in the Senate in recent years to encourage small businesses to be able to act as the incubator of our economy. Together with Senator BOND, chairman of the committee, I think the Small Business Committee has been able to be particularly responsive to the needs of those businesses.

We have heard Alan Greenspan talk a lot about the so-called ''virtuous economic cycle'' that we lived through in the course of the last decade, and I think all of us look with special sensitivity to the impact the bankruptcy bill might have on small businesses.

It is with that concern I come to the floor today with deep concern about a particular provision within the bankruptcy bill that, in my judgment, runs counter to the policies we have been putting in place in the last years as we tried to have low-documentation loans, lift the regulatory burden on small businesses, lift the paperwork burden on small businesses, and, indeed, expand the capacity for entrepreneurship and for growth.

There is no evidence at all that small business bankruptcies are a problem which somehow warrant the rather extraordinary increase in regulatory oversight this bill seeks to impose on those businesses.

I am offering an amendment that would strike the small business subtitle of the Bankruptcy Reform Act and include in its place a study of the causes of small business bankruptcy and how Federal law regarding small business bankruptcy can be made more effective and more efficient.

Let me preface my comments about the specifics of this particular section that I seek to strike by saying that I share with all my colleagues who support the bankruptcy bill the notion that a decision to file for bankruptcy obviously should not be used as an economic tool to avoid responsibility for unsound business decisions, nor should it be an effort to get out from under a reckless act by either an individual or a business.

There has been a decline, as we all know, in the stigma of filing for personal bankruptcy, and certainly we would agree that appropriate changes are necessary in order to ensure that bankruptcy not be considered a lifestyle choice.

During the 105th and 106th Congresses, I have supported legislation that would increase personal responsibility in bankruptcy, and I have offered amendments that improve the number of small business provisions in the bill.

It has been Congress' long-held belief that regulatory and procedural burdens, however, should be lowered to whatever degree we can for small business—i.e., when it is possible and when it is rational to do so or when it doesn't somehow create another set of problems.

The Senate previously passed legislation to reduce that regulatory burden on small business, including most recently the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act.

Both of them have brought about fundamental changes in the way Federal agencies develop regulations.

In fiscal year 1999, changes to final regulations throughout the Federal Government reduced the compliance costs for small businesses by almost $5.3 billion.

I respectfully submit the provisions of this bankruptcy bill will set back those very efforts of the Senate, and most importantly they do so without an adequate showing and without any adequate demonstration that this is, in fact, necessary.

I ask my colleagues, What is the evidence on which we are going to potentially proceed in the Senate to literally punish entrepreneurship?

As we can see in this chart, the degree to which small businesses have been carrying the heavy load of creating jobs during our recent economic expansion for every single year over the last decade, small firms have developed more jobs than large firms. In many years, small firm job creation has exceeded the growth of large firms by 2 or 3 to 1.

In 1992–1993 it was extraordinary the degree to which small firms eclipsed large firms. But even most recently, from 1994–1995 and 1996–1997, we have had the same trend during which small businesses have clearly exceeded the extraordinary growth level of all of the economy.

It would be insane for us to come in here now without an adequate showing of need and turn around and burden some businesses with proceedings that will cost them extraordinary amounts of administrative time, which in a small business is exceedingly difficult to comply with.

I ask those who promote this legislation, are we imposing on small businesses these kinds of requirements because small businesses have somehow been egregious in the bankruptcy process? The answer to that is no. There is no showing. In fact, the showing is to the contrary. Business bankruptcy chapter 11 filings from 1987 to the year 2000 show a decline in the numbers in thousands of small business bankruptcies. In fact, over the past decade, we have gone from 24,000 in the year 1991 to just below 10,000 last year, 23.7 million business tax returns filed in 1997, and a record 885,416 new small firms with employees opened their doors.

The numbers show us that of approximately 23.7 million business tax returns, and 885,000 new small businesses, only 10,000 were forced to file for bankruptcy.

Are those that filed for bankruptcy somehow doing such an injury to our economy that it measures the kind of response we see in this legislation?

A 1999 SBA study found that 79 percent of small businesses that filed for bankruptcy had each incurred less than $500,000 in debt. The study also found that about 45 percent of bankruptcy cases had one or no employees. Less than 5 percent of the bankruptcy cases represented companies with 50 or more employees.

The median assets of small businesses that filed for bankruptcy was just $94,000. So, once again, we have to measure the intrusive nature of the reporting requirements placed in this legislation versus the overall positive impact that small businesses have had versus the extraordinarily small impact of those small businesses that have filed for bankruptcy.

In November of last year, Wei Fan of the University of Michigan and Michelle White of the University of California at San Diego released a report on personal bankruptcy and its effects on entrepreneurial activity. The study concludes that while the bankruptcy reform bill is intended to reduce abuse in the bankruptcy system, an unintended consequence of adopting those reforms would be a substantial reduction in the level of self-employment by U.S. households.

Elizabeth Warren, a professor of Harvard Law School, and a recognized leader on the bankruptcy issue, believes the small business provisions in the bankruptcy bill would be the first piece of Federal legislation that actively discriminates against small businesses and denies them protection available to large businesses.

Ms. Warren believes the additional reporting requirements will be extraordinarily difficult and expensive for small businesses to produce on a monthly basis. She concludes:

> A decision by Congress in 2001 that small businesses should bear greater costs, face shorter deadlines, file more papers and lose any flexibility that a supervising judge might provide is a decision to shut down small businesses simply because they are small.

Mr. President, I ask unanimous consent her letter be printed in the RECORD.

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

HARVARD LAW SCHOOL,
Cambridge, MA, March 7, 2001.

Senator KIT BOND,
Russell Senate Building,
Washington, DC.
Senator JOHN KERRY,
Russell Senate Building,
Washington, DC.

DEAR SENATOR BOND AND SENATOR KERRY: As the Senate considers Senate Bill 420, I ask that you pay particular attention to the business provisions. They will have a direct, immediate and adverse impact on businesses in Missouri, Massachusetts and across the country.

Unlike the consumer provisions which have received substantial attention, the proposed amendments that would alter the rules of business reorganizations have remained largely unnoticed. According to data released last week by the Administrative Office of the U.S. Courts, 9,197 businesses filed for Chapter 11 reorganization during 2000. The proposed amendments would dramatically change the rules for every one of these businesses and for the thousands more businesses expected to file this year.

The proposed changes make it much more difficult for these businesses to reorganize successfully. The entrepreneurs and shareholders of these businesses will be affected, as will an estimated two million employees who work for businesses filing for bankruptcy and the communities across the country where these businesses buy goods and pay taxes.

I am particularly concerned about a group of provisions, sections 431–443, that target small businesses and single them out for reduced access to Chapter 11. This would be the first piece of federal legislation in history that actively discriminates against small businesses and denies them protection available to large businesses.

The impact of the small business provisions would be substantial. More than 80% of the chapter 11 cases would fall within the new constraints of ''small business'' in §420. In many communities, all the businesses would come within its sweep. Businesses that are vital to smaller communities would not have the same opportunities to reorganize as their larger counterparts.

The provisions allowing the court to combine the hearing on approval of the disclosure statement are meritorious. The remainder of the provisions that apply to ''small business'' (which the bill defines as any and every business with debts of $3.0 million or less) restrict the discretion of the court to control the plan confirmation process. These provisions force the court to liquidate the business or dismiss the proceedings for failure to comply with technical and burdensome reporting requirements.

Secton 434, for example, would impose regular reports on the debtor's profitability. This kind of report has very limited usefulness for the creditors because accounting profits are subject to manipulation, so that judges and creditors do not rely on them in small business cases. Instead, they look at the debtor's cash disbursements and receipts. Nonetheless, these reports may be very difficult and expensive for small businesses to produce on a monthly basis. A debtor that fails to produce it faces dismissal—with the inevitable loss of jobs. The deadlines in the bill impose a similar stranglehold on the business regardless of the progress of the case toward successful reorganization. The 175-day deadline in §438 and the inconsistent 300-day deadline in §437 are artificial. They ignore, for example, the delays in plan confirmation that are beyond the debtor's control and have nothing to do with the viability of the business. For example, a state regulatory action that takes places outside of the bankruptcy court may need to run its course before a plan can be formed.

In addition, provisions outside sections 431–443 would doom small businesses. The draconian provisions of §708 and §321(d) of the bill—introducing the concept of nondischargeability in corporate reorganizations, large or small—would provide a major setback to the rehabilitation of any corporation. These provisions would fall especially hard on small businesses that could not afford increased litigation costs and would be destroyed by a single recalcitrant creditor. The provisions are particuarly counterproductive because §708 punishes the wrong people. The appropriate remedy when management has misbehaved is to file the management and to sue them personally, not to saddle the surviving company with litigation that will sink it and repayments that will come out of the pockets of the innocent creditors. By permitting litigation over nondischargeability, the innocent creditors are put to the choice of letting one creditor take all the assets of the business or litigating nondischargeability. Most will choose to fight rather than give up, but if everyone fights, the case is prolonged, assets are dissipated and no one wins except the lawyers. This provision hinders reorganizations without doing anything to hold the right people accountable for the false statements.

Before the adoption of the 1978 Code, Congress has implemented a system by which small businesses and large businesses were to be dealt with separately in reorganization. The difference was that Congress had decided that more constraints should be imposed on big businesses than on small ones. Congress understood that small businesses already in financial trouble have the best chance to reorganize and pay their creditors if they are not saddled with an expensive administrative apparatus.

This bill stands that laudable, common sense concept on its head. A decision by Congress in 2001 that small businesses should bear greater costs, face shorter deadlines, file more papers and lose any flexibility that a supervising judge might provide is a decision to shut down small businesses simply because they are small.

There are no data to suggest that entrepreneurs are abusing the bankruptcy system or that they are somehow less trustworthy than people running bigger businesses. To single out the hardworking men and women who run these businesses for unfavorable treatment solely on the basis of their size is indefensible. I hope you will persuade your colleagues to strike these provisions from the bill.

Very Truly Yours,

ELIZABETH WARREN,
Leo Gottlieb Professor of Law.

Mr. KERRY. Mr. President, the provisions included in the Bankruptcy Reform Act impose new technical and burdensome reporting requirements for small businesses that file for bankruptcy that are far more stringent on small businesses than they are on big businesses. Furthermore, the bill would provide creditors with greatly enhanced powers to force small businesses to liquidate their assets at a time it may not be advisable, and with reporting requirements that may, in fact, force a liquidation that does not have to take place.

Specifically, the bill will require small businesses to provide periodic financial and other reports containing information ranging from cash receipts, cash disbursements, and comparisons of actual cash receipts and disbursements with projections in prior reports.

Just in case they missed anything, the bill includes a provision that includes reports on such matters as are in the best interests of the debtor and the creditors. This shifts all of the power in such a way as to place an extraordinary burden on mom-and-pop stores and mom-and-pop operations and small businesses that simply do not have the capacity to be able to comply.

Any big business would have difficulty complying with these burdensome requirements. But I think we ought to measure what we are doing here against the necessity that we see in the declining number of bankruptcies, the declining level of assets that are at stake, and the great upside of what these entities provide to the country.

So for that reason, I hope my colleagues will join me in specifically asking for a study, a short-term study, that will enable us to better judge whether these changes in the current system are needed. I believe we ought to do everything possible to ensure the viability of small businesses and to assist in fostering entrepreneurship in the economy. The Bankruptcy Reform Act, as it is today constructed, does not meet that challenge.

I ask my colleagues to join me in removing the small business provisions, undertake the study, and then we can revisit it, if we need to, based on a sound analysis of precisely how we might proceed in a least intrusive, a least burdensome manner.

I thank the Chair.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

Mr. KERRY. I recognize my colleague probably wants to set the time for that vote at some future time. That is fine with me.

Mr. GRASSLEY. Thank you.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I am not going to respond to the substance of the amendment but to give some background on where we have come over the last 5 or 6 years on this legislation for the consideration of people who will want to debate against the amendment by the Senator from Massachusetts.

I suggest to you that when Senator Heflin from Alabama was a Member of the Senate, he and I served as either chairman or ranking member of the judiciary subcommittee on courts that has jurisdiction over bankruptcy issues for the period of time that he and I served together in the Senate, which, I think, was 16 years—1980 to 1996.

Just prior to that time, and my coming to the Senate, the Senate had adopted the last bankruptcy reform legislation, which I think was in 1978 or 1979.

During the period of time he and I served as either chairman or ranking member—depending upon which party was in the majority—he and I sponsored some technical corrections and some small changes to the last major overhaul of the bankruptcy law. But as time went on, into the early 1990s, Senator Heflin and I came to the conclusion that there were changes in the economy—the globalization of the economy and a lot of other reasons—

and that we ought to give considerable attention to greater changes of the bankruptcy code rather than the very small changes we enacted from time to time during the 1980s.

He and I also came to the conclusion we would probably not have the time, as the two Senators shouldering the responsibilities on bankruptcy legislation, to do it through our subcommittee. So we set up the Bankruptcy Commission of which this legislation we are dealing with now is a product. That commission was not made up of any Members of Congress. It was made up of appointees by legislative leaders and by the President of the United States. These people truly are authorities in bankruptcy legislation, including Professor Warren from Harvard, who was rapporteur for the commission, and is the person Senator KERRY was quoting. And he put a letter in the RECORD that was from her.

The commission studied the issues for over a year, and put a lot of work into recommendations for both consumer bankruptcy and for business bankruptcy reform. There was an awful lot within the commission on consumer bankruptcy reform that was very controversial and did not have even near-unanimous recommendations. There was a majority report, but not an overwhelming majority report, on consumer bankruptcy.

But when it came to the recommendations of the commission on business bankruptcy reform, the recommendations of the commission came down to the Congress on an 8–1 vote.

So we are being asked by the Senator from Massachusetts to do this amendment for the sake of small business. I think it is essential that all of us take into consideration the needs of small business; so I do not find fault with the interests he is trying to espouse here. But I think we need to take into consideration that his amendment is taking the business bankruptcy provisions of our bill and setting them aside and asking us to study what we should do in regard to business bankruptcy reform.

I don't think enough has changed in the last 4 or 5 years that an 8–1 recommendation of the Bankruptcy Commission for business bankruptcy reform should be undone by this amendment of the Senator from Massachusetts.

I hope people will take into consideration the work Senator Heflin and I—we alone, almost totally for the rest of the Senate—had put into bankruptcy legislation through the 1980s into the 1990s, and particularly our recommendation of going to a commission instead of our doing it, so we would have the most expertise involved with the changes and the reforming of business and personal bankruptcy. We set this commission up to do exactly what it did. It came out with an overwhelming recommendation that is before the Senate.

Beyond that, in the period of time of 1997–1998, when we moved the commission's recommendations through the Senate, through the House, through conference, through the House a second time, dying on the floor of the Senate because it came late in the session, and then starting over again with the same commission recommendations in 1999, moving it through the Senate, moving it through the House, moving it through conference, moving it through the House, moving it through the Senate, moving it to the President of the United States where it was subjected to a pocket veto—through all of this consideration of the Bankruptcy Commission's recommendations, there has been little dispute about the business provisions compared to the more controversial aspects of the consumer and personal bankruptcy recommendations of the commission.

That is directly related to the fact that the commission's recommendations came out 8–1 and, almost unchanged, have become the legislation that first Senator DURBIN and I introduced and then, because Senator DURBIN was not on the Judiciary Committee in the Congress of 1999 and 2000, it was Senator TORRICELLI who joined me in introducing bankruptcy legislation. That was introduced in exactly the same way in the last Congress, as a result of our moving ahead with the same conference report that President Clinton pocket vetoed for the underlying legislation that we have before us, almost unchanged again, in legislation introduced as the Grassley-Torricelli-Biden-Hatch-Sessions legislation that is before us.

I don't know why all of a sudden somebody thinks we ought to throw these fairly noncontroversial small business and business bankruptcy provisions out of this bill for further study. Each Member of this body is going to have to make up his or her mind on the substance of the amendment by Senator KERRY. I want them to at least understand that we are where we are now not by some flippant decision of a couple Members of the Senate that we should be here, rather that these provisions are the recommendations of a study of the bankruptcy commission. So the small business provisions we have now before us are based on a study of a commission and recommended by that commission on an 8–1 vote.

I yield the floor and ask unanimous consent to set aside the amendment of the Senator from New York, the Senator from Massachusetts, so we can now proceed to the amendment of the Senator from California.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from California is recognized.

AMENDMENT NO. 27

Mrs. FEINSTEIN. Mr. President, I thank the manager of the bill, the distinguished Senator from Iowa. I call up amendment No. 27.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself, Mr. JEFFORDS and Mr. DURBIN, proposes an amendment numbered 27.

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

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

The amendment (No. 27) is as follows:

(Purpose: To make an amendment with respect to extensions of credit to underage consumers)

At the end of Title XIII, add the following:

SEC. 1311. ISSUANCE OF CREDIT CARDS TO UNDERAGE CONSUMERS.

(a) APPLICATIONS BY UNDERAGE CONSUMERS.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

''(8) APPLICATIONS FROM UNDERAGE OBLIGORS.—

''(A) PROHIBITION ON ISSUANCE.—Except in response to a written request or application to the card issuer that meets the requirements of subparagraph (B), a card issuer may not—

''(i) issue a credit card account under an open end consumer credit plan to, or establish such an account on behalf of, an obligor who has not attained the age of 21; or

''(ii) increase the amount of credit authorized to be extended under such an account to an obligor described in clause (i).

''(B) APPLICATION REQUIREMENTS.—A written request or application to open a credit card account under an open end consumer credit plan, or to increase the amount of credit authorized to be extended under such an account, submitted by an obligor who has not attained the age of 21 as of the date of such submission, shall require—

''(i) submission by the obligor of information regarding any other credit card account under an open end consumer credit plan issued to, or established on behalf of, the obligor (other than an account established in response to a written request or application that meets the requirements of clause (ii) or (iii)), indicating that the proposed extension of credit under the account for which the written request or application is submitted would not thereby increase the total amount of credit extended to the obligor under any such account to an amount in excess of $2,500 per card (which amount shall be adjusted annually by the Board to account for any increase in the Consumer Price Index);

''(ii) the signature of a parent or guardian of that obligor indicating joint liability for debts incurred in connection with the account before the obligor attains the age of 21; or

''(iii) submission by the obligor of financial information indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account.

''(C) NOTIFICATION.—A card issuer of a credit card account under an open end consumer credit plan shall notify any obligor who has not attained the age of 21 that the obligor is not eligible for an extension of credit in connection with the account unless the requirements of this paragraph are met.

''(D) LIMIT ON ENFORCEMENT.—A card issuer may not collect or otherwise enforce a debt arising from a credit card account under an open end consumer credit plan if the obligor had not attained the age of 21 at the time the debt was incurred, unless the requirements of this paragraph have been met with respect to that obligor.

''(9) PARENTAL APPROVAL REQUIRED TO INCREASE CREDIT LINES FOR ACCOUNTS FOR WHICH PARENT IS JOINTLY LIABLE.—In addition to

the requirements of paragraph (8), no increase may be made in the amount of credit authorized to be extended under a credit card account under an open end credit plan for which a parent or guardian of the obligor has joint liability for debts incurred in connection with the account before the obligor attains the age of 21, unless the parent or guardian of the obligor approves, in writing, and assumes joint liability for, such increase.''.

