United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 105th CONGRESS, SECOND SESSION

Vol. 144 WASHINGTON, WEDNESDAY, JUNE 10, 1998 No. 74

House of Representatives

The House met at 9 a.m. and was called to order by the Speaker pro tempore (Mr. SOLOMON).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
June 10, 1998.

I hereby designate the Honorable GERALD B.H. SOLOMON to act as Speaker pro tempore on this day.

NEWT GINGRICH,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Of all your blessings, O God, to which we cling and of all the gifts that mark the human soul, we especially hold dear the spirit of thanksgiving and the attitude of praise. O Almighty God, who has given us all good things, we pray that we will express our gratitude to you for your love to us even as we express our appreciation and respect to those we love. Bless us this day and every day, we pray, amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Missouri (Mr. SKELTON) come forward and lead the House in the Pledge of Allegiance.

Mr. SKELTON led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair desires to make an announcement. After consultation with the majority and minority leaders and with their consent and their approval, the Chair announces that during the joint meeting to hear an address by his Excellency Kim Dae-Jung, only the doors immediately opposite the Speaker and those on his right and left will be open.

No one will be allowed on the floor of the House who does not have the privilege of the floor of the House.

Due to the large attendance which is anticipated, the Chair feels that the rule regarding the privilege of the floor must be strictly adhered to. Children of Members will not be permitted on the floor, and the cooperation of all Members is requested.

RECESS

The SPEAKER pro tempore. Pursuant to the order of the House of Friday, June 5, the House will stand in recess subject to the call of the Chair.

Accordingly (at 9 o'clock and 3 minutes a.m.), the House stood in recess subject to the call of the Chair.

During the recess, beginning at about 10:00 a.m., the following proceedings were had.

□ 1000

JOINT MEETING OF THE HOUSE AND SENATE TO HEAR AN ADDRESS BY HIS EXCELLENCY KIM DAE-JUNG, PRESIDENT OF THE REPUBLIC OF KOREA

The SPEAKER of the House presided.

The Assistant to the Sergeant at Arms, Richard Wilson, announced the President pro tempore of the Senate and the Members of the U.S. Senate who entered the Hall of the House of Representatives, the President pro tempore of the Senate taking the chair at the right of the Speaker, and Members of the Senate the seats reserved for them.

The SPEAKER. On the part of the House, the Chair appoints as members of the committee on the part of the House to escort His Excellency Kim Dae-jung into the Chamber:

The gentleman from Texas (Mr. ARMEY);

The gentleman from Texas (Mr. DELAY);

The gentleman from Ohio (Mr. BOEHNER);

The gentleman from California (Mr. COX);

The gentleman from New York (Mr. GILMAN);

The gentleman from Nebraska (Mr. BEREUTER);

The gentleman from New York (Mr. SOLOMON);

The gentleman from California (Mr. KIM);

The gentleman from Missouri (Mr. GEPHARDT);

The gentleman from Michigan (Mr. BONIOR);

The gentlewoman from Connecticut (Mrs. KENNELLY);

The gentleman from Maryland (Mr. HOYER);

The gentleman from Indiana (Mr. HAMILTON);

The gentleman from Connecticut (Mr. GEJDENSON);

The gentlewoman from California (Ms. PELOSI); and

The gentleman from North Dakota (Mr. POMEROY).

The PRESIDENT pro tempore. The President pro tempore of the Senate, at the direction of that body, appoints the following Senators as a committee on

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

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the part of the Senate to escort His Excellency Kim Dae-jung, the President of the Republic of Korea, into the House Chamber:

The Senator from Oklahoma (Mr. NICKLES);

The Senator from Florida (Mr. MACK);

The Senator from Georgia (Mr. COVERDELL);

The Senator from Indiana (Mr. LUGAR);

The Senator from Alaska (Mr. MURKOWSKI);

The Senator from Wyoming (Mr. THOMAS);

The Senator from South Dakota (Mr. DASCHLE);

The Senator from Maryland (Ms. MIKULSKI);

The Senator from Nebraska (Mr. KERREY);

The Senator from New Jersey (Mr. TORRICELLI);

The Senator from Iowa (Mr. HARKIN);

The Senator from Delaware (Mr. BIDEN);

The Senator from New Jersey (Mr. LAUTENBERG);

The Senator from Michigan (Mr. LEVIN); and

The Senator from California (Mrs. BOXER).

The Assistant to the Sergeant at Arms announced the Acting Dean of the Diplomatic Corps, His Excellency Roble Olhawe, Ambassador of Djibouti.

The Acting Dean of the Diplomatic Corps entered the Hall of the House of Representatives and took the seat reserved for him.

The Assistant to the Sergeant at Arms announced the Cabinet of the President of the United States.

The members of the Cabinet of the President of the United States entered the Hall of the House of Representatives and took the seats reserved for them in front of the Speaker's rostrum.

(At 10 o'clock and 11 minutes a.m., the Assistant to the Sergeant at Arms announced the President of the Republic of Korea, His Excellency Kim Dae-jung.)

[Applause, the Members rising.]

The SPEAKER. Members of the Congress, it is my great privilege and I deem it a high honor and personal pleasure to present to you His Excellency Kim Dae-jung, the President of the Republic of Korea.

[Applause, the Members rising.]

ADDRESS BY HIS EXCELLENCY KIM DAE-JUNG, PRESIDENT OF THE REPUBLIC OF KOREA

President KIM. Mr. Speaker, Mr. President, distinguished Members of the Senate and House, ladies and gentlemen.

A rare succession of world leaders has been accorded the honor of speaking from this lofty podium. But today, I am the first to have been twice snatched from death by the decisive actions of your Nation.

You first saved my life in 1973, when I was kidnapped and nearly murdered by the military regime, and again in 1980, when a dictatorship sentenced me to death.

I escaped five attempts on my life; one by communists; the other four by military dictators. Living 40 years of my life under surveillance, I spent six years in prison and more than 10 years in exile or under house arrest.

In 1973, I was kidnapped in Tokyo and taken onto a ship. Bound and gagged, I was about to be thrown overboard. But, as only someone who has brushed up to death's door can know, I saw Jesus Christ near me. I prayed for my life and I truly believe God saved me.

At that moment, an airplane flew over the vessel and stopped my abductors. Later, we learned the plane had intervened because of information from the United States.

In 1980, I was arrested by the leaders of a military coup d'etat and sentenced to death. If not for the active efforts by President Carter and President-elect Reagan, this podium would now be empty.

In prison, threats of death were ceaseless. But I could never make a separate peace with a dictatorship. I could never betray the people.

□ 1020

And when they said I would die, still I never gave in, even though I was afraid of death. Every now and then, I look in the mirror, with deep emotion, and wonder how I overcame 40 years of such trial. Even now, the anguish and doubt of those times are hard to talk about.

Only years later did I hear words attributed to your great statesman, Abraham Lincoln, and come to know their true meaning: ''I will prepare, and someday, my chance will come.''

So the improbable Korean journey that has brought me to this, democracy's most famous home, is not lost on this humble and fellow public servant.

And to those of you in this Chamber, to those Americans who fought for democracy and to whom my life is literally owed, I will never forget the example of your safe haven. I will never forget America and the destiny that so strongly binds my political life to your Nation.

Mr. Speaker, Mr. President, distinguished Members of the Senate and House, a century and 16 years ago, our two nations established formal relations. It is a long and unbroken friendship. The United States helped liberate Korea from the iron chains of Japanese colonialism and defend the Republic from Communist aggression.

Today, in this Chamber, with deepest gratitude, I pray between these words for the souls of more than 33,000 young Americans who sacrificed their precious lives to defend the Republic from Communist tyranny. How can I thank the brave Americans who fought nearly 50 years ago in that horror of a war? Some of you here fought in that war. For this sacrifice, I thank you from the bottom of my heart. In defending Korea, you helped set us free.

Yet today, there is no peace on the Korean peninsula. At this hour, armed forces of the Republic and the United States stand within sight of North Korean Communist troops in a state of hostility. And that must change. We must bring a real and permanent peace to the Peninsula and nudge North Korea toward cooperation and reconciliation.

So to the leader of North Korea, I say: First, no armed provocation by North Korea will be tolerated, under any circumstances. Second, we will not undermine your regime or attempt unification by absorbing the North. Third, we will pursue with you across-the-board exchange and cooperation. Support for this approach comes from Koreans and from Japan, China, Russia, and the United States, and many other nations around the world.

Above all, I say again, we must not tolerate armed provocation by North Korea. We must secure peace through strength. Our purpose is not war. We seek only peaceful cooperation with North Korea.

In this regard, the Geneva Agreed Framework must continue to play an important role in promoting peace and stability on the Peninsula and strengthening the global nuclear nonproliferation regime. Thus, even with our current economic difficulties, Korea will faithfully abide by our commitment to the KEDO project. And we hope the United States continues to smoothly implement the agreed framework.

To lead North Korea toward reconciliation, the Republic and the United States should promote a ''sunshine'' policy, offering inducements against the backdrop of strong security measures. And we should extend to North Korea both goodwill and sincerity so suspicion dissolves and openness emerges.

Above all, we need a flexible policy. To get a passerby to take off his coat, so the fable goes, sunshine is more effective than a strong wind.

We are going to promote cooperation in a wide range of areas, under the principle of separation of politics and economics. We want America's support in this effort. Both our nations need to be more confident, coordinated, and composed in our relations with North Korea.

We hope such an overall approach gives North Korea psychological room to open its mind and its doors. To be sure, we will never relax our vigilance against North Korea. But neither will we be afraid to pursue peace.

That is what I believe. This approach, this doctrine, is the most secure and stabilizing for the Peninsula, for Northeast Asia, for America and for the world.

Indeed, Northeast Asia is one of the world's most important regions, militarily and economically. The United States, Japan, China and Russia all have a stake in this region.

Nearly surrounded by these four powers, Korea's national and security interests are substantially influenced by them. And I am convinced the continued pretense of U.S. troops in East Asia, including Korea, is consistent with American national interest and necessary for peace and stability in the region.

Mr. Speaker, Mr. President, for 30 years Korea has sustained economic growth. But late last year, we began to face grave economic difficulties due to a sudden and unanticipated shortage of reserves. America has taken the lead in international efforts to assist us through these difficult times. And may I say, it is truly good to have friends in times of need. I remember vividly a phone call from President Clinton and his encouraging words the day after my election, as well as the many messages from Members of this great Congress.

The cause of our economic problems is quite clear. My predecessors did not practice democracy and a free market economy. In fact, there was too little democracy, too much collusion with big business, and too much government-directed finance. Corruption prevailed. Imprudent borrowing weakened our Nation's banks and businesses.

Today, Korea faces a long and hard challenge. Unemployment is at a record high. Sales are falling. Bankruptcies are increasing. Nevertheless, the people and government are joining hands to overcome the foreign exchange crisis and to reform the economic structure. Labor, business and government are doing their part to rebuild the economy. Reform bills have been passed. Changes are underway.

As a result, encouraging signs have begun to appear. Foreign exchange reserves now total 35 billion U.S. dollars, a far cry from the mere $3.9 billion tallied on December 18, the day I was elected. Once skyrocketing foreign exchange and interest rates are on a downward trend.

We remain focused on reviving Korea's economy. And what we need now, more than anything else, are foreign investors. Since the crisis, Koreans have become far more positive about accommodating foreign capital. A recent poll showed 87 percent of Koreans now believe foreign investment is beneficial to our Nation's economy.

Inspired by this support, we have moved decisively to revise laws and regulations so that international investors can operate under the same conditions as Koreans. In fact, Korea will become one of the best countries for international investors to freely and safely do business. This is a precious opportunity, and we must seize it.

In international trade, we will open our markets. Unfair regulations are being abolished. And we will no longer tolerate legal discrimination against foreign products. Free trade is essential for success.

Pursuing reform of this magnitude, we need help from others. And we need unreserved supported from the United States.

Korea is America's eighth largest trading partner and one of your staunchest allies. Today, I appeal to you and to the American people: We need your encouragement for our reforms to succeed and for us to become a stronger trading partner in the future.

It may be remembered that at important times Korea was there for America, too. For example, during your own economic downturn in the 1980s, Korea dispatched special purchasing delegations to the United States and bought billions of dollars of your goods. Over the years, Korean corporations have individually invested over $1 billion each in the U.S. In 1996, Korea purchased from America $11.6 billion more than we sold to you, absorbing more than half the total trade deficit of that year. And Korean Airlines just concluded a $2 billion contract with an American aircraft manufacturing.

Mr. Speaker, Mr. President, I am grateful for the help we received from the IMF, the IBRD, and other financial institutions. With the IMF's strong support, we are aggressively and successfully promoting restructuring of our economy to the level of other advanced countries.

In a sense, the IMF is to international finance what the Federal Reserve is to your Nation's financial system, the lender of last resort. The IMF may well have to play again a critical role in averting and stabilizing future economic crises. And the IMF deserves continued support.

Korea is going to dedicate this year to economic reform. To be sure, Koreans must endure cruel tests of unemployment, inflation, recession and bankruptcy. But many experts believe conditions will improve substantially in the second half of next year. The Korean economy will then reenter a stage of solid growth, bounding ahead, beginning in the year 2000.

□ 1040

Korea can do it. We built one of the leading economies in the world in just three decades, rising from the ruins of war. We have a proven potential. We are resilient. But we now need your help.

Mr. Speaker, Mr. President, at this thrilling moment for me, in a life that has already been long and not entirely uneventful, millions of Koreans are also listening to these words. And I am sure they feel very proud. Korea's first President to be elected through a genuinely democratic process is speaking in this, democracy's most hallowed hall. My countrymen will surely join me in wanting our two nations to grow closer and rise to a higher partnership, to a higher friendship.

Across Asia, a valuable lesson is being learned. Where there is no democracy, there can be no free market economy; and where there is no dynamic free market economy, there can be no competitiveness. Many people in Asia, and around the world, are beginning to agree that democracy and a free market economy can and must flourish together, as one.

Today, we face a fundamental challenge in working together to help Korea move beyond the current economic crisis, so it can once again stand boldly as a model of inspiration for the world.

Mr. Speaker, Mr. President, thank you for helping me stand before you as the President of a democratic Korea.

Today, how can I help but think back to destiny, to the two times your Nation saved me from death? So much was endured throughout that long and hard struggle for real democratization in Korea that today, our two nations are obligated to ensure it was all truly worthwhile.

Twenty-five years ago and eighteen years ago, America's decisive actions saved me from paying the highest price an individual can pay. Today, I say, let us join together in a higher friendship that stands as a shining example of democracy's true destiny.

Thank you very much.

[Applause, the Members rising.]

At 10 o'clock and 44 minutes a.m., the President of the Republic of Korea, accompanied by the committee of escort, retired from the Hall of the House of Representatives.

The Assistant to the Sergeant at Arms escorted the invited guests from the Chamber in the following order:

The Members of the President's Cabinet.

The Acting Dean of the Diplomatic Corps.

JOINT MEETING DISSOLVED

The SPEAKER. The purpose of the joint meeting having been completed, the Chair declares the joint meeting of the two Houses now dissolved.

Accordingly, at 10 o'clock and 46 minutes a.m., the joint meeting of the two Houses was dissolved.

The Members of the Senate retired to their Chamber.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The House will continue in recess until the hour of 11 a.m.

□ 1106

AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 11 o'clock and 6 minutes p.m.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate passed bills of the following titles, in which concurrence of the House is requested:

S. 1531. An act to deauthorize certain portions of the project for navigation, Bass Harbor, Maine.

S. 1532. An act to amend the Water Resources Development Act of 1996 to deauthorize the remainder of the project at East Boothbay Harbor, Maine.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. On January 4, 1995, the Chair enunciated a clear policy concerning the conduct of electronic votes. Under that policy the House was able to avoid the unnecessary loss of time in conducting its business by striving to close each electronic vote as soon as possible after the minimum time guaranteed by the rules. After consultation with the minority leader, the Chair has concluded that this policy bears reaffirmation.

As Members are aware, the rules of the House establish 15 minutes as the minimum time for electronic voting in the ordinary case and 5 minutes as the minimum time for electronic voting in other cases where Members are already in or near the Chamber in response to an earlier vote. With the cooperation of the Members, an electronic vote can be completed within the minimum time allotted under the rules.

Today the Chair asks all Members to join in mutual rededication to the policy of closing electronic votes as soon as possible after the minimum time guaranteed by the rule. Where the minimum time guaranteed by the rule is 15 minutes, occupants of the chair will endeavor to close votes after no more than 17 minutes. Where the minimum time guaranteed by the rules is 5 minutes, occupants of the chair will endeavor to close votes after no more than 6 minutes.

Members have appreciated and cooperated with the Chair's strict enforcement of this policy in the past. The Chair encourages all Members to depart for the Chamber promptly upon the appropriate bell and light signal. As in recent Congresses, the Cloakroom should not forward to the Chair requests to hold a vote by electronic device but should simply apprise inquiring Members of the time remaining on the voting clock. Members should not rely on signals related from outside the Chamber to assume that votes will be held open until they arrive in the Chamber.

Although no occupant of the chair will prevent a Member who is visible to the Chair before the announcement of the result from casting or changing his or her vote, each occupant of the chair will have the full support of the Speaker in striving to close each electronic vote at the earlier opportunity.

PRINTING OF PROCEEDINGS HAD DURING RECESS

Mr. NEUMANN. Mr. Speaker, I ask unanimous consent that the proceedings had during the recess be printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will recognize 10 Members on each side for 1 minutes.

HARLEY-DAVIDSON CELEBRATES 95TH ANNIVERSARY

(Mr. NEUMANN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. NEUMANN. Mr. Speaker, the Harley-Davidson Company is gearing up for its 95th anniversary celebration, and I would like to take this opportunity to express my admiration for this outstanding Wisconsin company. Great Wisconsinites, like Green Bay Packer Coach Mike Holmgren, drive Harley bikes; I believe the coach has been seen around the State in a Heritage Softail.

Harley Davidson is a company that I have long admired for its commitment to quality, its dedication to treating both customers and employees like the valuable commodities they are. I believe for this reason that Harley Davidson inspires a loyalty that we see too rarely in American-made products in this day and age. The company has come a long ways from its humble beginnings in 1903, but it has never lost its vision of the American dream, and continues to excel in both domestic and international marketplaces.

Harley-Davidson is also a major contributor to the welfare of communities it is a part of. For example, Harley is a Wisconsin sponsor of the Tour de Cure an annual bike ride for American Diabetic Association. The company also contributes a portion of its corporate earnings each year for the Harley-Davidson Foundation which oversees charitable donation of groups like Boy Scouts and Girl Scouts.

For this reason, I want to be among those who are standing up saying, ''Happy Birthday, Harley-Davidson, and keep up the good work.''

INTRODUCTION OF H.R. 3652, THE ETHERIDGE SCHOOL CONSTRUCTION ACT

(Mr. ETHERIDGE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ETHERIDGE. Mr. Speaker, I rise today to call on this House to pass common sense legislation to help our States and communities build modern, safe school facilities for our children.

Across the country, students rejoice as another school year comes to an end. On Friday I had the opportunity to attend the high school graduation for my son David. It was one of my proudest moments as a father. But as a former superintendent of my State schools, I also know firsthand that too many of our children are forced to attend classes in trailers or closets and bathrooms and unsafe, overcrowded classrooms, and I call on this Congress to pass legislation before the start of the next school year to build new schools, relieve the overcrowding and reduce class sizes.

I have introduced legislation, H.R. 3652, that will create $7.2 billion in school construction bonds for States and localities that are suffering under the strain of overcrowded schools. Forty-eight Members of this House have already signed on from 15 different States, and I call on other colleagues to join me to address this urgent need. Many different organizations have joined, and I challenge others to join us.

Mr. Speaker, an investment in our schools is an investment in our children and an investment in our Nation's future.

THE CHILD PROTECTION AND SEXUAL PREDATOR PUNISHMENT ACT

(Ms. DUNN asked and was given permission to address the House for 1 minute and to revise and extend her remarks and include therein extraneous material.)

Ms. DUNN. Mr. Speaker, I rise today to encourage my colleagues to send a strong message to those who would prey on innocent children over the Internet. Make no mistake, these sex crimes against children will not be tolerated.

This week the House will consider the Child Protection and Sexual Predator Punishment Act introduced by the gentleman from Florida (Mr. MCCOLLUM) and myself. This legislation is for moms and dads throughout the country who are doing everything they can to keep their children safe and innocent but cannot control the pedophiles cruising the Internet.

In this age of ever expanding technology, pedophiles are increasingly using the anonymity of the Internet to pose as minors and befriend vulnerable children who are unknowingly lured into very dangerous situations.

That is why the McCollum-Dunn bill is so critical to families across America. This legislation helps law enforcement crack down on pedophiles who no longer offer candy to unsuspecting children on the playground but now offer companionship to children through the Internet chat room. This bill tells sexual predators that the Information Superhighway is not a detour for deviant behavior, it is a dead end.

Mr. Speaker, I encourage my colleagues to support this legislation.

HOPE FOR DEMOCRACY IN CHINA COULD TURN TO DESPAIR IF THE PRESIDENT STANDS WITH COMMUNISTS IN TIANANMEN SQUARE

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, the President said if China wants a ceremony in Tiananmen Square, so be it; it is not my place to make demands on Communist China.

Unbelievable. When the leader of the free world stands with Communists on

the very same site where young Chinese students gave their lives struggling for democracy, something is wrong, very wrong, and the hope and inspiration for democracy that once existed in China may turn into disgust and despair.

Let us tell it like it is. If the President can stonewall Kenneth Starr, the President can stonewall the butchers of Tiananmen Square.

And one last word:

The Berlin Wall would still be standing if Ronald Reagan made no demands on Communists.

□ 1115

TECHNOLOGY TRANSFERS TO CHINA A RISK TO AMERICAN SECURITY

(Mr. GIBBONS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GIBBONS. Mr. Speaker, most Americans are familiar with the old saying, ''Fool me once, shame on you; fool me twice, shame on me.'' Well, Americans are now starting to wonder just how many times the Communist Chinese have fooled this administration.

The Clinton administration has been selling U.S. secrets to China for the past few years. You name it, nuclear technology, missile secrets, computer technology, they have sold it. Now we have another foolish deal to add to the list.

In 1993, in exchange for a deal on commercial airliners, the Clinton administration pushed a sale to China of special computer-controlled machinery used to make parts for America's premier war planes. The Chinese gave us their word, they gave us their solemn promise, that these machines would not, repeat, would not, be used for military purposes.

Should anyone have been surprised when that sophisticated equipment showed up in a Communist Chinese factory that makes military cruise missiles, military cruise missiles that can be aimed at American soldiers and sailors?

Mr. Speaker, it is time the Clinton administration and their Commerce Department take off their blinders and see these technology transfers for what they are, risks to American national security that clearly endanger American lives.

HONORING SANTA MARIA, CALIFORNIA

(Mrs. CAPPS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CAPPS. Mr. Speaker, I rise today to pay special tribute to Santa Maria, California, one of the most vital and remarkable communities of this great Nation. The strength of this diverse city is its people. The residents of Santa Maria are from all walks of life, and they work together often finding innovative ways to solve complex problems.

For example, the Santa Maria-Bonita School District's Healthy Start Program has long offered crucial services to local families in need, and it is not unusual for farmers, educators, entrepreneurs and elected officials to join together and stand up for their city, as they did last October when a delegation of leaders came to our Nation's capital for Santa Maria Day in Washington. Just last Saturday my grandson and I participated in the annual Elks rodeo and parade and saw firsthand the support this community gives to projects which benefit children and families.

Mr. Speaker, it is for these reasons that I wholeheartedly recommend Santa Maria for the prestigious All-American City Award.

Mr. Speaker, this is a city and a community to be honored.

EXPLANATION REQUIRED ON U.S. MISSILE TECHNOLOGY TRANSFERS TO CHINA

(Mr. BARR of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARR of Georgia. Mr. Speaker, India conducts nuclear tests; Pakistan then conducts nuclear tests; China we know transfers nuclear technology to Pakistan, to Iran, and possibly other nations. Now it turns out that the United States gave missile technology to China. That is right, Communist China, the same country that has transferred that technology to Pakistan, Iran and possibly other adversaries. Though, not to worry, we are told, the Communist Chinese have assured us they will not do it anymore.

It is time, Mr. Speaker, for Congress to examine how the President of the United States has become the Proliferator-in-Chief. It is time for the White House to explain how it is that transferring authority for technology waivers from the State Department to the Commerce Department is in our national interests.

Why will the White House not respond to the May 1997 Pentagon report that concluded, ''National security has been harmed,'' as a result of the technology transfers arising from China's February 1996 rocket failure? The Proliferator-in-Chief should respond to these questions before the next nuclear tests take the world by surprise yet again.

PASS CAMPAIGN FINANCE REFORM LEGISLATION NOW

(Mr. ADAM SMITH of Washington asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ADAM SMITH of Washington. Mr. Speaker, I rise today to strongly urge the House to pass the Shays-Meehan campaign finance reform bill as quickly as possible. I also urge the House to reject all amendments and all substitutes to that bill.

Opposition to campaign finance reform has been the main reason that it has not passed thus far, but another reason has been the lack of consensus among the pro-campaign finance reform members. There have been too many reform proposals to settle on one, and the confusion has stopped reform. Well, thanks to the work of Mr. SHAYS and Mr. MEEHAN, we have a consensus bill. Let us unite behind that legislation and pass it as soon as possible.

