

“(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

“(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

“(D) one or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.”.

SEC. 910. DAMAGE MEASURE.

(a) IN GENERAL.—Title 11, United States Code, is amended—

(1) by inserting after section 561, as added by section 907, the following:

“§562. **Timing of damage measurement in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, and master netting agreements**

“(a) If the trustee rejects a swap agreement, securities contract (as defined in section 741), forward contract, commodity contract (as defined in section 761), repurchase agreement, or master netting agreement pursuant to section 365(a), or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

“(1) the date of such rejection; or
“(2) the date or dates of such liquidation, termination, or acceleration.

“(b) If there are not any commercially reasonable determinants of value as of any date referred to in paragraph (1) or (2) of subsection (a), damages shall be measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value.

“(c) For the purposes of subsection (b), if damages are not measured as of the date or dates of rejection, liquidation, termination, or acceleration, and the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant or the trustee objects to the timing of the measurement of damages—

“(1) the trustee, in the case of an objection by a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant; or

“(2) the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant, in the case of an objection by the trustee,

has the burden of proving that there were no commercially reasonable determinants of value as of such date or dates.”; and

(2) in the table of sections for chapter 5, by inserting after the item relating to section 561 (as added by section 907) the following new item:

“562. **Timing of damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.**”.

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by inserting “(1)” after “(g)”; and
(2) by adding at the end the following:

“(2) A claim for damages calculated in accordance with section 562 shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.”.

SEC. 911. SIPC STAY.

Section 5(b)(2) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding at the end the following new subparagraph:

“(C) EXCEPTION FROM STAY.—

“(i) Notwithstanding section 362 of title 11, United States Code, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by SIPC from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in sections 101, 741, and 761 of title 11, United States Code, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

“(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement, or securities lent under a securities lending agreement.

“(iii) As used in this subparagraph, the term ‘contractual right’ includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act), or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.”.

SEC. 912. EFFECTIVE DATE.

(a) EFFECTIVE DATE.—This title and the amendments made by this title shall take effect 180 days after the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this title shall not apply with respect to cases commenced or appointments made under any Federal or State law before the effective date of this Act.

SEC. 913. SAVINGS CLAUSE.

The meanings of terms used in this title are applicable for the purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

SA 137. Mr. LEAHY submitted an amendment to be proposed by him to the bill S. 256, to amend title 11 of the United States Code, and for other purposes, which was ordered to lie on the table; as follows:

On page 156, line 18, insert “, unless the debtor certifies under penalty of perjury that the debtor is a victim of domestic violence whose physical well-being or whose children’s physical well-being would be threatened if relief from the stay is granted” before the semicolon.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. CHAMBLISS. Mr. President, I would like to announce that the Committee on Agriculture, Nutrition, and Forestry will hold a hearing to discuss school nutrition programs. The hearing will be held on Tuesday, March 15, 2005, at 10 a.m. in SH-216, Hart Senate Office Building. Senator SAXBY CHAMBLISS will preside.

For further information, please contact the Committee at 224-2035.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. BROWNBACk. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition and Forestry be authorized to conduct a hearing during the session of the Senate on Tuesday, March 8, 2005. The purpose of this hearing will be to consider the reauthorization of the Commodity Futures Trading Commission.

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

COMMITTEE ON ARMED SERVICES

Mr. BROWNBACk. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on March 8, 2005, at 9:30 a.m., in open and closed session to receive testimony from unified and regional commanders on their military strategy and operational requirements, in review of the defense authorization request for fiscal year 2006.

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

COMMITTEE ON ARMED SERVICES

Mr. BROWNBACk. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on March 8, 2005, at 5 p.m., in closed session to receive a classified briefing regarding current operations in Iraq.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BROWNBACk. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, March 8 at 2:30 p.m.

The purpose of the hearing, entitled Power Generation Resource Incentives & Diversity Standards, is to receive testimony regarding ways to encourage the diversification of power generation resources. Issues to be discussed include: Renewable Portfolio Standards (RPS) efforts among states and the cost and benefits of a federal RPS program. New approaches to promoting a variety of clean power resources, such as wind, solar, clean coal technology and nuclear power, will also be considered.

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

COMMITTEE ON FINANCE

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Tuesday, March 8, 2005, at 10 a.m., to hear testimony on "Physician-Owned Specialty Hospitals: In the Interest of Patients of a Conflict of Interest?"

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

COMMITTEE ON FOREIGN RELATIONS

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, March 8, 2005, at 2:30 p.m. to hold a hearing on the Black Sea Strategy.