(b) REGULATORY AUTHORITY.—The Board of Governors of the Federal Reserve System may issue such rules or publish such model forms as it considers necessary to carry out paragraphs (8) and (9) of section 127(c) of the Truth in Lending Act, as amended by this section.

(c) EFFECTIVE DATE.—Paragraphs (8) and (9) of section 127(c) of the Truth in Lending Act, as amended by this section, shall apply to the issuance of credit card accounts under open end consumer credit plans, and the increase of the amount of credit authorized to be extended thereunder, as described in those paragraphs, on and after the date of enactment of this Act.

Mrs. FEINSTEIN. Mr. President, I offer this amendment cosponsored by Senator JEFFORDS and Senator DURBIN.

The amendment would put a $2,500 cap on any credit card issued to a minor—that is, an individual under 21—unless the minor submits an application with the signature of his parent or guardian indicating joint liability for debt or the minor submits financial information indicating an independent means or an ability to repay the debt that the card accrues.

The amendment would give parents who cosign for liability on their child's credit card the opportunity to have some say in the credit limit on the card.

Why is this amendment needed? Supporters of bankruptcy reform have justified this bill on the basis of personal responsibility. I agree with that basic presumption. Responsible debtors should pay back the debts they can afford to repay. The bill, however, must be balanced. If Congress really intends to tackle the surging tide of bankruptcy cases, our laws must enforce responsibility on the part of creditors as well.

One area where I think creditors must show more responsibility is the marketing of credit cards to minors. For those under 18, there are some protections. In each of the 50 States, juveniles under 18 lack the authority to sign contracts with narrow exceptions. Thus, if a credit card company issued a card to a 15-year-old, the company would not be able to legally enforce its debt in bankruptcy court.

Yet, there is a gaping loophole with respect to college students. It is almost impossible for students on campus to avoid credit card offers. Applications are stuffed in plastic bags at the campus bookstore, solicitations hang from bulletin boards, and credit card representatives set up tables at student unions, enticing students with free gifts.

Credit cards are increasingly pressed on college students, even those with no income or no credit history. A parent's signature is not required. With their low monthly payments, these cards are very attractive to cash-strapped students and appear to impose little financial burden.

Minors today are getting credit cards at younger and younger ages. In 1994, 66 percent of college students with at least one card received their first card before college or during their freshman year. In 1998, 81 percent had received their first card by the end of their freshman year.

The cards are attractive because minimum payments are typically low. However, if students just make the minimum payments, they get in way over their heads.

For example, if a student makes just a $25 minimum payment on a $1,500 line of credit, at 19.8 percent interest, it will take 282 months to pay off the debt.

Not surprisingly, with credit cards flooding college campuses, student debts are rising.

Nellie Mae, the student loan giant, found that 78 percent of undergraduate students who applied for credit-based loans with Nellie Mae in the year 2000 had credit cards. This is up from 67 percent in 1998.

Of the 78 percent of undergraduates who had credit cards in Nellie Mae's Year 2000 study, the average student had three cards, with 32 percent having four or more credit cards.

The average debt of these credit-card owning undergraduates was $2,748. This is up from an average of $1,879 in Nellie Mae's 1998 study. Some 13 percent of these students had balances of $3,000 to $7,000 and 9 percent owed amounts exceeding $7,000.

Traditionally, American youth under 25 have contributed marginally to the ranks of our nation's bankruptcy filers.

However, over the past 10 years, our youth have represented a larger and larger slice of those who file for bankruptcy.

In 1996, only 1 percent of personal bankruptcies were by those age 25 or younger. By 1998, that number had risen to almost 5 percent. In 1999, a year later, the number rose to 6.8 percent of all bankruptcy filers.

In committee, I was asked the question: What does this have to do with bankruptcy? I would like to answer it. A seven times greater percentage of minors are filing for bankruptcy today than just 5 years ago, and the great bulk of this is credit card debt.

Credit cards are a major factor in student and youth debt. For example, at the Consumer Credit Counseling Service of Greater Denver, more than half of all clients are ages 18 to 35. On average, they have 30 percent more debt than all other age groups.

Let me give you a couple of examples of the runup of credit card debt that has plagued so many unwary youth.

A USA Today article on February 13, 2001, describes the case of Jennifer Massey. As a freshman at the University of Houston, Jennifer signed up for a credit card. She got a free T-shirt. A year later, she had piled on $20,000 in debt on 14 credit cards.

Another case: A young Mexican American from Los Angeles declared bankruptcy just last July after racking up $20,000 in credit card expenses. Most of it was for clothes, dinners, and drinks with friends.

A West Virginia student saddled with student loans filled out applications for 10 major credit cards and was approved for every single one—showing no ability to repay that debt.

A youngster at Georgetown University fell into debt totaling over $10,000. Unable to make even the minimum payments, she had to turn to her parents in order to bail her out.

Alex, a college freshman, found himself over $5,000 in credit card debt by the end of his first semester. His parents had to take out a loan to pay off his debt to the credit card company. When Alex graduated in 1999, his family was still making payments on the loan to pay off his debt from his freshman year.

Let me give you the case of Sean Moyer. He was a student at the University of Oklahoma who ran up more than $10,000 in debt. The crushing debt was one of the factors he cited before committing suicide on February 7, 1998, at the age of 22.

Contrary to what you may hear from the opposition to this amendment, this amendment is not about the right of an 18-year-old to get a credit card. I have no problem with that. The concern is the unlimited credit that the youngster can place on that card.

Like any other adult who seeks credit, a minor who has independent means to repay debts is entitled to credit based on his ability to pay. A minor with adequate resources, or with a parental cosigner, can get a credit limit under this amendment of $5,000, $10,000, or $20,000.

I just want to say that this amendment places the $2,500 debt limit on each credit card—not the combination of credit cards, but each credit card. We think it is fair, and we think it is responsible.

During a recent ''60 Minutes II'' interview, sources in the credit card industry stated that even if a student's application for credit indicates no source of income, the student still gets approved for credit. The credit card company assumes that the student has other means to pay because they buy books, clothes, CDs, or that a parent is going to bail them out.

So without this amendment, credit card companies can continue to lend reckless amounts of money to college students that any reasonable inquiry into the student's financial status would indicate the student could not afford. Then, when a student can't pay his or her debt, the lender can pressure the parent to assume the liability or use the full power of the bankruptcy court to recover the amount it is owed.

The bankruptcy court should not be used as a collection agency for ill-advised extensions of credit to college students by credit card lenders.

I also want to briefly discuss the section of this amendment that would give a parent who cosigns for a credit card some measure of control over future expansion of credit limits on the card. Under current law, if a parent assumes joint liability for a credit card with his or her minor child, the parent has no control over the debt limit on the card. A credit card company can raise the debt limit without consulting the parent. The credit card company can even raise the debt limit if the parent expressly objects to any further increase.

Let me give you a case written up in the Los Angeles Times. I ask unanimous consent that the Times story be printed in the RECORD at the end of my remarks.

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

(See Exhibit 1).

Mrs. FEINSTEIN. This is the case of Dr. James Whitemore, a retired surgeon from Carson, CA. When his son Quentin entered Cal-State Dominguez Hill, Dr. Whitemore cosigned his son's application for credit with the stipulation that the debt limit remain at $500. But without Dr. Whitemore's knowledge, MBNA, the credit card issuer, raised his son's credit limit repeatedly until it finally reached $9,000. After several years, Quentin's balance reached $9,089 and MBNA determined his account to be delinquent.

MBNA, then rediscovered Dr. Whitemore. After failing to contact the doctor as it increased his son's liability, the company then demanded that Dr. Whitemore assume responsibility for the debt as guarantor. I think this is wrong. This amendment would correct that.

I also want to respond to those who question the link between credit card debt and bankruptcy. All-purpose credit card debt is the most frequently listed debt in bankruptcy files. Eighty-eight percent of the debtors in bankruptcy have credit card debt of some kind.

According to a study by Harvard Professor Elizabeth Warren, the median debtors in bankruptcy are carrying six times higher credit card debts than other cardholders.

Homeowners in the United States spend, on average, about $18 of every $100 of take-home pay for principal, interest, taxes, and insurance on their mortgage payments. A family spending more than $28 is considered house poor. Median debtors in bankruptcy owe $47 of each $100 of income to their credit card.

Experts who testified before Congress on this issue have linked the share rise in consumer debt and the corresponding rise in consumer bankruptcy to lower credit standards.

As I have said, today, a seven times greater percentage of youth go through bankruptcy than did 5 years ago. So this is clearly a problem that is increasing.

I don't believe minors should have their credit histories ruined when they take their first steps as adults; nor should we put parents in the position of having to bail out their kids to protect their kids' future credit rating. A credit card limit, per card, of $2,500, I believe, is prudent and wise. If a youngster wants to go beyond that, they have to show that they can pay it back or, secondly, have a parent or guardian cosign.

I am very pleased to join with Senator JEFFORDS and Senator DURBIN in presenting this amendment.

EXHIBIT 1

[From the Los Angeles Times, Jan. 17, 1999]

SON'S DEBT PLAGUES DAD FOR 7 YEARS

(By Kenneth Reich)

Guaranteeing a credit card for a child about to go off to college is fairly common, but it seldom generates as much trouble as it did for Dr. James H. Whitmore, a retired surgeon from Carson.

He has been through a seven-year drama that is not over yet.

When his son, Quentin Whitmore, entered Cal State Dominguez Hills in 1992, he wanted him to have a credit card. This is natural, since even if, as in this case, the child is going to be close to home, the parent knows he will be more on his own and may need emergency financial resources.

And so, after some exploring, Whitmore agreed to co-sign his son's application with MBNA of Wilmington, Del. ''This I did with the stipulation that his credit limit be $500,'' he recalls.

At first, all went well. Quentin Whitmore was making small payments on the card out of the allowances his dad gave him.

But then, without ever notifying his dad, MBNA, which describes itself as ''the largest independent credit card lender in the world with $59.6 billion in loans,'' repeatedly raised young Whitmore's credit limit. It finally hit $9,000.

By the end of 1996, the balance on the card, including late charges, reached $9,089, and MBNA declared the account delinquent. It informed Whitmore Sr. that he owed that amount as guarantor.

The doctor refused to pay. As MBNA put the sum out for collection and subsequently entered a bad credit report against both father and son, Whitmore insisted he had never authorized raising the limit and therefore was not responsible for the debts on the card above $500. He did send in $500.

I asked Whitmore whether he wasn't teed off at his son too.

''I remonstrated with my son and guess what happened?'' he said. ''His grades went from A's to nothing. One entire year was wasted.''

Quentin Whitmore, now 24 and still a Dominguez Hills student, explained it this way:

''When I received the credit raises, I assumed [my father] had approved them. I never thought to call him, because at the outset MBNA had agreed not to raise the limits unless he gave his approval.''

A Quicken survey last year revealed nearly half of college students bounce checks, 71% of those with cards fail to pay off balances monthly and most estimate that they will have $15,000 in debt before graduation. So young Whitmore's extravagance, or needs, may not be that unusual.

I asked MBNA whether it would acknowledge a mistake in raising young Whitmore's limit so high.

That was indeed a mistake, said Brian Dalphon, a MBNA senior vice president. He said his credit account was never coded as either a student or a guarantor account, as it should have been.

''When we assign a credit line to a student, it's at a lower limit, initially $500 [as in Whitmore's case],'' he explained. ''And we're very conservative with it. We don't raise the limits very quickly. A typical credit line for a student remains at $500 to $1,000.''

When Dr. Whitmore was first billed as the guarantor, however, he was unsuccessful for months in resisting. Finally, the Los Angeles County Consumer Affairs Department agreed to intervene for him.

Timothy Bissell, the agency's assistant director, observed, ''As a matter of contract law, MBNA could not hold him responsible for a higher amount than $500 unless they had notified him they were raising the credit limit.''

* * *

On Oct. 27, 1997, 10 months after trying to bill Dr. Whitmore, MBNA First Vice President Edward Matthews informed the department that the doctor was being absolved of responsibility for the debt above $500 and that a bad reference was being stricken from his credit file.

''I apologize for any inconvenience Dr. Whitmore has been caused by this situation,'' he wrote. ''Due to a keying error when the account was established in 1992, the account received automatic credit line increases until December 1996 as a result of Quentin Whitmore's previous satisfactory payment history.''

But, at that time, the nature of the keying error was left obscure. And the ''satisfactory payment history'' was left undetailed.

The Whitmores say the delinquency took the better part of a year to develop, after payment requests far outstripped young Whitmore's ability to pay.

Quentin Whitmore's account has now been closed, Dalphon said.

But, Dr. Whitmore said, his son will keep his bad credit rating for several years, and six months ago, when the senior Whitmore last checked, he said he found his own credit record still impaired.

MBNA proposed 18 months ago to forgive 50% of Quentin Whitmore's balance if he agreed to pay monthly installments of $378.

But Dr. Whitmore said his son ''has absolutely no income'' as he continues his studies.

''So I called them and told them that if they would remove all the late charges, the excess limit charges and reduce this to the absolute minimum that he originally charged, then I would negotiate a settlement with them under these conditions and pay them off myself, But they refused.''

Dalphon declined to say whether MBNA continues to try to collect.

Dr. Whitmore remains unhappy.

''I do not feel that MBNA's hands are clean in this matter,'' he said. ''If the limits on this account had not been raised, then my son would not have been able to abuse it. If what the credit card companies are doing to our youth before they can develop a sense of financial responsibility is legal, then new laws are needed.''

But, of course, MBNA denies its policy is to raise limits on students. It maintains that what happened was another of these electronic glitches I sometimes write about.

Mrs. FEINSTEIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Does the Senator ask that the pending amendments be laid aside?

Mr. SESSIONS. I object. We want to see a copy before we change the order of business.

Mr. BINGAMAN. Mr. President, I suggest the absence of a quorum. I am glad to share it with the Senator.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 28

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the pending amendment be set aside so I can call up an amendment that is at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN], for himself, Mr. DASCHLE, Mr. LEAHY, Mr. DORGAN, Mr. KENNEDY, Ms. MIKULSKI, Mr. LEVIN, Mr. DODD, Mr. SCHUMER, Mr. BREAUX, Mr. DURBIN, Mr. KERRY, Mr. DAYTON, Ms. CANTWELL, Mr. CORZINE, Mrs. CLINTON, Mr. REID, Mr. AKAKA, Mrs. CARNAHAN, Mr. ROCKEFELLER, Mr. CONRAD, Mr. WELLSTONE, Ms. LANDRIEU, Mr. KOHL, Mr. NELSON of Nebraska, Mr. REED, Mr. LIEBERMAN, Mr. BAYH, Mr. SARBANES, Ms. STABENOW, Ms. LINCOLN, Mr. HOLLINGS, Mr. DOMENICI and Mrs. BOXER, proposes an amendment numbered 28.

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

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

The amendment is as follows:

(Purpose: To increase the authorization of appropriations for low-income energy assistance, weatherization, and State energy emergency planning programs, to increase Federal energy efficiency by facilitating the use of private-sector partnerships to prevent energy and water waste, and for other purposes)

At the appropriate place in the bill, add the following:

TITLE—EMERGENCY ENERGY ASSISTANCE AND CONSERVATION MEASURES

SEC. 01. SHORT TITLE.

This title may be cited as the 'Energy Emergency Response Act of 2001'.

SEC. 02. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) high energy costs are causing hardship for families;

(2) restructured energy markets have increased the need for a higher and more consistent level of funding for low-income energy assistance programs;

(3) conservation programs implemented by the States and the low-income weatherization program reduce costs and need for additional energy supplies;

(4) energy conservation is a cornerstone of national energy security policy;

(5) the Federal Government is the largest consumer of energy in the economy of the United States; and

(6) many opportunities exist for significant energy cost savings within the Federal Government.

(b) PURPOSES.—The purpose of this title are to provide assistance to those individuals most affected by high energy prices and to promote and accelerate energy conservation investments in private and Federal facilities.

SEC. 03. INCREASED FUNDING FOR LIHEAP, WEATHERIZATION AND STATE ENERGY GRANTS.

(a) LIHEAP.—(1) Section 2602(b) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621(b)) is amended by striking the first sentence and inserting the following: ''There are authorized to be appropriated to carry out the provisions of this title (other than section 2607A), $3,400,000,000 for each of fiscal years 2001 through 2005.''.

(2) Section 2605(b)(2) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.c. 8624(b)(2)) is amended by adding at the end the following:

''And except that during fiscal year 2001, a State may make payments under this title to households with incomes up to and including 200 percent of the poverty level for such Stat;''.

(b) WEATHERIZATION ASSISTANCE.—Section 422 of the Energy Conservation and Production Act (42 U.S.C. 6872) is amended by striking ''For fiscal years 1999 through 2003 such sums as may be necessary'' and inserting: ''$310,000,000 for fiscal years 2001 and 2002, $325,000,000 for fiscal year 2003, $400,000,000 for fiscal year, and $500,000,000 for fiscal year 2005.''.

(c) STATE ENERGY CONSERVATION GRANTS.—Section 365(f) of the Energy Policy and Conservation act (42 U.S.C. 6325(f)) is amended by striking ''for fiscal years 1999 through 2003 such sums as may be necessary'' and inserting: ''$75,000,000 for each of fiscal years 2001 through 2005''.

SEC. 04. FEDERAL ENERGY MANAGEMENT REVIEWS.

Section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253) is amended by adding at the end the following:

(e) PRIORITY RESPONSE REVIEWS.—Each agency shall—

''(1) not later than October 1, 2001, undertake a comprehensive review of all practicable measures for—

(A) increasing energy and water conservation, and

(B) using renewable energy sources; and

''(2) not later than 180 days after completing the review, implement measures to achieve not less than 50 percent of the potential efficiency and renewable savings identified in the review.''

SEC. 05. COST SAVINGS FROM REPLACEMENT FACILITIES.

Section 801(a) of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)) is amended by adding at the end the following:

''(3)(A) In the case of an energy savings contract or energy savings performance contract providing for energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities, benefits ancillary to the purpose of such contract under paragraph (1) may include savings resulting from reduced costs of operation and maintenance at such replacement buildings or facilities when compared with costs of operation and maintenance at the buildings or facilities being replaced.

''(B) Notwithstanding paragraph (2)(B), aggregate annual payments by an agency under an energy savings contract or energy savings performance contract referred to in subparagraph (A) may take into account (through the procedures developed pursuant to this section) savings resulting from reduced costs of operation and maintenance as described in subparagraph (A).''.

SEC. 06. REPEAL OF ENERGY SAVINGS PERFORMANCE CONTRACT SUNSET.

Section 801(c) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)) is repealed.

SEC. 07. ENERGY SAVINGS PERFORMANCE CONTRACT DEFINITIONS.

(a) ENERGY SAVINGS.—Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended to read as follows:

''(2) The term 'energy savings' means a reduction in the cost of energy, water, or wastewater treatment from a base cost established through a methodology set forth in the contract, used by either—

''(A) an existing federally owned building or buildings or other federally owned facilities as a result of—

''(i) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

''(ii) more efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or

''(iii) more efficient use of water at an existing federally owned building or buildings in either interior or exterior applications; or

''(B) a replacement facility under section 801(a)(3).''.