I also urge this House to stop the sham on the campaign finance reform debate. The underlying bill currently has 11 substitutes and over 600 amendments filed. It is obvious that this is just a stalling tactic to stop reform.

Promises have been repeatedly made on the floor of this House to bring up campaign finance reform and have a vote on it as soon as possible. Once again, those promises are not being met. Campaign finance reform is being thwarted, and a stalling tactic is replacing real reform. Let us vote on Shays-Meehan as soon as possible.

PROTECT AMERICA FROM THREAT OF BALLISTIC MISSILE ATTACK

(Mr. ROGAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROGAN. Mr. Speaker, recent nuclear tests abroad serve as a stark reminder to those who need reminding that the world is still a very dangerous place. Although some are tempted to think that free trade and diplomacy alone will remove the threat of war, all of history suggests this is both fantasy and a dangerous illusion. It was a dangerous illusion in 1914, it was a dangerous illusion in 1939, and it remains a dangerous illusion today.

It is crucial that America end this foolish policy of remaining vulnerable to a ballistic missile attack. Many Americans will be shocked to learn that it is the policy of the United States to have no national ballistic missile defense system in place.

It is time to protect Americans from the threat of a ballistic missile attack and recognize the reality that the world is a dangerous place. If we fail to do that, Mr. Speaker, we will fail in the most crucial obligation we have as a Congress and as the elected representatives of the American people—to secure their future.

TIME TO SCHEDULE VOTE ON SHAYS-MEEHAN CAMPAIGN FINANCE REFORM BILL

(Mr. MEEHAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MEEHAN. Mr. Speaker, yesterday's Los Angeles Times got it right: ''Voters are getting tired of empty promises'' from the Republican leadership on campaign finance reform.

Weeks have passed since the Republican leadership committed to holding a vote on the Shays-Meehan bill. Each day Republican leaders have postponed reform or debate on reform, and every day they postpone it, support for our bill has grown. Grassroots organizations, ranging from the AARP to the National Farmers Union to public groups all over the country are uniting behind supporting the Shays-Meehan bill.

Last week, key Democratic and Republican sponsors of the commission bill merged with our coalition in support of a single bipartisan bill. Over the past few weeks, reform-minded Members on both sides of the aisle have committed to pulling their own reform proposals off if the Shays-Meehan bill wins a majority vote. Now all we need is the opportunity to do just that. Vote on the Shays-Meehan bill.

In short, to the gentleman from Texas (Mr. ARMEY) and the gentleman from Texas (Mr. DELAY), reform supporters are ready to move forward. Enough is enough. Let us vote on Shays-Meehan.

TIME TO BUILD NATIONAL MISSILE DEFENSE SYSTEM

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, it is a shame that it has taken nuclear blasts in India and Pakistan to convince American leaders that it is time to put an end to our policy of mutually assured vulnerability.

What I mean by this is that the United States is vulnerable to a missile attack. Many Americans are unaware of this. But if a missile were to be fired at American cities, the United States would be defenseless against it. Not only that, but this is the deliberate policy of the United States, to remain defenseless in the face of nuclear attack.

But recent events in Pakistan and India should serve to force us to reconsider our policy of vulnerability in face of a missile attack. Recent reports that Communist China has 13 nuclear missiles aimed at the United States should reinforce the need for this reassessment. It is time to begin to build a national missile defense system. The security of our Nation is at stake.

SUPPORT DOLLARS TO THE CLASSROOM ACT

(Mr. SHIMKUS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHIMKUS. Mr. Speaker, I rise today to urge Congress and the President to send more dollars to our classrooms instead of Washington bureaucrats. The Dollars to the Classroom Act is a Republican initiative which would require 95 percent of all Federal funding for K-through-12 education programs to be sent to local schools. As a former teacher, I support this act.

Unfortunately, the Clinton administration and its core of Washington bureaucrats believe that they know best how to educate our children. They believe that our children should submit to another national test and that they would benefit from another Federal mandate.

However, the American people know better. The Dollars to the Classroom Act will send nearly all of our Federal tax dollars for education back to local schools. That means $10 billion will be taken from the grasp of bureaucrats and put into the hands of a teacher who actually knows your child's name.

Support H.R. 3248, the Dollars to the Classroom Act.

WITNESSES REFUSING TO TESTIFY IN WHITE HOUSE INVESTIGATION

(Mr. CHABOT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CHABOT. Mr. Speaker, the Washington Post, which is not exactly known as a conservative newspaper, has done the American people a great service. I do not think anybody with a straight face could say they are part of some vast alleged right wing conspiracy.

Yesterday the Washington Post published a full page list of 94 witnesses who have either fled the country or taken the fifth amendment in relation to the Clinton White House scandals. There has been a pattern of nearly total noncooperation by this administration.

The White House delays and stonewalls, and then complains that the investigation is taking too long. Witnesses flee the country or refuse to testify, and then the White House accuses investigators of being on a witch hunt. Attorney General Janet Reno expands the investigation, and then the White House blames Judge Starr for spending too much money. White House aides suddenly experience massive memory loss and cannot recall any relevant facts about important events.

Mr. Speaker, the American people deserve better than this.

CONGRESS, NOT THE FCC, SHOULD SET TAXES

(Mr. CANNON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CANNON. Mr. Speaker, the most exciting technological development of the past decade is the Internet. This truly global network is a conduit for communication and commerce and is rapidly transforming business, government and virtually every other part of our society.

Not surprisingly, Congress in the Telecom Act 2 years ago moved to push the Internet into our schools. The concept was that deregulation would push down phone rates, allowing for some of the savings to be channeled into connecting schools to the Internet.

That was the intent. The reality has been much different. Starting July 1, every AT&T customer will begin paying a 5 percent surcharge on every long distance call. MCI customers will be burdened with a 5.9 percent markup.

Should every American school have access to the Internet? Yes. Should every American child have the opportunity to tap the wonders of the electronic highway? Clearly, yes. But should every American be forced to pay up to 5.9 percent of their current phone bill in order to funnel funds into a new Federal bureaucracy with the charge to disburse billions of dollars to schools that beg appropriately? The answer to that is no.

The power and authority to levy taxes is clearly vested in Congress. We, not the FCC, should be shaping policy in this area.

EXPRESSING SYMPATHY TO MARY-ALYCE JONES ON THE PASSING OF HER MOTHER

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

The SPEAKER pro tempore (Mr. DUNCAN). Without objection, the gentleman from Ohio is recognized for 1 minute.

There was no objection.

Mr. TRAFICANT. Mr. Speaker, I take this time today to notify Members of the House that we could be expressing our condolences to Mary-Alyce Jones on the death of her mother this past Sunday.

Many in the Congress will recognize Mary-Alyce as a longtime employee of the Clerk, whose professional attitude and quiet dignity here on the floor serves as a model for all employees to follow, and Members as well.

□ 1130

So on behalf of all the Congress to not only notify them, we say to Mary-Alyce Jones and the family to please accept our deepest sympathy and know that our thoughts and prayers are with you and your family on this day of loss.

BANKRUPTCY REFORM ACT OF 1998

Mr. MCINNIS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 462 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 462

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the

House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 3150) to amend title 11 of the United States Code, and for other purposes. The first reading of the bill shall be dispensed with. Points of order against consideration of the bill for failure to comply with section 303(a) of the Congressional Budget Act of 1974 are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill. The committee amendment in the nature of a substitute shall be considered by title rather than by section. Each title shall be considered as read. All points of order against the committee amendment in the nature of a substitute are waived. No amendment to the committee amendment in the nature of a substitute shall be in order except those printed in the report of the Committee on Rules accompanying this resolution. Each amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against the amendments printed in the report are waived. The chairman of the Committee of the Whole may: (1) postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment; and (2) reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

UNFUNDED MANDATES POINT OF ORDER

Mr. NADLER. Mr. Speaker, pursuant to section 426 of the Congressional Budget and Impoundment Control Act of 1974, as amended by the Unfunded Mandates Reform Act of 1995, I make a point of order against consideration of the rule, House Resolution 462.

Section 425 of that same act, as added by the Unfunded Mandates Reform Act of 1995, states that a point of order against legislation which, one, imposes an unfunded mandate in excess of $50 million annually against State or local governments or, two, does not publish prior to floor consideration a CBO estimate of any unfunded mandates in excess of $50 million annually for State and local entities or in excess of $100 million annually for the private sector.

Section 426 of the Budget Act specifically states that the Committee on Rules may not waive this point of order. On page 2, lines 13 through 15 of House Resolution 462, all points of order are waived against the committee amendment in the nature of a substitute. Therefore, I make a point of order that this rule may not be considered pursuant to section 426 as added by the Unfunded Mandates Reform Act of 1995.

The SPEAKER pro tempore (Mr. DUNCAN). The gentleman from New York makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974.

In accordance with section 426(b)(2) of the act, the gentleman must specify precise waiver language in the resolution on which he predicates his point of order. Having met this threshold burden, the gentleman from New York and a Member opposed each will control 10 minutes of debate.

Pursuant to section 426(b)(3) of the act, after debate the Chair will put the question of consideration; to wit: Will the House now consider the resolution?

The gentleman from New York (Mr. NADLER) will be recognized for 10 minutes, and the gentleman from Colorado (Mr. MCINNIS) will be recognized for 10 minutes.

The Chair recognizes the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have been complaining for months that this bill was being rushed through without proper consideration. We asked that this bill not be voted on in committee until we got a CBO score, until they told us how much this bill would cost the Federal Government and the taxpayers, until we found out how much this bill would cost in unfunded mandates on the private sector.

Yesterday, we received the CBO score which told us that this bill will impose a cost on the Federal Government of $214 million at least. Interestingly enough, the committee report that was filed by the Committee on the Judiciary, filed hastily without proper study, said there was no fiscal impact on the Federal Government. The CBO report said there was at least a $214 million fiscal impact on the Federal Government.

About an hour ago, just in the nick of time, we received the CBO report on unfunded mandates in the private sector. Let me read from that report. It says, ''Certain provisions in H.R. 3150 that incorporate means testing in the bankruptcy system would impose new private sector mandates as defined in the Unfunded Mandates Reform Act with costs that exceed the statutory threshold of $100 million in 1996 annually adjusted for inflation.''

It goes on to list what some of those costs are. Then in the next page, page 2 of the report from CBO, we read, ''CBO estimates that the direct cost of the private sector of complying with mandates in H.R. 3150 would exceed the statutory threshold in the Unfunded Mandates Reform Act in each of the first 5 years that new mandates were effective.'' It goes into what those costs would be.

Then it says the following. ''Some estimates of increased costs for attorneys and private trustees in Chapter 7 filings have been several hundred dollars per case. Chapter 13 filings have ranged from several hundred dollars to over a thousand dollars per case per year. More than 1.3 million bankruptcy filings occurred in 1997. Because reliable national data on the cost of the bankruptcy system are lacking, CBO does not have sufficient information to place a reasonable upper bound on its estimate.''

So we do not know what the upper bound is, but we can say the following: Several hundred dollars per case at a minimum to a thousand dollars per case at a maximum, at 1.3 million cases, that means a minimum cost to the private sector of $260 million and a probable maximum cost of $1.3 billion in unfunded mandates to the private sector.

Who pays for this? We are told that Americans are losing large sums of money because deadbeats are deadbeating, not paying their debts; and we have to crack down on this bill and make them pay their debts. This will take $290 million minimum, $1.3 billion maximum out of the sum of money from which people can pay their debts. So the creditors will be out between $260 million and $1.3 billion by the administrative burdens of this bill.

Mr. Speaker, in 1995, with great fanfare as part of the Contract with America, the Republican majority in this House passed the Unfunded Mandates Reform Bill, a bill that said, and I remember all the rhetoric on the floor and I am sure my friend from Colorado remembers it too, Congress should not be in the business of imposing unfunded mandates on private sector businesses and individuals. We should not do it.

That is why the act says you can raise a point of order against a bill that imposes such mandates as this one does. It imposes such costs on innocent individuals, in this case, on creditors in the private sector. That is why the bill provides for a vote on the point of order.

The idea, the Unfunded Mandates Reform Act, was that if we are going to impose a mandate that we are not going to pay for, we ought to stand up and vote for it and say so.

I am putting everybody on notice, if my colleagues vote against the point of order, they are voting for two things. They are voting that contrary to the act, it is fine for Congress to place $1.3 billion unfunded mandates on creditors in the private sector.

I voted against the Unfunded Mandates Reform Act. But anybody who voted for that act and is in this Chamber today, who votes against this point

of order, is saying either that he was not being honest when he voted for that bill or that he changed his mind since then. People are entitled to change their minds.

But that is what we are saying, either that my colleagues never believed in the purpose of the Unfunded Mandates Reform Act or that they no longer believe in the purpose of the Unfunded Mandates Reform Act.

I never believed in it. I voted against the bill. I am going to vote for the point of order, because I think we ought to uphold the law. That is what is involved here.

CBO tells us that this bill will impose a cost of $260 million to $1.3 billion on the private sector in unfunded mandates. According to the Unfunded Mandates Reform Act that the majority Republican passed, that is something that Congress should never, never, never, ever do. So I anticipate that most of our friends on that side of the aisle will vote in favor of that order.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. The gentleman from Colorado does have the right to close the debate on this point of order.

The Chair recognizes the gentleman from Colorado (Mr. MCINNIS).

Mr. MCINNIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from New York kind of surprises me. I am listening very carefully to his points about the private sector unfunded mandates. While the gentleman was speaking very artfully, I might add, I was looking up the voting record 2 weeks ago. The gentleman who today, as he said, feels and speaks very strongly against mandates on the private sector voted against, voted against the Mandates Information Act which was the Republican Party majority's way of trying to avoid mandates on the private sector.

I guess, as the gentleman said, we are entitled to change our mind. He has changed his mind in the last 2 weeks. Welcome on board.

Let us talk about the facts of what we have today; and that is the Congressional Budget Office, which, again, the gentleman very eloquently spoke of, but he did not quite include all of the facts.

One of my favorite things I like to listen to is Paul Harvey. He has got a little thing: ''And now for the rest of the story.'' Well, let us talk about the rest of the story. I quote from the CBO study, ''H.R. 3150 contains no intergovernmental mandates as defined by the Unfunded Mandates Reform Act.''

There is a possibility, a remote possibility about some type of unfunded mandate on the private sector out there; but, of course, we could have eliminated even this type of concern a couple of weeks ago with the assistance of the gentleman from New York, which we did not receive.

I think that this point of order is not appropriate.

Mr. Speaker, I reserve the balance of my time

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, apparently the gentleman from Colorado did not listen to what I said. I said I voted against the Unfunded Mandates Reform Act because I do not have a problem personally with unfunded mandates on the private sector being enacted by Congress for good and proper purposes.

I did not agree with that act then. I do not agree with it now, but it is the law. What I am saying is that, if you vote yes on proceeding today, you are voting against the purpose of that law.

I am going to vote no because I think it is a terrible bill. I think that we ought not to be conceit doing that. I think that, if we pass a law, we ought to obey it. If I had my way, I would repeal the law. I did not vote for it. But I think that if it is on the books, we ought to obey the law, which is why I am going to vote against proceeding and urge my colleagues to do so.

I do not know what the gentleman was reading from a moment ago about government. That was probably yesterday's report of CBO. But today's report of CBO is about private sector mandates. Yesterday's report said at least $214 million unfunded mandate on the Federal Government. Today says somewhere between $260 million and $1.3 billion unfunded mandate on the private sector, which will come out of the money available for repayment of creditors.

I think that, frankly, as I said, the bill was rushed through. I do not think that the sponsors of the bill anticipated this effect and ought to go back for further study and amendment.

Mr. Speaker, I reserve the balance of my time.

□ 1145

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I include for the RECORD a letter from CBO and a report of CBO.

The material referred to is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 10, 1998.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office (CBO) has prepared the enclosed summary review of H.R. 3150, the Bankruptcy Reform Act of 1998, for private-sector mandates. CBO completed a federal cost estimate and an assessment of the bill's effects on state, local, and tribal governments on June 5.

If you wish further details on this review, we will be pleased to provide them. The CBO staff contact is Matt Eyles.

Sincerely,

JUNE E. O'NEILL,
Director.

Enclosure.

H.R. 3150—Bankruptcy Reform Act of 1998

Summary: H.R. 3150 would make many changes and additions to the federal bankruptcy laws. By amending the bankruptcy code, the bill would affect consumer debtors, business debtors, secured and unsecured creditors, bankruptcy trustees, attorneys, debt relief counselors, and other entities in the private sector. Certain provisions in H.R. 3150 that incorporate means-testing in the bankruptcy system would impose new private-sector mandates, as defined in the Unfunded Mandates Reform Act UMRA) with costs that exceed the statutory threshold ($100 million in 1996, adjusted annually for inflation). Specifically, new enforceable duties would be imposed on private trustees who administer bankruptcy cases, attorneys, debt relief counselors, and utilities, as defined in the bill. H.R. 3150 would also impose additional duties on parties who file for relief under the bankruptcy system, although new requirements for bankruptcy filers would not be considered new mandates for purposes of UMRA. Furthermore, H.R. 3150 contains provisions that could impose costs on certain categories of creditors who receive distributions from bankruptcy estates by delaying payments to creditors and by raising administrative costs. Increased administrative costs would reduce the pool of funds available for creditors.

Private-Sector Mandates and Effects: H.R. 3150 would establish a system of means-testing provisions for determining the eligibility of consumers for relief under the bankruptcy system. Participants in consumer bankruptcy proceedings would be most affected by the bill. Under current law, most individual debtors who seek bankruptcy relief have two options: liquidation (Chapter 7) or reorganization (Chapter 13). H.R. 3150 would institute a ''needs-based system'' for relief under Chapter 7 by requiring individuals (and households) who file for bankruptcy to seek debt relief under Chapter 13 if they earn a regular income equal to or greater than the national median income (adjusted for household size) and could pay at least 20 percent of their unsecured debts and $50 per month. In addition, H.R. 3150 would amend other provisions in federal bankruptcy law, including those covering family farmers and municipalities, collection of bankruptcy data, single-asset real estate debtors, the treatment of certain taxes, and cross-border bankruptcy cases.

CBO estimates that the direct costs to the private sector of complying with mandates in H.R. 3150 would exceed the statutory threshold in UMRA in each of the first five years that new mandates were effective. The lion's share of costs would be imposed on private trustees who administer bankruptcy estates, providers of debt relief counseling services, and attorneys. Most mandate costs would stem from new requirements to investigate and verify financial information provided by bankruptcy filers. Costs would be imposed on debt relief counselors by enacting new consumer protection regulations. Some estimates of increased costs for attorneys and private trustees in Chapter 7 filings have been several hundred dollars per case, and estimates for Chapter 13 filings have ranged from several hundred dollars to over $1,000 per case per year. More than 1.3 million bankruptcy filings occurred in 1997. Because reliable national data on the costs of the bankruptcy system are lacking, CBO does not have sufficient information to place a reasonable upper bound on its estimate.

CBO's estimate excludes: financial transfers between debtors and creditors that would result from enacting H.R. 3150; costs that could result from delaying distributions from bankruptcy estates to certain creditors; and potential reductions in debtor repayments if the costs of administration for the bankruptcy system rise by more than payments by debtors.

Attorneys and trustees in Chapter 13 cases would be able to recoup most mandate costs.

Administrative costs in Chapter 13 cases, which include attorneys' and trustees' costs, receive priority treatment in Chapter 13 cases and, therefore, those costs would likely be offset by increased payments from bankruptcy estates. Mandate costs for Chapter 7 trustees, however, would reduce trustee income because provisions are lacking for reimbursement for increased trustee costs from Chapter 7 debtor estates.

To the extent that the bill would delay payments from liquidated or reorganized bankruptcy estates, the bill could impose costs on certain creditors. However, by increasing the number of debtors who are required to file under Chapter 13, the bill would likely increase the pool of funds available to creditors, which would benefit creditors. Again, offsetting a portion of the benefits to creditors would be the higher costs of administering a bankruptcy system that uses means-testing. As a result, some creditors could ultimately receive smaller distributions.

Estimate Prepared By: Matt Eyles.

Estimate Approved By: Arlene Holen, Assistant Director for Special Studies.

The SPEAKER pro tempore (Mr. DUNCAN). The gentleman from New York (Mr. NADLER) is recognized for the balance of his time.

Mr. NADLER. Mr. Speaker, the issue on this point of order is very simple. This House, under Republican leadership, passed the bill. They said we should not impose unfunded mandates on the private sector. Some of us did not agree with that, but that is the law.

This bill, according to the Congressional Budget Office, by whose judgment we are bound, imposes an unfunded cost on the private sector of somewhere between $260 million and $1.3 billion per year. That will come out of the money available to pay creditors.

We should not proceed. The sponsors of this bill I am sure did not anticipate this. The committee report says it does not impose any costs. That is wrong. It obviously does.

We have said for a long time that this bill was rushed through, that the proper research was not done, the implications were not understood. It is now clear that that is true. I would urge that on the substantive grounds that when we legislate, we ought to legislate knowing what we are doing, understanding the implications and all the pros and cons and effects of the bill. We ought to put this aside and come back to it another day.

On the legal mandate of the Unfunded Mandates Reform Act, we should not proceed to impose such a mandate on the private sector because that is the law that the gentleman on the other side of the aisle imposed on us. Therefore, I urge a no vote, which I am told is how we have to go in order to proceed.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The gentleman from Colorado (Mr. MCINNIS) is recognized to close debate.

Mr. MCINNIS. Mr. Speaker, I think what the gentleman from New York has said, and I will quote him here in just a moment, is the very clear definition of the difference between the Republican Party and the Democratic Party. The gentleman from New York very ably states the Democratic Party position. That is, they do not have a problem with unfunded mandates on the private sector.

The Republican Party has a big problem with unfunded mandates on the private sector. The gentleman should keep that in mind. There is a distinct difference between his side of the aisle and our side of the aisle. We do not think we ought to be putting unfunded mandates on the private sector.

I will quote the gentleman from New York (Mr. NADLER), and this is him speaking, ''I do not have a problem with unfunded mandates on the private sector.'' I do. I think the people are out there working, trying to make a living. By the way, they fund us. They are the taxpayers. We work for them.

For us to continue to go back to the private sector and continue to hammer them and hammer them and hammer them with more taxes, and that is what unfunded mandates are, more taxes and more taxes and more taxes, we are going to break the bank. We are going to break the bank. We have to get off the shoulders of the working people out there. It is a clear distinction between gentleman's party and ours.

Now, on the point of order, I realize the gentleman diverted us from the point of order. Let me make it clear that the point of order does not fit the claim that the gentleman was making.

I wish the gentleman could have been in attendance at the Committee on Rules last night. We would have been happy to discuss with the gentleman, previous him to coming to the floor and tying us up for an hour or so with this point of order, that while I think the point of order certainly is put forward with good intent, it is not right. It is out of order. It just does not fit. It is not fitting the claim. The gentleman's argument, the puzzle does not come together.

Under the rules that we have here, the point of order cannot be sustained, in my opinion, because, and I do not want to say it does not make sense, because that sounds derogatory, and I do not intend to be derogatory to the gentleman from New York, but it certainly falls short of the standards that need to be met.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. SOLOMON), chairman of the Committee on Rules.

Mr. SOLOMON. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I am in the middle of a meeting of the Committee on Rules upstairs, but when I saw my good friend, the gentleman from New York (Mr. JERRY NADLER) make a point of order against an unfunded mandate, I could not constrain myself and I had to come down here on this floor.

Let us set the record straight. If there was an unfunded mandate in this bill, I would be raising the point of order, the gentleman would not have to, or anybody else, as I did the other day when there was an unfunded mandate on this floor and I raised the point of order.

Mr. Speaker, it seems to me that the gentleman from New York knows as well that we have a good track record since we established the unfunded mandate points of order against the public sector when unfunded mandates were brought on the public sector, and then on the rule change that we made the other day, applying that to the private sector, we intend to carry that out. I can assure the Members as chairman of the Committee on Rules, if there is ever an unfunded mandate on a bill, I will be down here raising that point of order. I wanted to make that straight.

I just have to raise this point, that my good friend, the gentleman from New York (Mr. JERRY NADLER) has recognized, and he admits that he is one of the most liberal members of this House. He votes just about for everything where you are going to spend more money, and he votes yes on everything and no on nothing when it comes to spending money. But I respect him, because that is his philosophy.

Again, Mr. Speaker, I just want to assure the gentleman, there is no unfunded mandate in this bill. The Congressional Budget Office will verify that.

Mr. NADLER. Mr. Speaker, will the gentleman yield?

Mr. MCINNIS. I yield 15 seconds to the gentleman from New York.

Mr. NADLER. The question for the two gentlemen, and I do not know who wants to answer it, the gentleman from New York says there is no unfunded mandate in here. The gentleman from Colorado says that the puzzle just does not fit.

I simply ask, the CBO report says, ''Certain provisions in H.R. 3150 would impose new private sector mandates as defined by the Unfunded Mandates Reform Act with costs that exceed the statutory threshold.'' Why does the gentleman say it does not fit?