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

COMMITTEE ON THE JUDICIARY

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Tuesday, March 8, 2005 at 9:30 a.m. on "Judicial Nominations." The hearing will take place in the Dirksen Senate Office Building Room 226. The tentative witness is attached.

Agenda:

PANEL I: Senators.

PANEL II: Thomas B. Griffith, of Utah, to be United States Circuit Judge for the District of Columbia Circuit.

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Tuesday, March 8, 2005, at 9:30 a.m., to conduct a hearing to examine and discuss S. 271, a bill which reforms the regulatory and reporting structure of organizations registered under Sections 527 of the Internal Revenue Code.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on March 8, 2005 at 2:30 p.m. to hold a closed hearing.

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

SUBCOMMITTEE ON PUBLIC LANDS

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands and Forests be authorized to meet during the session of the Senate on Tuesday, March 8 at 10 a.m.

The purpose of the hearing is to receive testimony on S. 179, to provide for the exchange of land within the Sierra National Forest, California, and for other purposes; S. 213, to direct the Secretary of the Interior to convey certain federal land to Rio Arriba County, New Mexico; S. 267, to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000, and for other purposes; and S. 305, to authorize the Secretary of the Interior to recruit volunteers to assist with or facilitate the activities of various agencies and offices of the Department of the Interior; S. 476, to authorize the Boy Scouts of America to exchange certain land in the state of Utah acquired under the Recreation and Public Purposes Act; and S. 485, to reauthorize and amend the National Geologic Mapping Act of 1992.

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

SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND SECURITY

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary Subcommittee on Terrorism, Technology, and Homeland Security be authorized to meet to conduct a hearing on "Terrorism and the EMP Threat to Homeland Security," on Tuesday, March 8, 2005, at 2:30 p.m. in Room 226 of the Dirksen Senate Office Building.

Panel I: Dr. Lowell Wood, Commissioner, Congressional EMP Commission, Livermore, CA; Dr. Peter Pry, Senior Staff, Congressional EMP Commission, Washington, DC; Dr. Peter Fonash, National Communications System Deputy Manager (Acting), Department of Homeland Security, Washington, DC.

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

PRIVILEGE OF THE FLOOR

Mr. BROWNBACK. Mr. President, I ask unanimous consent Alison Thompson, a Marine fellow on Senator DOLE's staff, be granted privileges of the floor for the duration of today's session.

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

MEASURE PLACED ON THE CALENDAR—S. 539

Mr. GRASSLEY. Mr. President, I understand there is a bill at the desk that is due for its second reading.

The PRESIDING OFFICER. The Senator is correct. The clerk will read the title of the bill for the second time.

The assistant legislative clerk read as follows:

A bill (S. 539) to amend title 28, United States Code, to provide the protections of habeas corpus for certain incapacitated individuals whose life is in jeopardy, and for other purposes.

Mr. GRASSLEY. Mr. President, in order to place the bill on the calendar under the provisions of rule XIV, I object to further proceedings.

The PRESIDING OFFICER. Objection is heard. The bill will be placed on the calendar.

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the President of the Senate, and after consultation with the Majority Leader, pursuant to Public Law 106-286, appoints the following Members to serve on the Congressional-Executive Commission on the People's Republic of China: The Senator from Nebraska, Mr. HAGEL, Chairman; the Senator from Kansas, Mr. BROWNBACK; the Senator from Oregon, Mr. SMITH; the Senator from South Carolina, Mr. DEMINT; and the Senator from Florida, Mr. MARTINEZ.

INTERNATIONAL WOMEN'S DAY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 74, submitted earlier today by Senators BIDEN, CLINTON, LUGAR, KOHL, and others.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 74) designating March 8, 2005, as "International Women's Day."

There being no objection, the Senate proceeded to consider the resolution.

Mr. DURBIN. Today, March 8, is International Women's Day. This day provides a special opportunity for us to reflect on the status of women throughout the world and to think about what we can do to improve the health and well-being of some of the world's most vulnerable women.

Today, I would like us to think about Uganda, where I sat on a porch with mothers who were HIV-positive. These mothers were gathering scrapbooks, photos, notes, and little memorabilia of their lives to leave to their children. Their children, playing in the yard, had already lost one parent, and were now about to lose a second.

I would like us to think about South Africa, where I saw women waiting for hours on wooden benches, inside a clinic made from old rail cars, in the hope that they might be sick enough to qualify for antiretroviral treatment for HIV.

And, I would like us to think about Bangladesh, where I saw women who had known nothing but poverty, but who, thanks to a tiny loan, had become entrepreneurs. They were offering cell phone service to their villages, made possible by their ownership of a single, solar-powered cell phone.