(b) ENERGY SAVINGS CONTRACT.—Section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3)) is amended to read as follows:

''The terms 'energy savings contract' and 'energy savings performance contract' mean a contract which provides for—

''(A) the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy, water conservation, or wastewater treatment measure or series of measures at one or more locations; or

''(B) energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities.''.

(c) ENERGY OR WATER CONSERVATION MEASURE.—Section 804(4) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(4)) is amended to read as follows:

''The term 'energy or water conservation measure' means—

''(A) an energy conservation measure, as defined in section 551(4) (42 U.S.C. 8259(4)); or

''(B) a water conservation measure that improves the efficiency of water use, is life cycle cost effective, and involves water conservation, water recycling or reuse, improvements in operation or maintenance efficiencies, retrofit activities or other related activities, not affecting the power generating operations at a Federally-owned hydroelectric dam''.

Mr. BINGAMAN. Mr. President, the amendment we are now discussing and that I have offered on behalf of myself and over 30 cosponsors addresses an important problem that is being felt this winter all across America. High energy costs have hit low-income and working Americans hard this winter, and this coming summer promises to be just as expensive in many parts of our country.

The high heating bills this winter are the result of a combination of two primary factors: First, higher demand resulting from colder than average

weather across the country, we have just seen another major snowstorm in the Northeast, and second, a supply shortfall that stems from lack of drilling 2 years ago when the oil and gas prices were so low.

The combination of these two factors has resulted in natural gas and propane bills that are as much as 200 percent higher this year than they were last year. Heating oil prices have been well above last year's average as well. Natural gas prices and tight generating capacity are driving up electricity prices around the country. Of course, California is the area of our country that has gotten the most attention in this regard, but electricity prices in other parts of the country have also escalated.

We can predict now that many people in southern States will be especially burdened this summer because of the high cost of trying to maintain air-conditioning.

Applications for energy assistance have increased dramatically this year. Over 5 million households in the United States may be unable to pay their energy bills this winter. That is a figure that is up substantially from last year. The State-by-State increase in caseloads coming from assistance requests is illustrated on this chart that is provided by the National Energy Assistance Directors Association.

When one looks at some of the figures on this chart, the point I am making becomes very clear. The chart is titled, ''Low-Income Home Energy Assistance Program, Increase in Caseloads'' as of the First of March.

As of the first of March, the increase in caseloads in my State this year over last year is 100 percent. We have twice as many people requesting assistance. In Oklahoma, it is 50 percent above last year. In Louisiana, it is 91 percent above last year. In Mississippi, it is 50 percent above last year. I can go all around this chart and one can see the increases different States have experienced. There are over 20 States reporting increases greater than 26 percent.

I ask unanimous consent that a copy of the survey detailing the critical situation we have in each of our States be printed in the RECORD at the end of my statement.

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

(See exhibit 1.)

Mr. BINGAMAN. Mr. President, many consumers who cannot pay their energy bills have been protected so far by the so-called cutoff laws. Those are laws which prohibit utility companies from terminating service to customers during the winter. But these prohibitions against terminating utility service expire in March or in April, and when they do, the seriousness of the situation for low-income working Americans will become harshly obvious to all of us.

According to a recent survey by the National Council of State Legislators, 18 States have extended income eligibility limits because so many people just above the current thresholds are struggling to pay their utility bills. Thirty-one States either have already increased or hope to increase benefit levels in an effort to keep net costs to those in need at the same level as in previous winters. Many States have expressed a serious need for additional funds to extend eligibility and benefit levels.

The reality is that many States have already depleted their LIHEAP and weatherization funding, the funding that we appropriated for these programs in the last year. Without additional funds, assistance to low-income working families for the summer cooling season is going to be impossible.

People tend to forget the severe toll the summer heat takes on many people in this country, particularly on our senior citizens. Just last year, the State of Texas was forced to impose a moratorium on utilities cutting off service during the summer. Usually there is a moratorium against cutting off utility service during the winter, but Texas was forced to impose it in the summer.

According to the Austin American Statesman of August 11, 2000:

> With 54 heat-related deaths across Texas this summer, the state Public Utilities Commission on Thursday stopped electric companies from shutting off service for nonpayment until the end of September. The commission wanted to prevent any more deaths because fans or air conditioners were just not used for fear of high bills.

The Texas experience last summer was especially heartbreaking in its magnitude—54 deaths. But this was not the first time this circumstance has occurred and it will not be the last.

The chairman of the Texas commission lamented the fact that the process had taken so long. A moratorium on disconnections helps with the immediate problem of no service, but it does not address the bill that will eventually have to be paid by each of these families.

Many who remember the days of childhood without air-conditioning forget the fact that most of us, including myself, did not live in the midst of concrete cities. These cities have been referred to as modern-day heat islands. During the summer, not just in the Southern States, it is our parents and grandparents who are most vulnerable during heat waves. Unfortunately, many seniors living on fixed incomes often consider air-conditioning a luxury, not a health necessity.

This is not a partisan issue. The provisions of this amendment are the same or very similar to those contained in the bill introduced by Senator MURKOWSKI, the same bill the majority leader cosponsored last week when he declared his support for LIHEAP on the Senate floor. But, he declared his support for it as part of a broader package that will not be brought to the floor until several months in the future.

I hope the vision of a one-shot comprehensive energy bill does not cause delay our acting on such an immediate need, especially when human lives are at stake. Especially given the administration has been saying it will not even have a proposal to us for several more months. It seems every time they report on their progress it is to report the 2-month clock is starting again. Clearly, they are working in good faith on a comprehensive bill or comprehensive set of proposals for dealing with our long-term energy problems, but that does not relieve us of the responsibility to deal with this immediate problem and to deal with it now.

I support taking a comprehensive look at energy. I think it is important to have a balanced framework in order to evaluate the various tradeoffs. In fact, I am working with colleagues in the Senate to put such a bill together. My experience is the last time the Congress passed a major energy bill, the Energy Policy Act of 1992, it took an entire Congress and it resulted in a Christmas tree with several strong branches on which to hang many ornaments, a tremendous number of which were never implemented and were never funded by the Congress.

That is not the best approach to take in dealing with this immediate problem. Energy issues are complex, they often involve billions of dollars of investment, in very long-lived capital equipment. We need to focus on manageable sections in the interest of developing the best policy outcomes based on a common set of principles.

I have a chart that shows what I consider to be fundamental principles for a long-term energy policy. I want to make the point that this amendment I am now talking about, and urging my colleagues to consider, is not an alternative to a long-term bill, but is consistent with such a framework. It is only distinct in that we are dealing with an immediate problem.

These are some common principles that need to be dealt with for a successful long-term energy strategy. Let me briefly mention them.

First, we need a new model of Federal-State cooperation to ensure reliable and affordable energy supplies. If we had had better coordination in the past, perhaps we would not be needing to consider the amendment I have brought up today. That we don't have them in place is not the fault of the federal government or that of any individual state. By their very definition, restructured markets have changed the very framework upon which many of our energy policies and institutions were based.

Second, fuel and technology diversity need to be increased and emphasized. We need to have improved distribution systems for energy.

Third, we need to have a balance of supply-and-demand-side options with a commitment to efficiency, environmental quality and climate change mitigation.

Fourth, we need targeted tax and economic incentives to address market failures. We all recognize there are market failures, there are inefficiencies in the market.

Finally, we have to have comprehensive research and development in order to ensure a full complement of technologies and fuels to meet our energy needs.

All five of these items are principles for a long term policy. We are going to propose a set of provisions that incorporate those principles in the larger bill I mentioned before. But, we have immediate needs for energy assistance that cannot wait for months while we debate the very real energy issues this country faces.

It was well recognized at the time we passed the appropriations bill last year that LIHEAP funding was going to be inadequate to do the job in this current year. Individuals, families, and small businesses that are suffering today from energy bills they cannot pay cannot just wait while we debate a long term energy policy. We should not wait. To borrow a catch phrase from President Bush, they need an immediate helping hand.

The amendment I am offering today takes the first concrete steps in providing that hand, that assistance, the first concrete steps to put measures in place to address this remainder of this winter's financial distress and to deal with the high cost of electricity that we can all see coming at us this summer.

The amendment raises the authorized limits governing the low-income home energy assistance program, raising the limit to alleviate financial burdens on low- and middle-income families in the near term. At present, it is only authorized in fiscal year 2001 at the $2 billion level. That is a base level that has been relatively flat since the mid-1980s—just to show how long we have gone without any change in this authorization.

The amendment raises the base funding requirement to $3.4 billion for fiscal year 2001, each of the fiscal years 2001 to 2005. The increase comes close to addressing the erosion in the program due to inflation since President Reagan was in the White House.

The amendment also gives States additional flexibility in this fiscal year on income levels for recipients by increasing eligibility from 150 percent of poverty to 200 percent of poverty. This change only applies for the remainder of this fiscal year but will give States the flexibility to help working families and senior citizens with whatever additional funds we can send to those States. This adjustment is at the request of many of our States.

Third, the amendment raises the authorization levels for this fiscal year and succeeding years for the low-income weatherization program and the State conservation and emergency planning grants. The immediate increase in the authorization for the weatherization program of $310 million is for the remainder of this fiscal year and the fiscal year 2002 compared to the current appropriations level of $162 million. The weatherization program is a sound and long-term investment in energy efficiency. A one-time investment of weatherization yields savings of $300 to $470 per household annually thereafter. This program, however, requires trained staff. Erratic and insufficient funding of the weatherization program has diminished its effectiveness in recent years.

Increased energy efficiency is the least cost solution to meeting our energy needs. The weatherization program was funded at nearly three times the current level in the 1980s. This amendment will increase the weatherization authorization in an attempt to catch up with the 1980s level in real dollars.

The fourth thing this amendment does is increase the authorization for grants to State energy programs up to $75 million. This program funds State conservation and emergency planning. The extremely low level of funding in recent years has diminished the State's ability to implement State level conservation plans and to plan for emergencies in coordination with the Department of Energy and with neighboring States.

I cannot overemphasize how critical it is to have better coordination of overall energy planning and emergency response preparedness. The power situation in the western states is just the most recent example of where better regional planning could have reduced costs and provided greater reliability. Heating oil markets in the northeast and gasoline supply problems in the midwest last summer are just a few examples of where a little more advanced preparedness could have reduced disruption and impact on consumers. I would note that for all the lamenting the lack of an energy policy on the part of many members of this body, it was the Republican majority that eliminated coordinated emergency planning from the Department of Energy budget in 1995.

I urge the Congress to enact these amendments and to encourage the President to propose an emergency supplemental bill for these programs. Let's stop debating form over substance and get it done now.

We all know that even if we adopt the amendment I have sent to the desk, it will only increase the authorization levels for these programs. We still need the funding. I very much hope the President will take the lead in requesting the increased funding from this Congress so we can actually send the assistance to the States and it can go to the families who need it.

Finally, my amendment contains a package of provisions aimed at quickly increasing the energy efficiency of Federal facilities around the country. Many of these facilities are very wasteful in their use of energy and water—two commodities that could be in short supply this summer in many parts of the country. Federal agencies spend $4 billion per year to heat, cool, and power their facilities. Too much of that is wasted. If federal agencies aggressively reduce their energy waste, their neighbors will enjoy the benefits of increased supplies of electricity, and taxpayers will benefit by paying less for the power that would have been wasted. Under an existing Executive order, federal facilities are required to increase energy efficiency by 30 percent by 2005 and 35 percent by 2010 relative to 1985, but there is some evidence that this Executive order is not being aggressively implemented.

This amendment calls for a concerted effort by facility managers to meet the Executive order targets early, thereby saving taxpayer dollars, reducing stress on the power grid and demand for fuels. Specifically, my amendment calls for each Federal agency to complete a comprehensive review this fiscal year of all practicable measures for increasing energy and water conservation and using renewable energy sources.

The agencies then have 180 days to implement measures to achieve 50 percent of the potential savings identified in their reviews. That could result in a measurable reduction in federal energy consumption by this time next year, if we get started now.

Federal agencies could also use this authority to investigate siting new generating capacity at their facilities, to further ease stress in our power system this summer. We won't be building many new central electricity generating stations before the summer, but we could start installing a lot of distributed generation at Federal facilities, particularly proven technologies such as ground-source heat pumps, that could dramatically reduce the power requirements for heating and cooling Federal buildings.

My amendment also makes it easier for federal agencies to use partnering tools with the private sector, known as energy savings performance contracts (or ESPCs), to reduce energy costs through facility upgrade and replacement. ESPCs offer perhaps the fastest means for rapidly improving the efficiency of the existing building stock owned by Federal agencies.

These are targeted measures that will help relieve the immediate needs of our citizens who cannot cope with the high energy bills this winter, and provide incentives for the Federal government to do its part to decrease energy consumption now.

I urge the adoption of this amendment.

EXHIBIT 1

NATIONAL ENERGY ASSISTANCE DIRECTOR'S ASSOCIATION STATE-BY-STATE LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM SURVEY RESPONSES (FEBRUARY 7, 2001)

ALABAMA

The Alabama LIHEAP program estimates it will award regular benefits to 6.9% more

households this year (75,000 vs. 70,146). Although higher benefits are being provided to those households that heat with propane or natural gas, more is needed since the cost of these fuels has already risen 50–65%. Alabama continues to provide weatherization and furnace repair services as part of its crisis program.

CALIFORNIA

Requests for assistance by phone are running almost 60% higher than last year at this time. California's natural gas prices have risen 40–50% this year, but definitive information is not yet available on electricity rates statewide. The state's LIHEAP program allows the maximum eligibility criteria of 60% of sate median income and plans to increase the benefit levels for this year's eligible households in response to significant increases in natural gas and electricity prices. Supplemental funds are needed to increase both the benefit levels and the number of households served. Additional funding is also needed to increase the furnace repair and replacement programs.

COLORADO

Colorado expects to serve 41% more households this year than last (75,000 vs. 53,182). Program benefit levels have been increased by 125%, while eligibility has been expanded from 150% to 185% of the federal poverty guidelines. Natural gas and propane have doubled in price and the state's largest natural gas provider recently asked the Public Utilities Commission for another increase of about 5%. These increases have placed unreasonable burdens on low-income households, as well as those whose income is slightly over the current eligibility criteria. Colorado needs additional funds to increase eligibility to 200% of the federal poverty level, increase the benefit amount, increase outreach to ensure needy households are aware of the program, and increase funding for weatherization and the summer grants program operated by the Colorado Energy Assistance Foundation.

CONNECTICUT

Connecticut estimates it will provide LIHEAP benefits to 21% more households this year (68,000 vs. 56,340). According to representatives from the natural gas companies, prices are currently 39% higher this year and the State LIHEAP program reports oil prices are running 34.6% higher than last year. This year income limits for LIHEAP eligibility were raised to 60% of the State median income for all fuel types, as compared to last year's limit of 150% of the federal poverty income guidelines. All benefit amounts have also been increased. Additionally, $400,000 has been set aside for furnace repairs and/or replacements for households whose heating systems are determined to be unsafe or inoperable. Supplemental funding is needed in order to expand the application period. The program currently pays for fuel beginning November 1st, but would like to change that date to October 15th (the date when landlords are required to begin providing heat) and extend the last date for fuel to April 15th (the end of the utility moratorium).

DELAWARE

Delaware expects a 12.6% increase in the number of regular benefits awarded (11,500 vs. 10,215) and a 6.9% increase in the number of households receiving crisis assistance (from 2,807 to 3,000), although these numbers do not include the summer cooling assistance program. Regular LIHEAP benefits have increased an average of 20% (from $206 to $241). Some households also receive up to $400 from the crisis program, although the average is $200. Eligibility for the regular program has remained at 150% of the federal poverty guidelines, but crisis eligibility guidelines were increased to 200% of poverty. In order to respond to numerous inquiries the state has received requesting assistance with furnace repairs/replacements, additional funding is needed.

GEORGIA

The number of households assisted by Georgia's LIHEAP program is expected to double this year (120,000 vs. 60,710). LIHEAP eligibility has been expanded to 150% of the federal poverty guidelines and may be further increased to 60% of the state median income. The amount currently provided to households does not have a significant impact—the maximum $194 benefit cannot fill a propane tank so the household cannot benefit from energy assistance unless they are prepared to supplement the balance. All LIHEAP funds have been utilized for direct financial client benefit services due to the colder than usual temperatures and the rapidly rising fuel prices. Additional funding is needed to serve more households and keep the program open longer, as well as provide supplemental and crisis payments.

FLORIDA

Florida expects to serve 23% more clients this winter season than last year (42,500 vs. 34,393). In addition, the state is expecting to provide assistance this summer to an additional 31,000 clients for cooling assistance, about the same level as last year. Natural gas prices have increased by about 110%, while electricity prices at one utility have increased by 15.5%. Florida has increased its benefit level from a maximum of $300 to $1,000 per household. In addition, Florida is providing assistance to restore home power, including: paying deposits, late fees and reconnect fees; purchasing and/or repairing of non-portable heating equipment; repairing or replacing unsafe fuel oil or propane tanks; and paying fees required to assure the continuation or resumption of services. At the current rate of demand for services, the state expects to be out of funds by the end of March with little or no funds available for summer cooling. Additional funds would be used to address unmet needs and to continue providing services through the summer which is typically the state's peak demand time.

IDAHO

The number of households served by Idaho's LIHEAP program is expected to increase by 31% (30,930 vs. 23,529); average benefits are expected to increase by 14%. Fuel prices increased for natural gas by 48%; electricity by 6% and home heating oil by 40%. Although no change has been made to the LIHEAP income eligibility criteria (133% of federal poverty guidelines), this year the program application period will be extended to May 31st (rather than March 31st). Supplemental funding is needed to serve these additional eligible households, as well as to finance weatherization activities.

ILLINOIS

The number of households served by Illinois' LIHEAP program is expected to increase by 41% (350,000 vs. 247,000). Prices for natural gas, electricity, kerosene and electricity have increased from 2 to 4 times depending on the utility provider. The state has increased benefits increased by 35% and increased eligibility to 150%. If additional funding were available, the state would probably expand the program's eligibility and benefit levels.

IOWA

In Iowa approximately 21% more households have been certified and approved than last year at this time (75,000 vs. 62,000). Last year the average residential customer spent $354 on their total gas bill for the period November through March. It is projected the same customer will spend $807 for the same period this year. Although the average LIHEAP benefit has increased from $204 to $306, an additional $351 per household is needed in order for this year's participating households to have the same percentage of their total household income going towards winter gas bills as last year's participating households.

Iowa conducted a survey of last year's LIHEAP recipients to determine what these households do when faced with unaffordable bills. Over 20 percent reported going without needed medical care or prescription drugs in order to pay their heating bills and 12 percent reported without food in order to pay those same bills. The report, Iowa's Cold Winters: LIHEAP Recipient Perspective, documents an affordability crisis that existed prior to this year's rising fuel costs.

Last winter, LIHEAP recipients experienced winter home heating burdens of 8.2 percent on average—this figure does not include winter non-heat electric burdens. Heating costs represent approximately 40% of a household's total energy bill. Last winter, the LIHEAP program was able to reduce the average heating burden of 8.2% to 3.5% of total household income. For comparison, the typical non-low income household's heating burden is less than 2%. In order for this year's participating households to have the same percentage of their total household income going towards winter gas bills as last year's participating households, the Iowa LIHEAP program needs an additional $20.5 million.