Mr. MCINNIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the point of order lies against the public sector. I think what is critical here and what the chairman has come down to say from the Committee on Rules, he came out of the Committee on Rules because he saw this on television, that is to reemphasize the difference between this side of the aisle, the Republican side of the aisle, and the gentleman's side of the aisle. That is, we do not buy into this unfunded mandates stuff.

I know, and I will approach the gentleman again, this is the gentleman's quote from just a couple of minutes ago, that the gentleman does not have a problem with unfunded mandates on the private sector. Once again, on the Republican side of the aisle, we have a heck of a problem with unfunded mandates on the private sector. As I said

earlier, how much more burden can we put on these people?

I just came from my office where I met with some people out there that are in small business. Their main discussion is that we continually put it on top of them, we continually hit them with these mandates, more regulations, more rules. It is appalling for me to come over here to the floor.

Mr. Speaker, the rest of the story is that the Republicans are not going to buy into unfunded mandates. These people in my office, these are not wealthy people, these are small business people. In fact, several of them were having difficulty coming to Washington, just being able to afford the lodging over here. They talk over and over again about how crushing, how crushing the Federal Government can be to small business with a lot of these kinds of mandates.

I realize that we are on the point of order. As I said to the gentleman, with all due respect, I think his point of order, while offered in good intent, does not fit the claim he is making.

I think the gentleman then kind of moved the point of order into a discussion on mandates, and the gentleman's position is, he does not mind mandates, Federal mandates on the private sector, unfunded mandates, by the way.

Let me explain what the ''unfunded mandate'' means. That means a regulation by the Federal Government, often an order by the Federal Government, on a small businessman, ordering them to perform something, or in an intergovernmental way, it can be intergovernmental, on a State government, ordering them to do something but not paying for it. That should not happen. It should not be.

That is why, and it is pretty easy to focus on, and that is why it is not too often, but this morning, anyway, we have been able to draw a clear distinction between the Republican side and the Democratic side. But boy, if there is one this morning, here it is right here, unfunded mandates. We are not going to go into it. We do not support them.

This kind of legislation we are talking about, I wish we would have had some of the points that the gentleman made in this kind of debate 2 weeks ago when we had the bill, the Information Act. That would have been a lot of fun to have that kind of debate.

Let us wrap it up. The way to wrap it up is really quite simple. Number one, the Republicans will not, contrary to what the gentleman from New York's policy is, we do not support these kinds of unfunded mandates. We do have a big problem with unfunded mandates. As the chairman from the Committee on Rules said, he would be the first one down here pushing this point of order if in fact he felt there was an unfunded mandate on governmental units.

Mr. Speaker, the second issue that we should summarize on is, hey, let us stop this unfunded mandate stuff. This point of order is not in order. It should be ruled on by the Chair.

The SPEAKER pro tempore. All time has expired.

The question before the House is: Will the House now consider House Resolution 462?

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. MCINNIS. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to—

The SPEAKER pro tempore. Does the gentleman from Colorado (Mr. MCINNIS) recognize that the noes prevailed on the pending vote?

Mr. MCINNIS. I am a little confused as to the order.

POINTS OF ORDER

Mr. NADLER. Mr. Speaker, we continued. The vote is over.

Mr. MCINNIS. I have the floor, Mr. Speaker, and I make a point of order to that point.

The SPEAKER pro tempore. The gentleman from Colorado (Mr. MCINNIS) has the floor.

Does the gentleman from Colorado object to the vote?

Mr. MCINNIS. Yes, I do, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from Colorado (Mr. MCINNIS) objects to the vote on the ground that a quorum is not present and makes the point of order that a quorum is not present.

A quorum is not present. Under the rule, the yeas and nays are ordered. Those in favor will say aye——

Mr. NADLER. Mr. Speaker, business intervened. Speech intervened. He did not ask for the vote or object to the quorum until the Chair asked about it. I object to this. He had gone on, all right.

The SPEAKER pro tempore. The gentleman from Colorado (Mr. MCINNIS) objected to the vote. The gentleman from Colorado (Mr. MCINNIS) objected to the vote.

Mr. NADLER. Mr. Speaker, business intervened. Before he objected to the vote, he started saying he asked 30 minutes for speaking time, et cetera. We had already progressed. He did not object to the vote.

The SPEAKER pro tempore. There was no business that intervened. The gentleman from Colorado (Mr. MCINNIS) did not have the floor for debate since the pending voice vote was against consideration.

The gentleman from Colorado (Mr. MCINNIS) did not have the floor for debate. The gentleman from Colorado objected to the vote.

Mr. MCINNIS. That is correct, Mr. Speaker. I had the floor. I was on my feet and had the floor.

The SPEAKER pro tempore. The Chair will repeat, the gentleman from Colorado (Mr. MCINNIS) has objected to the vote on the ground that a quorum is not present.

Mr. NADLER. Mr. Speaker, I appeal the ruling of the Chair.

The SPEAKER pro tempore. The gentleman makes the point of order that a quorum is not present.

Mr. NADLER. Mr. Speaker, I object on the ground that the RECORD will show, if the Clerk will read the RECORD, that the gentleman had gone on to another subject, had already started talking about something else, and did not, did not object on the ground that a quorum is not present until the Speaker asked him, do you not want to object that a quorum was not present?

The vote was already over and cannot be continued at this point. I make a point of order.

□ 1200

The SPEAKER pro tempore (Mr. DUNCAN). The gentleman from Colorado (Mr. MCINNIS) had not been recognized to debate the resolution since the House had not voted to consider the resolution. Therefore, no intervening business had been transacted.

Does the gentleman from New York (Mr. NADLER) insist on appealing the ruling of the Chair?

Mr. NADLER. Mr. Speaker, no, I do not.

The SPEAKER pro tempore. The gentleman from New York (Mr. NADLER) has withdrawn his appeal of the ruling of the Chair.

The gentleman from Colorado (Mr. MCINNIS) has objected to the vote. That objection was made on the grounds that a quorum was not present, and the gentleman has made a point of order that a quorum is not present.

Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The Chair reminds all Members of the Speaker's announcement today. Based on the request and the order of the Speaker, this will be a strictly enforced 17-minute vote.

The vote was taken by electronic device, and there were—yeas 248, nays 166, not voting 19, as follows:

[Roll No. 216]

YEAS—248

Aderholt	Camp	Dunn
Archer	Campbell	Ehlers
Armey	Canady	Ehrlich
Bachus	Cannon	Emerson
Baesler	Cardin	English
Baker	Castle	Everett
Ballenger	Chabot	Ewing
Barr	Chambliss	Fawell
Barrett (NE)	Chenoweth	Foley
Bartlett	Christensen	Forbes
Barton	Coble	Fossella
Bass	Coburn	Fowler
Bateman	Collins	Fox
Bereuter	Combest	Frank (MA)
Bilbray	Cooksey	Franks (NJ)
Bilirakis	Cox	Frelinghuysen
Bliley	Cramer	Frost
Blunt	Crane	Gallegly
Boehlert	Crapo	Ganske
Boehner	Cubin	Gekas
Bonilla	Cunningham	Gibbons
Bono	Davis (FL)	Gilchrest
Boswell	Davis (VA)	Gillmor
Boucher	Deal	Goode
Boyd	DeLay	Goodlatte
Brady (TX)	Deutsch	Goodling
Bryant	Diaz-Balart	Gordon
Bunning	Dickey	Goss
Burr	Dingell	Graham
Burton	Dooley	Granger
Buyer	Doolittle	Greenwood
Callahan	Dreier	Gutknecht
Calvert	Duncan	Hall (TX)

Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Holden
Horn
Hostettler
Hulshof
Hunter
Hutchinson
Hyde
Istook
Jenkins
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kennedy (RI)
Kim
King (NY)
Kingston
Kleczka
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Lewis (CA)
Lewis (KY)
Livingston
LoBiondo
Lucas
Maloney (CT)
Manzullo
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Mica
Miller (FL)
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Packard
Pappas
Parker
Paul
Paxon
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Redmond
Regula
Riggs
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Ryun
Salmon
Sanford
Sawyer
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skaggs
Skeen
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Stearns
Stump
Sununu
Talent
Tauscher
Tauzin
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Traficant
Turner
Upton
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Weygand
White
Whitfield
Wicker
Wolf
Young (AK)

NAYS—166

Abercrombie
Ackerman
Allen
Andrews
Baldacci
Barcia
Barrett (WI)
Becerra
Bentsen
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Brady (PA)
Brown (CA)
Brown (FL)
Brown (OH)
Capps
Carson
Clay
Clayton
Clement
Clyburn
Condit
Costello
Coyne
Cummings
Danner
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dixon
Doggett
Doyle
Edwards
Engel
Ensign
Eshoo
Etheridge
Evans
Fattah
Fazio
Filner
Ford
Furse
Gejdenson
Gephardt
Green
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Hooley
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (WI)
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (MA)
Kennelly
Kildee
Kilpatrick
Kind (WI)
Klink
Kucinich
LaFalce
Lampson
Lantos
Lee
Levin
Lewis (GA)
Lipinski
Lowey
Luther
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McGovern
McHale
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller (CA)
Minge
Mink
Mollohan
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Poshard
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Schumer
Scott
Serrano
Skelton
Slaughter
Spratt
Stabenow
Stark
Stenholm
Stokes
Strickland
Stupak
Tanner
Taylor (MS)
Thompson
Thurman
Tierney
Torres
Towns
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Wexler
Wise
Woolsey
Wynn
Yates

NOT VOTING—19

Borski
Conyers
Cook
Farr
Gilman
Gonzalez
Harman
Houghton
Inglis
Klug
Leach
Linder
Lofgren
McDermott
Moakley
Oxley
Pickett
Sensenbrenner
Young (FL)

☐ 1219

Mr. DICKS, Ms. MCCARTHY of Missouri, and Messrs. OBEY, JEFFERSON, and BISHOP changed their vote from ''yea'' to ''nay.''

Mr. GIBBONS and Mr. ROTHMAN changed their vote from ''nay'' to ''yea.''

So the question of consideration was decided in the affirmative.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. MCDERMOTT. Mr. Speaker, I was unavoidably delayed at the White House and missed rollcall vote number 216 regarding House Resolution 462. Had I been present, I would have voted ''no.''

PERSONAL EXPLANATION

Mr. GILMAN. Mr. Speaker, During Rollcall Number 216 I was unavoidably detained and missed the vote. If I had been present I would have voted ''aye.''

The SPEAKER pro tempore. The gentleman from Colorado (Mr. MCINNIS) is recognized for 1 hour.

Mr. MCINNIS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 462 is a structured rule providing for consideration of H.R. 3150, the Bankruptcy Reform Act of 1998, a bill that will improve bankruptcy practices and restore personal responsibility and integrity to the bankruptcy system.

House Resolution 462 provides for 1 hour of general debate, equally divided between the chairman and ranking member of the Committee on the Judiciary. The rule also waives section 303(a) of the Congressional Budget Act against consideration of the bill.

Mr. Speaker, the rule provides that the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill be considered as an original bill for the purpose of amendment.

House Resolution 462 provides that the committee amendment in the nature of a substitute shall be considered by title and that each title shall be considered as read. The rule also waives all points of order against the committee amendment in the nature of a substitute. The rule provides that no amendment to the committee amendment in the nature of a substitute shall be in order except those printed in the Committee on Rules report.

Each amendment may only be offered in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment.

The rules also waives all points of order against amendments printed in the report.

This rule also allows the Chairman of the Committee of the Whole to postpone recorded votes and to reduce to 5 minutes the voting time after the first of a series of votes, provided that the first vote is not less than 15 minutes.

This provision will provide a more definite voting schedule and will help guarantee the timely completion of this important legislation. House Resolution 462 also provides for one motion to recommit with or without instructions, as is the right of the minority.

Mr. Speaker, we face a bankruptcy crisis in America today in which the needs of the debtor and the rights of the creditor are no longer in any kind of equilibrium. The balance between the debtor and the creditor has been lost and reform is clearly necessary. Basically we are asking that people assume personal responsibility, that they pay their bills when their bills are due, that they not give their word when they do not intend to keep their word.

We need to reestablish and preserve the original balance of the bankruptcy code in areas of which it has lost its fairness and modernize the sections of the code which have become outdated. H.R. 3150 achieves these goals.

When we consider the need for bankruptcy reform, it strikes me that we should simply look at some of the more startling statistics. The number of bankruptcies has increased more than 400 percent since 1980, more than 400 percent since 1980. This year there are expected to be more than 1.4 million bankruptcies, more than one bankruptcy in every 100 American households.

This extraordinary increase comes during a time of economic prosperity, not a period of recession that usually would bring more people into the bankruptcy court. Instead the increase is largely due to bankruptcies of convenience. Let me repeat that, bankruptcies of convenience.

We have the healthiest economy we have ever faced in the history of this country, yet our bankruptcies are exploding. Why? Because it is the convenient thing to do. It is the easy street. It is the easy way out.

This increase of bankruptcies of convenience is simply a ploy that is used by some people that owe money and

their bankruptcy attorneys to avoid paying all or most of their debts, even though they are financially capable and able to do so.

Bankruptcy was always intended to be for a person who ran into unintended consequences who could not pay their bills to give them a new chance on life. Now what we have seen is we have seen that overwhelmed by the bankruptcy of convenience. These bankruptcies of convenience, initiated, by the way, from abusers of our bankruptcy laws, are having a very harmful impact on our Nation's competitiveness. The current system is unfair to all people who are fiscally responsible, who are penalized in the form of higher prices, credit card rates, interest rate increases. In other words, the people who do pay their bills have to carry the load for those who do not pay their bills.

To reduce these costs, we must end the widespread abuses of the system. This bill is sensitive to the fact that people may lose their job, have a medical crisis or they may come upon hard times, real hard times, realistic hard times, not artificial hard times. However, what we are finding in many cases is that a growing number of people who file for bankruptcy relief under Chapter 7 actually have the capability to pay at least some of their debts. In fact, a study by Ernst and Young showed that 15 percent of the people who filed under Chapter 7 could have repaid 64 percent of their unsecured debts.

This bill repairs a system that rewards abuse of the system. In other words, the current system rewards one to abuse the system. This bill changes that. This bill makes bankruptcy really applicable to those people that need it and takes it out of the reach of those people who abuse it or use it as convenience.

At the heart of these reforms is implementation of a needs-based mechanism that ensures that those debtors who can afford to repay some of their debts simply repay what they can afford to repay. At the same time, H.R. 3150 preserves the right of bankruptcy relief for those in true financial straits by targeting only those who have the ability to repay. Contrary to what we will hear certainly and what I would expect today in the floor debate, this bill provides that none of the reforms will adversely impact the priority treatment accorded to child support claims. That is a critical issue for me. That an important issue for me.

In fact, H.R. 3150 incorporated additional safeguards to enhance the existing protections for family support.

□ 1230

H.R. 3150 represents another example of this Congress's efforts to encourage individual responsibility. The Republican Party feels that individual responsibility is a basic and fundamental standard that we should all accept. The current system promotes fiscal irresponsibility and gives people a loophole that encourages mismanagement of individual finances. Bankruptcy was designed to serve as a last resort to be utilized only in the most desperate circumstances. That is not what is happening today. In fact, today we see bankruptcy kind of synonymous with the word convenience. We see personal responsibility for some reason not politically correct to talk about. With the changes in this bill, we will renotify people that they do need to be held accountable for their debts that they have accumulated. We will remind them about keeping their word. We will remind them to not go out and spend money that they do not have. Accept personal responsibility.

I actually am optimistic that the country is taking a turn, it is going back to the fundamentals of this country, basic responsibility, strong education, et cetera, et cetera. But any formula you look at for the success of this country has to incorporate within its terms personal responsibility.

With regard to the consideration of amendments, the Committee on Rules has done its best to accommodate Members who filed amendments with the Committee on Rules. We have been more than fair in permitting six Democrat amendments, five Republican amendments, and one bipartisan amendment. We faced numerous duplicative amendments in the Committee on Rules and we did our best in the Committee on Rules to allow a wide variance of amendments on a number of key issues. In reviewing the amendments provided to the Committee on Rules, we also noted that there are those Members who simply do not wish to see any changes in the bankruptcy laws. We have some Members that want this to continue to be a tool of convenience. We have some Members who for some reason have put personal responsibility aside and use this charade of the current bankruptcy system as the policy that ought to be in place.

This rule is a fair rule, Mr. Speaker, and I urge all of my colleagues to support it so that we may proceed with general debate and consideration of amendments and the merits of this important bill.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I thank the gentleman from Colorado for yielding me the customary 30 minutes, and I yield myself such time as I may consume.

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, I rise in strong opposition to this rule. I oppose the hasty process this rule embraces, I oppose the breach of faith that this rule embodies, and I oppose the damage to America's children this rule refuses to address.

Last year, more than 1 million American families went through bankruptcy, leaving millions of creditors without full payment for their goods and services. Is the record number of bankruptcies a serious problem? Yes. Is this bill a real answer to the problem? No one knows. Some claim that it will result in fewer bankruptcies, but others believe it is a giveaway to the very creditors whose profligate lending may be the chief cause of increased bankruptcies.

Article I, Section 8 of the United States Constitution requires the Congress ''to establish uniform Laws on the subject of Bankruptcies throughout the United States.'' Beginning in 1792, the Congress has taken this responsibility seriously, carefully weighing creditors' rights against a new start for the debtor.

The precedent is that the House crafts bankruptcy legislation carefully, and on a bipartisan basis. At yesterday's Committee on Rules hearing, we learned that in 1978, the last time that fundamental changes to the bankruptcy code were proposed, a National Bankruptcy Commission proposed the outline of the changes, the House held 38 days of hearings, and the Senate held 24 days of hearings.

Compare that careful deliberation with this bill's consideration. Again we had recommendations from a National Bankruptcy Commission, but this bill ignores them, and in major instances includes ideas expressly rejected by the Commission. The House held only 4 days of hearings, and the Committee on the Judiciary's markup was so rushed that germane amendments offered by committee members were not even considered. In fact, the gentleman from Illinois (Mr. HYDE), the committee chairman, received unanimous consent to report this bill only after he promised to recommend that the bill would be considered on the floor under an open rule, so that additional amendments could then be debated.

Unhappily, today's rule is proof that this House's leadership did not follow the recommendation of the gentleman from Illinois. The chairman of the Committee on Rules explained to us that the gentleman from Illinois did not have enough experience as the chairman to realize that he could not make a commitment about floor debate. From my personal observation, I would say that in his 23 years in the House and 8 years in the Illinois House of Representatives, the gentleman from Illinois has proved himself a master of procedure. In reality, the gentleman from Illinois' failing is his belief that the Committee on Rules, and this House's leadership, would respect him enough to honor his recommendation as chairman of the Committee on the Judiciary.

So instead of the open rule, we have this rule that makes in order only 12 of the 40 amendments that were submitted to the committee. Why this curtailed consideration? Apparently after months of doing nothing on the floor of the House, the House leadership decided that only 6 hours could be spent

considering landmark legislation affecting the lives of millions of families filing for bankruptcy, and millions of creditors, many of them small businesses.

Mr. Speaker, I oppose this rule because it will not allow us to consider amendments which might have cured this bill's flaws, and allowed a bipartisan House to support it. I am particularly concerned about the 125,000 children who are owed child support from a parent who declared bankruptcy.

In its current form, this bill will have a devastating impact on the parents and children who are owed child support and alimony. It will take us back to the days when the bankruptcy code gave child support and alimony no greater priority than a television set or jewelry purchased with a credit card.

Just 4 years ago, I introduced the Spousal Equity in Bankruptcy Amendments to give priority to child and spousal support payments in bankruptcy proceedings. That legislation became law as part of the Bankruptcy Reform Act of 1994. Thanks to those and other child support enforcement reforms, child support collections have increased by 68 percent since 1992. Nevertheless, we have far to go, as America's children are still owed $34 billion a year in child support.

This bill could reverse the progress we have made in recent years. By making large amounts of consumer debt nondischargeable in bankruptcy, this bill would place money owed on a credit card at the same level as alimony and child support obligations. Under this bill, after a debtor goes through bankruptcy proceedings, he or she will still have credit card and other types of consumer debt left to pay, and those debts will compete with child support and alimony for the limited resources of the post-bankruptcy debtor.

Proponents of the bill claim that they have repaired the damage that the bill does to child support. However well intentioned, those repairs are only cosmetic. They ignore the reality that, after bankruptcy proceedings are over, the bankrupt debtor will be left with additional credit card and consumer debt. When aggressive credit card collection agencies are calling, it will be easier to pay them than the former spouse or the powerless child.

The Committee on Rules was schizophrenic on the child support issue. Some in the majority claimed the problem never existed or had been fixed by amendments, and yet had heard testimony from a Member of the majority that likened the post-bankruptcy situation to a shark joining the sardines. That Member argued that without a procedure for enforcing the post-bankruptcy priority that the bill claims to establish, credit card companies will greatly overpower the competing claims of children needing support. Clearly this issue is not resolved.

The rule does make in order an amendment by the gentleman from Florida (Mr. SHAW) on this subject. But early analysis from bankruptcy experts shows the Shaw amendment is unworkable for both creditors and those claiming child support. It will inevitably cause children who are owed child support to lose the payments that they are owed.

Several of my colleagues and I tried to offer an effective amendment to solve the problems that this bill creates for women and children. The amendment we sought to offer would have clarified the status of child support and alimony. It would have ensured that child support and alimony would be paid before unsecured debt. It would have protected against abusive reaffirmation agreements that have an adverse effect on a debtor's family. It would have prevented new kinds of credit card and consumer debt from being made nondischargeable, and thereby competing for the debtor's limited post-bankruptcy funds against child support, alimony and other priority payments. It would have provided an enforcement mechanism for the bill's protections for child support. However, we were not allowed to have our amendment on the floor.

Mr. Speaker, the bill in its current form is opposed by children's rights advocates and women's groups, who are concerned about the damage it will do to a family in crisis. It is opposed by victim's rights groups, such as Mothers Against Drunk Driving, who are concerned about the way the bill will endanger settlements owed to victims of crime; it is opposed by consumer groups, such as the Consumer Federation of America and Consumers Union; and it is opposed by judges and scholars such as the National Conference of Bankruptcy Judges, who are concerned about the integrity of the bankruptcy process.

I support efforts to reform our bankruptcy laws to make debtors responsible for the debt they incur and indeed agree that something must be done. A full floor debate such as that contemplated by the chairman and the Committee on the Judiciary would perhaps have addressed many of the problems. But the Committee on Rules chose to disregard the Committee on the Judiciary's wishes and forbid the offering of the primary amendment to cure its most obvious flaw. We should not and cannot allow the bill to turn back the clock on the progress we have made in the past few years to ensure that women and children in crisis receive the support they are owed.

Mr. Speaker, I urge my colleagues to oppose this rule. America's children are too precious for this Congress to put their future at risk. We should not allow an artificially imposed time limit to preclude a full discussion of the child support question and the other important issues raised in the bill.

By defeating the rule, we will instruct the Committee on the Judiciary to reconsider the bill and its unintended consequences, to complete its deliberation on all relevant amendments, and then bring the bill back to the full House in a perfected form.

I also notify my colleagues that I will call for a vote to defeat the previous question. If the previous question is defeated, I will offer an amendment to the rule to allow the Jackson-Lee, Slaughter, Nadler, Blumenauer Family Support Protection amendment to be considered by the full House. Our Nation's children deserve at least an hour of time on the House floor to discuss whether this bill adequately protects their interests. If we could be sure of that protection, many of us could support this bill.

Mr. Speaker, a vote for the previous question and this flawed rule means that the House is unwilling to spare an hour to make sure our children do not suffer for lack of food, clothing and shelter that child support provides. Defeat the previous question and defeat the rule.

Mr. Speaker, I reserve the balance of my time.

Mr. SOLOMON. Mr. Speaker, I yield such time as he may consume to the gentleman from Harrisburg, PA (Mr. GEKAS), a member of the committee and one of the most distinguished and respected Members of this body.

Mr. GEKAS. Mr. Speaker, I thank the gentleman for recognizing my birthplace and for yielding me the time.

Mr. Speaker, I rise in support of the rule which does allow for ample time to debate the most vital issues that face bankruptcy and bankruptcy reform.

I am a witness to the fact that the chairman of the Committee on Rules and the Committee on Rules were eminently fair in the composition of the rule which is before us here today, because the chairman and the Committee on Rules rejected one or two of my own offerings for amendments to be made in order. If anything shows balance on the part of the chairman and the committee, it is that the author of the bill and the chairman of the relevant subcommittee offered amendments which the Committee on Rules rejected. One of them, by the way, I thought was going to go automatically accepted by the Committee on Rules which I crafted in accommodation to what the gentleman from Massachusetts (Mr. FRANK) and I had agreed on a certain portion of single asset, an arcane portion of the bankruptcy bill. But the point is that a rule which allows full debate on the most significant issues facing bankruptcy is one that will give us full opportunity to vent all sides of those issues.

If the minority will recall, and the gentleman from New York (Mr. NADLER) could, I think, substantiate it, in the Committee on Rules, I offered to the chairman and the Committee on Rules that we would be happy to allot whatever time is necessary for the substitute measure by the minority to be placed for debate in the full question of bankruptcy reform. So we support the rule and urge everyone to vote ''yes.''