To date, approximately 2,000 applications statewide that are not eligible for any benefit because the household was just over our income guidelines. Many of these households are elderly Iowans whose recent Social Security increase put them a few dollars a month over our maximum allowable income. These same households report tremendous out-of-pocket medical/prescription drug costs coupled with home energy bills they simply cannot afford without making extreme sacrifices. Federal rules would allow LIHEAP to increase our income guidelines from 150% of the federal poverty level to 185%. Unfortunately, this option cannot be considered at this time. In the absence of additional funding, the state plan's to continue to give, on average, a benefit of $306 to all eligible households that apply, and at some point in the future determine what if any supplemental payment we might be able to make.

KANSAS

Kansas expects to serve 18% more households this year (31,000 vs. 26,143). LIHEAP benefits have been increased by 31% to help offset the burden of higher gas prices—which are now more than double last year's rates. Supplemental funding is needed to provide benefits to additional eligible clients and bring the energy burdens of Kansas households to a manageable range.

MAINE

The number of households assisted by Maine's LIHEAP program is expecting to increase by 32% from (58,000 vs. 44,000). The state has already received 65,000 applicants this year, however they only have adequate funds to serve 58,000. As a result of the 40% increase in fuel costs this year, LIHEAP eligible households are utilizing the available funds so quickly the state is unable to handle the demand and all resources have been obligated. Unfortunately, the state has been forced to decrease funding for weatherizataion services, furnace repair, and administration. The income guidelines were increased from 125% of the federal poverty guidelines to 175% and the average benefit was decreased from $490 to $350 in order to

serve the additional households this change would create. Maine desperately needs additional funds to increase fuel assistance benefits, increase emergency funding, and provide for furnace repair or replacement.

MASSACHUSETTS

The number of households assisted by Massachusetts' LIHEAP program is expecting to increase by 9% (123,000 vs. 113,408). Last year, LIHEAP eligibility limits were raised to 200% of the federal poverty guidelines and benefits were extended to households with incomes up to 60% of state median income that heat with oil or propane. If the household's consumption exceeds the threshold established for the fuel type, 50% is added to the excess over the threshold or the high energy benefit, whichever is greater, is added to the regular benefit.

Oil prices in Massachusetts have risen by 36%, electricity by 42% and natural gas by 39%, with additional rate increases proposed. Massachusetts operates weatherization programs, system repair and replacement programs and conservation programs funded by the utilities through the legislative act on utility restructure. These are operated through a network of programs in the community action agencies throughout the state. Individual agencies distribute blankets but it is not a statewide coordinated effort as is the weatherization program.

MICHIGAN

The number of households served in Michigan's LIHEAP program has increased by 24% through December 31. At the current rate of increase, the state is expected to serve almost 362,000 this year vs. 291,831 last year. Energy prices have increased significantly, heating oil by 70% and propane by 100%. However our three largest natural gas vendors have had no increase due to rules by the Public Service Commission. Those rules will be lifted this spring and we expect at least 40% to 60% increase in the cost of natural gas. Benefit caps have been increased twice since the start of the winter heating season.

MINNESOTA

Minnesota's LIHEAP caseload is projected to increase by 10% (107,000 vs. 96,924). Eligibility has remained at 50% of the state median income, although benefits have been increased from an average of $415 in FY 2000 to $475 this year. This resulted in an increase to the maximum assistance from $900 to $1,200. Natural gas prices have risen 304%, propane costs are up 73% and oil is 27% higher. Weatherization and furnace repair continue to be offered. The state needs additional funding to increase benefits since the increases previously provided barely make a dent in the bills experienced by Minnesota households this year.

NEW HAMPSHIRE

New Hampshire LIHEAP program is expected to serve almost 20% more households than it did last year (27,500 vs. 23,081). Applications for assistance are running 31% higher than last year and the number of requests for requests for emergency assistance have increased by 88%. Funds previously set-aside for weatherization and administration have been redirected to client benefits as a result of the critical need this winter season.

Last year the income eligibility criteria was expanded to 60% of the state median income, which has also been retained this year. Had this not occurred, approximately 3,000 families who received LIHEAP benefits last year at the higher eligibility level would have suffered. The basic benefit matrix was increased by 65% so that benefits now range from $240 to $1200. Given that the projected need far outweighs available funding, New Hampshire is in serious need of additional LIHEAP funding to ensure the program will be able to serve all eligible households seeking assistance. As of January 12, 2001, 2,967 households had already exhausted their program benefits, so additional funding is also needed increase benefit amounts. Finally, additional funding is needed to restore program components currently suspended, including weatherization.

NEW JERSEY

New Jersey expects to serve almost 25% more households this year (150,000 vs. 120,000). In addition, 55,182 elderly and/or disabled households with incomes over the LIHEAP eligibility limit, but under the income cap for the state funded supplemental Lifeline utility assistance program, received a one time benefit of either $100 (electric heat) or $215 (gas, oil or propane heat). The state has recently raised its income eligibility limit to 175% of poverty. The state is considering a number of options for the additional emergency funds received, one of which includes higher income eligibility.

NEW MEXICO

New Mexico expects to serve almost double the number of households this year (80,000 vs. 48,405). Natural gas prices have risen 20% since last year, while kerosene/propane has increased by 200%. Because of the increase in applicants, grant payments were not increased, however, the program did provide an emergency payment for oil and bulk propane in addition to the regular payment in order to purchase the same amount of fuel. Additional funds are needed to serve the increasing number of applicants and provide supplemental or second benefits to offset the tremendous price increases. Although the Native American tribes in New Mexico receive their own LIHEAP allocation, the state is also concerned about helping the tribes serve additional eligible households in their jurisdiction.

NEW YORK

The percentage of households served by New York State's LIHEAP program is expected to increase by 18% (818,000 vs. 691,500). Last February, New York expanded its LIHEAP income eligibility criteria to 60% of the state median income, which has been retained for FY 2001. The regular benefit was increased by $50 and, as of January 2001, a second emergency benefit is now allowed. The program continues to provide weatherization, furnace repair and furnace replacement. Additional funding is needed in order to provide a second regular benefit to offset the rising energy burdens felt by New York residents. 691,500 regular benefits Emergency program? 195,500 emergency benefits were issued.

NORTH DAKOTA

North Dakota expects to serve 15% more households in its regular and emergency LIHEAP programs this year. The state has increased the program eligibility criteria from 150% of poverty to 60% of the state's median income and has continued its weatherization and furnace replacement programs. Residents have seen the cost of natural gas rise by 29%, propane by 40% and heating oil by 47%. If prices remain high, the state will need a 40% increase in funds to maintain program benefit levels. So far, state spending for winter home heating benefits is running 92% higher than last year at this time.

OHIO

The percentage of households assisted by Ohio's LIHEAP program is expected to increase by about 15% in the regular program (224,700 vs. 195,380) and emergency programs (126,000 vs. 109,656) this year. The benefit levels of both program components have been increased to help offset the increases in home heating costs. Natural gas prices have increased between 35 and 50% this year, as have propane and oil. Additional funding is needed to expand the income guidelines from 150% of the federal poverty guidelines to 60% of the state median income, which would greatly increase the number of potential applicants and enable the state to assist those who are not currently served but whose energy burdens have skyrocketed.

OKLAHOMA

Oklahoma is expecting an increase of 50% in the number of households served this year (86,000 vs. 57,300) although income eligibility remains at 110% of the federal poverty guidelines. Oklahoma's LIHEAP program reports natural gas prices have almost doubled and an additional $23 million is needed just to maintain the same out-of-pocket expense to the low and fixed income clients. December 2000 had the coldest average temperature in recorded history in Oklahoma.

OREGON

The caseload in Oregon's LIHEAP program is expected to rise by 82% this year (88,547 vs. 48,547). Although there has been no increase in benefits and no changes to the eligibility criteria, an emergency payment was authorized for oil and bulk propane in addition to the regular payment so that households could purchase the same amount of fuel that the benefits would have purchased last year. The contingency funds previously targeted for weatherization have been redirected to client benefits instead. There has been a significant increase in the demand for benefits this year and additional funds are needed to accommodate this, as well as to provide additional crisis benefits to clients who heat with oil or bulk propane.

PENNSYLVANIA

The percentage of households assisted by Pennsylvania's regular LIHEAP program is expecting to increase by almost 32 percent (280,750 vs. 213,032). Applications for crisis assistance are also expected to increase by a similar percentage (101,500 vs. 76,700). Income eligibility in Pennsylvania's LIHEAP program was increased from 110% to 135% of the federal poverty guidelines and the maximum crisis award is up from $250 to $400. As a result of the contingency funds awarded to Pennsylvania this year, applications will continue to be accepted until April 30th, the maximum crisis benefit will be increased to $700 and the crisis eligibility will be expanded to 150% of the poverty level. Pennsylvania residents have seen the price of deliverable fuels rise by 50% and gas by 40%. Additional funding is needed to expand the eligibility criteria for all applicants to 150% of the federal poverty guidelines, increase benefits to offset the higher energy burdens and develop a spring/summer cooling program.

RHODE ISLAND

The percentage of households served by the Rhode Island LIHEAP program is expected to increase by 33% (26,000 vs. 19,500). Energy prices have shown significant increases. Prices for natural gas prices have increased by 30–40%, electricity by 40–50% and the home heating oil by 50%. To help offset these increases, the LIHEAP minimum benefit was increased from $200 to $325, which resulted in an increase in the average award from $390 to $550. Emergency oil delivery has also been increased from 100 gallons to 200 gallons. Eligibility criteria remains at the 60% state median income level. Although LIHEAP funds have been set aside for weatherization activities, boiler or furnace replacement, blankets and hats for elderly and shut-in clients and summer crisis programs, additional funding is needed to expand the crisis and emergency assistance programs, as well as to implement bulk fuel purchases.

SOUTH CAROLINA

A 24% overall increase in the number of households served is expected this year and benefits and LIHEAP eligibility criteria have been increased and expanded to assist clients in coping with higher energy prices. Additional funds are needed to provide furnace repair/replacement services, which are currently not available.

SOUTH DAKOTA

South Dakota expects a 30% increase in the number of households served (15,000 vs. 11,500) in its regular LIHEAP program. Income eligibility criteria has not changed (140% of poverty), but benefits have been increased by 60% for natural gas, oil and propane users to offset the higher costs of these fuels. Weatherization and furnace repair and replacement programs continue to be offered. Additional funds are needed to further increase the benefit levels, as well as expand the eligibility criteria to enable more households to participate.

VERMONT

A 10% increase is expected in the number of households served by Vermont's LIHEAP program this year (23,900 vs. 21,637). Home heating prices have risen as follows: oil 50%; propane 45%; and kerosene 45% and although some increases were made to the benefits this year, additional funds are needed to keep up with the fuel price increases, as well as to provide emergency furnace repair/replacement and weatherization services.

WASHINGTON

Washington's LIHEAP caseload is expected to increase by 50% this year (75,000 vs. 49,770). Neither benefits nor eligibility criteria have changed this year, but fuel costs have increased significantly. Natural gas prices are up by 26%, electricity by 15% and kerosene by 60%. Supplemental funding would enable higher benefits to be awarded to offset the higher energy burden experienced by Washington households this year, as well as enable additional households to be served.

WEST VIRGINIA

West Virginia expects to serve almost 55% more households this year (55,000 vs. 38,804). Heating costs have increased on average by about 12%. Benefits levels were increased by raising the minimum payment by $50 and the maximum benefit from $475 to $600. Additional funding would probably be used to assist customers with cooling costs during the summer, and to expand the LIHEAP program to include more customers.

WISCONSIN

Wisconsin expects to serve 25% more households in its regular LIHEAP program (110,100 vs. 88,105) and emergency program (25,000 vs. 20,152) this year. The average benefit has been increased and additional funds have been targeted for crisis assistance. Residents have seen the cost of natural gas rise by 101%, propane by 62% and heating oil by 30%. Additional funding is needed to further increase the benefit levels to more adequately mitigate the effects of the price spikes, as well as to expand outreach efforts and assist additional eligible households.

Mr. BINGAMAN. Mr. President, I don't know if it is the will of the managers of the bill to have a vote at this time. I am certainly ready for a vote whenever time is appropriate.

I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

At the moment, there is not a sufficient second.

Mr. BINGAMAN. Mr. President, I will renew that request when we have more Senators on the floor.

I yield the floor.

Mr. KENNEDY. Mr. President, this amendment includes essential short-term responses to the energy difficulties that American families face right now. It includes protections for working families who must heat their homes during the severe winters that we have in the Northeast and Midwest, and for families who must cool their homes during times of extreme heat in the South and West. Many families cannot afford sudden and dramatic increases in their heating costs, yet they must heat their homes to survive. This year 123,000 Massachusetts families needed help with their heating costs under the Low Income Home Energy Assistance Program, a 10 percent increase in need over last year. In Boston alone, community action agencies made over 1,500 emergency heating oil deliveries this winter.

The expanded relief afforded working families under this Amendment is a fitting—and I say crucial—addition to a bankruptcy bill that seeks to limit the debt relief available to consumers. I am proud to join my colleagues in proposing to improve this bankruptcy bill with energy protections for middle and low-income families.

Over the next year, Congress faces difficult choices in planning the Nation's energy future, choices that will have profound long-term consequences for every sector of the Nation's economy. Republicans insist on debating controversial proposals like oil drilling in wildlife refuges but even if they succeed in forcing the drilling to begin, any oil found there will not have any effect on the domestic energy supply for 5 or even 10 years.

While we take the time that is necessary to debate long-term energy policy, a foot of snow remains on the ground in Boston today. The cold weather brings immediate needs to families and small businesses, including many who work in the transportation industry. These needs cannot and should not continue be ignored. Unless Congress acts now, many families will suffer in the cold through the remainder of the winter, they will endure the summer's heat without respite, and they will be the first to feel the effects of any destabilization in the larger economy.

Especially as Congress acts to weaken the bankruptcy protections available to low-income consumers, it must account for their legitimate short-term energy needs. This amendment accomplishes this work in a straightforward way, by: increasing authorized funding for the Low Income Home Energy Assistance Program, the Weatherization Assistance Program, and State Energy Grants; expanding state options for providing energy assistance to any family earning under 200 percent of poverty; and requiring the federal government to lead by example in all manners of energy conservation.

The fact that we cannot solve all of the Nation's energy problems overnight does not excuse us from doing what we know works to protect families in the near term. The sponsors of this amendment are clear that a strong safety net for low-income working families, conservation, and energy efficiency are actions that can and must be taken immediately in response to the energy difficulties that we all know consumers throughout the Nation are facing today.

I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank the Senator for his concern about energy policy in America. I share that. Those of us who worked for 4 years on the bankruptcy bill know that we need to remain focused on this bill.

I hope there is some way we can avoid having an energy debate delay our ability to bring to a conclusion the bill that is before us today, the bankruptcy legislation. To date, we have been pretty good about that. People are bringing their amendments down. They have been relevant amendments for the most part. Some have not been very relevant but at least arguably relevant. I think this one is particularly nongermane to the matter before us.

I want to say with regard to energy policy, it has been obvious to me for some time that this Nation has been operating within a rosy scenario. We have blithely gone along, even though we have so much more superior technology today and are so much more capable of producing energy without any environmental damage, virtually no environmental damage, and at the same time we have been declaring time and time again that we will not allow energy reserves to be produced.

One of the reasons is there is a group in this country that favors high energy prices. This is a no-growth group that is not in the mainstream. But every time there is an opportunity to bring on a new supply of energy, they object. It is their joy when prices go up because they think somehow that will cause people to burn less fuel and emit less pollutants. They are not concerned the average family in Alabama 2½ years ago maybe spending $100 a month for their gasoline bill for their automobile and now spending $150 is because we allowed ourselves to become increasingly dependent on foreign oil.

Those OPEC nations got together and politically jacked up the price by withholding supplies. They are not concerned we can't bring nuclear power on line. That has been blocked in any number of different ways leaving us now totally dependent for new electricity generation on natural gas which places electric generation in competition with homeowners. And we are seeing huge increases in natural gas prices in my State.

I see the Senator from Maryland. Is he prepared to speak on the bankruptcy bill?

Mr. SARBANES. I want to speak with respect to an amendment that was offered a short while ago and is still pending before the body.

Mr. SESSIONS. I would be delighted to yield to him, Mr. President, because he will be speaking on a pending bankruptcy amendment.

The PRESIDING OFFICER (Mr. FITZGERALD). The Senator from Maryland is recognized.

AMENDMENT NO. 25

Mr. SARBANES. Mr. President, I rise to speak in favor of the amendment offered just a short while ago by my very able colleague from New York, Senator SCHUMER, which I cosponsored. I thank Senator SCHUMER for his leadership on this amendment which seeks to ensure—there is some ambiguity—that the claims and defenses that would have existed with respect to a predatory loan will survive at sale or loan and passage through a bankruptcy proceeding.

Last year, just to illustrate the dimensions of this problem, the New York Times and ABC News broke a story about a company called First Alliance Corporation. First Alliance was a predator mortgage lender which engaged in deceptive and fraudulent practices.

Like many predatory lenders, First Alliance targeted elderly homeowners, many of whom were ill, for the hard sell. In fact, First Alliance developed a script for its lending staff called ''The Track,'' which detailed a set of tricks that could be used to distract and deceive trusting homeowners. Indeed, according to press accounts, a California appeals court found that First Alliance ''trained its employees to use various methods, including deception, to sell its services.''

This guidebook to deception is only part of the story. Loan officers did not disclose, as required by the Truth in Lending Act, the true costs of the loan. Even where the documents told the true story, the loan officers would lie to the customer about the meaning of the documents.

This is not an idle or empty accusation. This is not speculation. One customer of First Alliance taped her conversation with a loan officer to play for her husband later on because she had become so confused by the transaction. So we know these violations occur.

Over time, a number of State attorneys general started investigating First Alliance, and a growing number of victims of these practices brought suit.

Under the Truth in Lending Act and State fraud and other statutes, the victims have the right to seek redress that makes them whole and in some cases to collect damages. Under threat from many such lawsuits, First Alliance declared bankruptcy. In other words, the company that had engaged in these practices, which was now being called to account for those practices by the State attorneys general and by those people victimized—utilizing the Truth in Lending Act, and State fraud and other statutes—that company declared bankruptcy. Other subprime predatory lenders engaging in similar practices have sought the protection of bankruptcy courts as the suits have piled up. A number of these firms have sold their loan portfolios, or the servicing rights to their loans, in their bankruptcy proceedings.

What this amendment would do is it would ensure that the claims that rest against these deceptive and fraudulent loans would survive the bankruptcy process. It is arguable that that is what existing law provides, but it is not altogether clear. This seeks to make that crystal clear.

The amendment is necessary because some are now advancing the argument that going through bankruptcy is essentially equivalent to laundering the loan; in other words, what was dirty going into the bankruptcy proceeding comes out clean. But of course what that means is that innocent homeowners who sought a loan, homeowners who were tricked and lied to, homeowners who have legitimate claims to relief under existing law, might end up without a remedy and might end up losing their homes.

Indeed, one could argue that the current ambiguity encourages these lenders to go into bankruptcy. If bankruptcy results in these loans being laundered—cleaned up—then those loans, those assets, become more valuable after bankruptcy than they were before. If you can pass them through that process and, in effect, block out the victims from seeking the remedies to which existing law entitles them, then the asset is more valuable if it passes through the bankruptcy proceeding.

Obviously, anyone stopping to think about this, even for a moment, would conclude that this is wrong. If a consumer has a legitimate claim because a loan was made without complying with the law, that consumer should be able to pursue the claim regardless of whether the company that made the loan went through bankruptcy or not.

Indeed, one of the arguments that was used earlier today in the debate, in opposing the amendment that was offered by Senator DURBIN, was that remedies against predatory, fraudulent, and unfair loans already exist in the law today. That argument was used to say that the Durbin amendment was not necessary. The fact of the matter is, if we want to ensure that such protections do in fact exist and that they are not wiped out by the bankruptcy proceeding, we need to adopt this amendment.

Let me make one final point. This amendment does not create any new causes of action or create liability where none currently exists. All it does is, it simply maintains the same claim against the loan on both sides of the bankruptcy process. So it precludes using the bankruptcy process to wipe out these claims and remedies that are available to the consumer because the lender has engaged in predatory and fraudulent practices.

I am very frank to say to you I think it is a small but significant step to providing victims of predatory lending the opportunity to obtain a measure of relief with respect to the exploitation that has been practiced upon them.

I urge the adoption of the amendment which Senator SCHUMER offered just a short while ago and which is pending at the desk along with, as I understand it, a number of other amendments which will be voted upon later in our proceedings.

Mr. President, I yield the floor.

Mr. SESSIONS. Will the Senator yield?

Mr. SARBANES. Certainly.

Mr. SESSIONS. I know the Senator is a distinguished member of the Banking Committee and understands these matters far better than I. But this deals with a situation in which a lending institution violated the law in making certain loans and was subject to lawsuit; is that right?

Mr. SARBANES. That is right. First of all, let me make very clear, the number of institutions engaged in these kinds of practices is limited. They are the worst of the bunch. The responsible people in the industry do not want these people engaged in these kinds of practices.

But, unfortunately, there are people who are really engaged in essentially what is a ripoff. And there are some existing protections against some practices that are provided in the law, in the Truth in Lending Act at the Federal level and in State fraud statutes, so that the victims can bring suit and obtain a remedy with respect to the way they have been exploited by a loan.

All this amendment says if those kinds of business enterprises which have engaged in this practice declare bankruptcy, they then cannot use the bankruptcy proceeding to, in effect, erase those claims—in other words, take what is a dirty asset, or a dirty loan, into bankruptcy and bring it out on the other side as a clean loan where you then say to the consumer: It's too bad, you just can't get any recourse because this loan has gone through the bankruptcy process.

So this would maintain the consumer's rights that he had going into the bankruptcy on the other side. It does not add to those rights. Those rights are defined by existing law—Federal and State—so it would not substantively expand the recourse, but procedurally it would maintain the existing remedies.

Mr. SESSIONS. I think I understand the goal. And I am sympathetic to that. I guess we are wrestling with the question, Would it simply come down to the fact that you are telling the borrowers who have been abused that if they are not able to make their claim, before or while the case is in bankruptcy, against that bankrupt estate,

under current law it is lost, but under your law they could make their claim against whoever bought or purchased the loan?

We can talk about it later. We don't want to make assets unsalable.

Mr. SARBANES. They declare bankruptcy and then they sell these loan portfolios or the servicing rights to the loans, often in the course of the bankruptcy proceedings. If you allow that to happen, then you have an incentive for these companies to use the bankruptcy proceeding as a way of cleaning up their loans. So they go into bankruptcy, they use the bankruptcy proceeding to sell them off to somebody, but the victim has no recourse. We are saying if it goes in as a predatory fraudulent loan, the person who has been victimized ought not to lose his remedy because they can wash it through the bankruptcy proceeding.

Mr. SESSIONS. Does the amendment make any difference between a reorganization and a liquidation circumstance?

Mr. SARBANES. I don't think it does. I would have to doublecheck and let the Senator know.

Mr. SESSIONS. Is the Senator aware of how this could affect Fannie Mae or any of those type loans?

Mr. SARBANES. Any purchaser of such loans would have to be on guard because they would not be able to take them free and clear because the claims would stay with the loan.

Mr. SESSIONS. They would be less valuable as an asset to sell.

Mr. SARBANES. Potentially.

Mr. SESSIONS. I think I am beginning to comprehend it. I know there are very delicate issues involved in these matters. It may well be the Senator has an amendment that would benefit us. I will be glad to look at it.

Mr. SARBANES. I thank the Senator.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, is there an amendment pending?

The PRESIDING OFFICER. The Bingaman amendment No. 28 is now pending.

AMENDMENT NO. 20

Mr. LEAHY. Mr. President, I ask unanimous consent that that be set aside and I be allowed to call up amendment No. 20 introduced earlier this morning on current monthly income.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY] proposes an amendment numbered 20.

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

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

The amendment (No. 20) is as follows:

(Purpose: To resolve an ambiguity relating to the definition of current monthly income)

On page 18, beginning on line 9, strike ''preceding the date of determination'' and insert ''ending on the last day of the calendar month immediately preceding the date of the bankruptcy filing''.

Mr. LEAHY. Mr. President, this amendment clarifies when a debtor's current monthly income should be measured. The debtor's current monthly income is the cornerstone of the bill's means test provision which has become quite controversial. Whether one supports or opposes the means test, I think everybody should agree, for or against it, that it ought to be as clearly drafted as possible.

Assuming that passed as it is now, my amendment would avoid what I think would be unnecessary future litigation or would clarify that currently monthly income is measured from the last day of the calendar month immediately preceding the bankruptcy filing.

Allow me tell you what this means. Under the bill's current language, currently monthly income could be the 6-month period ending on the date the debtor's schedules were prepared, which could be a substantial time before the case was filed, or it could be the filing date, or it could be some later date, such as the time of a hearing on a motion to convert or dismiss the case based on the debtor's ability to pay. So it becomes a moving target.

Since accuracy of the schedules is of vital importance and subject to audit, it is important that debtors and their counsel be given clear direction as to the time on which income must be averaged. My amendment would resolve the ambiguity so as to deal with full calendar months of income data and to give a cutoff date prior to the bankruptcy filing. As amended, this definition would apply to average monthly income derived during the 6-month period ending on the last day of the calendar month immediately preceding the bankruptcy filing. Everybody would know where we are.

That is a relatively simple amendment. I think actually if one looks back on this, it would seem to be a drafting error. That is why I brought it up earlier this morning: more to improve the bill so we are not stuck with a bill that, if it does pass, we find ourselves litigating for the next year or two on issues none of us intended, whether for or against the bill.

That is what it is. I hope Senators will take a look at it.

The PRESIDING OFFICER. The Senator from North Dakota.

AMENDMENT NO. 29 TO AMENDMENT NO. 20

Mr. CONRAD. Mr. President, I send to the desk an amendment in the second degree.

The PRESIDING OFFICER. The clerk will report.

Mr. SESSIONS. Mr. President, I object.

The PRESIDING OFFICER. The Senator has that right.

The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. CONRAD] proposes an amendment numbered 29 to amendment No. 20.

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

Mr. CONRAD. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue the reading of the amendment.

The legislative clerk continued the reading of the amendment.

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

The PRESIDING OFFICER. Is there objection?

Mr. SESSIONS. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue the reading of the amendment.

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

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

The amendment (No. 29) is as follows:

(Purpose: To establish an off-budget lockbox to strengthen Social Security and Medicare)

At the end of the amendment No. 20 insert the following:

TITLE ____—SOCIAL SECURITY AND MEDICARE OFF-BUDGET LOCKBOX ACT OF 2001

SEC. ____01. SHORT TITLE.

This title may be cited as the ''Social Security and Medicare Off-Budget Lockbox Act of 2001''.

SEC. ____02. STRENGTHENING SOCIAL SECURITY POINTS OF ORDER.

(a) IN GENERAL.—Section 312 of the Congressional Budget Act of 1974 (2 U.S.C. 643) is amended by inserting at the end the following:

''(g) STRENGTHENING SOCIAL SECURITY POINT OF ORDER.—It shall not be in order in the House of Representatives or the Senate to consider a concurrent resolution on the budget (or any amendment thereto or conference report thereon) or any bill, joint resolution, amendment, motion, or conference report that would violate or amend section 13301 of the Budget Enforcement Act of 1990.''.

(b) SUPER MAJORITY REQUIREMENT.—

(1) POINT OF ORDER.—Section 904(c)(1) of the Congressional Budget Act of 1974 is amended by inserting ''312(g),'' after ''310(d)(2),''.

(2) WAIVER.—Section 904(d)(2) of the Congressional Budget Act of 1974 is amended by inserting ''312(g),'' after ''310(d)(2),''.

(c) ENFORCEMENT IN EACH FISCAL YEAR.—The Congressional Budget Act of 1974 is amended in—

(1) section 301(a)(7) (2 U.S.C. 632(a)(7)), by striking ''for the fiscal year'' through the period and inserting ''for each fiscal year covered by the resolution''; and

(2) section 311(a)(3) (2 U.S.C. 642(a)(3)), by striking beginning with ''for the first fiscal year'' through the period and insert the following: ''for any of the fiscal years covered by the concurrent resolution.''.

SEC. ___03. MEDICARE TRUST FUND OFF-BUDGET.

(a) IN GENERAL.—

(1) GENERAL EXCLUSION FROM ALL BUDGETS.—Title III of the Congressional Budget Act of 1974 is amended by adding at the end the following:

''EXCLUSION OF MEDICARE TRUST FUND FROM ALL BUDGETS

''SEC. 316. (a) EXCLUSION OF MEDICARE TRUST FUND FROM ALL BUDGETS.—Notwithstanding any other provision of law, the receipts and disbursements of the Federal Hospital Insurance Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

''(1) the budget of the United States Government as submitted by the President;

''(2) the congressional budget; or

''(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

''(b) STRENGTHENING MEDICARE POINT OF ORDER.—It shall not be in order in the House of Representatives or the Senate to consider a concurrent resolution on the budget (or any amendment thereto or conference report thereon) or any bill, joint resolution, amendment, motion, or conference report that would violate or amend this section.''.

(2) SUPER MAJORITY REQUIREMENT.—

(A) POINT OF ORDER.—Section 904(c)(1) of the Congressional Budget Act of 1974 is amended by inserting ''316,'' after ''313,''.

(B) WAIVER.—Section 904(d)(2) of the Congressional Budget Act of 1974 is amended by inserting ''316,'' after ''313,''.

(b) EXCLUSION OF MEDICARE TRUST FUND FROM CONGRESSIONAL BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 (2 U.S.C. 632(a)) is amended by adding at the end the following: ''The concurrent resolution shall not include the outlays and revenue totals of the Federal Hospital Insurance Trust Fund in the surplus or deficit totals required by this subsection or in any other surplus or deficit totals required by this title.''

(c) BUDGET TOTALS.—Section 301(a) of the Congressional Budget Act of 1974 (2 U.S.C. 632(a)) is amended by inserting after paragraph (7) the following:

''(8) For purposes of Senate enforcement under this title, revenues and outlays of the Federal Hospital Insurance Trust Fund for each fiscal year covered by the budget resolution.''.

(d) BUDGET RESOLUTIONS.—Section 301(i) of the Congressional Budget Act of 1974 (2 U.S.C. 632(i)) is amended by—

(1) striking ''SOCIAL SECURITY POINT OF ORDER.—It shall'' and inserting ''SOCIAL SECURITY AND MEDICARE POINTS OF ORDER.—

''(1) SOCIAL SECURITY.—It shall''; and

(2) inserting at the end the following:

''(2) MEDICARE.—It shall not be in order in the House of Representatives or the Senate to consider any concurrent resolution on the budget (or amendment, motion, or conference report on the resolution) that would cause a decrease in surpluses or an increase in deficits of the Federal Hospital Insurance Trust Fund in any of the fiscal years covered by the concurrent resolution.''.

(e) MEDICARE FIREWALL.—Section 311(a) of the Congressional Budget Act of 1974 (2 U.S.C. 642(a)) is amended by adding after paragraph (3), the following:

''(4) ENFORCEMENT OF MEDICARE LEVELS IN THE SENATE.—After a concurrent resolution on the budget is agreed to, it shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause a decrease in surpluses or an increase in deficits of the Federal Hospital Insurance Trust Fund in any year relative to the levels set forth in the applicable resolution.''.

(f) BASELINE TO EXCLUDE HOSPITAL INSURANCE TRUST FUND.—Section 257(b)(3) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking ''shall be included in all'' and inserting ''shall not be included in any''.

(g) MEDICARE TRUST FUND EXEMPT FROM SEQUESTERS.—Section 255(g)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following:

''Medicare as funded through the Federal Hospital Insurance Trust Fund.''.

(h) BUDGETARY TREATMENT OF HOSPITAL INSURANCE TRUST FUND.—Section 710(a) of the Social Security Act (42 U.S.C. 911(a)) is amended—

(1) by striking ''and'' the second place it appears and inserting a comma; and

(2) by inserting after ''Federal Disability Insurance Trust Fund'' the following: '', Federal Hospital Insurance Trust Fund''.

SEC. ___04. PREVENTING ON-BUDGET DEFICITS.

(a) POINTS OF ORDER TO PREVENT ON-BUDGET DEFICITS.—Section 312 of the Congressional Budget Act of 1974 (2 U.S.C. 643) is amended by adding at the end the following:

''(h) POINTS OF ORDER TO PREVENT ON-BUDGET DEFICITS.—

''(1) CONCURRENT RESOLUTIONS ON THE BUDGET.—It shall not be in order in the House of Representatives or the Senate to consider any concurrent resolution on the budget, or conference report thereon or amendment thereto, that would cause or increase an on-budget deficit for any fiscal year.

''(2) SUBSEQUENT LEGISLATION.—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report if—

''(A) the enactment of that bill or resolution as reported;

''(B) the adoption and enactment of that amendment; or

''(C) the enactment of that bill or resolution in the form recommended in that conference report,

would cause or increase an on-budget deficit for any fiscal year.''.

(b) SUPER MAJORITY REQUIREMENT.—

(1) POINT OF ORDER.—Section 904(c)(1) of the Congressional Budget Act of 1974 is amended by inserting ''312(h),'' after ''312(g),''.

(2) WAIVER.—Section 904(d)(2) of the Congressional Budget Act of 1974 is amended by inserting ''312(h),'' after ''312(g),''.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 26

Mr. BOND. Mr. President, I thank my colleagues for allowing me to go forward. I apologize. We have several markups going on today, and I was unable to be here to discuss the small business bankruptcy provision.

My colleague and friend, Senator KERRY of Massachusetts, offered an amendment which would delete the small business changes in chapter 11 and replace them with a study of the factors that cause small businesses to enter into bankruptcy and any changes to chapter 11 that might be appropriate.

At first blush, the amendment would not appear to be a problem. Senator KERRY and I have worked together in the Small Business Committee on many things over the years. We take a great deal of pride in the fact that assisting small business has generally received overwhelming bipartisan support in this body.

I find some problems with the amendment and with the proposal requested by the distinguished Senator from Massachusetts because the report that he seeks actually has already occurred. Approximately 4 years ago, the National Bankruptcy Review Commission conducted a wide-ranging study of how well the bankruptcy code was working. There was a small business working group on the commission that looked particularly at chapter 11 and made an assessment of how well the chapter was serving small business debtors and creditors.

The small business provisions in this bill are a result of that study, that work, and the recommendations of the working group of that commission.

Let's remember that under chapter 11, the debtor is still managing a business during the bankruptcy proceeding. The small business working group found that in too many small business cases, there are no strong creditors committees to oversee how the debtors are managing the company, and the courts are not doing an adequate job of overseeing the debtors.

As a result, the working group noted that chapter 11 debtors often lived under the protection of the bankruptcy code literally for years, often without providing any meaningful return to unsecured creditors and diminishing their assets in the process. Accordingly, the commission recommended chapter 11 be amended in two principal ways.

First, there should be standard reports filed with the courts on a regular basis so that courts can follow how a debtor is progressing in bankruptcy.

Second, there should be presumptive plan filing and plan confirmation deadlines specifically tailored to fit the needs of small business cases. If these deadlines cannot be met, the commission recommended that the bankruptcy court hold a factfinding hearing. In that hearing, the court can look at all the evidence and determine whether a small business is likely to be able to confirm a plan of reorganization within a reasonable period of time.

The intent of the provisions is not to eliminate a small business' ability to reorganize or to place restrictive requirements on it. It is merely a procedure that would permit courts to review on a regular basis the progress of a small business attempting to reorganize so that the court can step in if it appears that the small business does not have a realistic ability to reorganize.

The establishment of such a process is important for small business. First, the small business provisions establish standard disclosure statements and

debtor reporting requirements that will assist small businesses entering chapter 11. These provisions have been widely supported as dramatically improving the chapter 11 process with small business debtors. Standard requirements will get rid of what is now a costly burden on small business debtors to draft from scratch a reorganizing plan and a prospectus-type disclosure statement.

In other words, what is in the bill, what would be stricken by this amendment, actually does simplify the process significantly for the small business.

One must remember that small businesses are on both sides of bankruptcies in this country; they are both creditors and debtors. Small business creditors are significantly harmed if their fellow small business debtors, who do not have a realistic opportunity to reorganize, languish in bankruptcy while their assets deteriorate. These small business creditors will receive significantly less on their claims and are substantially harmed.

One of the most important points I can make on this is, if there is no protection for small business creditors, then there is likely to be no credit for small businesses. Let us go back and think about that a minute.

If a small business that gets into trouble cannot go into bankruptcy, and if there is no means for the creditor to realize something from the assets of the debtor or get some reasonable plan of accommodation, then the creditor, the lender, is at risk of losing perhaps the entire loan to the small business. That is why I say if you do not have a reasonable bankruptcy procedure, then you are going to curtail the availability of credit.

We have seen in other countries where they do not have good bankruptcy provisions that treat fairly the debtors, the creditors, and all other interested parties, and they have a very difficult time getting credit for the businesses.

The committee has worked hard, following the commission to study bankruptcy and the work of the small business working group, to come up with provisions that are reasonable. These provisions in this bill are designed to facilitate the proceeding without imposing undue burdens. That is why I am advised that the National Federation of Independent Businesses, the National Association of Credit Managers, and the U.S. Chamber of Commerce oppose this amendment.

They recognize if you inhibit the ability of small business creditors to get relief, you will make it much less likely that creditors supply the credit for small business needs.

Lastly, I point out that Congress has approved these provisions several times. These provisions have been in the bankruptcy bill in one form or another since the 105th Congress and have been amended during that time. My colleague from Massachusetts amended the provisions last Congress significantly to increase the amount of time a small business has to file a reorganization plan under chapter 11.

I hope we can all agree we need an approach that is balanced between small business debtors and creditors. We should permit every small business that gets into credit trouble to have the ability to reorganize. That is what these provisions are intended to do. That is why I ask my colleagues to oppose this amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Mr. SESSIONS. I object.