In the meantime, the three main issues that I think will be raised during the course of the debate are A, B and C which I just want to outline and prepare the Members for a full discussion of them. One is the gateway system that we have prepared in H.R. 3150 which tests out the debtor's ability to repay some of the debt right at the first instance at the application being made for bankruptcy, the original means-test system that we have in place. That is one contentious issue. The second is, that is raised over and over again, almost to bore me at least to tears, is the one that it is the credit card and lenders that are at fault for this whole mess that we find ourselves in with 1,400,000 filings in 1997 and more bankruptcies being recorded every day even as we speak, into unheard of numbers. That is another one that we meet head-on in our discussion, because we are talking about the debtor who comes to bankruptcy. We are not talking about how he got there. It could be gambling, it could be divorce, it could be a variety of things. So the so-called fault of the lenders, which will be one of the attacks made on our bill, will be a second important issue. The third is one that is almost preposterous in its formation, having to do with somehow that our bankruptcy reform bill militates against support obligations for the children. That is simply not the case.

□ 1245

But to make doubly certain of it, we also have amendments that will raise the priority of support payments to No. 1 on the list on the bankruptcy to supplement the already existing State and Federal statutes that guarantee that support payments will have utmost priority.

With that I reiterate, let us support the rule, let us debate the amendments as they appear, and then in the final analysis let us support a sweeping change in bankruptcy reform dedicated to the proposition that personal responsibility has to be returned to our society through a change in the bankruptcy laws.

Ms. SLAUGHTER. Mr. Speaker, I yield 5 minutes to the gentleman from New York (Mr. NADLER).

(Mr. NADLER asked and was given permission to revise and extend his remarks.)

Mr. NADLER. Mr. Speaker, as the gentlewoman from New York (Ms. SLAUGHTER) mentioned, this bill has been rushed to the floor beyond all prudence, and unfortunately we have not been permitted most of the important amendments. The House leadership decided that the one thing this bill did not need was close scrutiny or open debate, so they choose not to allow debate in the most important amendments offered by the minority.

The gentleman from Pennsylvania says the Committee on Rules was fair. We gave the Committee on Rules, we told them we had 12 priority amendments. One of those 12 was made in order. The American people are being cheated because they will not get the open debate and open votes on issues affecting the finances of millions of American families that they deserve.

Have credit card companies been lending recklessly? The data indicates they have. In fact, every American family's mailbox tells the same story. How many pre-approved credit card solicitations have my colleagues thrown out last week?

We had an amendment to eliminate the claims of any lender who knowingly pushed the debtor over 40 percent of his annual income in unsecured debt. That goes on all the time. It undermines the carefully made loans of other creditors. Yet these lenders want the taxpayers to help them share in the corrections with responsible collectors. That is not right, but we will not be allowed to debate that today.

We have the amendment that would have eliminated the claims for debt incurred at ATM machines inside gambling casinos. Trying to lend thousand of dollars to gambling addicts in casinos at 18 to 22 percent interest is simply immoral. We know it destroys families and causes bankruptcies and leads to other responsible lenders not being paid. Yet although the amendment had the support of the Republican chairman of the subcommittee of appropriations, the gentleman from Virginia (Mr. WOLF) who has been a leader on this issue, we will not be allowed to debate this amendment today.

The gentleman from Massachusetts (Mr. KENNEDY) had a series of amendments to deal with unscrupulous practices by some lenders, but the sponsors of this bill, for all their talk of personal responsibility, do not want to debate irresponsible lending practices so we will not have an opportunity to debate those amendments.

The gentleman from Massachusetts (Mr. DELAHUNT) had an amendment to protect the hard-earned benefits paid to our veterans, and the Social Security benefits of retirees are paid for but we cannot talk about that on the floor today.

We will not get a chance to debate the amendments sponsored by my colleague from New York (Ms. SLAUGHTER) and myself along with the gentlewoman from Texas (Ms. JACKSON-LEE) the gentlewoman from Connecticut (Mrs. KENNELLY) and the gentleman from Oregon (Mr. BLUMENAUER) to protect child support collections from the terrible effects of this bill because the majority is afraid to have these issues come before the American people. Instead we will get another sham amendment crafted by the promoters of this legislation which will again pretend to fix the problem, the same problem they had first denied existed, then proclaim to have fixed in committee and will now try to fix again. But we will not be able to debate any real solution.

I did have an amendment made in order which implements changes recommended by the National Bankruptcy Conference of the Small Business Administration. The bill threatens to force thousands of small or medium-sized businesses into liquidation, out of business, bury the jobs, because they will be buried under a mountain of paperwork and bureaucratic rules and deadlines that will not apply to big business, only to small business. No, this bill's special ruse is small business. It will cost jobs and destroy the dreams of small business people.

How much time do we get to debate the future of small business in country? Five minutes on each side. That is all the Republicans think small businesses deserve before Congress buries the small businesses. But do not worry. The next time the majority wants to kill an environmental protection law, they will tell us they are doing it to save small business. Before we believe them we should remember what they did today.

I regret that we have not been able to work in a more bipartisan basis. I was pleased by the progress of negotiations which the staff conducted over several weeks which seem to be yielding a reasonable and principled compromise. But unfortunately that good work will not see the light of day. One day we were told suddenly the negotiations were off and everything we had talked about was off the table.

We are getting yesterday's news, the same wish list from the credit card companies. They have spent a bundle lobbying this one. As my colleagues know, the New York Times today says $40 million. I am not so naive as to think middle-class families on the brink can compete with a $40 million lobbying effort by the Nation's biggest banks and credit card companies.

Mr. Speaker, this is no way to rewrite the code. It is simply legislative malpractice. I believe this bill is not ready and the record is incomplete.

Mr. Speaker, I know how to count, and I know the majority has the votes to pass this embarrassment today. The minority will do what we ought to do, point out the weaknesses in the bill and suggest corrections. But I am under no illusions about the outcome. All I can observe is that this is a pretty shameful way to celebrate the centennial of the Bankruptcy Act, and that if, God forbid through some foolishness this bill makes it into law, we will hear a year or 2 from now the cries of the thousands and thousands of small businesses and middle-income and low-income people who will be buried by this bill, and then we will have to start undoing the handiwork we do today.

Mr. MCINNIS. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. DOOLEY).

Mr. DOOLEY of California. Mr. Speaker, I rise in support of this rule, and I rise in support of this bill, H.R. 3150.

Is it a perfect rule? No. But is it a responsible rule? Yes.

As my colleagues know, it is time for us to have fundamental reform of our

Nation's bankruptcy, and it should be guided by 3 basic principles: restoring responsibility, protecting consumers and then sharing fairness. H.R. 3150, which preserves a historic fresh start for those who truly need it is a solution.

Our Nation is witnessing an unsustainable soar in personal bankruptcies. Bankruptcies have increased by more than 400 percent since 1980 with one more million personal bankruptcies filed in 1996. Last year alone, despite a booming economy and low unemployment, a record 1.3 million people filed for bankruptcy, more than 1 in every 100 American households.

The overwhelming majority of Americans who pay their bills on time are the ones who are paying the price for this surge in bankruptcy. It takes approximately 33 Americans to pay for one bankruptcy, and bankruptcy will cost each American household an estimated $400 per year in higher prices for goods and services.

We must restore a sense of responsibility to our bankruptcy system and stop it from becoming a first step rather than a last resort. More and more people are choosing bankruptcy as a financial planning tool, and responsible Americans are the ones who are forced to pick up the tab from those who walk away from their debts.

Mr. Speaker, 3150 would restore personal responsibility and fairness to our bankruptcy system. The bill would amend the bankruptcy code and employ a needs-based approach where debtors in need get relief but only the relief that they need. Anyone earning an amount equal to or above the Nation's median income and are able to pay at least 20 percent of his or her unsecured debt over the course of 5 years would be forced to comply with Chapter 13 which requires a repayment plan rather than Chapter 7. H.R. 3150 provides tremendous flexibility, and in turn it needs, allows, the court to consider extraordinary circumstances such as medical costs or sudden loss of employment.

Most Americans agree that the time has come for meaningful and fair bankruptcy reform. Please join me in supporting this rule and this important piece of legislation so that our bankruptcy system can be approved for all Americans.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. Edwards).

Mr. EDWARDS. Mr. Speaker, I speak as someone who had hoped to support a bipartisan measure to deal with a problem of increasing bankruptcies in America. But I am disappointed in the result of this bill. Specifically this bill would undermine the Texas constitutional protection for family homesteads. It is disappointing to me that in a Republican-led Congress that has paid a lot of lip service to the concept of States' rights, this bill would run roughshod over the States' rights and the property rights of Texas and 5 other States: Florida, Kansas, Oklahoma, Minnesota and South Dakota.

Mr. Speaker, there can be no more personal property right that a State can try to protect than the right of one's own home, and I am deeply disappointed that the leadership in this House refused to recognize our 6 States' efforts to protect that important property right.

Let me say also, if this bill is about personal responsibility, it misses the mark because nowhere in it do I find any effort to ask multibillion dollar credit card companies to face their responsibility for having increased consumer debt by billions of dollars through unsolicited credit card mailings and through unsolicited increases in credit card limits.

I will finish with a personal note. When my mother, my 74-year-old mother, died 5 years ago, I went to her one-bedroom apartment in Houston to collect her things and found on the kitchen table letters from credit card companies on one hand saying, ''You are 2 to 3 months late in your payments,'' and on the other hand on the same table found those same credit card companies and others saying, ''Congratulations, we're increasing your credit card limit by thousands of dollars.'' I believe this bill failed in its responsibility to make not only American families but also American corporations face the responsibility for the serious problem that has been created.

Mr. McINNIS. Mr. Speaker, I yield myself such time as I may consume.

Well, to my colleague from Texas (Mr. EDWARDS), I used to be a police officer, and I never recall ever being asked to respond to a situation where somebody claimed they were forced to use their credit card.

My colleagues know there is personal responsibility. Of course people, as we know, when we buy a car we always have people trying to sell us another car, but does that let us say, well, I do not need to pay for the car I originally bought because somebody else wants to sell me an additional car? I mean, it just does not make logical sense.

Because of the time restriction, let me go on to a couple other points, and, Mr. Speaker, I control the floor. To the previous remarks made on the amendments submitted, let us talk about the fairness of the Committee on Rules. I think there has been a little misdirection here. We had 39 amendments, 39 amendments submitted to the Committee on Rules. The chairman of the Committee on Rules has said repeatedly he wants to make it as fair as possible, but he also has to manage this rule. Of the 39 amendments, 11 Republican amendments, 27 Democratic amendments, 12 amendments were made in order.

Now several of the amendments were repetitive. Of the 12 amendments that were made in order, 5 of them were Republican, and by the way the Republicans control the majority of this committee, and 6 of them by the minority of the committee were made in order for the Democrats. In other words the Democrats got one more amendment than the Republicans did, and then one bipartisan amendment was made as well.

The other issue that I think is critical is that the gentleman from New York stood up, and frankly I question about some of the whining because I think this has been a very, very fair approach. His statement was that the Democrats had 12 priority amendments and that the Republicans only made one in order. I do not know where he was. I thought he was in the committee. Physically he was at the committee last night, but that is not what occurred in his presence. In his presence what occurred is that the Democrats had 7 priority amendments, and we made 3 of them in order, 3 of them. And let me add again that the Democrats have one more amendment in order on this bill than do the Republicans.

Mr. Speaker, I reserve the balance of my time.

□ 1300

Ms. SLAUGHTER. Mr. Speaker, I yield 30 seconds to the gentleman from Texas (Mr. EDWARDS).

Mr. EDWARDS. Mr. Speaker, I hope the American people heard the gentleman point out on this floor that he does not consider the credit card companies in any way responsible for the billions of dollars in debt that have been increased, to a large extent because they have sent out easy credit cards, unsolicited credit cards, to teenagers and senior citizens. According to his philosophy of personal responsibility, I guess drug dealers should not be held responsible for the drug problem in America, because nobody forced those people in America to use drugs. If that is the kind of personal responsibility that is behind this bill, I do not want any part of it.

Mr. MCINNIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I take it from the comments of the gentleman from Texas (Mr. EDWARDS) that he associates small business people, which I have a lot in my district, with drug dealers. Is that what the gentleman is saying, because they came and charged in the store for some reason, it is the store merchant's responsibility? It is the small businessman in my district's responsibility if somebody comes in and charges something in their store and does not pay for it?

I would say to the gentleman from Texas (Mr. EDWARDS), there is a time in this country to accept personal responsibility. If you cannot afford it, do not buy it; and if you do buy it and you cannot afford it, do not blame it on the merchant.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, nothing needs to be said about this bill, other than it is a bankrupt bill and it is bankrupting America.

I stand to oppose this rule for the children of America. 325,000 bankruptcy filings are based upon child support and alimony payments. This rule and this particular legislation disregards the importance of protecting our children at risk. What it does is it takes the multibillion-dollar credit card companies and it puts them at equal level to those parents trying to fight every day to keep their doors open and their children alive. Yes, it is just that bad.

We tried in the Committee on Rules to present to the Republican members of the Committee on Rules an amendment, an omnibus child support amendment. The gentlewoman from New York (Ms. SLAUGHTER) has been a leader on this issue, yet that amendment has been rejected.

What do they have in its place? Something unsatisfactory. They have something that says oh, that is okay. You can put the credit card debt equal to the child support. What does that mean? Do you have time to sit and make 12 and 15 calls a day, like the multibillion-dollar credit card companies, harassing people in order to get payments? No, you do not.

So there is no equality here. We wanted to protect child support and alimony payments, so that hard-working Americans could keep their head above water.

Let me tell you what the real issue is, 3 billion contacts every day to Americans asking them to take this credit card and this credit card. I believe in personal responsibility. I want people to pay their bills, and Americans pay their bills. Today they wait when the debt is 125 percent of income. They do not recklessly go down to the bankruptcy courts. In fact, no one throws a party on their neighborhood block when they have to go to the bankruptcy court.

I tell you, this bill should go back to committee, with only five hearings. We were promised an open rule in committee, it is on the record, yet we did not get one.

This is a bad rule. Vote it down, vote for Americans, vote for working people. This is a bad, bad bill.

Mr. Speaker, I come to the floor of the House to oppose this rule. The function of the House Rules Committee is to examine amendments and make germane amendments in order, not to try to defeat the bill in the Rules Committee before it reaches the floor. This is a bad way to run this House and it undemocratic.

I appeared, before the Rules Committee with the recommendation that four of my amendments to H.R. 3150 be made in order, because I seriously question whether this bill, as it is now written, will accomplish its goal of reforming our present bankruptcy system without causing significant harm to many innocent parties. Sure, I believe that the bill in its philosophical approach and legislative function, appears to unnecessarily burden the rights of the bankrupt debtor, but in the end, my objections to this bill are much deeper than that. As a member of the Judiciary Committee's Subcommittee on Commercial and Administrative Law, who has dealt with this legislation since its inception, I have several serious reasons why I believe there should have been more of an inclusive rule for H.R. 3150. This is a bad rule and this is not democracy.

I am not shy to say that Chairman HYDE promised an open rule to the Democrats in Committee. That is exactly why the Democrats did not offer more amendments in the Judiciary Committee. Then we go to the Rules Committee with an assurance that we would get an open and inclusive rule and what we have here is a restrictive and exclusive rule. This is no way to legislate, no way to make policy, no way to run this house. It is bad for collegiality of the House, and most importantly it is bad for the country. This is a bad rule . . . and this is not democracy.

I was prepared to offer an amendment, cosponsored by Rep. SLAUGHTER of New York, a Member of the Rules Committee which would have completely corrected certain serious problems in the bill. First of all, the amendment would protect child support and alimony payments in a Chapter 7 or Chapter 13 bankruptcy proceeding by excluding these payments from the definition of ''current monthly income'' in the bill. Secondly, the amendment would ensure that all priority payments like child support and alimony would be paid before any unsecured creditors, whether it is mandated as a part of the means test or as a nondischargeable credit card debt in Chapter 7 or in Chapter 13 repayment plans. Third, the amendment would strike all sections of the bill that make unsecured or credit card debt competitive with child support and alimony payments. And finally, no presumably nondischargeable debt owed to a credit card or credit lending institution can be collected if in good faith it is believed that its collection would impede upon an individual's ability to meet child support or alimony obligations. These provisions, in particular, would finally make H.R. 3150, a ''woman and child'' friendly, rather than, a ''woman and child'' adverse piece of legislation.

The only amendment allowed to be offered on the floor of the House which remotely speaks to child support is the Boucher-Gekas amendment which does not accomplish as much as the Jackson-Lee/Slaughter amendment. While it moves child support and alimony obligations from seventh priority to first priority during the bankruptcy proceedings, the child support debts must still compete with the credit card debts, or unsecured creditors. Listen to me colleagues, the mothers and children must still wait in line for the big corporations to be paid, or compete with them since those debts have become non-dischargeable debt. This is a bad rule and this is not democracy.

That is why I am hoping that Members will vote for the Nadler/Meehan/Berman/Jackson-Lee Substitute amendment because it strikes Section 141 of the bill which would thereby eliminate new non-dischargeable status for these credit card and other debts which would compete with alimony and child support. This is bad rule and this is not democracy.

Now my colleagues, let me tell you a little about the Means Testing provision in this bill. It is not a means test, it is just a mean test. The bill's mean Means testing would bar anyone earning the nation's median income—about $51,000 for a family of four—from using Chapter 7 proceedings if they could pay off all secured debt, such as a home mortgage or car loan, and 20 percent of unsecured debt, such as credit card bills, over three to five years.

I offered an amendment with Chairman HYDE which passed that would make the Means testing more fair. This amendment was not made in order and not allowed to be offered on the floor. This is a bad rule and this is not democracy. First Lady Hillary Rodham Clinton said in a May 7th article:

> I have no quarrel with responsible bankruptcy reform, but I do quarrel with aspects of the bill (H.R. 3150) that would force single parents to compete for their child support payments with big banks trying to collect credit card debt. . . Any effort to reform the bankruptcy system must protect the obligations of parents to support their children.

This is a bad rule, and this is not democracy. I urge my colleagues to oppose this rule, and vote ''no'' on the rule for H.R. 3150.

Mr. MCINNIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it amazes me to hear the gentlewoman from Texas talk in such a manner as she does. It takes all responsibility away from the person who goes in and purchases the product.

My question to the gentlewoman would be, has she ever been the recipient of a bankruptcy? In other words, has she ever been the creditor? I was.

When I first got out of school, I had my little business. I had three small children and my wife. My wife and I were struggling. We rendered the service. You know what? The person walked out on us, for a bankruptcy of convenience.

So you can give all these sorry stories and sob stories, but, let me tell you, there is the other side of the story. In your statement you need to be there and reflect on the other side of the story. And there is nothing, nothing wrong with personal responsibility in this country.

Now, for the second point made by the gentlewoman from Texas about the unfairness of this, how it ought to go back for more hearing. Let me say, I know the gentlewoman, to her credit, comes to the Committee on Rules on a regular basis. This bill has had over 60 witnesses. Every interest group I know has testified either in committee or had opportunities to testify somewhere in the process of this. This is not something that fell out of the sky.

There are a lot of people out there that are suffering. There are a lot of people that are suffering, not because they went and bought something they knew they could not afford. There are a lot of people who, on good faith on a person's word, sold them something, and the person did not keep their word.

Let me give you an example. Come to my office. I invite the gentlewoman

from Texas to my office, room 215, Cannon Building. You will see a bull elk in my office. Do you know where I go got that? I represented a woodsman, and this woodsman owed me about $5,000 personally. I loaned the money. He never paid me.

I told him, I said, ''You gave me your word.'' He said, ''I gave you my word.'' I said, ''Are you going to declare bankruptcy?'' He said, ''No, I am going to give you something of value.'' He brought me in this bull elk. He kept his word.

The other issue that is critical, and this is nothing but a diversionary tactic, is this child support thing. Let me repeat this very quickly. The President of the California Family Support Council says, ''H.R. 3150 contains a wish list of provisions which substantially enhances our efforts to enforce support obligation during the bankruptcy of a support obligor. It closes many of the loopholes which currently exist in bankruptcy and which greatly hamper our efforts to enforce support,'' speaking of child support, ''debts, when a debtor has other creditors who are also seeking participation in the distribution of the assets of the debtor's bankruptcy estate.''

That letter was sent to the chairman. I would be happy after their turn to yield a couple of minutes to the gentleman from Pennsylvania (Mr. GEKAS). I would like the chairman to go into a little more detail about that hearing a couple of minutes from now. Let us address that.

I do not want one diluting the importance of this bill by some diversionary tactic by saying, well, this takes away from child support. It does not. The rule is fair. We ought to pass the rule and pass the bill.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 30 seconds to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentlewoman for yielding me time.

Mr. Speaker, I appreciate the sincerity of the gentleman. But just as he has his beliefs, I have my facts. The facts are that the amendments do not correct the imbalance between credit card and child support. You have to fight the credit card companies to get your child support.

The other fact is that 60 percent of those who file bankruptcy have been unemployed in the last couple of months. We want personal responsibility. In fact, we have supported an amendment that would study why small businesses go bankrupt or are not being paid.

This bill needs to go back for hearing so that we can bring forth a true bipartisan bill that would answer your concern and truly commit us to personal responsibility.

Ms. SLAUGHTER. Mr. Speaker, I yield 2½ minutes to the gentleman from Texas (Mr. BENTSEN).

(Mr. BENTSEN asked and was given permission to revise and extend his remarks.)

Mr. BENTSEN. Mr. Speaker, I rise against the rule. Once again, it appears that the average Members of the House, Republicans and Democrats, cannot be trusted to legislate, even though that is what we were sworn in to do. The Committee on Rules and the Republican leadership of have decided what amendments will be made in order. The gentleman from Colorado says the chairman of the Committee on Rules needs to have a managed rule so he can manage this bill through.

I am not sure what the hurry is. I guess because we have to get out for another recess. This has been a Congress more of recesses than a Congress of action, even on important issues like bankruptcy reform.

I actually agree with the gentleman on a lot of it. I actually would tell the gentleman on his situation, he probably would have done better to ask for a promissory note than a bull moose head for his wall. But, nonetheless, let us go forward.

The problem with this bill and the problem with this rule is the Republicans for so long, since I have been in Congress, have always been talking about returning powers to the States. But this bill in sections 181 and 182 preempt State law with respect to the State constitutions dealing with homestead, particularly in my home State of Texas.

Let me read a letter from the Governor of Texas, Governor Bush, along with the Lt. Governor Bullock and Speaker James E. ''Pete'' Laney. ''We strongly oppose Congress' effort to pass this legislation with the inclusion of the $100,000 homestead cap. The homestead cap is a clear violation of states' rights with regard to State private property laws. State and local government participation should be maintained in Federal bankruptcy law.''

Mr. Speaker, I will include the whole letter for the record.

Mr. Speaker, this is the whole point. Here we are talking about returning power to the States on one day, and then the next day we are taking it back away from them, whatever is most convenient for whatever our goals may be. To rush this legislation through, again, I agree with the gentleman on most of this, but for some reason, we cannot trust the 435 Members of this body to go through, spend the time, debate the amendments and bring up various amendments. We can all think. We all have the same power, or should have the same power to offer amendments.

But this leadership, which cannot figure out what direction it is going in, has now come up with the rule that mirrors the strategy of this leadership, whether it is busting the budget by $22 billion on the highway bill, or trying to craft a budget bill that is going nowhere fast, and then debating it in the middle of the night, when nobody except people in Hawaii would be paying attention.

Apparently this is just another example of the failed Republican leadership that cannot get anything done, and now wants to change the bankruptcy laws in the most significant way in the last 20 years, and wants to do it with 1 hour of general debate, 12 amendments, 10 minutes on what we are going to do with State homestead laws. I think that is ridiculous, and it is a real shame for this body to consider this.

STATE OF TEXAS,
OFFICE OF THE GOVERNOR,
Austin, TX June 2, 1998.

Hon. HENRY HYDE,
Chairman, House Judiciary Committee, Washington, DC.

DEAR CHAIRMAN HYDE: The House Judiciary Committee and Senate Judiciary Committee have included in their respective bankruptcy reform bills (S. 1301 and HR 3150) an amendment that would place a monetary cap of $100,000 on the amount of homestead equity individuals can protect from bankruptcy foreclosure proceedings. We are writing to express our opposition to the amendment and let you know how greatly it could affect Texas residents.

The Texas homestead provisions, included in the Texas Constitution, exempt a Texas resident's homestead in the event of a declared bankruptcy and place no monetary restrictions on that property. The Texas law does provide certain restrictions, such as limiting homestead property to one acre in urban area and 200 acres per family in a rural area. By placing a monetary cap of $100,000 on the amount of equity individuals can protect from foreclosure, the amendment to both bankruptcy reform bills would preempt the Texas Constitution.

We strongly oppose Congress' efforts to pass this legislation with the inclusion of the $100,000 homestead cap amendment. The homestead cap is a clear violation of states' rights with regard to state private property laws. State and local government participation should be maintained in federal bankruptcy law.

Thank you for your consideration.

Sincerely,

GEORGE W. BUSH,
Governor.
BOB BULLOCK,
Lt. Governor.
JAMES E. ''PETE'' LANEY,
Speaker.

Mr. MCINNIS. Mr. Speaker, I yield myself such time as I may consume.

The gentleman from Texas, I realize that late nights offend him because he would prefer to be at the golf course. But the fact is the reason the Republicans run these late nights is because we have got a lot of work to do, and the gentleman can participate in that work.