The PRESIDING OFFICER. The objection is heard. The clerk will continue to call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I ask unanimous consent that amendment No. 29 be modified to be considered a first-degree amendment and laid aside.

I further ask consent that it now be in order for Senator SESSIONS to offer an amendment relating to lockbox, and that following the reporting by the clerk, Senator CONRAD be recognized, and following his remarks, Senator DOMENICI, or his designee be recognized. I further ask consent that no amendments be in order to either amendment, and that following Monday's debate the amendments be laid aside until the hour of 2:15 p.m. on Tuesday, and there be 30 minutes for closing remarks on the issue to be equally divided in the usual form on Tuesday.

I further ask consent that the Senate proceed to a vote in relation to amendment No. 29, to be followed by a vote in relation to the second lockbox amendment, beginning at 2:45 p.m. Tuesday.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, I say to the acting leader, the manager of the bill—I have a couple points of clarification. We are concerned about being in session Friday. I understand the leader is not available. We hope that we can work that out prior to when we close tonight because Senator CONRAD wants to be able to talk on this amendment tomorrow, in addition to Monday.

It is my understanding there will be a separate agreement later today to stack some votes Tuesday morning on the amendments that are now pending; is that right?

Mr. SESSIONS. If we can get an overall agreement, which we have been seeking, an agreed-upon list of amendments, which has not yet been forthcoming, which is critical to final disposition of this bill.

Mr. REID. I am quite confident by the end of the vote we will be able to have a finite list of amendments to give to you and the leader. The last thing: Is this going to be the last vote of the day? We have had a number of inquiries in the Cloakroom.

Mr. SESSIONS. I think it hinges on the same problem. If we don't have on overall agreement, there might be more votes.

Mr. REID. That sounds pretty weak. On behalf of Senator LEAHY, we are doing our best to move this legislation along. We appreciate the cooperation of the majority in allowing this matter to go forward on this basis. We feel with the time we have spent doing this, we could have gone forward with the amendment and be at the same place we are. Having said that, we have no objection to the unanimous consent agreement.

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

Amendment No. 29, as modified, is as follows:

AMENDMENT NO. 29, AS MODIFIED

(Purpose: To establish an off-budget lockbox to strengthen Social Security and Medicare)

At the end of the bill insert the following:

TITLE XX—SOCIAL SECURITY AND MEDICARE OFF-BUDGET LOCKBOX ACT OF 2001

SEC. ___01. SHORT TITLE.

This title may be cited as the ''Social Security and Medicare Off-Budget Lockbox Act of 2001''.

SEC. ___02. STRENGTHENING SOCIAL SECURITY POINTS OF ORDER.

(a) IN GENERAL.—Section 312 of the Congressional Budget Act of 1974 (2 U.S.C. 643) is amended by inserting at the end the following:

''(g) STRENGTHENING SOCIAL SECURITY POINT OF ORDER.—It shall not be in order in the House of Representatives or the Senate to consider a concurrent resolution on the budget (or any amendment thereto or conference report thereon) or any bill, joint resolution, amendment, motion, or conference report that would violate or amend section 13301 of the Budget Enforcement Act of 1990.''.

(b) SUPER MAJORITY REQUIREMENT.—

(1) POINT OF ORDER.—Section 904(c)(1) of the Congressional Budget Act of 1974 is amended by inserting ''312(g),'' after ''310(d)(2),''.

(2) WAIVER.—Section 904(d)(2) of the Congressional Budget Act of 1974 is amended by inserting ''312(g),'' after ''310(d)(2),''.

(c) ENFORCEMENT IN EACH FISCAL YEAR.—The Congressional Budget Act of 1974 is amended in—

(1) section 301(a)(7) (2 U.S.C. 632(a)(7)), by striking ''for the fiscal year'' through the period and inserting ''for each fiscal year covered by the resolution''; and

(2) section 311(a)(3) (2 U.S.C. 642(a)(3)), by striking beginning with ''for the first fiscal year'' through the period and insert the following: ''for any of the fiscal years covered by the concurrent resolution.''.

SEC. ___03. MEDICARE TRUST FUND OFF-BUDGET.

(a) IN GENERAL.—

(1) GENERAL EXCLUSION FROM ALL BUDGETS.—Title III of the Congressional Budget

Act of 1974 is amended by adding at the end the following:

''EXCLUSION OF MEDICARE TRUST FUND FROM ALL BUDGETS

''SEC. 316. (a) EXCLUSION OF MEDICARE TRUST FUND FROM ALL BUDGETS.—Notwithstanding any other provision of law, the receipts and disbursements of the Federal Hospital Insurance Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

''(1) the budget of the United States Government as submitted by the President;

''(2) the congressional budget; or

''(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

''(b) STRENGTHENING MEDICARE POINT OF ORDER.—It shall not be in order in the House of Representatives or the Senate to consider a concurrent resolution on the budget (or any amendment thereto or conference report thereon) or any bill, joint resolution, amendment, motion, or conference report that would violate or amend this section.''.

(2) SUPER MAJORITY REQUIREMENT.—

(A) POINT OF ORDER.—Section 904(c)(1) of the Congressional Budget Act of 1974 is amended by inserting ''316,'' after ''313,''.

(B) WAIVER.—Section 904(d)(2) of the Congressional Budget Act of 1974 is amended by inserting ''316,'' after ''313,''.

(b) EXCLUSION OF MEDICARE TRUST FUND FROM CONGRESSIONAL BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 (2 U.S.C. 632(a)) is amended by adding at the end the following: ''The concurrent resolution shall not include the outlays and revenue totals of the Federal Hospital Insurance Trust Fund in the surplus or deficit totals required by this subsection or in any other surplus or deficit totals required by this title.''

(c) BUDGET TOTALS.—Section 301(a) of the Congressional Budget Act of 1974 (2 U.S.C. 632(a)) is amended by inserting after paragraph (7) the following:

''(8) For purposes of Senate enforcement under this title, revenues and outlays of the Federal Hospital Insurance Trust Fund for each fiscal year covered by the budget resolution.''.

(d) BUDGET RESOLUTIONS.—Section 301(i) of the Congressional Budget Act of 1974 (2 U.S.C. 632(i)) is amended by—

(1) striking ''SOCIAL SECURITY POINT OF ORDER.—It shall'' and inserting ''SOCIAL SECURITY AND MEDICARE POINTS OF ORDER.—

''(1) SOCIAL SECURITY.—It shall''; and

(2) inserting at the end the following:

''(2) MEDICARE.—It shall not be in order in the House of Representatives or the Senate to consider any concurrent resolution on the budget (or amendment, motion, or conference report on the resolution) that would cause a decrease in surpluses or an increase in deficits of the Federal Hospital Insurance Trust Fund in any of the fiscal years covered by the concurrent resolution.''.

(e) MEDICARE FIREWALL.—Section 311(a) of the Congressional Budget Act of 1974 (2 U.S.C. 642(a)) is amended by adding after paragraph (3), the following:

''(4) ENFORCEMENT OF MEDICARE LEVELS IN THE SENATE.—After a concurrent resolution on the budget is agreed to, it shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause a decrease in surpluses or an increase in deficits of the Federal Hospital Insurance Trust Fund in any year relative to the levels set forth in the applicable resolution.''.

(f) BASELINE TO EXCLUDE HOSPITAL INSURANCE TRUST FUND.—Section 257(b)(3) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking ''shall be included in all'' and inserting ''shall not be included in any''.

(g) MEDICARE TRUST FUND EXEMPT FROM SEQUESTERS.—Section 255(g)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following:

''Medicare as funded through the Federal Hospital Insurance Trust Fund.''.

(h) BUDGETARY TREATMENT OF HOSPITAL INSURANCE TRUST FUND.—Section 710(a) of the Social Security Act (42 U.S.C. 911(a)) is amended—

(1) by striking ''and'' the second place it appears and inserting a comma; and

(2) by inserting after ''Federal Disability Insurance Trust Fund'' the following: '', Federal Hospital Insurance Trust Fund''.

SEC. ___04. PREVENTING ON-BUDGET DEFICITS.

(a) POINTS OF ORDER TO PREVENT ON-BUDGET DEFICITS.—Section 312 of the Congressional Budget Act of 1974 (2 U.S.C. 643) is amended by adding at the end the following:

''(h) POINTS OF ORDER TO PREVENT ON-BUDGET DEFICITS.—

''(1) CONCURRENT RESOLUTIONS ON THE BUDGET.—It shall not be in order in the House of Representatives or the Senate to consider any concurrent resolution on the budget, or conference report thereon or amendment thereto, that would cause or increase an on-budget deficit for any fiscal year.

''(2) SUBSEQUENT LEGISLATION.—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report if—

''(A) the enactment of that bill or resolution as reported;

''(B) the adoption and enactment of that amendment; or

''(C) the enactment of that bill or resolution in the form recommended in that conference report,

would cause or increase an on-budget deficit for any fiscal year.''.

(b) SUPER MAJORITY REQUIREMENT.—

(1) POINT OF ORDER.—Section 904(c)(1) of the Congressional Budget Act of 1974 is amended by inserting ''312(h),'' after ''312(g),''.

(2) WAIVER.—Section 904(d)(2) of the Congressional Budget Act of 1974 is amended by inserting ''312(h),'' after ''312(g),''.

Mr. SESSIONS. Mr. President, I ask unanimous consent that a vote occur in relation to the Kerry amendment No. 26 relative to small business at 3:30 p.m. today and that no second-degree amendments or further debate be in order prior to the vote.

Finally, I ask consent that there be 10 minutes equally divided in the usual form prior to the vote in relation to the Kerry amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 32

Mr. SESSIONS. Mr. President, I send to the desk an amendment to establish a procedure to safeguard the surpluses of the Social Security and Medicare hospital insurance trust fund.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alabama [Mr. SESSIONS] proposes an amendment numbered 32.

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

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

The amendment is as follows:

(Purpose: To establish a procedure to safeguard the surpluses of the Social Security and Medicare hospital insurance trust funds)

At the end of the bill insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Social Security and Medicare Lock-Box Act of 2001.''

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the Balanced Budget Act of 1997 and strong economic growth have ended decades of deficit spending;

(2) the Government is able to meet its current obligations without using the social security and medicare surpluses;

(3) fiscal pressures will mount as an aging population increases the Government's obligations to provide retirement income and health services;

(4) social security and medicare hospital insurance surpluses should be used to reduce the debt held by the public until legislation is enacted that reforms Social Security and Medicare;

(5) preserving the social security and medicare hospital insurance surpluses would restore confidence in the long-term financial integrity of social security and medicare; and

(6) strengthening the Government's fiscal position through debt reduction would increase national savings, promote economic growth, and reduce its interest payments.

(b) PURPOSE.—It is the purpose of this Act to—

(1) prevent the surpluses of the social security and medicare hospital insurance trust funds from being used for any purpose other than providing retirement and health security; and

(2) use such surpluses to pay down the national debt until such time as medicare and social security legislation is enacted.

SEC. 3. PROTECTION OF SOCIAL SECURITY AND MEDICARE SURPLUSES.

(a) PROTECTION OF SOCIAL SECURITY AND MEDICARE SURPLUSES.—Title III of the Congressional Budget Act of 1974 is amended by adding at the end the following new section:

''LOCK-BOX FOR SOCIAL SECURITY AND HOSPITAL INSURANCE SURPLUSES

''SEC. 316. (a) LOCK-BOX FOR SOCIAL SECURITY AND HOSPITAL INSURANCE SURPLUSES.—

''(1) CONCURRENT RESOLUTIONS ON THE BUDGET.—

''(A) IN GENERAL.—It shall not be in order in the House of Representatives or the Senate to consider any concurrent resolution on the budget, or an amendment thereto or conference report thereon, that would set forth a surplus for any fiscal year that is less than the surplus of the Federal Hospital Insurance Trust Fund for that fiscal year.

''(B) EXCEPTION.—(i) Subparagraph (A) shall not apply to the extent that a violation of such subparagraph would result from an assumption in the resolution, amendment, or conference report, as applicable, of an increase in outlays or a decrease in revenue relative to the baseline underlying that resolution for social security reform legislation or medicare reform legislation for any such fiscal year.

''(ii) If a concurrent resolution on the budget, or an amendment thereto or conference report thereon, would be in violation of subparagraph (A) because of an assumption of an increase in outlays or a decrease in revenue relative to the baseline underlying that resolution for social security reform legislation or medicare reform legislation for any such fiscal year, then that resolution shall include a statement identifying any such increase in outlays or decrease in revenue.

''(2) SPENDING AND TAX LEGISLATION.—

''(A) IN GENERAL.—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report if—

''(i) the enactment of that bill or resolution, as reported;

''(ii) the adoption and enactment of that amendment; or

''(iii) the enactment of that bill or resolution in the form recommended in that conference report.

would cause the surplus for any fiscal year covered by the most recently agreed to concurrent resolution on the budget to be less than the surplus of the Federal Hospital Insurance Trust Fund for that fiscal year.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to social security reform legislation or medicare reform legislation.

''(b) ENFORCEMENT.—

''(1) BUDGETARY LEVELS WITH RESPECT TO CONCURRENT RESOLUTIONS ON THE BUDGET.—For purposes of enforcing any point of order under subsection (a)(1), the surplus for any fiscal year shall be—

''(A) the levels set forth in the later of the concurrent resolution on the budget, as reported, or in the conference report on the concurrent resolution on the budget; and

''(B) adjusted to the maximum extent allowable under all procedures that allow budgetary aggregates to be adjusted for legislation that would cause a decrease in the surplus for any fiscal year covered by the concurrent resolution on the budget (other than procedures described in paragraph (2)(A)(ii)).

(2) CURRENT LEVELS WITH RESPECT TO SPENDING AND TAX LEGISLATION.—

''(A) IN GENERAL.—For purposes of enforcing subsection (a)(2), the current levels of the surplus for any fiscal year shall be—

''(i) calculated using the following assumptions—

''(I) direct spending and revenue levels at the baseline levels underlying the most recently agreed to concurrent resolution on the budget; and

'(II) for the budget year, discretionary spending levels at current law levels and, for outyears, discretionary spending levels at the baseline levels underlying the most recently agreed to concurrent resolution on the budget; and

''(ii) adjusted for changes in the surplus levels set forth in the most recently agreed to concurrent resolution on the budget pursuant to procedures in such resolution that authorize adjustments in budgetary aggregates for updated economic and technical assumptions in the mid-session report of the Director of the Congressional Budget Office.

Such revisions shall be included in the first current level report on the congressional budget submitted for publication in the Congressional Record after the release of such mid-session report.

''(B) BUDGETARY TREATMENT.—Outlays (or receipts) for any fiscal year resulting from social security or medicare reform legislation in excess of the amount of outlays (or less than the amount of receipts) for that fiscal year set forth in the most recently agreed to concurrent resolution on the budget or the section 302(a) allocation for such legislation, as applicable, shall not be taken into account for purposes of enforcing any point of order under subsection (a)(2).

''(3) DISCLOSURE OF HI SURPLUS.—For purposes of enforcing any point of order under subsection (a), the surplus of the Federal Hospital Insurance Trust Fund for a fiscal year shall be the levels set forth in the later of the report accompanying the concurrent resolution on the budget (or, in the absence of such a report, placed in the Congressional Record prior to the consideration of such resolution) or in the joint explanatory statement of managers accompanying such resolution.

''(c) ADDITIONAL CONTENT OF REPORTS ACCOMPANYING BUDGET RESOLUTIONS AND OF JOINT EXPLANATORY STATEMENTS.—The report accompanying any concurrent resolution on the budget and the joint explanatory statement accompanying the conference report on each such resolution shall include the levels of the surplus in the budget for each fiscal year set forth in such resolution and of the surplus or deficit in the Federal Hospital Insurance Trust Fund, calculated using the assumptions set forth in subsection (b)(2)(A).

''(d) DEFINITIONS.—As used in this section:

''(1) The term 'medicare reform legislation' means a bill or a joint resolution to save Medicare that includes a provision stating the following: 'For purposes of section 316(a) of the Congressional Budget Act of 1974, this Act constitutes medicare reform legislation.

''(2) The term 'social reform legislation' means a bill or a joint resolution to save social security that includes a provision stating the following: 'For purposes of section 316(a) of the Congressional Budget Act of 1974, this Act constitutes social security reform legislation.'.

''(e) WAIVER AND APPEAL.—Subsection (a) may be waived or suspended in the Senate only by an affirmative vote of three-fifths of the Members, duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

''(f) EFFECTIVE DATE.—This section shall cease to have any force or effect upon the enactment of social security reform legislation and medicare reform legislation.''

(b) CONFORMING AMENDMENT.—The item relating to section 316 in the table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended to read as follows:

''Sec. 316. Lock-box for social security and hospital insurance surpluses.''.

SEC. 4. PRESIDENT'S BUDGET.

(a) PROTECTION OF SOCIAL SECURITY AND MEDICARE SURPLUSES.—If the budget of the United States Government submitted by the President under section 1105(a) of title 31, United States Code, recommends an on-budget surplus for any fiscal year that is less than the surplus of the Federal Hospital Insurance Trust Fund for that fiscal year, then it shall include a detailed proposal for social security reform legislation or medicare reform legislation.

(b) EFFECTIVE DATE.—Subsection (a) shall cease to have any force or effect upon the enactment of social security reform legislation and medicare reform legislation as defined by section 316(d) of the Congressional Budget Act of 1974.

AMENDMENT NO. 29, AS MODIFIED

The PRESIDING OFFICER. Under the order, the Senator from North Dakota is recognized next.

Mr. CONRAD. Mr. President, the amendment I have sent to the desk is an amendment to provide protection to both the Social Security trust fund surplus and the Medicare Hospital Insurance Trust Fund surplus. Mr. President, this is legislation I offered last year that passed the Senate on a bipartisan basis with 60 votes.

I hope that again this year we can send a very strong signal in this body that we fully intend to protect the Social Security and Medicare trust funds; that we intend to establish a lockbox to wall off those trust funds from being used for any other purpose; that we would assure the American people that the Social Security trust fund and the Medicare Trust Fund will not be raided, will not be used for other spending, will not be used for any other purpose, will not be used for a tax cut; that we will assure those who are the beneficiaries of Social Security and Medicare—those who make payments to those programs—that the money they have paid in will be used for the purposes intended.

This amendment, very simply, takes the Medicare Hospital Insurance trust fund completely off budget the same way we have protected the Social Security fund. It would add points of order to ensure that neither Social Security nor Medicare surpluses could be used for any other purpose.

As you know, Social Security is already off budget. This amendment would treat the Medicare Trust Fund the same way as we already treat the Social Security trust funds. It would also create points of order against any legislation that would reduce the Medicare Hospital Insurance trust fund surpluses. Similar points of order already apply to Social Security.

In addition, the amendment strengthens existing rules that protect Social Security. For example, we establish a point of order protecting Social Security's off-budget status. Our amendment also includes a point of order protecting Social Security surpluses in every year covered by a budget resolution, which is a strengthening over current law. Again, this is largely, almost entirely, the amendment that passed the Senate Chamber last year with 60 votes, and it was a strong bipartisan vote.