Second of all, in regards to the gentleman's comment about my bull elk head, I would be happy to take a promissory note from the gentleman for the amount, because I know he will pay. I know he will not take the bankruptcy for convenience.

I kind of assume the gentleman is going to ask me to yield time. I will preempt that and say no, the other side can yield the gentleman time if he would like.

Mr. Speaker, I yield 4 minutes to the gentleman from Pennsylvania (Mr. GEKAS).

Mr. GEKAS. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, while the gentleman from Texas is on his feet, I had informed him and reinformed him, as I know the gentleman is aware, that an amendment that we intend to offer will satisfy the complaint of the Governor of Texas as to the current exemption base that is listed in the bill. We are trying to accommodate the State of Texas and the State of Florida and others who want to retain their homestead exemption.

When the question occurs about whether or not our bill treats child support cruelly or handsomely, depending on the point of view, I must reiterate something that the gentleman from Colorado had begun to articulate. The support enforcement communities around the Nation, New York, California, Virginia and others, have stated that they are in full support of what we are attempting to do in 3150 with respect to the privatization of support payments.

Here is a letter from the California Family Support Council, to which the gentleman from Colorado has alluded. We have a letter from the City of New York which thanks us for the provisions that we have in 3150 as to support, making it easier for them to collect support.

What is left unsaid in all of this, which I am going to iterate and reiterate as often as I can, is that the vast majority, 95 percent, of child support issues are raised in a court order situation in which the court orders support payments to be made by X, and no matter what happens in bankruptcy court or any other court, they are enforced over the year with the marshals and the jails and the sheriffs and the bailiffs, a whole system to enforce the court orders on support.

□ 1315

Nothing that we will do over on the bankruptcy side is going to harm their ability to enforce support payments. But insofar as, through some happenstance, that the child support that escapes the court system that is set up to enforce child support leads to consideration of that same issue in bankruptcy, we take extra pains to prioritize the support payments even in those few cases comparatively that the bankruptcy court must deal with with respect to support.

The amendments that we are going to offer will even go farther and set the priority with which no one could quarrel on support.

Mr. MCINNIS. Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 30 seconds to the gentleman of Texas (Mr. BENTSEN) to explain the allegation he would rather play golf at night than work.

Mr. BENTSEN. Mr. Speaker, first of all, I do not play golf. Second of all, I was unaware you could play golf at night. I would in many evenings rather be home with my children. But I do not recall the gentleman being on the floor at 12:30 in the morning when we were debating the Republican budget resolution, because I was here debating against the $10 billion cuts my colleagues want to make in veterans programs and the cuts they want to make in education. I just wanted to clarify that.

To my colleague, the gentleman from Pennsylvania (Mr. GEKAS), and I would yield if I had the time, it would be unprecedented, I know, in my time in Congress that anybody would yield to the other, is that I do want to work with the gentleman, as I said. But the fact is it is unprecedented action that my colleagues are taking at preempting State homestead laws in this bill. For the record the Governor of Texas has said they are for the amendment, but they take no position on the bill.

Ms. SLAUGHTER. Mr. Speaker, I yield 1½ minutes to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Speaker, as a general supporter of this bill, I did want to express my dismay at that attack on the gentleman from Texas. That remark about playing golf at night certainly does not grant this debate any reasonable weight.

Mr. MCINNIS. Mr. Speaker, will the gentleman yield?

Mr. FRANK of Massachusetts. No, just as the gentleman, having made the attack on the gentleman, would not yield to him, I certainly would not yield at this point.

I do want to say to my colleagues, while I generally like the bill, I also wanted some amendments, but they are following the wrong course. What we should do, and we can still do it, offer these as amendments to the campaign finance bill, because the same Committee on Rules that would not allow amendments to the defense bill and shut off reasonable amendments to this bill, and I regret that as a supporter, this same Committee on Rules has made more amendments in order to the campaign finance bill than I think it has made in order for all other bills that have come up in this Congress.

So given what the Committee on Rules has done, the Committee on Rules is actually out shopping for nongermane amendments. So while we have to do this very important bill in a quick-time operation, Members who, like myself, had good amendments to this bill which were germane to this bill and were shut out, despite, in some cases, assurances that we would get them in, make them nongermane amendments to the campaign finance bill.

Follow this pattern. Go to the Committee on Rules. Make any amendment we want to bankruptcy a nongermane amendment to the campaign finance bill. Not only will it be made in order, but we will have unlimited debate time.

It does seem to me, when we are judging the seriousness of purpose and fairness of procedure, to compare these. Here is the campaign finance bill. Here is the bankruptcy bill. The bankruptcy bill is a very important bill. It will have a significant impact on this country, and I am generally in favor of it.

But we get amendments killed by the Committee on Rules, presumably on the direction of the leadership. We get amendments with only 10 minutes to debate. Then we get the campaign finance bill where amendment upon amendment, as far as the campaign finance bill is concerned, germane is Michael Jackson's brother.

The whole concept that has always been at the core of the House of Representatives that an amendment should be germane to the bill has been thrown out the window.

So I have to say I am particularly dismayed as a supporter of the basic concept of this bill to see a rule come forward which does violence to fair debate in this particular instance and then makes a mockery of it elsewhere. Then the gentleman from Texas is, I think, unfairly impugned for complaining about it. So I urge people to vote against this rule.

Mr. MCINNIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, to the gentleman from Massachusetts, let me tell him, the golf comment was preceded by a comment from the gentleman from Texas regarding recess period and a few other things. He speaks, on which is pretty typical with his approach, speaks on one hand for the microphone about bipartisanship and cooperation, and I want to help you, and then, on the other hand, spends the rest of his time attacking the Republican leadership and the Republican efforts to, in this particular bill, say, look, it is not wrong in this country to say you have to accept personal responsibility. It is not wrong in this country to say, if you are going to buy something, you have got to pay for it. It is not wrong in this country to say, when you owe somebody money, when you gave them your word, your word that you are going to pay for it, keep your word and pay your bills.

It is always this party that feels very strongly when we have somebody that comes up in a hardship case, let us say somebody gets a cancer, they are uninsured, they are down on their luck. I mean, that is what it is designed for.

But as is typical, the liberals have taken advantage of it, taken bankruptcy way beyond what its original intents were, and now we have a system of convenience. Look, go ahead, charge everything you want. Take every credit card you want. If you are worried about paying your bills, file bankruptcy. It does not matter. You are not shamed in the community. You do not have to worry about anything. That kind of behavior should not go on.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Speaker, I thank the gentlewoman from New York for yielding to me.

Mr. Speaker, I guess I want to pick up on that theme of responsibility. We are going to hear, I am sure, much about responsibility today, personal responsibility.

But I also wanted to pick up on an observation made by the gentleman from New York (Mr. NADLER) in terms of congressional responsibility. There is no doubt that this particular proposal has rushed through the legislative process, unlike any proposal in my limited experience.

I dare say, as I talk to colleagues throughout and listen to the statements that have been made, there have been fewer hearings on this. The rush to bring this proposal to the floor was such that it is interesting to read the committee report in terms of the cost estimate. I want to take the time to read it. This is the majority report.

''The estimate of the Congressional Budget Office was not available at the time of this report. The committee believes that the enactment of H.R. 3150 will not have a substantial budget effect for the fiscal year 1999 and subsequent years.''

Well, guess what? They were wrong. They were wrong to the tune of $300 million over the course of the next 5 years. That is 300 million taxpayer dollars.

As the debate unfolded earlier on the issue surrounding the point of order, the ranking member, the gentleman from New York (Mr. NADLER), was correct when he said, in terms of the impact of these mandates under H.R. 3150 will cost the private sector over $1 billion, over $1 billion.

The gentleman from Colorado indicates his concern about private mandates. The CBO estimates that the impact on the private sector will be in excess of $1 billion over 5 years. But we are in such a rush to secure passage of this legislation that the point is bring it to the floor, get it done, limit debate.

This is not responsibility. This is not a responsible legislative process. We, too, have a collective responsibility. Let us call it congressional responsibility. I urge that the rule be defeated and the bill also be defeated.

Mr. MCINNIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, to the gentleman from Massachusetts, first of all, as a suggestion, I think he has got his, with good intent, but I think his facts are wrong. I would suggest that he visit with the gentleman from Ohio (Mr. PORTMAN) on our side, and the gentleman can talk to him about his concern he has got on unfunded mandates.

What especially bothers me, though, about the gentleman's comments, he talks about, in his short career up here, about how this bill has been rushed more than any other bill. I am not sure where the gentleman has been. I realize he is busy.

Let me tell the gentleman, there have been lots of hearings on this bill. Let me just read it. With regard to H.R. 3150 alone, the subcommittee held four hearings. Over the course of those hearings, more than 60 witnesses representing a broad cross-section of interest and constituents in the bankruptcy committee testified. Nearly every major organization having an interest in reform had an opportunity to participate in these hearings.

Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. GEKAS) if he would just comment about the comments just made by the gentleman from Massachusetts how this bill was rushed to the floor, no chance for input, and so on and so forth.

Mr. GEKAS. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I have been amused by listening to the litany of criticisms about how we rushed through it. Comparisons were made about what happened with the 1978 bill that finally became law.

Prior to 1978, the opposition is pleased to say, they had 5 years to work on a bankruptcy bill that became the bankruptcy bill of 1978. That subcommittee and that committee that worked on it for 10, 12, 15 days. After 5 years, they still had a markup with new ideas and new proposals to consider even through the markup stages of the subcommittee and the full committee. So even with the 5 years, they were not ready at the final moment to have a final bill, just like we did not.

We have new ideas, new circumstances occurring all the time. But the main themes of this bankruptcy reform bill were born of the 1,400,000 unexplained filings and our society being drenched in debt of individual debtors who, in some cases, could repay some of the debt. We believe that enough time has been devoted to it.

Moreover, even during the time that we had, we had the benefit of the Commission report, the Bankruptcy Commission. So we had a body that had worked on 2 years' worth of investigation and testimony and hearings on the bankruptcy. So we incorporated that.

All of a sudden, we can see, if the gentleman from Massachusetts will acknowledge, we already had, by adopting some of the recommendations of the Bankruptcy Commission, 2 years of work put right into 3150. That is not speeding up or rushing.

In addition to that, we had the hearings that the gentleman from Colorado has mentioned and the number of witnesses. But beyond that, we had tremendously intricate consultations with people in bankruptcy, from debt organization standpoint, from consumers standpoint, bankruptcy trustees, bankruptcy judges, conferences, Chambers of Commerce, you name it, credit unions.

The credit unions are anxious for the passage of this bill. Their whole system is being attacked daily by the number of filings that they see within their system. They want this bill passed, and so do we.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Mr. Speaker, the subject of bankruptcy should not be a partisan issue. It never has been in the history of this House. It should not be today or in the future. There should be no Republican perspective or Democratic perspective on this issue.

In 1994, Congress established a Commission to study and recommend changes to the bankruptcy law. The Commission issued its report last October. This bill comes to the floor today without the inclusion of the great, great majority of the recommendations of that Commission.

□ 1330

It comes with this many amendments having been offered before the Committee on Rules, a total of 45 proposed amendments, and it comes under a rule under which only 12 of those proposed amendments will have the benefit of debate in this House.

These are important proposed amendments that were left out. One excludes veterans' and Social Security benefits from the calculation of current monthly income for the purposes of bankruptcy or means testing under this bill.

One provides that a residential landlord would be required to seek relief from the automatic stay, as are other creditors seeking such relief, before being able to move to evict a residential tenant who is elderly or disabled or who is a veteran.

These are important amendments that the Committee on Rules has said to this House, we are not going to allow the democratic process to work its will. We are going to close off debate.

Ms. SLAUGHTER. Mr. Speaker, I yield 30 seconds to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. I think it is important to note, Mr. Speaker, for the record, in response to the chairman of the subcommittee, that upon an inquiry by me to the chairman of the National Bankruptcy Commission, I asked him about necessary data.

I said, and I am quoting, ''Every commission was frustrated by the absence of reliable data dealing with the bankruptcy process. Please communicate with the CBO, with the GAO, and get that data before you take action.''

I sent that letter, it was signed by other Members, and we are still waiting for that result. But here we are today, on the floor of the House without the evidence and the data that is necessary.

Ms. SLAUGHTER. Mr. Speaker, I yield myself the balance of my time.

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks and include extraneous material.)

The SPEAKER pro tempore (Mr. DUNCAN). The gentlewoman from New York (Ms. SLAUGHTER) is recognized for 30 seconds.

Ms. SLAUGHTER. I urge Members to vote no on the previous question, Mr. Speaker. If the previous question is defeated, I will offer an amendment to the rule that will make in order an amendment that will improve the bill's provisions that weaken child support, alimony, and victims' protections under bankruptcy.

Mr. Speaker, I urge a no vote on the previous question.

Mr. Speaker, I include for the RECORD information on the vote on the previous question and other material.

The material referred to is as follows:

THE VOTE ON THE PREVIOUS QUESTION: WHAT IT REALLY MEANS

This vote, the vote on whether to order the previous question on a special rule, is not merely a procedural vote. A vote against ordering the previous question is a vote against the Republican majority agenda and a vote to allow the opposition, at least for the moment, to offer an alternative plan. It is a vote about what the House should be debating.

Mr. Clarence Cannon's *Precedents of the House of Representatives,* (VI, 308–311) describes the vote on the previous question on the rule as ''a motion to direct or control the consideration of the subject before the House being made by the Member in charge.'' To defeat the previous question is to give the opposition a chance to decide the subject before the House. Cannon cites the Speaker's ruling of January 13, 1920, to the effect that ''the refusal of the House to sustain the demand for the previous question passes the control of the resolution to the opposition'' in order to offer an amendment. On March 15, 1909, a member of the majority party offered a rule resolution. The House defeated the previous question and a member of the opposition rose to a parliamentary inquiry, asking who was entitled to recognition. Speaker Joseph G. Cannon (R-Illinois) said: ''The previous question having been refused, the gentleman from New York, Mr. Fitzgerald, who had asked the gentleman to yield to him for an amendment, is entitled to the first recognition.''

Because the vote today may look bad for the Republican majority they will say ''the vote on the previous question is simply a vote on whether to proceed to an immediate vote on adopting the resolution * * * [and] has no substantive legislative or policy implications whatsoever. But that is not what they have always said. Listen to the Republican Leadership *Manual on the Legislative Process in the United States House of Representatives,* (6th edition, page 135). Here's how the Republicans describe the previous question vote in their own manual: ''Although it is generally not possible to amend the rule because the majority Member controlling the time will not yield for the purpose of offering an amendment, the same result may be achieved by voting down the previous question on the rule * * * When the motion for the previous question is defeated, control of the time passes to the Member who led the opposition to ordering the previous question. That Member, because he then controls the time, may offer an amendment to the rule, or yield for the purpose of amendment.''

Deschler's *Procedure in the U.S. House of Representatives,* the subchapter titled ''Amending Special Rules'' states: ''a refusal to order the previous question on such a rule [a special rule reported from the Committee on Rules] opens the resolution to amendment and further debate.'' (Chapter 21, section 21.2) Section 21.3 continues: ''Upon rejection of the motion for the previous question on a resolution reported from the Committee on Rules, control shifts to the Member leading the opposition to the previous question, who may offer a proper amendment or motion and who controls the time for debate thereon.''

The vote on the previous question on a rule does have substantive policy implications. It is the one of the only available tools for those who oppose the Republican majority's agenda to offer an alternative plan.

PREVIOUS QUESTION ON H.RES. 462—H.R. 3150—BANKRUPTCY REFORM ACT

At the end of the resolution add the following new sections:

''SEC. 2. Notwithstanding any other provision of this resolution, it shall be in order to consider the amendment specified in section 3 of this resolution as though it were after the amendment numbered 11 in House Report 105–573. The amendment may be offered only by Representative Jackson-Lee of Texas or her designee and shall be debatable for 30 minutes.

''SEC. 3. The amendment described in section 2 is as follows:

Page 6, line 11, insert the following before the 1st semicolon: ", but excludes (1) maintenance for or support of a child of the debtor, received by the debtor and (2) current alimony, maintenance, or support paid by the debtor for the benefit of a spouse, former spouse, of child of the debtor'';

Page 16, after line 25, insert the following (and make such technical and conforming changes as may be appropriate):

(A) in paragraph (2) by inserting ''before any unsecured claim is paid,'' after ''cash payments'';

Page 17, strike line 15 and all that follows through ''1326(b);'' on line 24, and insert the following:

''(i) that all claims entitled to priority under section 507(a)(7) are paid in full before any nonpriority unsecured claim is paid;

''(ii) that, to the extent not inconsistent with clause (i), payments to unsecured nonpriority creditors who are not insiders shall equal or exceed $50 per month of the plan;

''(iii) that, during the applicable commitment period, the total amount of plan payments on account of unsecured nonpriority claims shall equal the monthly net income of the debtor multiplied by the number of months in the commitment period less payments pursuant to section 1326(b); and

Page 18, line 14, strike ''(iii)'' and insert ''(iv)''.

Page 18, line 24, strike ''(iv)'' and insert ''(v)''.

Page 48, after line 13, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 119B. PROTECTION AGAINST REAFFIRMATION AGREEMENTS ADVERSELY AFFECTING CHILD SUPPORT.

Section 524 of title 11, United States Code, is amended by adding at the end the following:

''(i) Notwithstanding any other provision of this title, an agreement of the kind described in subsection (c) shall be void unless the court determines that such agreement will not have an adverse impact on the ability of the debtor to support a dependent of the debtor.''.

Page 54, line 15, insert '', but includes any tangible personal property reasonably necessary for the maintenance or support of a dependent child'' before the semicolon.

Beginning on page 65, strike line 16 and all that follows through line 25 on page 66 (and make such technical and conforming changes as may be appropriate).

Page 68, strike lines 8 through 23 (and make such technical and conforming changes as may be appropriate).

Page 72, strike line 2, and insert the following: at the end and inserting a semicolon; and

Page 72, strike line 9, and insert the following: port that are due after the date the petition is filed; and

''(8) the plan provides that all remaining debts to a spouse, former spouse, or child of the debtor, due before or after the date the petition is filed, for alimony to, maintenance for, or support of such spouse or child, or to a spouse, former spouse, or child of the debtor, to the extent such debt is the result of a property settlement agreement, a hold harmless agreement, or any other type of debt that is not in the nature of alimony, maintenance, or support in connection with or incurred by the debtor in the course of a separation agreement, divorce decree, any modifications thereof, or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, but not to the extent that such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or such debt that has been assigned to the Federal government, or to a State or political subdivision of such State, or the creditor's attorney) shall be paid before the payment of any other debt provided for in the plan unless the beneficiary of the payment waives the obligation that such payment be made before paying such other debt''.

Page 75, line 21, insert ''(a)'' before ''Notwithstanding''.

Page 76, line 12, insert ''and any debt of a kind described in paragraph (6), (9), or (13) of section 523(a) of this title,'' before ''shall''.

Page 76, line 14, strike ''or (14)'' and insert ''or (19)''.

Page 76, line 17, strike the close quotation marks and the period at the end.

Page 76, after line 17, insert the following:

''(b)(1) For purposes preserving the priority established in subsection (a), the holder of claim for a debt of a kind described in paragraph (2), (4), or (19) of section 523(a) of this title that is not discharged may not take any action to obtain payment or collection (including engaging in any communication with the debtor or with any person who holds property of the debtor) of such debt if such holder—

''(A) knew or should have known that taking such action, or obtaining payment of such debt, would impair the ability of the debtor to pay a debt that has priority under such subsection; or

''(B) failed to verify immediately before taking such action, by good faith means designed to identify all debts that have priority under such subsection, that the debtor does not then owe any debt that has priority under subsection (a).

''(2) If such holder violates paragraph (1), such holder shall be liable to any person injured by such violation for the sum of $3000, actual damages, and a reasonable attorney's fee.''.

Mr. MCINNIS. Mr. Speaker, I yield myself the balance of my time.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Colorado (Mr. MCINNIS) for 1 minute remaining to close debate.

Mr. MCINNIS. Mr. Speaker, this rule should be passed and it will be passed, and then we are going to get to have debate, and that debate is all about

personal responsibility. No matter how the Democrats want to cut it, the fact is that it is about personal responsibility, about keeping our word, about not buying something if we do not have the money to pay for it.

The previous question vote itself is simply a procedural vote, Mr. Speaker, to close the debate on this rule and proceed to a vote on its adoption. The vote has no substantive or policy implications whatsoever.

Mr. Speaker, I include for the RECORD an explanation of the previous question.

The material referred to is as follows:

THE PREVIOUS QUESTION VOTE: WHAT IT MEANS

House Rule XVII (''Previous Question'') provides in part that: There shall be a motion for the previous question, which, being ordered by a majority of the Members voting, if a quorum is present, shall have the effect to cut off all debate and bring the House to a direct vote upon the immediate question or questions on which it has been asked or ordered.

In the case of a special rule or order of business resolution reported from the House Rules Committee, providing for the consideration of a specified legislative measure, the previous question is moved following the one hour of debate allowed for under House Rules.

The vote on the previous question is simply a procedural vote on whether to proceed to an immediate vote on adopting the resolution that sets the ground rules for debate and amendment on the legislation it would make in order. *Therefore, the vote on the previous question has no substantive legislative or policy implications whatsoever.*

Mr. MCINNIS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

This will be a 17-minute vote. As previously stated on orders by the Speaker, this will be a strictly enforced 17-minute vote.

Pursuant to clause 5 of rule XV, the Chair will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the question of agreeing to the resolution.

The vote was taken by electronic device, and there were—yeas 236, nays 183, not voting 14, as follows:

[Roll No. 217]

YEAS—236

Aderholt
Archer
Armey
Baesler
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Berry
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boucher
Boyd
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Christensen
Coble
Coburn
Collins
Combest
Cook
Cooksey
Cox
Cramer
Crane
Crapo
Cubin
Cunningham
Davis (VA)
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dreier
Duncan
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Foley
Forbes
Fossella
Fowler
Fox
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Greenwood
Gutknecht
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Hulshof
Hunter
Hutchinson
Hyde
Istook
Jenkins
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
Livingston
LoBiondo
Lucas
Maloney (CT)
Manzullo
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Mica
Miller (FL)
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pappas
Parker
Paul
Paxon
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Redmond
Regula
Riggs
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Ryun
Salmon
Sanford
Saxton
Schaefer, Dan
Schaffer, Bob
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Shuster
Skeen
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Solomon
Souder
Spence
Stearns
Stump
Sununu
Talent
Tauscher
Tauzin
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Traficant
Upton
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)

NAYS—183

Abercrombie
Ackerman
Allen
Andrews
Baldacci
Barcia
Barrett (WI)
Becerra
Bentsen
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Cardin
Carson
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cummings
Danner
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Fattah
Fazio
Filner
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gordon
Green
Gutierrez
Hall (OH)
Hall (TX)
Hamilton
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Holden
Hooley
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (WI)
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Klink
Kucinich
LaFalce
Lampson
Lantos
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McHale
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Mollohan
Murtha
Nadler
Neal
Oberstar
Obey
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pickett
Pomeroy
Poshard
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schumer
Scott
Serrano
Sisisky
Skaggs
Skelton
Slaughter
Snyder
Spratt
Stabenow
Stark
Stenholm
Stokes
Strickland
Stupak
Tanner
Taylor (MS)
Thompson
Thurman
Tierney
Torres
Towns
Turner
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Wexler
Weygand
Wise
Woolsey
Wynn
Yates

NOT VOTING—14

Bachus
Berman
Brady (TX)
Brown (CA)
Dunn
Farr
Gonzalez
Goodling
Houghton
Inglis
Klug
Olver
Scarborough
Sensenbrenner

□ 1351

Mr. YATES and Mr. FROST changed their vote from ''yea'' to ''nay.''

Mr. HEFLEY changed his vote from ''nay'' to ''yea.''

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 251, nays 172, not voting 10, as follows:

[Roll No. 218]

YEAS—251

Aderholt
Archer
Armey
Bachus
Baesler
Baker
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boucher
Boyd
Brady (TX)
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Christensen
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Cramer
Crane
Crapo
Cubin
Cunningham
Danner
Davis (VA)
Deal
DeLay
Deutsch
Diaz-Balart
Dickey

Dicks
Dingell
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Foley
Forbes
Fossella
Fowler
Fox
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Goss
Graham
Granger
Greenwood
Gutknecht
Hamilton
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Hulshof
Hunter
Hutchinson
Hyde
Istook
Jenkins
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kennedy (RI)
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
Livingston
LoBiondo
Lucas
Maloney (CT)
Manzullo
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McIntyre
McKeon
Metcalf
Mica
Miller (FL)
Minge
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pappas
Parker
Paul
Paxon
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Redmond
Regula
Riggs
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Ryun
Salmon
Sanford
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Shimkus
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Solomon
Souder
Spence
Stearns
Stump
Sununu
Talent
Tauscher
Tauzin
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Traficant
Upton
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Young (AK)
Young (FL)

NAYS—172

Abercrombie
Ackerman
Allen
Andrews
Baldacci
Barrett (WI)
Becerra
Bentsen
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Brady (PA)
Brown (OH)
Capps
Cardin
Carson
Clay
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Cummings
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dixon
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Fattah
Fazio
Filner
Ford
Frank (MA)
Furse
Gejdenson
Gephardt
Gordon
Green
Gutierrez
Hall (OH)
Hall (TX)
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Holden
Hooley
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (WI)
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (MA)
Kennelly
Kildee
Kilpatrick
Klink
Kucinich
LaFalce
Lampson
Lantos
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McHale
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Mink
Moakley
Mollohan
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pickett
Pomeroy
Poshard
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schumer
Scott
Serrano
Sherman
Skaggs
Skelton
Slaughter
Snyder
Spratt
Stabenow
Stark
Stenholm
Stokes
Strickland
Stupak
Tanner
Taylor (MS)
Thompson
Thurman
Tierney
Towns
Turner
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Wexler
Weygand
Wise
Wolf
Woolsey
Wynn
Yates

NOT VOTING—10

Berman
Brown (CA)
Brown (FL)
Farr
Gonzalez
Houghton
Inglis
Klug
Miller (CA)
Torres

□ 1402

Mr. SHERMAN changed his vote from ''yea'' to ''nay.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. DUNCAN). Pursuant to House Resolution 462 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 3150.

□ 1404

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3150) to amend title 11 of the United States Code, and for other purposes, with Mr. MILLER of Florida in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Pennsylvania (Mr. GEKAS) and the gentleman from New York (Mr. NADLER), each will control 30 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. GEKAS).

Mr. GEKAS. Mr. Chairman, we are about to embark on one of the most momentous pieces of legislation that has come to the floor in a long time. And to signify the importance of the measure, we significantly begin by yielding to the gentleman from Illinois (Mr. HYDE), chairman of the Committee on the Judiciary, he being a leader of the committee and of the effort that brings us to this point in bankruptcy reform legislation.

Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois (Mr. HYDE).

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, before I talk about the bill in chief, I would like to say parenthetically that I am a little disturbed at the controversy over whether or not I kept my word in asking for an open rule. I did ask for an open rule. It was not formally asked. It was down here at the desk to the chairman of the Committee on Rules.

I did not make a commitment that there would be an open rule because that is not my prerogative. That is up to the Committee on Rules. I suppose the fact that there were 43 amendments offered at the markup was a disincentive to have an open rule, but, nonetheless, I offered to use whatever force and effect I would have to get amendments that the gentleman from New York (Mr. NADLER) wanted that were serious amendments made in order. And, again, unfortunately, because of weather, I was in an airplane yesterday afternoon coming from Evansville, Indiana by way of Cincinnati, and planes were canceled. I was not here. I just hope nobody feels I did not live up to my commitment which was to ask for an open rule. I just wanted to state that.

Mr. NADLER. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from New York.

Mr. NADLER. Mr. Chairman, I just want to say, I do not doubt for a moment the integrity and the word of the gentleman from Illinois, the chairman of the committee. I am sure that he did exactly what he committed to do and asked the Committee on Rules for an open rule.

I assume he asked that the priority amendments that we asked for be made in order. I just regret that he was not more influential, perhaps, with the Committee on Rules and that they did not make more than one out of the 12 amendments that we had a priority on in order. I do not doubt for a moment nor would I ever cast aspersion on the integrity or the good word of the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I thank the gentleman very much. I can only say, one cannot overestimate my lack of influence with some of the institutions around here.

In any event, I am pleased that the Committee on the Judiciary, after a 3-day markup in May, favorably reported bankruptcy reform legislation designed to address deficiencies in current bankruptcy processes and mitigate adverse impacts of bankruptcy filings. We recognized the importance of responding to the many developments since the Bankruptcy Code's enactment a generation ago, including a burgeoning bankruptcy case load that reached a new high of over 1.4 million filings during the 1997 calendar year.

Last September, our colleague, the gentleman from Florida (Mr. McCollum), introduced H.R. 2500, the Responsible Borrower Protection Bankruptcy Act, a bill designed in part to implement the concept of needs-based bankruptcy.

In February the chairman of the Committee on the Judiciary Subcommittee on Commercial and Administrative Law, the distinguished gentleman from Pennsylvania (Mr. GEKAS), built on this approach by introducing H.R. 3150, the Bankruptcy Reform Act of 1998.

H.R. 3150 incorporated, with modifications and additions, most of H.R. 2500's consumer bankruptcy provisions while also addressing other bankruptcy related subjects.

Our committee sought to achieve an appropriate balance between debtor and creditor rights in endorsing a needs-based bankruptcy process that would increase creditor recoveries while offering relief to deserving debtors. Those who needed an immediate fresh start would get it, but those who could afford to pay a substantial portion of their obligations out of future income before getting a fresh start would be required to do so.

Under H.R. 3150 as reported, individuals or couples with income levels equaling or exceeding national median figures that take into account family size may be ineligible, depending on certain calculations, to be chapter 7 debtors. Chapter 7 offers a fresh start, without encumbering future income, to individual debtors who are prepared to give up all of their nonexempt assets. Those denied access to chapter 7 under the pending legislation generally will have the option of making payments under a chapter 13 plan for a number of years and qualifying for a limited discharge eventually.

The chapter 7 disqualification is more limited in scope as a result of committee action raising the income threshold for disqualification from 75 percent to 100 percent of national median income figures.

The higher cutoff point, endorsed by the committee, addresses a major argument of opponents of this legislation that the needs-based formula was too harsh in its treatment of people with very limited means.

Our committee sought to ensure that family support obligations would be protected under the reported version of the bill. It adopted an amendment that I offered to prevent any dilution of the priority treatment accorded claims of spouses, former spouses and children for alimony, maintenance, or support, and also adopted four family support related amendments offered by the learned gentleman from Virginia (Mr. BOUCHER). Although this legislation was never intended to derogate from the preferred treatment of family support obligations under bankruptcy law, the Committee on the Judiciary welcomed the opportunity to take action emphasizing, in a number of contexts, its firm commitment to facilitating the fulfillment of such obligations.

In addition, as a result of a provision in the manager's amendment, the priority in distribution for support related obligations is substantially enhanced compared with current law.

I wish to commend the gentleman from Pennsylvania (Mr. GEKAS) for introducing H.R. 3150 and conducting important hearings on bankruptcy reform in his subcommittee. He is performing, as he does so often, an important public service by serving as our floor manager for this bill.

The remedial legislation before us not only covers consumer issues but also addresses business bankruptcy, tax related issues in bankruptcy, and transnational bankruptcy. It merits the support of this body.

I hope in the months ahead we will be able to point to bankruptcy reform as one of the significant achievements on a bipartisan basis of the 105th Congress.

Mr. GEKAS. Mr. Chairman, H.R. 3150 is one of the most comprehensive legislative efforts to reform bankruptcy law and practice in the 20 years since the enactment of the Bankruptcy Code in 1978. The guiding principle of these reforms has been to restore personal responsibility and integrity in the bankruptcy system and to ensure that it is fair for both debtors and creditors.

This bill represents the culmination of more than three years of careful analysis and review of our nation's current bankruptcy system. In the past year, the Subcommittee on Commercial and Administrative Law, of which I serve as Chairman, has held nine hearings on various aspects of bankruptcy reform. With regard to H.R. 3150 alone, the Subcommittee held four hearings. Over the course of those hearings, more than 60 witnesses, representing a broad cross-section of interests and constituencies in the bankruptcy community, testified. Nearly every major organization having an interest in bankruptcy reform had an opportunity to participate in these hearings.

H.R. 3150's reforms pertain to consumer and business bankruptcy law and practice, and includes provisions regarding the treatment of tax claims and enhanced data collection. H.R. 3150 also establishes a separate chapter under the bankruptcy Code devoted to the special issues and concerns presented by international insolvencies.

Why do we need needs-based consumer bankruptcy reform? The answers are not only easy, but obvious. Last year, bankruptcy filings topped 1.4 million and even exceeded the number of people who graduated college in that same year. Nevertheless, literally thousands of people who have the ability to repay their debts are simply filing for bankruptcy relief and walking away from those debts without paying their creditors a single penny under the current system.

Why do we care about creditors? Again, the answer is easy and obvious. When they don't get paid, someone suffers a loss. The only way they can make up that loss is by passing it along to us—you and me—in the form of increased prices and higher interest rates. Besides being unfair to those of us who pay our debts, the current consumer bankruptcy system at best lacks balance, at worst lacks morality and is subject to abuse.

There are two extreme approaches to bankruptcy relief: No one is allowed any bankruptcy relief or bankruptcy relief is granted to anyone who requests such relief. Our current system has become dangerously close to the latter extreme and the enormous leap in the number of bankruptcy cases being filed appear to document that.

H.R. 3150's needs-based reforms will restore balance to consumer bankruptcy law while reducing its potential for abuse. Not only will everyone in the bankruptcy system benefit from these reforms, but people like us—the corner grocer who extends credit to his neighbors, the family who's buying its first home and trying to get the lowest rate of interest for financing that purchase, the single mother who's applying for credit for the first time—are the ones who will also benefit from H.R. 3150.

H.R. 3150 is our response. It offers a balanced approach to reform with regard to consumer as well as business bankruptcy reform. In addition, as reported from the Full Committee last month, H.R. 3150 fully protects the priority treatment accorded to child support claims and fully responds to the concerns that some have expressed about this issue.

H.R. 3150 creates a debtor's ''bill of rights'' with regard to the services and notice that a consumer should receive from those that render assistance in connection with the filing of bankruptcy cases. Through misleading advertising and deceptive practices, ''petition mills'' deceive consumers about the benefits and detriments of bankruptcy. H.R. 3150 responds to this problem by instituting mandatory disclosure and advertising requirements as well as enforcement mechanisms.

In all, H.R. 3150 represents a balanced approach to bankruptcy reform with the goal of reducing abuse, promoting greater uniformity, and restoring public confidence in the integrity of the bankruptcy system.

I include the following letters of support for H.R. 3150 in the RECORD.

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, June 9, 1998.

Hon. GEORGE GEKAS,
U.S. House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE GEKAS: On behalf of the 600,000 small business owners of the National Federation of Independent Business (NFIB), I am writing to urge your support for H.R. 3150, the Bankruptcy Reform Act of 1998.

Small business is concerned, as many are, about the rapid increase of bankruptcy filings over the last several years. Whether their customers are other businesses or individual consumers, small businesses feel the pain to their bottom line when their customers go bankrupt. As an unsecured creditor, most small businesses never even get a chance to get back what they are owed.

A recent poll found that 77 percent of NFIB members want to make the criteria for declaring bankruptcy more stringent. Small business owners feel current law is in desperate need of reform in order to curb the abuses of the current federal bankruptcy system.

H.R. 3150 goes a long way to fight the abuses to the bankruptcy system. Most importantly, the legislation strikes a fair balance by giving small business owners more of a chance to get back what is rightfully theirs, while still providing bankruptcy protection to those small businesses who truly need it.

I urge you to give small business a chance to get what is theirs. Support H.R. 3150, the Bankruptcy Reform Act of 1998.

Sincerely,

DAN DANNER,
Vice President,
Federal Governmental Relations.

NATIONAL CONSUMER BANKRUPTCY COALITION

STATEMENT ON THE HOUSE JUDICIARY COMMITTEE'S PASSAGE OF H.R. 3150

We are very pleased that the House Judiciary Committee today favorably reported The

Bankruptcy Reform Act of 1998 (H.R. 3150), clearing the measure for action by the full House. We also applaud Chairman Hyde and the Committee members for putting to rest any question about the priority status of child support and alimony payments in the bankruptcy process. The amendments adopted by the Committee specifically and categorically state that child support and alimony payments must be given priority in bankruptcy proceedings. There is no greater personal responsibility than meeting one's child support and alimony obligations, and we strongly support these measures to ensure that these payments are in no way affected by this legislation.

The result is that H.R. 3150 has emerged from the Committee even stronger in terms of personal responsibility and should enjoy strong bipartisan support on the House floor. We urge the full House to act upon this legislation at the earliest opportunity so that sensible, fair bankruptcy reform can be enacted in 1998. We are also pleased that the Senate plans to move forward next week on significant bankruptcy reform legislation.

H.R. 3150 will restore personal responsibility and fairness to our bankruptcy system. For too long now, our flawed bankruptcy law has provided complete debt relief to individuals who have enough income to repay at least some of what they owe. As a result, the overwhelming majority of Americans who pay their bills on time have been forced to pick up the tab—to the tune of about $400 per household—for those who walk away from their debts. This important legislation will correct this flaw by ensuring that bankruptcy filers receive only the amount of debt relief they need, no more and no less.

American Bankers Association; American Financial Services Association; America's Community Bankers; Bankruptcy Issues Council; Consumer Bankers Association; Credit Union National Association; Independent Bankers Association of America; National Retail Federation; U.S. Chamber of Commerce.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Washington, DC, March 2, 1998.

Hon. GEORGE GEKAS,
U.S. House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE GEKAS: The U.S. Chamber of Commerce—the world's largest business federation representing more than three million businesses of every size, sector and region—strongly supports bankruptcy reform legislation, specifically, H.R. 3150, the Bankruptcy Reform Act of 1998. We urge you to support this bankruptcy reform legislation sponsored by Chairman George Gekas, Representatives Bill McCollum, Rick Boucher and James Moran. H.R. 3150 will reform our bankruptcy laws and establish a ''needs-based'' system which aids all Americans who are affected by the abuses and misuses of the current code. The timing of this legislation could not be more critical.

The number of personal bankruptcy filings, which canceled approximately $40 billion in consumer debt last year, is rising precipitously. Early indications for 1997 suggest that we will see the number rise by 20 percent over the 1996 record and the amount of debt canceled rise by 33 percent. Given the strong performance of the economy during the past year, these staggering increases in filings suggest that our bankruptcy system must be reformed. Of course, the consumer debt taken off the books by the bankruptcy system is not really erased—instead, the cost is shifted to third parties such as households and businesses, in the form of higher prices and higher interest rates.

In addition to the creation of a ''needs-based'' system, the Chamber applauds the efforts by Chairman Gekas, Representatives McCollum, Boucher and Moran in addressing small business and farm bankruptcies, tax collections and single-asset realty cases, as well as inclusion of education-related provisions and protections for those who receive inadequate or improper counseling. These efforts could be key in providing the best climate in which small business can prosper.

We look forward to working with you and your colleagues on passing this legislation in this session of Congress.

Sincerely,

R. BRUCE JOSTEN,
Executive Vice President,
Government Affairs.

U.S. CHAMBER OF COMMERCE,
Washington, DC, June 8, 1998.

TO MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES: The U.S. Chamber of Commerce, the world's largest business federation, representing more than three million businesses of every size, sector and region, urges you to support passage of the ''Bankruptcy Reform Act of 1998,'' H.R. 3150. This important bipartisan legislation will reform our bankruptcy laws and establish a ''needs-based'' system that will aid all Americans who are affected by the abuses and misuses of the current code.

The number of personal bankruptcy filings, which canceled approximately $40 billion in consumer debt last year, is rising precipitously. Early indications for 1997 suggest that we will see the number rise by 20 percent over the 1996 record and the amount of debt canceled rise by 33 percent. Given the strong performance of the economy during the past year, these staggering increases in filings indicate that our bankruptcy system must be reformed. The fact is the consumer debt taken off the books by the bankruptcy system is not really erased. Instead, the cost is shifted to third parties such as households and businesses, in the form of higher prices and higher interest rates.

The U.S. Chamber of Commerce believes that this bill would close a number of loopholes in the law that encourages debtors to take advantage of our current system and avoid paying their debts. The legislation would steer debtors away from the more lenient ''Chapter 7'' filing, back to ''Chapter 13,'' where courts establish timely repayment plans for those that are able to repay a portion of their debts. Repeated use of bankruptcy laws to continually walk away from debts would be severely restricted.

Because of the importance of this legislation to the business community and consumers, we may include votes on or in relation to H.R. 3150 as key votes in the Chamber's annual How They Voted ratings.

Sincerely,

R. BRUCE JOSTEN.

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, January 30, 1998.

Hon. GEORGE GEKAS,
Chairman, Subcommittee on Commercial and Administrative Law, Committee on Judiciary, U.S. House of Representatives, Washington, DC.

DEAR CHAIRMAN GEKAS: On behalf of the 600,000 small business owners of the National Federation of Independent Business (NFIB), I applaud your efforts to introduce real bankruptcy reform legislation.

Small business is concerned, as many are, about the rapid increase of bankruptcy filings over the last several years. Whether their customers are other businesses or individual consumers, small businesses feel the pain to their bottom line when their customers go bankrupt. As an unsecured creditor, most small businesses never even get a chance to get back what they are owed.

A recent poll found that 77 percent of NFIB members want to put more limits on people's ability to declare bankruptcy. Small business owners feel current law is in need of reform because the federal bankruptcy system has been abused.

The Bankruptcy Reform Act of 1998 that you and Congressman Moran have authored goes a long way to fight the abuses to the bankruptcy system. It will also give small business owners more of a chance to get what is rightfully theirs, while still providing bankruptcy protection to those who truly need it.

Thank you for your leadership on this issue. NFIB looks forward to working with you as this issue proceeds through your subcommittee.

Sincerely,

DAN DANNER,
Vice President,
Federal Governmental Relations.

U.S. DEPARTMENT OF JUSTICE,
UNITED STATES TRUSTEE, NORTHERN AND EASTERN DISTRICTS OF CALIFORNIA AND NEVADA,
San Francisco, CA, May 11, 1998.

Representative GEORGE W. GEKAS,
U.S. House of Representatives,
Washington, DC.

DEAR MR. GEKAS: The Small Business Proposal, a component of H.R. 3150, the ''Bankruptcy Reform Act of 1998,'' is not an untested concept and would codify the ''best practices'' of the United States Trustees. Since January 1, 1995, the field offices of Region 17 have conducted Initial Debtor Interviews in every chapter 11 case filed. In advance of the interview, we request the debtor supply detailed financial information to our office. At the interview, we use that information to focus on the debtor's business and work with the debtor to understand what is required to emerge successfully from chapter 11. We continuously monitor the debtor's financial progress during the pendency of the chapter 11 case with particular emphasis on the debtor's continuing viability. The result of this practice is quicker, and more likely successful, reorganization for chapter 11 cases.

Please contact me if you have any questions.

Sincerely,

LINDA EKSTROM STANLEY,
United States Trustee.

THE CITY OF NEW YORK
LAW DEPARTMENT,
New York, NY, April 15, 1998.

Hon. GEORGE W. GEKAS,
Chairman, House Subcommittee on Commercial and Administrative Law, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN GEKAS: The City of New York (the ''City'') would like to thank you for your leadership in drafting H.R. 3150, the Bankruptcy Reform Act of 1998. The legislation will be of great benefit to the City because it will strengthen the ability of local governments to collect ad valorem taxes. As your Subcommittee prepares for consideration of H.R. 3150, I would like to offer my comments and suggestions on key provisions of the legislation.

The City is especially supportive of ''Title V, Tax Provisions'', which will help ensure that local governments receive more of the tax debt they are owed. Title V will also make the bankruptcy process more predictable and stable for local governments. While these changes will be very beneficial to the City, it is critical that one provision of H.R. 3150 be clarified to avoid unintentionally increasing bankruptcy filings while reducing local government revenue.

As drafted, H.R. 3150 proposes a new section, Section 511 of the Bankruptcy Code, which provides for an Internal Revenue Code rate of interest on tax claims. This provision is problematic as it does not specifically identify or limit the types of taxes subject to the proposed interest rate. Were this section limited to excise tax claims or tax claims on or measured by income or gross receipts, the City would have minimal objection that the interest rate should be the ''statutory rate'' for such taxes. On the other hand, if the bill defines ''tax'' as including ad valorem taxes, the City would have a very strong objection, as the interest rate would be significantly less than that which is charged by the City, and would, in fact, encourage bankruptcy filings by real property owners in order to obtain this more favorable rate. H.R. 3150 should specifically exclude ad valorem taxes from the definition of ''tax'' under Section 511.

The City supports the language in the Bankruptcy Reform Act of 1998 that recognizes that ad valorem taxes must be paid ahead of other debts in bankruptcy cases. The City applauds your leadership on this critical revision of Bankruptcy Code Section 724 for the protection of local government budgets. Cities are non-consensual creditors and are in a unique relationship with debtors in bankruptcy. As such, cities should be paid before other creditors in bankruptcy cases.

The City strongly supports H.R. 3150's revisions to Section 505 of the Bankruptcy Code. The legislation would provide that a challenge to real property assessment may occur only if the period of time to contest such tax did not expire by operation of law. Section 505 of the Bankruptcy Code presently allows debtors to challenge any tax covering any period of time unless such tax had been contested and adjudicated prior to the commencement of the bankruptcy case. Thus, taxes may be contested in a bankruptcy proceeding even if the statute of limitations to challenge the taxes had expired under the relevant state law. This Section is patently unfair to taxing authorities. It fosters abuse by debtors who potentially can force a government to litigate taxes which were collected years ago and had not been timely challenged. It leaves municipalities in a fiscally precarious and vulnerable position. There is no legal finality to tax challenges or stability in local government finances. Since there is no statute of limitations as Section 505 of the Bankruptcy Code is presently drafted, the changes made by H.R. 3150 to Section 505 of the Bankruptcy Code are of enormous importance.

The City supports H.R. 3150's modifications to Section 342 of the Bankruptcy Code that would require a debtor to submit necessary information for creditors, such as taxpayer identification numbers, and parcel numbers for blocks and lots, and to list the appropriate department or agency for filing City claims. This information will enable the City to act more efficiently. However, the City would like clarification that governmental units are allowed to designate safe harbor mailing addresses for each department, agency or instrumentality of such governmental units. In addition, the City would like a clarification that ''notice'' to a particular department, agency or instrumentality of a governmental unit shall not constitute ''notice'' to other departments, agencies or instrumentalities of the same governmental unit.

Thank you again for your leadership on bankruptcy issues. H.R. 3150 can greatly improve the City's ability to collect debts owed by bankruptcy filers which will relieve revenue pressure on all other taxpayers. We appreciate your support for the changes outlined above, and with these clarifications support the prompt passage of H.R. 3150.

Sincerely,

MICHAEL D. HESS,
Corporation Counsel.

COMMONWEALTH OF VIRGINIA, DEPARTMENT OF SOCIAL SERVICES, DIVISION OF CHILD SUPPORT ENFORCEMENT

Richmond, VA, June 9, 1998.

Hon. JAMES P. MORAN,
House of Representatives, Washington, DC.

DEAR CONGRESSMAN MORAN: As Director Nick Young is traveling, I am responding to your request for comments on child support-related portions of H.R. 3150. The inclusion of provisions in H.R. 3150 to improve child support collections when a debtor has filed for protection under the Bankruptcy Code would be very helpful to families in Virginia. Amendments proposed in Section 146 would substantially assist our efforts to enforce child support obligations during the bankruptcy of a child support obligor. Currently, there exist in bankruptcy a number of issues that make enforcement of child support debts difficult when that parent has other creditors also attempting to gain a position in the ranking for distribution of the debtor's bankruptcy estate.

While we have many valuable tools with which to enforce child support collections, bankruptcy can place the child support debt collection in competition with other creditors. This is not normally the case in the rest of our support enforcement tools; child support takes high precedence. In bankruptcy cases filed under Chapters 12 and 13, we must cease income withholding orders and add the child support debt into all the other financial obligations considered in developing the debtor's plan. This hardly puts children first!

Congressman Gekas' proposed amendments in section 146 would correct this situation, and ensure ''children first'' in bankruptcy situations where child support is involved. We most certainly believe these amendments are beneficial to Virginia's families and the larger welfare reform initiative across the country.

Sincerely,

BILL BROWNFIELD,
Legislative Coordinator.

CALIFORNIA FAMILY SUPPORT COUNCIL,

Sacramento, CA June 4, 1998.

Hon. GEORGE W. GEKAS,
House of Representatives, Washington, DC.

DEAR CHAIRMAN GEKAS: The California Family Support Council is an organization of district attorneys and other professionals in the State of California who represent the interest of the children of this state in the establishment and collection of support under the federal child support enforcement program (Social Security Act, Title IV-D). As president of the Council I wish to express the gratitude of our members for your inclusion of provisions in H.R. 3150 to improve child support collections when a debtor has filed for protection under the Bankruptcy Code.

In particular, section 146 of H.R. 3150 contains a veritable ''wish list'' of provisions which substantially enhances our efforts to enforce support obligations during the bankruptcy of a support obligor. It closes many of the ''loopholes'' which currently exist in bankruptcy and which greatly hamper our efforts to enforce support debts when a debtor has other creditors who are also seeking participation in the distribution of the assets of a debtor's bankruptcy estate.

Congress has already provided many tools which give us an enormous collection advantage over other creditors outside bankruptcy. We can, for example, intercept tax refunds; prosecute for criminal non-support or contempt of court; revoke, suspend or non-renew licenses; obtain income withholding order which, under federal law, have an absolute priority over other creditors' claims (42 U.S.C. § 666(B)(7); obtain penalties against employers who fail to honor income withholding orders; obtain such income withholding orders without leave of court; and obtain security bonds or guarantees for the payment of support. In addition nonpayment of support interstate is a federal crime. All of these collection techniques—and many more—are available at little or no cost to support obligees through the child support enforcement program.

During bankruptcy, however, many of these remedies must be reconciled with other bankruptcy code provisions which protect the debtor and place support obligees in competition with other creditors. What is worse, in cases filed under Chapters 12 and 13, income withholding must cease and the support debts must be structured to conform to the debtor's plan.