Many of us believe we should not raid the Social Security and Medicare trust funds, period. Ninety-eight Senators voted last year in favor of this principle; 60 voted for my proposal; I believe over 50 voted for Senator Ashcroft's proposal. But when you looked at the vote, 98 Senators voted for one or the other. I ask my colleagues to again endorse that principle.

Again, if we look at the specifics, it protects Social Security surpluses in each and every year. It takes the Medicare Hospital Insurance trust fund off budget. It gives Medicare the same protections as Social Security, and it contains strong enforcement. That is precisely what we offered last year. That is precisely what passed last year. I hope we don't take a step backward this year and water down these protections.

Now, some have said if we save both the Social Security and Medicare trust fund surpluses that we will get into excess cash buildup between now and the end of this 10-year budget forecast period. Let me just indicate, as this chart shows, we can save all of the Social Security surplus, and all of the Medicare

Hospital Insurance surplus, and not have any cash buildup problem until out in the year 2010. So we don't have a problem for 9 years of any cash buildup, no problem at all until the year 2010. So we have plenty of time to respond to that, if, indeed, it ever develops.

As we all know, this is based on a 10-year forecast. It is a forecast that may come true, and may not come true.

We are all working off a CBO projection that is a 10-year projection, which the forecasting agency itself tells us only has a 10-percent chance of coming through—10 percent. When we use this figure, $5.6 trillion surplus over the next 10 years, the forecasting agency has told us that only has a 10-percent chance of coming true. There is a 45-percent chance it will be more; there is a 45-percent chance it will be less. The only prudent thing to do in those circumstances is to bet that it may well be less because if, in fact, we overestimate, that has very serious implications of putting us back into deficit.

Speaker HASTERT said this about the House lockbox bill:

> We are going to wall off Social Security trust funds and Medicare trust funds and consequently, we pay down the public debt when we do that. . . . So we are going to continue to do that. That's in the parameters of our budget, and we are not going to dip into that at all.

Unfortunately, the version that passed the House has an enormous trapdoor in it. They say they are walling off Social Security, they say they are walling off Medicare, but then when you read the fine print, you find out they do not really intend to do that at all. They are fully prepared to dip into those trust funds for other purposes. Our amendment prevents that.

If we do not protect the Medicare surplus, we will reduce the solvency of the Medicare Hospital Insurance Trust Fund, reversing years of steady progress in shoring up this program.

Let's have a brief history lesson and remind ourselves that in 1992 the Medicare trust fund was projected to become insolvent in the year 2002. That is just 9 years ago. The actuaries studied the program and said we are headed for insolvency in the Medicare program in the year 2002, but by last year, that date was estimated to be 2025, an improvement of 23 years. That is because of actions that were taken in the Congress of the United States to extend the solvency of the Medicare program.

Those efforts have worked, but if we now start to spend from the trust fund, and if we take the $500 billion Medicare Part A trust fund surplus projected for the next 10 years and use it for other purposes, we will make Medicare insolvent by the year 2009, 16 years earlier than is now projected.

Some have argued that since beneficiary premiums only cover 25 percent of Medicare Part B costs, there is a deficit in that part of Medicare. Part B is funded by premiums and by the general fund.

The question before this body is, Do we protect the Hospital Insurance Trust Fund that exists for Medicare in the same way that we protect the trust fund that exists for Social Security?

Last year, overwhelmingly our colleagues said yes: we should provide the same protection to the Medicare trust fund that we provide the Social Security trust fund. I hope we will provide that same protection again this year.

Some say because Part B only has 25 percent of its costs covered by a premium, therefore it is in deficit. That is not what the law says or what the actuaries report, but that is the rhetoric being used by some who want to justify a raid on the Hospital Insurance Trust Fund for Medicare.

They are saying, yes, there is a trust fund for Part A of Medicare and, yes, it is in surplus by $500 billion, but they say Part B only gets 25 percent of its costs covered by premiums; therefore, it is in deficit; therefore, there is no surplus anywhere in Medicare. That is simply false. We know that there is a Hospital Insurance Trust Fund designated in law, and it has $500 billion, according to the Administration.

For those who say because Medicare overall is challenged fiscally, therefore there is no reason to protect the Hospital Insurance Trust Fund, let's just take that money and jackpot it and make it available for other expenditure, make it available for defense, make it available for agriculture, make it available for education, make it available for whatever other worthy purpose somebody might conjure up, make it available for a tax cut. The problem with that is, if you take the trust fund surplus that is in existence today in Medicare and you raid it and you use it for other purposes, you shorten the period of solvency of Medicare and you bankrupt the program. It is that simple. It is robbing Peter to pay Paul. It is digging the ditch deeper before starting to fill it in.

We should not tolerate raiding either the Social Security trust fund or the Medicare trust fund. In the private sector, if anybody tried to raid the retirement funds of a company, if anybody tried to raid the health plans of a company, they would be in violation of Federal law. They would be on their way to a Federal institution. It would not be the Congress of the United States, and it would not be the White House. They would be incarcerated because they would have violated Federal law.

This is a critically important decision that we will make. This is a fundamental decision. Do we protect the Social Security trust fund? Do we protect the Medicare Hospital Insurance Trust Fund or don't we? Do we open the door to a raid on both those funds? I very much hope that the answer in this Chamber, as it was last year, is a resounding no; that we make very clear to any who would raid these trust funds that they are off limits, that they will not be touched, that we are not going to accept using these funds for other purposes. That is what the American people want us to do. That is what we will have an opportunity to do when we vote on this amendment, and we should not take other plans that use the same words but have a trapdoor to them that opens the door to a raid on these trust funds. That would be, I believe, a serious mistake.

One other thing I want to point out about the President's budget that is carefully hidden in the numbers: Although the President claims there is enough in his so-called contingency fund to protect Medicare, in fact that is not the case. In the year 2005, the contingency fund totals $36 billion, but the Medicare trust fund surplus is $47 billion. That means if you protect Medicare under the President's budget, you will be raiding the Social Security trust fund to the tune of $11 billion in that year or you will be in deficit by $11 billion.

I think that is another demonstration that the tax cut offered by the President is so large that it threatens to put us back into deficit, because that is exactly what it does in the year 2005 if you protect Social Security and Medicare. Under the President's budget, we will be back in deficit in the year 2005 if, in fact, we protect the trust funds of Social Security and Medicare.

I believe Senator KERRY is to be recognized for final debate on his amendment. I look forward to talking more about this amendment tomorrow, on Monday and again on Tuesday.

I conclude by saying once more that last year we had a strong bipartisan vote. We had nearly 20 Republican Senators join a group of Senators on this side. We had over 60 votes to protect Social Security and Medicare trust funds. I hope we have a vote that is even stronger this year.

I yield the floor.

AMENDMENT NO. 26

The PRESIDING OFFICER. Under the previous order, the pending amendment is laid aside and there are now 10 minutes equally divided on the Kerry amendment No. 26.

Mr. KERRY. Mr. President, let me address quickly the elements of my amendment which seek to strike the small business provision within this bankruptcy bill. I emphasize to my colleagues, we don't strike it and not do anything; we strike it and ask for a study by the Small Business Administration for the most efficient and effective way of dealing with small business bankruptcies. The reason for that is as follows:

My colleague, Senator GRASSLEY, a little while ago—and I respect enormously the efforts he is making on this bill, and I respect the efforts generally in the Senate to try to reform the bankruptcy code—but Senator GRASSLEY talked about how the Bankruptcy Review Commission voted out the small business provisions. He talked about an 8–1 vote. Let me emphasize to

all my colleagues, the vote of the Bankruptcy Review Commission was 8–1 on the entire report. But indeed on the particular provision with respect to small business, the commission was very divided. It was an extraordinarily close vote, 5–4. That 5–4 vote reflected the tension that existed over this question of how to treat small business. There was not a generalized acceptance of their approach.

Second, we in the Senate are just beginning to focus on what the potential impact to small business might be as a consequence of this bill. I emphasize to my colleagues there are two reviews of this bankruptcy effort. One is the commission. But the National Bankruptcy Conference, which is a conference made up of experts, also has weighed in on this bill. The National Bankruptcy Conference has endorsed my approach to this issue of striking the small business sections. In other words, the National Bankruptcy Conference and many of the small business entities of the country believe that what the Senate is about to do is undo some of the things we attempted in the last few years with the small business regulatory reform and all of the efforts we have undertaken to lift from small business in this country undue amounts of paper burden, regulatory burden, government-mandated intrusion.

What we will be doing in this bankruptcy bill is putting back on to small businesses the very kind of burden we have tried to lift. I emphasize the National Bankruptcy Conference endorses my approach, which is to strike this section and ask for a Small Business Administration analysis of what will happen. I remind my colleagues, the number of chapter 11 filings with respect to small business has dramatically decreased over the last decade from 24,000 in 1991 to below 10,000 last year.

The fact is there is no showing whatever on the record that small businesses represent the kind of problem that invites the kind of onerous, intrusive documentation and recordation that is in this legislation.

If small business fails to comply with the new reporting requirements that are in this legislation, then creditors are given entirely new powers, and those powers could force bankruptcy court judges to liquidate small businesses or to completely dismiss their proceedings. This could force many small businesses to expend a huge amount of resources to fend off challenges by any creditor simply for not complying with one of the new burdensome reporting requirements that are put into this legislation.

These requirements place a burden on small mom-and-pop operations that are the lifeblood of the growth of this country. Sixty to eighty percent of the jobs in this country are created by small business, maintained by small business, and almost all the growth in the country. There is no showing that small businesses present the kind of problem with respect to the bankruptcy process that merits this kind of approach.

I reserve the remainder of my time.

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

Who yields time in opposition?

Mr. HATCH. Mr. President, the effect of the amendment is to strike section 431 to 445, all of subtitle B of title IV of the bill, the provisions which reform bankruptcies for companies that are ''small businesses''. A ''small business'' is a company that, together with its affiliates, has debts under $3,000,000 and is not primarily a real estate owning and operating company, but only if an unsecured creditor's committee has not been appointed. Also propose a Small Business Administration study of bankruptcy and small businesses.

Our present law: Although the Bankruptcy Code now contains provisions on small business bankruptcies, they are optional and rarely used. Present chapter 11 is complicated and expensive for debtors. It is a lawyer's paradise because their services are very necessary. Chapter 11s also tend to be long drawn out affairs, seemingly managed by the professionals to extract the largest possible fees. Small business creditors often complain about the delays and expense of trying to collect debts owed them.

On bill provisions, the bill provides the following reforms:

It creates streamlined, standardized forms so small business bankruptcies can be more cheaply managed by small business debtors. Under present law, a chapter 11 reorganization is made expensive by the need to tailor a plan and disclosure statement, a job done by a highly paid lawyer.

The bill creates nationwide uniform reporting requirements so that chapter 11 cases involving a small business can be standardized, simplifying the procedures debtors must comply with.

The bill standardizes the information a small business must provide to the trustee, like tax returns, schedules, financials and the like.

Debtors must meet plan filing and confirmation time deadline standards, specially developed for small business cases.

The duties of the United States trustee with respect to a small business case are spelled out.

The bill also contains controls on abusive use of chapter 11, like multiple filing of cases and unreasonable delay in resolving the case.

It contains a study of small business bankruptcy by the Small Business Administration.

Requires in single asset real estate company cases that interest be paid to creditors at a certain point in the case.

Provides administrative expense priority to any amount the debtor owes arising from certain real estate lease defaults.

In response, Congress created in 1994 a National Bankruptcy Review Commission to study the bankruptcy laws and suggest reforms, which closely studied small business bankruptcy and recommended reforms. The provisions the Kerry amendment would cut out are the result of those recommendations.

The NBRC found that small business bankruptcies needed reforms in order to benefit both small business debtors and to benefit small businesses when they were creditors. The bill provides the protections and benefits the NBRC recommended.

The amendments streamline bankruptcy for small businesses. It allows them to save lawyer fees. It allows them to promptly reorganize, to their benefit and that of their creditors.

Additional study is unnecessary. This matter has already been studied for 4 years by a blue ribbon panel of bankruptcy experts, who unanimously recommended the reforms. But even if more study is necessary, the bill provides for the same study Senator KERRY is now proposing.

Oppose the Kerry amendment. Senator KERRY last year sponsored an amendment that seriously impaired the reforms in this part of the bill. He now seeks to gut them completely. It is clear that he opposes all reform. Yet reform is needed.

Mr. GRASSLEY. I wish to respond to Senator KERRY's comments about my representation of the Bankruptcy Review Commission.

The commissioners themselves said the vote was 8 to 1 on the small business provisions. So it is not accurate that there are major tensions with respect to these provisions.

I have a letter that I will put in the RECORD that shows a former commissioner of the Bankruptcy Commission saying the vote was 8 to 1 on the small business provisions.

I ask unanimous consent the letter be printed in the RECORD.

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

BANKRUPTCY TAX CONSULTANT

To: Senator CHARLES E. GRASSLEY
From: JAMES I. SHEPARD

SENATOR GRASSLEY: The National Bankruptcy Review Commission adopted the Small Business Provisions in its report with solid support, the vote was 8 to 1 in favor. There was little dissension, the vote was NOT 5 to 4 as has been stated, the Commission was not bitterly divided but, in fact, was strongly in favor of the provisions.

Thank You,

JAMES I. SHEPARD.

Mr. HATCH. Mr. President, is all time yielded back?

The PRESIDING OFFICER. All time has expired.

Mr. HATCH. I yield back whatever time I have.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to table.

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 Idaho (Mr. CRAPO), the Senator from Oklahoma (Mr. INHOFE), and the Senator from Virginia (Mr. WARNER) are necessarily absent.

The result was announced—yeas 55, nays 41, as follows:

[Rollcall Vote No. 19 Leg.]

YEAS—55

Allard	Domenici	Murkowski
Allen	Ensign	Nelson (NE)
Bayh	Enzi	Nickles
Bennett	Frist	Reid
Biden	Gramm	Roberts
Bingaman	Grassley	Santorum
Bond	Gregg	Sessions
Breaux	Hagel	Shelby
Brownback	Hatch	Smith (NH)
Bunning	Helms	Smith (OR)
Burns	Hutchinson	Snowe
Campbell	Hutchison	Specter
Carper	Jeffords	Stevens
Chafee	Kyl	Thomas
Cleland	Lott	Thompson
Cochran	Lugar	Thurmond
Collins	McCain	Voinovich
Craig	McConnell	
DeWine	Miller	

NAYS —- 41

Akaka	Edwards	Lieberman
Baucus	Feingold	Lincoln
Boxer	Feinstein	Mikulski
Byrd	Graham	Murray
Cantwell	Harkin	Nelson (FL)
Carnahan	Hollings	Reed
Clinton	Inouye	Rockefeller
Conrad	Johnson	Sarbanes
Corzine	Kennedy	Schumer
Daschle	Kerry	Stabenow
Dayton	Kohl	Torricelli
Dodd	Landrieu	Wellstone
Dorgan	Leahy	Wyden
Durbin	Levin	

ANSWERED ''PRESENT''—1

Fitzgerald

NOT VOTING—3

Crapo	Inhofe	Warner

The motion was agreed to:

Mr. LOTT. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LOTT. Mr. President, I believe the Senator from Massachusetts wishes to speak for a few moments about an unrelated issue, perhaps. Before he does that, I want to notify all Senators that we are trying to work to get an agreement on how to proceed for the balance of today, Friday, and next week.

I had hoped we could get a list of amendments that would be offered, a realistic list, and in return we would agree that there would be no further votes this afternoon, or tomorrow, even though we will continue trying to work and also have work completed on Monday.

I say to both sides of the aisle that I am getting disturbed that the leadership continues to bend over backward to try to accommodate everybody's schedule. We are not getting a lot of response in kind. Senators don't particularly want to vote on Tuesday afternoons. Senators don't wish to be here on Friday or on Monday. Senators come up with—we have probably close to a hundred amendments on the bankruptcy bill on the two sides. We must finish this bill next week, by Thursday night. I don't want to file cloture, but when I look at the list with which we have just been presented, and considering the fact there is no desire to work on Friday, it is not practical that we can finish this up by next Thursday, unless we find some way to cut down the amendments considerably, move faster, or file cloture.

After that, we have to go to campaign finance reform, on Monday, the 19th. We are going to have to do the budget resolution in a relatively short period of time, in the next month or so. We have to do the education bill. Good work is being done in that committee. Basically, bankruptcy is going to have to be done next week. I don't want to cut anybody off.

We have bent over backward in many ways to get this bill done. We are going to try to get an agreement as to how this bill will be completed by next Thursday night. Senator DASCHLE may want to comment.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, I add my voice to the majority leader's admonition to all of those who have amendments. He and I have worked on this from the very beginning of the year and have used the regular order to accommodate all Senators, first in committee, and now on the floor.

I don't have any qualms about the interests on the part of so many Senators to express themselves. That is what the legislative process is all about. But let me say this will not be the only bill we take up this year. There will be other legislation. It is fair to say that if cloture is filed—and I hope that will be unnecessary—it will probably be invoked.

Senator LOTT came to me a few minutes ago to express an interest in filing—even today. I urged him to hold off filing today in order to accommodate Senators who may have amendments that are not relevant. In order for that to happen, we have to see, give and take on both sides. We are going to have to have a unanimous consent agreement that if he holds off on filing cloture, we can have that vote, perhaps Wednesday, so we can finish on Friday. Like he has noted, we have campaign finance reform that is already part of a unanimous consent agreement scheduled for the week after. So there is no question that we are going to have to finish this bill next week. There are over a hundred amendments. I think it is going to require some real cooperation on the part of all Senators, if we are going to address this matter in a meaningful way, orderly way, and in a way that is fair.

Anybody can object to the unanimous consent request we are going to make. If I were the majority leader, I guess if that were the case, I would probably file cloture and move on. I hope that won't be necessary. I hope we can accommodate those Senators who have amendments that are not necessarily germane, but I hope we can finish the bill.

I hope those who have a litany of amendments—some Senators have expressed an interest in offering 8 to 10 amendments. I am not very sympathetic to that. There are a lot of other issues out there that can be addressed on other bills down the road. So let's show a little cooperation, a little effort to be accommodating. Let's recognize that we have a lot of work to do. The only way we will get it done is if everybody plays fairly and does what they can to accommodate the needs of scheduling.

I yield the floor.

Mr. REID. Will the majority leader yield?

Mr. LOTT. Mr. President, I am glad to yield.

Mr. REID. I say to the two leaders, I have spoken to Senator CONRAD and he has a very important amendment pending. He said he would be willing to speak tomorrow for a reasonable period of time, and Monday there would be ample opportunity to offer lots of amendments.

Mr. LOTT. Mr. President, let me say that I appreciate that. I understand Senator BINGAMAN has an amendment that he can offer now, and we could continue to make progress. His amendment has been cleared. So we will continue to work. It may be necessary to be in session tomorrow. We are working on another issue to get completed tonight or first thing in the morning—in spite of the fact that I had hoped we could get a limited list of amendments—a reasonable one—in return for not having further votes tonight or tomorrow, but we didn't get that. We did not get that, but I did want to say there will be no further votes today. Members are encouraged to continue to offer amendments. We will work tonight, perhaps tomorrow. There will be votes on next Tuesday morning as previously ordered and on Tuesday at 2:45 p.m.