If the amendments you propose in section 146 of H.R. 3150 were enacted, the opposite would be true. Plans could not be confirmed or discharges granted unless all postpetition support payments were made; income withholding would not be affected by the filing of a bankruptcy petition; lingering issues relating to the dischargeability of certain support debts would be clarified; and distinctions between assigned and unassigned support would be eased. In short, your proposed amendments would make the effect of bankruptcy on a child support creditor negligible.

I have been informed that there is some opposition to H.R. 3150 based on the premise that support creditors would be worse off if certain credit car debts were made nondischargeable and credit card creditors and support creditors were in competition for the same post-discharge assets. I can only say that we are in competition with those creditors prior to bankruptcy now. We do not see such debts as impairing our ability to collect support, especially in view of the advantages child support creditors have under current state and federal law as outlined above. Our problems stem not from competition with credit card creditors outside bankruptcy, but from the disadvantages we incur as collectors of support under current bankruptcy law during bankruptcy. Your proposed amendments would give support creditors an enormous advantage over other creditors during bankruptcy and greatly aid us in the discharge of our support enforcement responsibilities.

I just want you to know that, on behalf of the public child support enforcement community in California, we enthusiastically support your efforts and look forward to the swift enactment of H.R. 3150.

Yours very truly,

JONATHAN BURRIS,
President.

BANK OF AMERICA

San Francisco, CA, March 11, 1998.

Hon. GEORGE W. GEKAS,
House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN GEKAS: I am writing to urge your support of H.R. 3150, the ''Bankruptcy Reform Act of 1998''.

Consumer bankruptcy reform is urgently needed to address the recent explosion in the number of personal bankruptcy filings. Last year, for the first time in history, more than 1 million personal bankruptcy petitions were filed. It is anticipated that as many as 1.4 million consumers will file for bankruptcy this year. This explosion in filings is most troubling given that it comes at a time when the American economy is strong and unemployment is low.

The rise in personal bankruptcies has an undeniable impact on Bank of America. However, it is consumers who are absorbing the heaviest burden. This year, approximately $40 billion in consumer debt will be written off as a result of personal bankruptcy filings. These losses translate to approximately $400 for every American household and are passed on to all consumers as higher interest rates and higher prices for goods and services. In effect, the vast majority of consumers who pay their bills on time are picking up the tab for those who do not.

Our flawed bankruptcy system allows this inequity to continue. The Bankruptcy Code allows individuals to erase all their debts even if they have the ability to repay some portion of them. Not surprisingly, the overwhelming majority of filers—70 percent—choose Chapter 7, which allows virtually all debts to be erased regardless of whether the debtor could repay some of what he or she owes. Recent research shows, in fact, that about 25 percent of Chapter 7 filers have the ability to repay their housing debt plus at least one-third of their remaining debts. One in twenty Chapter 7 filers has sufficient income to repay all debts, but receives complete relief anyway.

H.R. 3150 would change the law to ensure that individuals receive the amount of debt relief they need, no more and no less. It would allow those in the most serious financial difficulty to get the fresh start they need while requiring those with an ability to repay a portion of their debts to do so. It is a sensible solution to a serious problem.

I urge your support of H.R. 3150. This legislation represents important consumer bankruptcy reform that is necessary to stem the rising costs associated with personal bankruptcies, while making the bankruptcy system more equitable for consumers, creditors and debtors alike.

Sincerely,

JAMES G. JONES.

NATIONAL ASSOCIATION OF COUNTIES,
Washington, DC, June 8, 1998.

Hon. GEORGE W. GEKAS,
Chairman, Commercial and Administrative Law Subcommittee of the House Judiciary Committee, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN GEKAS: The National Association of Counties (NACo) supports the Bankruptcy Reform Act of 1998 (H.R. 3150) as reported by the Committee on the Judiciary. We urge the House of Representatives to vote for H.R. 3150 when it is considered on the floor.

NACo particularly is pleased with provisions included in the bill reported by the Committee on the treatment of state and local government tax liens in bankruptcy proceedings. The provisions in H.R. 3150 are very important to states, counties, cities and school districts. The bill would change a number of sections in the Bankruptcy Code that have caused counties to lose millions of dollars in property tax revenues. Counties have to increase taxes, cut programs or find substitute funding to replace this lost revenue as a result of current federal bankruptcy law. We are pleased that the bill contains a majority of the provisions developed and proposed by the National Association of County Treasurers and Finance Officers, an affiliate of NACo.

If you have any questions about the position of the National Association of Counties, please call Ralph Tabor or our staff at 202–942–4254.

Thank you for your consideration.

Sincerely,

LARRY E. NAAKE,
Executive Director.

COLORADO COUNTIES, INC.,
Denver, CO, April 29, 1998.

Hon. GEORGE W. GEKAS,
Member, House Judiciary Committee, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN GEKAS: On behalf of Colorado's 63 county governments, I am writing to urge your continued support of H.R. 3150 also known as the ''Bankruptcy Reform Act of 1998.'' We understand that the House Judiciary Committee will be marking up the legislation in the next week, and we appreciate your leadership in assuring its provisions are considered favorably.

As you are aware, the National Association of County Treasurers and Finance Officers (NACTFO) has been an active participant in the ongoing discussions related to the priority of ad valorum tax liens in bankruptcy proceedings. The organization previously submitted to you a paper entitled ''Local Government Recommendations for Bankruptcy Code,'' and attended all public hearings of the National Bankruptcy Review Commission.

As H.R. 3150 is considered in the Judiciary Committee, we encourage you to consider the attached ''Specific Recommendations to Amend H.R. 3150'' dated April 10, 1998, as prepared by The Honorable Ray Valdes, Co-Chair of the Legislative Committee of the National Association of County Treasurers and Finance Officers. The recommendations include a number of provisions that we believe will make H.R. 3150 an even stronger reform measure.

If you have specific questions regarding the proposal, I encourage you to contact The Honorable Ray Valdes at 407.321.1130 or The Honorable Sandy Hume, Boulder County Treasurer, at 303.441.3500.

Thank you for your consideration.

Sincerely,

PETER B. KING,
Director.

NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS,
Washington, DC, February 26, 1998.

Hon. GEORGE W. GEKAS,
Chairman, Commercial and Administrative Law, House Judiciary Committee, Washington, DC.

DEAR CHAIRMAN GEKAS: On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association exclusively representing the interests of the nation's federal credit unions, I wish to commend you on your efforts to restore personal responsibility to the bankruptcy system.

NAFCU believes that the ''Bankruptcy Reform Act of 1998'' (H.R. 3150) will help to ensure that the system is fair for debtors, creditors and consumers. Because of the unique structure of member-owned credit unions all losses suffered by a credit union are passed down through the members in the form of higher loan rates, lower rates on savings and/or more stringent lending criteria. Credit unions take great pride in working with their members who encounter financial difficulties and your legislation is certainly a step in the right direction. NAFCU is pleased to endorse this legislation.

NAFCU would like the opportunity to testify and share with the Committee the impact bankruptcies have on member-owned cooperative credit unions, and the unique role credit unions can play in assisting those in dire financial straits.

Thank you for the opportunity to participate in this important effort. Please allow me to extend a special note of appreciation to the members of your staff, especially Dina Ellis, for their assistance and support.

We look forward to working with you on this and other challenging issues affecting credit unions and your credit union constituents.

Sincerely,

WILLIAM J. DONOVAN,
Senior Vice President, Deputy General Counsel.

NATIONAL MULTI HOUSING COUNCIL AND NATIONAL APARTMENT ASSOCIATION,
Washington, DC, February 2, 1998.

Hon. GEORGE GEKAS,
Chairman, Commercial and Administrative Law Subcommittee, House of Representatives, Washington, DC.

DEAR CHAIRMAN GEKAS: On behalf of the National Multi Housing Council (''NMHC'') and the National Apartment Association (''NAA''), I am writing to convey our strong support of your legislation, the ''Bankruptcy Reform Act of 1998.''

NMHC and NAA jointly operate a federal legislative program which provides a unified voice for the private apartment industry. Our combined memberships are engaged in all aspects of the ownership and operation of apartments, including finance, development, construction, and management.

Bankruptcy filings in the nation continue their upward climb. According to the most recent information from the U.S. Department of Justice's Administrative Office of U.S. Courts, the federal agency which oversees the nation's federal bankruptcy courts, bankruptcy filings during the 12-month period ending September 30, 1997, were highest on record at 1,367,364, representing over a 400 percent increase since 1980.

The National Bankruptcy Review Commission has spent considerable time investigating the cause of these bankruptcy filings, and while there is no single answer, it is clear that part of the problem lies in the abuses of the U.S. Bankruptcy Code. NMHC and NAA believe that your legislation will help to stem these abuses and provide a more level playing field between debtors and creditors.

NMHC and NAA commend you for your leadership in reforming the Code and look forward to working with you during the 105th Congress to pass the Bankruptcy Reform Act of 1998.

Sincerely,

SCOTT BELCHER.

[News release from the National Retail Federation]

NATIONAL RETAIL FEDERATION VOICES SUPPORT FOR BANKRUPTCY REFORM ACT OF 1998

BILL WOULD STEM SOARING FILINGS AND RESTORE COMMON SENSE TO BANKRUPTCY CODE

Washington, DC, February 3, 1998—The National Retail Federation, the world's largest retail trade association, today voiced its support for The Bankruptcy Reform Act of 1998, calling it a giant first step that puts responsibility and sensibility back into the bankruptcy code.

''We applaud Rep. Gekas and his colleagues for their leadership in crafting this commonsense approach to bankruptcy reform,'' said NRF President Tracy Mullin. ''This bill will ensure that those with real need get real relief.''

The bill, introduced by Reps. George Gekas (R–PA), Thomas Moran (D–VA), Bill McCollum (R–FL) and Rick Boucher (D–VA), addresses what NRF believes are fundamental flaws in the current bankruptcy code: that individuals with the ability to repay their debts are not required to do so, nor is there any mechanism to determine their ability to pay.

Mullin noted that the number of individuals filing bankruptcy has soared in recent years—up nearly 60 percent in two years—in

spite of a growing economy and low unemployment. A recent study also revealed that 25 percent of those filing Chapter 7 could repay at least one-third of their debts.

''That's just plain wrong,'' she said. ''The bottom line is the costs associated with bankruptcy don't disappear; everyone pays for those who walk away from their debts.''

Retailers lost billions last year in bankruptcy claims. The growth in bankruptcy filings—particularly Chapter 7 filings—costs the average U.S. household an estimated $500 in higher prices for goods and services.

''The Bankruptcy Reform Act of 1998 is a positive step forward to restoring common sense to the bankruptcy code,'' Mullin concluded.

The National Retail Federation (NRF) is the world's largest retail trade association with membership that includes the leading department, specialty, discount, mass merchandise and independent stores, as well as 32 national and 50 state associations. NRF members represent an industry that encompasses over 1.4 million U.S. retail establishments, employs more than 20 million people—about 1 in 5 American workers—and registered 1997 sales of $2.5 trillion. NRF's international members operate stores in more than 50 nations.

FLEET,
Horsham, PA, May 19, 1998.

Hon. GEORGE W. GEKAS,
Rayburn House Office Building,
Washington, DC.

DEAR CONGRESSMAN GEKAS: On behalf of Fleet Financial Group I urge you to support H.R. 3150, the ''Bankruptcy Reform Act of 1998'' which is scheduled to come to the House floor this week. H.R. 3150 was reported favorably by the Judiciary Committee last week and contains urgently needed reforms to the consumer bankruptcy system. The bill establishes a fair and equitable ''needs'' test that requires those that can afford to repay some or all of their debts to do so.

Consumer bankruptcy filings exceeded 1.3 million last year, an increase of 20% from 1996 and more than 350% from 1980. Contrary to popular belief, credit cards are not a leading cause. Credit card loans represent only 7% of total US consumer debt and less than 16% for bankrupts. Ninety-six-percent of credit card holders pay on-time and only one-percent end up in bankruptcy .

Surveys have found an increasing number of consumers view bankruptcy as an acceptable option with little or no stigma. The 5,000 petitions filed daily cost responsible debtors upwards of $400 per year, or the equivalent of one-month's groceries for a family of four. To protect these families, it is essential that the system be reformed as proposed by H.R. 3150.

Some opponents of this legislation have argued that it raises concerns about child support payments. However, the Judiciary Committee adopted several amendments last week designed to strengthen and clarify the priority given to child support payments in bankruptcy proceeding and to deal effectively with other issues raised. Current federal and state law, as well as H.R. 3150 as reported by the Judiciary Committee, make it clear that child support must be paid 100% before repayment of any unsecured debt, including credit card debt. In fact, the House and Senate both recently passed the Child Support Performance and Incentive Act of 1998 that strengthens current law by increasing penalties for nonpayment of child support. That bill is going to conference and is expected to be signed into law by the President soon.

Fleet Financial Group urges you to vote YES on H.R. 3150 when it comes to the House floor and to reject amendments that weaken the needs test or otherwise undermine this important legislation.

Sincerely,

JOSEPH W. SAUNDERS,
Chairman and CEO.

EXPERIAN,
Orange, CA, April 15, 1998.

Hon. GEORGE W. GEKAS,
Chairman, House Judiciary Subcommittee on Commercial and Administrative Law, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I am writing on behalf of Experian, a leader in the consumer credit reporting industry, to express our support for your bill, H.R. 3150, the Bankruptcy Reform Act of 1998. Your bill represents a balanced approach to restoring personal responsibility to our federal bankruptcy system.

The proposal to require certain filers to repay at least some of their debt when seeking bankruptcy protection is a commonsense measure. The current bankruptcy system is flawed because it allows debtors that clearly have an ability to repay to walk away from their debts. Credit grantors deserve a chance to work out a payment schedule with consumers who have reasonable incomes.

At the same time, your proposal ensure that relief will be available for those who truly need bankruptcy protection. In addition, Experian supports the provisions of H.R. 3150 that promote consumer education and encourage debtors to fully explore alternatives to bankruptcy.

Now is the time for bankruptcy reform. The U.S. economy is stable and unemployment is low. Yet, last year 1.4 million individuals filed for personal bankruptcy, a record number that has more than doubled during the past decade. Personal bankruptcies costs the economy more than $40 billion each year, an amount that translates to about $400 per American family.

Please continue your leadership on this important reform measure.

Sincerely,

D. VAN SKILLING,
Chairman and CEO.

SENT TO ALL MEMBERS OF THE HOUSE JUDICIARY COMMITTEE, MAY 5, 1998

DEAR REPRESENTATIVE: We are writing in anticipation of the Committee's consideration of HR 3150, the ''Bankruptcy Reform Act of 1998.'' Our organizations urge the Committee to endorse a provision reported by the Subcommittee on April 23 to delete the $4 million cap from the definition of single asset real estate.

Single asset real estate is a form of real estate financing whereby the owner of a single piece of commercial real estate borrows funds from a lender and gives a mortgage on the property as collateral. The distinguishing feature of this arrangement is that the owner holds the property as an investment and does not conduct any business on the property. Therefore, arguments that this will cost jobs are baseless and erroneous. Rather, bankruptcies that cause property deterioration result in vacant buildings, tax losses to communities, economic decay and significant job losses.

Congress recognized that single asset entities should receive expedited treatment with the passage of the Bankruptcy Reform Act of 1994. However, during the final hours just prior to passage, a $4 million cap was arbitrarily inserted into the definition of single asset real estate. The presence of the $4 million cap is indefensible because there is no basis in fact, law, or commercial lending practice for the cap. To the contrary, the utility of the single asset provisions in avoiding or shortening futile Chapter 11 reorganization proceedings is greater, rather than less, for large properties with more secured debt. Therefore, the $4 million cap should be deleted to permit the efficient operation of the single asset provisions and the fulfillment of their purpose.

Finally, mortgages may be used to fund pensions, annuities and life insurance. They will be at risk in the next downturn of the economic cycle if defaulting single asset real estate owners are permitted to abuse the bankruptcy process.

For these reasons, we strongly support HR 3150, and specifically, the provision in the bill that would delete the $4 million cap from the definition of single asset real estate.

Sincerely,

AMERICAN BANKERS ASSOCIATION.
AMERICAN COUNCIL OF LIFE INSURANCE.
MORTGAGE BANKERS ASSOCIATION OF AMERICA.
NATIONAL ASSOCIATION OF REALTORS.
INSTITUTE OF REAL ESTATE MANAGEMENT.

HOUSEHOLD,
June 8, 1998.

U.S. House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE: Household International strongly supports passage of HR 3150, the Bankruptcy Reform Act of 1998, and we urge your support for the bill when it appears on the floor of the House later this week.

Household International, headquartered in Illinois with major facilities in California, Nevada and Virginia, is a leading provider of consumer finance and credit card products in the United States, Canada and the United Kingdom. Household Finance Corporation, one of Household's core businesses, is the oldest consumer finance company in the United States. Household Credit Services and Household Retail Services are two of the nation's largest issuers of general purpose and private-label credit cards. Our principal credit card products include the GM card and the AFL–CIO's Union privilege card. Household recently reached agreement to buy Beneficial Corporation and upon completion of that merger will have more than 1000 branches throughout the United States.

Despite a strong economy, personal bankruptcies are soaring and reached a record 1.3 million in 1997. Bankruptcies cost consumers about $40 billion last year, equal to about $400 per family working to pay its bills. HR 3150 does not have as a goal reducing the total number of bankruptcies, but it contains a mechanism to guide some 11% of filers who have the means to pay some of their debts into Chapter 13 bankruptcy where they will work with the court to create a repayment plan to pay a portion of the debts they have run up. Household believes it is only fair that those who can pay some of the debts do so, and according to a poll released by the National Consumer league, 76% of the public agrees that ''individuals should not be allowed to erase all their debts in bankruptcy if they are able to repay a portion of what they owe.''

Amendments to HR 3150 added at the full Committee mark-up raised the income level for the safe harbor provision of the bill and added protections for children and spouses receiving child support and/or alimony above those in existing law. We believe the bill is fair and needed. Household strongly urges your support for HR 3150.

Sincerely,

J. DENIS O'TOOLE,
Vice President, Government Relations.

MELLON BANK,
ONE MELLON BANK CENTER,
Pittsburgh, PA, June 8, 1998.

Hon. GEORGE W. GEKAS,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN GEKAS: I am writing to call your attention to a matter that is of vital interest to every bank, savings and loan, credit union and retailer across Pennsylvania. The issue is bankruptcy reform. There is currently a bill in the House that, in our view, addresses this growing problem and injects some common sense reforms into our outdated bankruptcy system. This bill, H.R. 3150, was recently reported out of the House Judiciary Committee and is scheduled for a vote on the floor this week.

As you know, filings for bankruptcy have skyrocketed in recent years to a point where it has become the option of choice for many who face financial difficulties. While we would never preclude the choice of a Chapter 7 filing for those truly in need of complete debt relief, we do take issue with those who possess the means to repay their debts but instead walk away from their obligations.

This abuse of the system does have a cost. At Mellon, in fact, we lost, on average, over $75 million in each of the last three years as a result of bankruptcy filings. We are forced to raise the cost of credit for our responsible customers to cover the losses we incur because of bad debt. For retailers, like department stores, losses are covered through higher prices on merchandise. But no matter how the losses are recouped, the end result is the same; people who pay their debts cover the cost of those who do not.

To correct this worsening problem, we are asking you to endorse ''needs-based'' bankruptcy reform legislation. H.R. 3150, we believe, provides a model reform measure for Congress to adopt and we think the ideas presented in this bill warrant your close inspection and your support.

Please vote ''yes'' on bankruptcy reform.

Sincerely yours,

MARTIN G. MCGUINN,
Chairman.

COMMUNITY ASSOCIATIONS INSTITUTE,
April 27, 1998.

Hon. GEORGE W. GEKAS,
U.S. House of Representatives,
Washington, DC.

DEAR CHAIRMAN GEKAS: On behalf of the 42 million Americans who live in the nation's 205,000 community associations—condominium associations, cooperatives and homeowners associations, I would like to thank you for supporting small but important changes to the Federal Bankruptcy Code.

Your willingness to include our changes in your amendment in the nature of a substitute to H.R. 3150 is greatly appreciated. These changes will obligate owners in homeowners associations, condominium associations and cooperatives who file for bankruptcy to pay association assessment fees as long as they—or their Trustees—maintain an ownership interest in their units. Community association assessments will also not be treated as executory contracts.

While changes to the Code in 1994 added important provisions dealing with the collection of post-petition assessments in certain condominiums and cooperatives, homeowners associations and commercial condominium associations were inadvertently omitted from the final legislation. Your inclusion of our language in your amendment will expand existing provisions to include homeowners associations and tie the responsibility for post-petition assessments to ownership.

Without this change, bankrupt owners could continue to avoid their assessment obligations whenever their units are vacant or occupied by people who do not pay rent—while all other association residents are left to pick up the tab.

Again, thank you for taking notice of the importance of this issue to over 42 million Americans. Please contact me by phone (703–548–8600), fax (703–684–1581) or email (cschneider@caionline.org) if CAI may be of assistance in any way.

Sincerely,

CORNELIA I. SCHNEIDER,
Issues Manager, Government & Public Affairs.

AMERICA'S COMMUNITY BANKERS,
June 9, 1998.

DEAR REPRESENTATIVE: America's Community Bankers (ACB) urges you to support H.R. 3150, which would provide much-needed reform for our nation's bankruptcy laws.

This legislation mandates that debtors who have the ability to repay a portion of their debts be required to do so, introducing the ''needs-based'' concept into the bankruptcy system. Under the ''needs-based'' system, debtors who truly need bankruptcy relief are provided a relatively quick and easy discharge in Chapter 7, while debtors who have the ability to repay are permitted to structure reasonable repayment plans in Chapter 13.

Further these revisions ensure that residential real estate mortgages cannot be ''crammed down,'' or reduced in priority, in bankruptcy. This rule, articulated by the Supreme Court in the 1993 Nobelman case, provides for fairness and certainty in mortgage-related transactions.

Moreover, it should be noted that any issues relating to child support and alimony have been resolved by the House Judiciary Committee. While H.R. 3150 did not alter existing law with respect to the priority of child support and alimony payments, the Judiciary Committee did adopt a series of amendments to address this issue. These amendments specifically and categorically provide that child support and alimony payments will be afforded priority over unsecured debts, both during and subsequent to the bankruptcy proceedings. Thus, child support and alimony payments are clearly protected under H.R. 3150.

H.R. 3150 creates an equitable system that balances the interests of both debtors and creditors. ACB and our members urge you to vote for H.R. 3150 because it will preserve and improve the bankruptcy system for all Americans.

Sincerely.

ROBERT R. DAVIS,
Director of Government Relations.

COUNCIL FOR CITIZENS AGAINST
GOVERNMENT WASTE,
Washington, DC, April 17, 1998.

Hon. GEORGE GEKAS,
U.S. House of Representatives,
Washington, DC

DEAR REPRESENTATIVE GEKAS: This letter is in response to your request for our opinion on H.R. 3150 (The Bankruptcy Reform Act of 1998). On behalf of the 600,000 members of the Council for Citizens Against Government Waste (CCAGW), I am pleased to support this important legislation. H.R. 3150 establishes fair and reasonable bankruptcy guidelines designed to protect debtors, creditors, and consumers while still holding debtors personally accountable.

In 1997, 1.33 million bankruptcy petitions were filed in this country, erasing an estimated $40 billion in consumer debt, which resulted in increased interest rates, set higher prices and increased layoffs. Each household will pay out an extra $400 this year to account for that consumer debt. H.R. 3150 ensures that responsible consumers will no longer be forced to shoulder such a large burden. By establishing a system that determines the amount of financial relief a debtor actually needs and requiring people to repay what they can, H.R. 3150 obligates debtors to take more responsibility for their situation.

H.R. 3150 also creates a ''Debtor's Bill of Rights'' which requires law firms and other consumer credit agencies to refund the full cost of representing a debtor if they do not adequately inform consumers of their rights and the potential harm bankruptcy can cause. Too often, debtors are not aware of options other than bankruptcy. The ''Debtor's Bill of Rights'' should reduce the amount of bankruptcy claims filed and therefore reduce the total amount of debt passed on to responsible consumers. Additionally, H.R. 3150 establishes a financial management training program that debtors may be required to complete in order to have his or her debts discharged. Educating debtors encourages them to become fiscally responsible and reduces the chance that their financial situation will again become unstable.

The Bankruptcy Reform Act of 1998 contains numerous provisions which protect all of those involved in a bankruptcy claim: the debtor, the creditor, and all consumers. In this time of economic prosperity, it is important that legislation be enacted that will help those in dire financial situations while protecting responsible consumers who unfairly shoulder the cost of bankruptcies. We encourage your colleagues to support H.R. 3150.

Sincerely,

THOMAS A. SCHATZ,
President.

THE BANKERS ROUNDTABLE,
Washington, DC, April 27, 1998.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
Washington, DC

DEAR MR. CHAIRMAN: The Bankers Roundtable, representing the nation's major banking companies, strongly supports the Bankruptcy Reform Act of 1998, H.R. 3150. As you are aware, studies have shown that the 1.3 million bankruptcies filed in 1997 have cost consumers over $40 billion. As a result, U.S. households have had to pay over $400 each in increased annual borrowing costs. A responsible approach to reform, such as H.R. 3150, would benefit the vast majority of Americans who properly use consumer debt as a tool to manage their household finance and repay their debts in a timely manner.