Again, it is previously ordered. I want Senators to understand we will have a vote Tuesday morning. So Senators need to be here on Monday in order to be here for the recorded vote Tuesday morning.

In that connection, again I urge Senators to continue to work tonight, come to the floor and work with the managers to offer amendments tomorrow and/or Monday.

I believe we are ready to propound a unanimous consent request.

After consultation with Senator DASCHLE, I ask unanimous consent that any votes ordered for today be postponed and stacked to occur beginning at 11 a.m. on Tuesday, March 13, with the concurrence of both managers.

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

Mr. LOTT. Mr. President, I ask unanimous consent that there be 5 minutes equally divided for explanation of each amendment beginning at 10 a.m. on Tuesday, to be debated in the order they were offered. In other words, even if debate occurs later today or Monday—just so Senators understand—before the vote there will be 5 minutes equally divided on each amendment.

I further ask unanimous consent that when the votes occur at 11 a.m. on Tuesday, the first vote be limited to 15 minutes in length, with all succeeding votes 10 minutes in length.

I further ask unanimous consent that all first-degree amendments in order to the pending S. 420 be limited to the following list which I now send to the desk, and any second-degree amendments must be relevant to the first-degree amendments.

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

The list of amendments is as follows:

AMENDMENT LIST TO S. 420

REPUBLICAN AMENDMENTS

B. Smith:
1. Relevant.
1. Relevant to List.
Gramm:
4. Relevant to List.
1. Credit Card.
Specter:
1. Pardon Guidelines.
K. Hutchison:
1. 2nd Degree on Homesteads.
Collins:
1. Fishermen.
Nickles:
2. Relevants.
Hatch:
1. Relevant.
Lott:
14. Relevant to List.
Sessions:
1. Landlord Tenant.
1. Appeals.

DEMOCRATIC AMENDMENTS

Baucus:
1. Involuntary Bankruptcy.
Bingaman:
1. Energy Assistance/Conservation.
2. Relevant.
Bond:
1. Relevant.
Boxer:
1. Relevant.
2. Relevant.
3. Relevant.
4. Relevant.
5. Non-Relevant.
6. Non-Relevant.
Breaux:
1. Ergonomics.
Byrd:
1. Relevant.
2. Relevant.
Carnahan:
1. Means Testing re: Home Energy Costs.
Conrad:
1. Non-Relevant.
Daschle:
1. Relevant.
2. Relevant.
Dayton:
1. Trade Adjustment Assistance.
2. Relevant.
Dodd:
1. Credit Card.
Dorgan:
1. Relevant.
2. Relevant.
Durbin:
1. Cramdown.
2. Predatory Lending.
3. Credit Card Disclosure.
4. Non-Relevant.
5. Relevant.
Hollings:
Lock Box.
Feingold:
1. Section 1310.
2. Definition of Household Goods.
3. FEC Fines & Penalties.
4. Insolvent & Political Committees.
5. Relevant.
6. Relevant.
7. Landlord Tenants.
Feinstein:
1. Guns.
2. Cap to Credit Cards to Minors.
3. Parental Notification of Limit Increase.
4. Technical Amdt on Landlord/Tenants.
5. Bankruptcy Petition Preparers.
6. Delete Sect. 226–229.
7. Second Degree to a Wyden Amdt.
8. Relevant.
9. Non-Relevant.
Kennedy:
1. Health Care.
2. Means Test.
3. Pensions.
4. Non-Relevant.
5. Non-Relevant.
Kerry:
1. Small Business.
Kohl-Feinstein:
1. Homestead Caps.
Kohl:
2. Back Pay.
Leahy:
1. Identity Theft & Financial Privacy.
2. Chapter 13 Length.
3. Chapter 13 IRS Standards.
4. Tax Returns.
5. Current Monthly Income.
6. Separated Spouses.
7. Relevant.
8. Relevant.
9. Non-Relevant.
10. Appeals.
11. Relevant.
Levin:
1. Red Lining.
2. Relevant.
3. Credit Card Grace Period.
4. Means Test re: Gas Prices.
5. Cramdown.
Reed:
1. Reaffirms GAO Study.
Reid:
1. Relevant.
2. Relevant.
3. Non-Relevant.
Schumer:
1. Predatory Lending.
2. Finance Charges.
3. Corporate Reorganization.
4. Creditor Abuses.
5. Safe Harbors.
6. Means Test.
7. Relevant.
8. Relevant.
9. Non-Relevant.
Wellstone:
1. Payday Loan.
2. Low Income Safe Harbor.
3. Relevant.
4. Trade Related Job Loss Safe Harbor.
5. Benefit Program Administration.
6. Means Test Fix.
7. Trade Adjustment Assistance.
8. Relevant.
9. Relevant.
10. Non-Relevant.
Wyden:
1. Protecting Electricity Rate Payers.

Mr. BINGAMAN. Mr. President, by way of explanation, am I correct in assuming that this does not preclude us from offering an amendment that can be adopted by voice vote?

Mr. LOTT. Mr. President, it would have to be on the list.

Mr. BINGAMAN. It is the one I called up earlier.

Mr. LOTT. I believe the Senator from New Mexico has two listed. I believe his amendment is one of these two that are listed.

Mr. BINGAMAN. We can vote that this afternoon.

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

Mr. LOTT. In light of the agreement, Mr. President, there will be no further votes tonight. The Senate will be considering the bill over the next couple of days, hopefully tomorrow as well as Monday, so that amendments can be offered and debated. The next votes will occur beginning at 11 a.m. on Tuesday.

In addition, the lockbox votes are scheduled to occur at 2:45 p.m. on Tuesday. I urge Senators who have amendments to schedule floor time with the managers. Again, I hope there is no desire to try to drag this out through the week and not complete it. I do not think that would be fair to anybody. We have other work to do. Senator DASCHLE has assured me, as he just said, that he understands and wants to join in getting this done by next Thursday night or Friday morning.

As we assess the situation, if it becomes necessary, I will be prepared to file cloture on Monday or Tuesday so we can finish this not later than Thursday night or Friday.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, there is an amendment that I sent to the desk and explained earlier on energy assistance. I ask unanimous consent that my colleague, Senator DOMENICI, be added as a cosponsor of that amendment.

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

Mr. BINGAMAN. Mr. President, I also ask unanimous consent that after the vote on this amendment, which I expect in the next 3 or 4 minutes after I speak and Senator MURKOWSKI speaks, Senator KERRY from Massachusetts be allowed to speak as in morning business.

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

AMENDMENT NO. 28, AS MODIFIED

Mr. BINGAMAN. Mr. President, I send a modification of my amendment to the desk.

The PRESIDING OFFICER. Without objection, the amendment will be so modified.

The amendment, as modified, reads as follows:

(Purpose: To increase the authorization of appropriations for low-income energy assistance, weatherization, and State energy emergency planning programs, to increase Federal energy efficiency by facilitating the use of private-sector partnerships to prevent energy and water waste, and for other purposes)

Strike all and insert the following:

TITLE—EMERGENCY ENERGY ASSISTANCE AND CONSERVATION MEASURES

SEC. 01. SHORT TITLE.

This title may be cited as the ''Energy Emergency Response Act of 2001''.

SEC. 02. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) high energy costs are causing hardship for families;

(2) restructured energy markets have increased the need for a higher and more consistent level of funding for low-income energy assistance programs;

(3) conservation programs implemented by the States and the low-income weatherization program reduce costs and need for additional energy supplies;

(4) energy conservation is a cornerstone of national energy security policy;

(5) the Federal Government is the largest consumer of energy in the economy of the United States; and

(6) many opportunities exist for significant energy cost savings within the Federal Government.

(b) PURPOSES.—The purposes of this title are to provide assistance to those individuals most affected by high energy prices and to promote and accelerate energy conservation investments in private and Federal facilities.

SEC. 03. INCREASED FUNDING FOR LIHEAP, WEATHERIZATION AND STATE ENERGY GRANTS.

(a) LIHEAP.—(1) Section 2602(b) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621(b)) is amended by striking the first sentence and inserting the following: ''There are authorized to be appropriated to carry out the provisions of this title (other than section 2607A), $3,400,000,000 for each of fiscal years 2001 through 2005.''.

(2) Section 2605(b)(2) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8624(b)(2)) is amended by adding at the end the following:

''And except that during fiscal year 2001, a State may make payments under this title to households with incomes up to and including 200 percent of the poverty level for such State;''.

(b) WEATHERIZATION ASSISTANCE.—Section 422 of the Energy Conservation and Production Act (42 U.S.C. 6872) is amended by striking 'For fiscal years 1999 through 2003 such sums as may be necessary' and inserting: ''$310,000,000 for fiscal years 2001 and 2002, $325,000,000 for fiscal year 2003, $400,000,000 for fiscal year, and $500,000,000 for fiscal year 2005.''.

(c) STATE ENERGY CONSERVATION GRANTS.—Section 365(f) of the Energy Policy and Conservation Act (42 U.S.C. 6325(f)) is amended by striking ''for fiscal years 1999 through 2003 such sums as may be necessary'' and inserting: ''$75,000,000 for each of fiscal years 2001 through 2005.''

SEC. 04. FEDERAL ENERGY MANAGEMENT REVIEWS.

Section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253) is amended by adding at the end the following:

''(e) PRIORITY RESPONSE REVIEWS.—Each agency shall—

''(1) not later than October 1, 2001, undertake a comprehensive review of all practicable measures for—

''(A) increasing energy and water conservation, and

''(B) using renewable energy sources; and

''(2) not later than 180 days after completing the review, implement measures to achieve not less than 50 percent of the potential efficiency and renewable savings identified in the review.''.

SEC. 05. COST SAVINGS FROM REPLACEMENT FACILITIES.

Section 801(a) of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)) is amended by adding at the end the following:

''(3)(A) In the case of an energy savings contract or energy savings performance contract providing for energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities, benefits ancillary to the purpose of such contract under paragraph (1) may include savings resulting from reduced costs of operation and maintenance at such replacement buildings or facilities being replaced.

''(B) Notwithstanding paragraph (2)(B), aggregate annual payments by an agency under an energy savings contract or energy savings performance contract referred to in subparagraph (A) may take into account (through the procedures developed pursuant to this section) savings resulting from reduced costs of operation and maintenance as described in subparagraph (A).''.

SEC. 06. REPEAL OF ENERGY SAVINGS PERFORMANCE CONTRACT SUNSET.

Section 801(c) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)) is repealed.

SEC. 07. ENERGY SAVINGS PERFORMANCE CONTRACT DEFINITIONS.

(a) ENERGY SAVINGS.—Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended to read as follows:

''(2) The term 'energy savings' means a reduction in the cost of energy, water, or wastewater treatment from a base cost established through a methodology set forth in the contract, used by either—

''(A) an existing federally owned building or buildings or other federally owned facilities as a result of—

''(i) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

''(ii) more efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or

''(iii) more efficient use of water at an existing federally owned building or buildings, in either interior or exterior applications; or

''(B) a replacement facility under section 801(a)(3).''.

(b) ENERGY SAVINGS CONTRACT.—Section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3)) is amended to read as follows;

''The terms 'energy savings contract' and 'energy savings performance contract' mean a contract which provides for—

''(A) the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy, water conservation, or wastewater treatment measure or series of measures at one or more locations; or

''(B) energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities.''.

(c) ENERGY OR WATER CONSERVATION MEASURE.—Section 804(4) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(4)) is amended to read a follows:

''The term 'energy or water conservation measure' means—

''(A) an energy conservation measure, as defined in section 551(4) (42 U.S.C. 8259(4)); or

''(B) a water conservation measure that improves the efficiency of water use, is life cycle cost effective, and involves water conservation, water recycling or reuse, improvements in operation or maintenance efficiencies, retrofit activities or other related activities, not affecting the power generating operations at a Federally-owned hydroelectric dam''.

SEC. 08. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect upon the date of enactment of this title.

Mr. BINGAMAN. Mr. President, for clarification, this modification merely changes the effective date of the amendment. The amendment I offered will raise the amount authorized to be appropriated by this Congress for weatherization programs and for low-income home energy assistance programs. Those are programs that help individuals and families around this country who are faced with rising and enormously increased natural gas bills and electricity bills and those who will be faced with substantial increases in those utility bills this summer for air-conditioning purposes.

It is important that we increase this authorization level and that we do so right away. It is also important that we appropriate money quickly. I am hoping we will see progress on that front, working with the administration in the next few weeks. I am certainly going to be urging the President and those in the Department of Energy to strongly support an appropriation in this area.

This is an important thing to do. This is not a substitute for a comprehensive energy bill by any means. Senator MURKOWSKI has introduced a comprehensive bill. I am working on developing a bill that is also much more broad in its reach and deals with the long-term energy needs of the country. This merely tries to deal with the immediate crisis.

It is very important we do this. I am very pleased all Senators have indicated support for this measure.

I yield the floor. I know Senator MURKOWSKI wishes to speak on this same subject.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. I thank the Chair.

I join Senator BINGAMAN in urging support of the Bingaman amendment. It is cleared, as he indicated, on our side. I remind my colleagues that energy affects America's families and businesses. We are seeing higher energy costs, lost jobs, and reduced prosperity. We know, as Senator BINGAMAN indicated, that the amendment cannot replace the need for a comprehensive energy policy.

We have a crisis in this country. We are addressing the symptoms and not the causes. That is easier said than done. We are going to have to get into those causes. We certainly agree we need to provide additional funds for the weatherization assistance and the LIHEAP program.

As you might know, Mr. President, these programs are in title VI of the

Murkowski-Breaux National Energy Security Act of 2001. Let me explain briefly the difference because we are very close.

As Senator BINGAMAN knows, we are going to be holding hearings on these matters beginning next week. We will hold a hearing each week.

On LIHEAP, we have proposed an increased base from $2 billion to $3 billion and an increase in emergency funds from $600 million to $1 billion. The Bingaman amendment increases the base from $2 billion to $3.4 billion, so there is an increase. However, there are no emergency funds.

In weatherization, Senator BINGAMAN's proposal and our proposal in title VI increases to $500 million by the year 2005. In weatherization State energy programs, we propose an increase of $125 million by 2005, and it is my understanding the Bingaman amendment proposes $75 million by 2005. We have set State energy efficiency goals to reduce energy use by 25 percent by 2010, compared to 1990 levels, and we encourage State and regional energy planning to go ahead.

I remind everyone, while we need immediate relief until we get an energy plan passed in its entirety that addresses supply and conservation, we are not going to have the immediate relief we would like. We only increase authorizations by this in a sense. It is better to address these programs, along with the other energy needs, through the comprehensive approach which I think is an obligation of the Energy Committee which we collectively work toward. A piecemeal approach to energy policy hasn't gotten us anywhere and that is part of the problem of where we are today.

My point is, for example, what are we going to do this summer when gasoline supplies run short, as they are expected to do, and the consumers pay up to $2 per gallon? Will we take the opportunity now to address the need for refining capacity in a comprehensive bill while we have the opportunity? Or will we avoid the tough political expensive decisions and instead come back here at a later time and increase LIHEAP yet again?

I think the time has come to make those tough decisions. I look forward to working with my colleague. We want to find a solution to add fuel to the tank of our economic engine now that it is running almost on empty. We will have to enact this year a comprehensive national energy policy. Otherwise, we will be forever chasing high energy prices with yet more temporary funds and placing the economic health and the national security of the country at risk.

Just as we can and need to get our way out of this energy crisis, we cannot buy our way out. The energy crisis, as we know, will not go away until we make the tough decisions that are needed to increase the supply of conventional fuels and improve our energy efficiency and conservation and expand the use of alternative fuel and renewables.

I congratulate Senator BINGAMAN and would like to be added as a cosponsor to his legislation.

I again reemphasize the reality that the American people expect us to address this crisis that impacts every American family. This amendment does not solve the underlying problem we face. We should and must address the illness, not the symptoms.

We must develop a comprehensive national energy strategy; again, one that ensures clean, secure, and affordable energy supply into the next decade.

I look forward to working with my colleague and others to develop this comprehensive energy strategy.

I yield to the Senator from Massachusetts.

The PRESIDING OFFICER. Under the previous order, the Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, it is my understanding there is no further debate, this is accepted, and we can vote now.

The PRESIDING OFFICER. If there is further debate on the amendment, the question is on agreeing to the amendment, No. 28, as modified.

The amendment (No. 28), as modified, was agreed to.

Mr. KERRY. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Massachusetts.

NORTH KOREA

Mr. KERRY. Mr. President, I was briefly downstairs in a meeting with President Kim Dae Jung of South Korea. I will take a few moments to share with my colleagues some thoughts about our policy with respect to North Korea, which obviously has profound implications for the region, as well as for the United States.

Mr. President, one of the major questions facing the United States and its South Korean and Japanese allies is how to deal with the ballistic missile threat posed by North Korea. Pyongyang has already demonstrated its capacity to launch a 500 kilogram warhead to a range of at least 1000 kilometers. The failed test of the Taepo Dong-2 missile in August 1999 clearly shows North Korea's interest in developing a longer range missile capability. North Korea's proliferation of missiles, missile components, technology and training to states such as Pakistan and Iran further magnifies the need to get Pyongyang to end its missile program.

The Clinton administration left a framework on the table which could, if pursued aggressively by the Bush administration, go a long way toward reducing the threat posed by North Korean missiles and missile exports. Our South Korean allies clearly want us to continue the discussions that the Clinton administration began with North Korea on the missile question. Two days ago Secretary of State Colin Powell stated that the Bush administration would ''pick up'' where the Clinton administration left off. Apparently not. Yesterday, President Bush told visiting South Korean President Kim Dae Jung that the administration would not resume missile talks with North Korea any time soon. I believe this is a serious mistake in judgment. I will suggest why.

Our South Korean allies are on the front line; they are under no illusions about the regime in North Korea or its leader Kim Jong Il. President Kim firmly believes that Washington and Seoul must continue their efforts to open up North Korea, and that the United States should move quickly to resume the missile talks. We should listen to him carefully. I and others raised this issue with Secretary Powell earlier today, when he testified before the Foreign Relations Committee. The Secretary indicated that some of the things put on the table by the Clinton administration are ''promising'' but that monitoring and verification ''are not there.'' He said that the Bush administration intended to do a comprehensive policy review and then would decide when and how to engage North Korea.

I don't think any of us in the Senate would second-guess the right or even the good sense of a new administration conducting a thorough review of a particular area of the world or a particular policy. That makes sense. However, I am deeply concerned that by sending the message we will not even engage in a continuation of talks where the Clinton administration left off, that we wind up potentially offering an opportunity to see a window closed or for people to misinterpret the long-term intentions of the United States and perhaps make it more difficult to pick up where the Clinton administration left off when and if the administration resumes.

We need to reflect on the fact that North Korea took some remarkable steps, heretofore unimaginable steps, and under the 1994 agreed framework, North Korea set about to freeze its existing nuclear energy program under the IAEA supervision to permit special inspections to determine the past operating history of its reactor program just prior to the delivery of key components of light-water reactors.

A few years ago when the United States was concerned that North Korea was violating the agreed framework by possibly building a new reactor in an underground site at Kumchangi-ri, North Korea ultimately allowed a team of Americans to inspect the site, first in May of 1999 and each year thereafter.

This showed, clearly, that monitoring and verification agreements can