H.R. 3150's means-test would maintain Chapter 7 discharge of debts for poor or heavily indebted borrowers while requiring those with the capacity to repay all or some of their debts to do so. Further, the bill's other balanced measures to reduce fraud and abuse in bankruptcy filings would aid in ensuring that consumers continue to have access to credit at reasonable and affordable terms and rates.

Attached please find a copy of the Roundtable's Policy Statement on Consumer Bankruptcy Reform. The Bankers Roundtable asks for your support for H.R. 3150, including the concept of a means-test, and looks forward to working with you on this legislation.

Sincerely,

ANTHONY T. CLUFF,
Executive Director.

NATIONAL LEAGUE OF CITIES,
Washington, DC, June 3, 1998.

Hon. GEORGE W. GEKAS,
U.S. House of Representatives,
Washington, DC

DEAR REPRESENTATIVE GEKAS: The National League of Cities (NLC) urges your support in the passage of provisions of the

''Bankruptcy Reform Act of 1998'' (H.R. 3150) that would aid local governments. The inclusion of the Investment in Education Act, as passed by the Senate in November 1997 in H.R. 3150, recognizes the importance of payment of ad valorem taxes to local governments to support education. NLC strongly urges you to support these provisions and the amendments made by the House Judiciary Committee that would strengthen the Investment in Education Act.

This legislation is very important to local governments because it would change provision of the Bankruptcy Code that have caused local governments to lose millions of dollars in property tax revenues. As you know, property taxes are the bread and butter of the education budget for cities, towns, counties, and school districts.

Of the provisions included in this bill, it is most important that local governments are able to receive the local statutory interest rate on ad valorem tax claims associated with bankruptcies. Cites and towns are nonconsensual creditors and are in unique situations with their constituents. In New York City and some New Jersey, Texas, Illinois, and California cities and towns the local interest rate accruing on unpaid taxes should be double the I.R.S. statutory rate. Cities cannot afford to have their interest rate ''crammed down''. Clarifying that the local interest rate should be applied for unpaid ad valorem taxes would put an end to unnecessary favorable treatment for bankruptcy filers who have not paid their property taxes.

NLC strongly encourages you to pass the Investment in Education provisions in H.R. 3150 this year, to ensure cities and towns, vital revenues for their education budgets. NLC looks forward to working with you towards the passage of bankruptcy legislation. If you have any questions, please, please have your staff contact Kristin Cormier, NLC Legislative Counsel, at (202) 626–3020.

Sincerely,

BRIAN O'NEILL,
President, Councilman, Phildelphia, PA

(Mr. NADLER asked and was given permission to revise and extend his remarks.)

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, bankruptcy is a dull, boring and technical subject. Not many people pay detailed attention to it. And advocating that people behave responsibly and pay their debts, if at all possible, is attractive and unassailable.

□ 1415

I know that many people, seduced by that slogan, signed up to support this bill. But it was false packaging, an attractive wrapper to disguise one of the worst special interest bills we have considered in many years.

When you strip away the veneer and the verbiage, there stands, starkly revealed, a bill with one central purpose, to take large sums of money from middle- and low-income American families in distress and give it to the credit card companies; and, while we are at it, to take large sums of money from other creditors and give it to the credit card companies. This is a bill of, by, and for the credit card companies which have waged a long and expensive campaign for it.

Who benefits from this bill? The credit card companies. Who gets hurt by this bill? Middle- and low-income families who are in over their heads in debt because of a medical emergency, a lost job, gambling addiction; mothers rearing young children dependent on child support or spouse support; crime victims seeking victim's compensation; other creditors who cannot afford the high-priced lawyers of the credit card companies to compete for the collection and who will have to forgo repayment of the $260 million to $1.3 billion the Congressional Budget Office says this bill will add to administrative costs and which will come out of money to be recovered by the creditors; small business owners whose businesses this bill will force into liquidation instead of survival; and the taxpayers, who will have to foot the $214 million the CBO says this bill will add to the Federal budget.

Who supports this bill? The credit companies and the big banks. Who opposes this bill? The consumer groups, the AFL-CIO, the women's groups, the victims' rights organizations, the bankruptcy judges, the bankruptcy trustees, the National Bankruptcy Conference, the National Association of Chapter 13 Trustees, the National Association of Consumer Bankruptcy Attorneys, the Administration; in short, everybody who knows the bankruptcy system except the credit card companies and the big banks. In fact, this legislation is nothing more than a special interest favor to the big credit companies and the big banks. It will take American families in terrible economic straits and it will allow creditors to harass them with litigation. It will allow MasterCard and Visa to snatch child support from struggling families. It will clog our courts. It will invade the privacy of families by requiring them to make their tax returns public so that banks and other creditors can review the most private details of their lives, including medical expenses, and it will cost the taxpayers a bundle to collect the reckless debts of credit card companies who sent out more than 3 billion credit card solicitations last year to children, family pets and people already in over their heads.

Why do we need this bill? We have heard a great many extravagant claims about the reasons why more than 1.3 million Americans filed for bankruptcy last year. The underlying assumption of this legislation that millions of Americans are essentially deadbeats using the bankruptcy code to cheat unsuspecting and helpless megabanks is quite frankly a slander against the American people.

Mr. Chairman, we have been told that the reason we have increased bankruptcy filings is that social mores have changed, that there is no longer a stigma associated with bankruptcy, that people use it as a first financial planning option instead of as a last resort, that there is an easy availability of bankruptcy. But this does not make sense. The bankruptcy code does not cause people to go bankrupt. Lack of health insurance, downsizing, jobs moving abroad, family disintegration, the sort of problems you would hear about if you listened to your neighbors, that is what causes bankruptcy. What is really scandalous is that instead of dealing with the pressures on American families, this Congress chooses to go after the victims. In fact, the Committee on the Judiciary received testimony from academics, from people like Professor Ausubel of the University of Maryland, demonstrating a direct link between deregulation of interest rates, increased lending and the increase in bankruptcies. These findings are supported by the work of the FDIC and we are waiting for the completion of a Congressional Budget Office review of the data which it appears will also likely confirm these findings.

What we have seen is that although real interest rates, the costs banks pay for money, have dropped substantially over the last 20 years, credit card interest rates, the price American consumers pay to borrow money on their credit cards, have remained extraordinarily high. The result, credit card operations are now the most profitable of all banking operations, up to five times more profitable than noncredit card operations. If it were true, as we are told by the supporters of this bill, that it is changing social mores, lack of a stigma that are getting people to file for bankruptcy when they still can pay their debts before they are in over their heads when they would not have done so years ago, one would expect that the ratio of debt that people have to their income would have gone down, because people are now filing when they still can pay their debts, whereas earlier they did not.

But, in fact, look at this chart. It shows just the opposite. In 1983, the average debt-to-income ratio of a Chapter 7 filer, someone who filed for bankruptcy, was 87 percent. It went up consistently. It has doubled. Now it is 164 percent, which means it went up, not down. People are twice as deeply in debt today before they file for bankruptcy as they were in 1981. They are more desperate. They do not file easily. They wait as long as they can.

In fact, if you look at the rise in bankruptcies and you look at the rise in the debt-to-income ratio in people at large and how much debt people have which started increasing with the deregulation of credit card rates about 20 years ago, you find it tracks almost exactly. Look at this. As the debt-to-income ratio goes up, that is what causes the bankruptcy filings to go up.

It is the irresponsible lending by the credit card companies that is largely responsible for the increase in bankruptcy filings. In fact, if we wanted to do something about this, we should limit that irresponsible lending. But unfortunately, that amendment was not made in order. We should say that it is an objection to claim, that you cannot collect your debt if you lent the money after you knew that the person was already in over his head, after he

already had a debt to income ratio of 40 or 60, draw the line, percent, but that unfortunately the Committee on Rules did not make in order.

We know that credit card lending is very profitable today. In fact, if you look at the chart, you see the profitability of credit cards versus the profitability of the overall banking system. The overall banking system has remained at the same level of profitability for the last 25 years. The profitability of the credit card system, however, has doubled. We have to bail them out with this bill because they are losing some money on bad debts when their profitability is five times the profitability of all other parts of the banking system.

Credit card interest rates have stayed up. The cost of money has gone down from 14 percent, reduced by half to 6 percent, but the credit card interest rates have gone down from 18 to 16 percent. Then we are told that we will save $400 per American family if we pass this bill because the credit card companies will lower the interest rates to counter the fact that they are getting more money from deadbeats. Look at the record. If you believe that, there are a couple of bridges in New York, not just the Brooklyn Bridge, that I can sell you for only a couple of billion dollars.

The fact is that car loans have gone down, mortgages have gone down, the cost of money has gone down, the credit card interest rates stay up and that is why they are so profitable. If we pass this bill, they will be even more profitable, but it will not be passed through to the consumer by a nickel.

Having said all that, we agree, there are some people who abuse the system. There are people who are filing for Chapter 7 bankruptcy who can afford to repay their debts. Let us crack down on them. But that is what the Democratic substitute says. Let us crack down on them, but let us crack down on them through a reasonable test, a test that really looks at their ability to pay.

The administration in its statement of opposition says:

> The formulaic mechanism in H.R. 3150 will not distinguish accurately those debtors who have the capacity to repay from those that do not have that capacity. A properly structured system would give bankruptcy courts greater discretion to consider the specific circumstances of a debtor in bankruptcy.

That is what we want to do in this substitute. That is what we did in the bill that the committee refused to consider. The fact is if you look at the ability to repay, you will want to look at someone's income and his expenses, how much is he paying in rent, not as the bill before us would say, how much does the Internal Revenue Service think someone in the northeastern United States is probably paying for rent. Who cares what someone might be paying for rent, the average person. The question is how much is he paying for rent, how much is he paying for child care, for his medical expenses for his wife or his daughter or whatever. A formula does not work. We have to have a human being there, a judge, who can take a look at the situation to make a judgment, not a computer.

The majority brags about this bill, that you can put it into a computer and the result will be put out, no human discretion, no human sympathy, no human understanding and no facts, only theory, from the Internal Revenue Service, of all people. That is what this means-based test is. Even if you pass the means test, under this bill you will be harassed by creditor motions that are not permitted in the law now, by the threat of litigation, and it will lead to many people who meet the means test having to withdraw their petitions because they cannot afford to pay the lawyers to fight the banks' lawyers on these frivolous, dilatory motions.

The other thing this bill does, because its major function is to give a lot of money to the credit card companies, is that credit cards jump the line. They are going to be nondischargeable in bankruptcy. The administration says the bankruptcy code generally makes debts nondischargeable only where there is an overriding public purpose as with debts for child support and alimony payments, educational loans, tax obligations or debts incurred by fraud. What is the overriding public policy purpose for skipping the credit cards ahead of the secured debtor, ahead of priority debt and making it nondischargeable? There is no public policy purpose. What is the public policy purpose for saying that in a Chapter 13 workout plan, you cannot confirm the plan unless you pay $50, minimum monthly, to the credit card companies? So if your ability to repay is $75 a month, $50 goes to the credit card companies and $25 is left for everything else.

Credit cards uber alles. Why? Why should the other creditors take second fiddle, creditors who have security interests, creditors who may have done more due diligence? And if your ability to repay is $40, less than the $50 minimum, they cannot confirm a plan, so you are too rich for a Chapter 7 bankruptcy and you are too poor for a Chapter 13 bankruptcy and you fall right through the cracks. And because the purpose of this bill is in these ways, by nondischargeability and a $50 minimum under Chapter 13, to give the money to the credit card companies, it fouls up the child support, it fouls up the victim's collection of crime victim's compensation.

The sponsors of the bill say they fixed it in committee. First they denied it. Then they said they fixed it. Now they have an amendment to say they fixed it. But all the groups who deal with this, the women's groups, the child support groups, the administration, they say those fixes are cosmetic, they do not deal with the problem, and they do not.

What does it do to small business? For reasons I know not, this bill adds great paperwork requirements to small businesses, constricts the time limits in which they have to do things, adds in effect a mini confirmation hearing before the confirmation hearing, all of which will result, as the Small Business Administration tells us, in thousands and thousands of small businesses that go into Chapter 13 and Chapter 11 for workouts to restructure their debts, to reorganize and to come out of it, retaining the business, retaining their employees, they will not be able to meet it, they will liquidate, jobs are gone. Why should we do this to small business?

Finally, this bill is a budget buster. CBO tells us, the Congressional Budget Office, it will cost the taxpayers $214 million out of the Federal budget, and they tell us it is a private sector burden of $260 million to $1.3 billion. That is the effect this bill would have.

In summary, this bill affects negatively everybody except the credit card companies and the big banks. The bill is ill-considered, it is not ready to move, it is a budget-buster, it takes away the rights of debtors, and it will hurt many creditors as it aids the credit card companies in their search for greater profits. This bill is unworthy of this House and will cause misery to our neighbors and financial distress. This bill is in fact morally bankrupt and I urge my colleagues to reject it.

Mr. Chairman, I reserve the balance of my time.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume, only to say, to repeat as often as possible, that the support enforcement agencies of the country are happy with the provisions of H.R. 3150 with respect to collection of child support. We will spread on the record as we have time and time again letters from the California support people, New York and others who are blessedly happy with what we are trying to do on support matters.

Mr. Chairman, I yield 3 minutes to the gentleman from Florida (Mr. MCCOLLUM).

(Mr. MCCOLLUM asked and was given permission to revise and extend his remarks.)

Mr. MCCOLLUM. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in strong support of this bill. I certainly respect the gentleman from New York (Mr. NADLER), but I disagree with a lot of his analysis and I want to go through it quickly.

First of all, we had a $44 billion loss in bankruptcies last year alone. We have seen an over 100 percent increase in personal bankruptcy filings from 1986 to 1996. And last year, the year in which the economy probably did better than any other time in the history of the Nation, bankruptcy filings were up some 20 percent in that year alone.

□ 1430

We have got a problem in this country, whatever the reason may be. Maybe some of that does belong because credit card companies send too many notices out to people, but by and large that is not the reason that we have the problem. It is because people are not exercising individual responsibility because they are not going to a payback plan when they could afford to pay back their debts as they once did, at least in larger numbers than they do now.

What our bill has tried to do is to help the consumer. The person who is responsible who does have credit card and other debt who does pay that debt back, help them to avoid the cost that they are paying because of the bad debt people who take advantage of pure bankruptcy and do not pay back the debt they are supposed to and could pay back.

The fact of the matter is that no credit card company or any other creditor is going to absorb the losses of the magnitude we are talking about. They are going to cost shift. They are going to pass that on. They do it in the cost of goods and services, fees and interest rates.

Will they all come down if we pass this bill? I do not know, but they sure as heck are going to go up if the rate of bankruptcies continue to climb the way they are now.

So our bill is a consumer protection bill. It creates a needs-based test, and it is a very simple formula. It says to take median family income, determine what that is. For a family of four that is about $51,000 last year. If they have less than a median family income, they can still file plain old vanilla pure bankruptcy under chapter 7, and do not worry about the means test and the needs test. But if they have over 50,000, they have got to go through this formula. Take monthly gross income, deduct from that monthly gross income the amount of secure debt payments, how much is being paid on the car. Then deduct from that the amount paid for child support, alimony, other court ordered support. Then deduct from that the monthly payments for other living expenses which are calculated under the Internal Revenue Service Code like we do for our taxes, for whatever they are, and if after doing that there is left over $50 a month or more and if by applying what there is left over they could pay off 20 percent or more of their unsecured debt over 5 years, then they have to file chapter 13 or a payback plan from a bankruptcy. Still get bankruptcy protection, but they have to file the kind where they actually pay back what they owe.

That is the basic premise of bankruptcy law. People who can afford to pay it back ought to be required to pay it back. That is the premise of this bill. There is nothing more and nothing less here, and I would certainly encourage my colleagues to recognize the fact that whatever else they think, this is a simple formula, it is not complicated, it is not expensive, it could be done with all the data that goes into bankruptcy courts anyway in the first place. We need to put personal responsibility back into the system again, and I encourage the adoption of this bill in the strongest of terms.

Mr. Chairman, I thank the gentleman for having yielded this time to me.

Mr. GEKAS. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. BOUCHER).

Mr. BOUCHER. Mr. Chairman, I want to commend the gentleman from Pennsylvania (Mr. GEKAS) for bringing H.R. 3150 to the floor today. It incorporates the core provisions of H.R. 2500 which the gentleman from Florida (Mr. MCCOLLUM) and I introduced last year. That measure was cosponsored by 185 Members of the House, including 40 Members on this side of the aisle, the Democratic side. These core reform measures are a part of H.R. 3150, and they truly have bipartisan support.

A central tenet of the reform is the needs-based test for chapter 7 that was just described in the statement by the gentleman from Florida (Mr. MCCOLLUM). That is the complete liquidation provision under the bankruptcy law. Under that approach bankruptcy filers who could pay a significant amount of their debts would no longer be able to get complete liquidation. If they wanted bankruptcy protection, they would be required to use chapter 13 and then make whatever payments they could afford under a court supervised repayment plan. And the needs-based reform is essential to this measure that we have before us and to achieving genuine bankruptcy reform.

During the 12-month period that ended on March 31, there were 1.37 million personal bankruptcy petitions filed across the country, and that was an increase of almost 25 percent over the previous year. That increase in personal bankruptcy filings occurred during the best economy that we have had in this country in decades, and so we would have expected exactly the opposite result, fewer bankruptcy filings rather than more. And yet in that 1 year period we had a 25 percent increase.

The dramatic increase is caused, I think, by several factors. First of all, an attitudinal change among many Americans who no longer view bankruptcy as a last resort but view it as a first opportunity and treat it today as a financial planning tool and today engage in bankruptcies of mere convenience. The bankruptcy system was never intended to function that way. The bill before the House would return chapter 7 to its intended use by making it available for those who need it and requiring that those who can pay their debts, we pay a substantial portion of those by filing under chapter 13.

Mr. Chairman, that change will benefit all consumers of goods and services and all responsible borrowers. Today about $44 billion in consumer debt is wiped out each year through bankruptcy filings. That wipeout of $44 billion in debt carries a hidden tax of about $400 on the typical American family. That reflects the higher prices that are charged for goods and services by merchants whose debt is wiped out in bankruptcy and reflects the higher credit cost, interest charges, that are imposed by lenders, many of whose debts are wiped out in bankruptcy as well.

The enactment of H.R. 3150 would significantly lessen that hidden charge, and it is my privilege to appear today in support of this measure, and I strongly encourage its passage by the House.

Mr. NADLER. Mr. Chairman, I yield 3½ minutes to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Chairman, as someone who has worked on bankruptcy revision as a lawyer in the past, I cannot stand here and say that the existing system is perfect. In fact it is not perfect, and there are areas in which reform is warranted. However, I do not believe that H.R. 3150, the bill before us, provides an acceptable answer to the defects that currently exist.

Much has been said about why we are seeing this increase in bankruptcy filings. It is clear that part of the reason is the massive increase in the amount of unsolicited and unwarranted credit that is being promulgated throughout our country.

Last week my little girl received an unsolicited, preapproved credit card application at home. I was of a mind to let her take the card since creditors cannot collect against minors in California, but instead we ripped it up.

Because of the problems of this bill, Congress has seen an unprecedented response from people who do not ordinarily become involved in legislative matters of this kind, including bankruptcy judges from all over the United States who have urged us to stop this process because of the bill's unintended consequences.

Much has been said about the impact on women and children, and I wanted to note as a member of the Committee on the Judiciary I did support the minor amendments made during committee mark-up to try to address the issue of child support, but they did not fix the problem. In fact, the National Organization for Women wrote after the markup, ''The Judiciary Committee adopted a number of amendments supposedly to cure the problem of having past due child support and alimony obligations compete with credit card debts, but careful analysis shows these changes are only cosmetic. There are still substantial problems with H.R. 3150.''

I believe that is why 20 women's organizations have contacted us to tell us they oppose this bill, including such organizations as the American Association of University Women, the Business

and Professional Women of the United States, Church Women United, the Older Women's League and the YWCA of the United States of America.

There is another issue that I think needs to be raised for those of us who come from high cost States, and that is the probably unintended, bias against certain parts of our country. Recently I was contacted by a bankruptcy attorney in Santa Clara County. This is a lawyer who teaches bankruptcy law, who represents creditors in addition to debtors, and he says that the nationwide income standard used in the qualifications test for chapter 7 would eliminate most residents of Santa Clara County, in fact most of urban California, from eligibility to file chapter 7.

Further, if an individual is able to meet the test, the housing allowance is a further disadvantage. Urban Americans will no longer be able to file for bankruptcy.

As someone whose family has lost income to someone who filed for bankruptcy, I do not like it, I understand that no one likes it, but there is a reason for bankruptcy law, and that is so that one can fail in America and yet continue to have a life. That is why bankruptcy is provided for in our Constitution, and I will quote the CEO of a high-tech company who said this to me and Chairman HYDE in Los Angeles a week ago. ''We innovate in this country because we have the freedom to fail. That is what our bankruptcy laws do. Do not change it, do not ruin it.''

Mr. GEKAS. Mr. Chairman, I yield myself such time as I might consume.

It is interesting; I bring this to the attention of the gentlewoman from California who has been in the forefront of expressing concern about the support quotient in 3150 wherein the California Family Support Council, which I assume is statewide in California, endorses enthusiastically the measure 3150 and all that it contains with respect to support. I commend that to her reading and ask her to consider voting for the bill.

Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, I am a lead sponsor of this measure because the bankruptcy system in this country is not serving the national interest. What used to be the option of last resort has too often become the preferred option of choice, and so a legislative fix is vital to distinguish between those who truly need and deserve a fresh start and those capable of assuming greater responsibility and making good on at least some of what they owe.

Mr. Chairman, unless steps are taken now to reform the bankruptcy system while economic times are good, we will not have the political resolve to fix it when the economy is not as strong. Today wages are up, unemployment is down, interest rates and inflation are low, but the rate of personal bankruptcies has increased dramatically. Last year personal bankruptcies rose 20 percent, reaching a record high of 1.4 million files. Think about it. More people filed for personal bankruptcy than graduated from college last year. What does that say about our country?

And while many would like to blame the credit card industry for the sharp increase in bankruptcy filings, it is important to note that the credit card industry is not the impetus for the current bankruptcy crisis. More than 96 percent of credit card holders pay bills as agreed to, and only 1 percent ever end up in bankruptcy.

According to a Federal Reserve Board survey last year credit cards account for a mere 3.7 percent of consumer debt, hardly large enough to cause the current bankruptcy crisis. While many may still want to vilify the shylocks of Shakespeare's day, the credit system of today is far more democratized. Creditors today include Main Street merchants who often sell products under installment plans, credit unions who include most Members of Congress and even State and local governments.

Mr. Chairman, I have a letter here that I got from Mattress Discounters. These people have a customer base that is almost exclusively moderate income families who need their purchasing installment plan. Now they tell me that they receive almost 3,000 consumer bankruptcy notifications each month, 36,000 a year, and the cost to the company has risen to over $30 million a year. The irony of this situation is that the average debtor filing for bankruptcy protection has assets exceeding $184,000. But because of this consumer bankruptcy, the company had to close 50 stores across the country, and that meant the loss of jobs in communities all over the country as well as the fact that their customer base of moderate income people does not have access to this line of credit.

□ 1445

People need that, and yet if we don't fix this system, we are foreclosing their credit opportunities.

Mr. Chairman, the key issue is that it is not fair for households who pay their debts to pay $400 a year in added expenses to compensate for the bad debts of their neighbors who do not pay their debts. I hope Members will support this bill.

Mr. NADLER. Mr. Chairman, I yield two minutes to the gentleman from Massachusetts (Mr. MEEHAN).

Mr. MEEHAN. Mr. Chairman, I come before the House today as a supporter of bankruptcy reform. It will enable creditors to collect some debt that is currently being discharged through bankruptcy and that would channel debtors who can afford to pay a substantial portion of their unsecured debts into Chapter 13 repayment plans.

Having said that, Mr. Chairman, let me now say that I come before the House today in opposition to this bill, H.R. 3150. There is nothing inconsistent about supporting pro-creditor bankruptcy reform and opposing H.R. 3150. The fact is, you can means test eligibility for Chapter 7 without relying on rigid IRS expense standards to evaluate a debtor's ability to pay his or her debts. You can means test without permitting aggressive creditors to target low and moderate income debtors with expensive and protracted and contentious litigation over their bankruptcy rights. You can address manipulation of the bankruptcy system by high income debtors without simply declaring large amounts of credit card debt to be exempt from discharge.

In short, you can replace H.R. 3150 with the Nadler-Meehan-Berman substitute. The result will be a balanced bankruptcy reform that enhances creditor recovery without drastically diluting the fresh start for financially strapped debtors or impeding alimony and child support collection.

On the other hand, voting yes on an unamended version of H.R. 3150 would send to the conference committee an unbalanced bill, and the Senate wants nothing to do with that and the Clinton Administration will veto this bill. That route is dangerous for the most vulnerable debtors and dangerous for the prospects of prompt bankruptcy reform.

I urge my colleagues to do the right thing and support the substitute and reject the unamended version, this bill, of H.R. 3150.

Mr. GEKAS. Mr. Chairman, I yield two minutes to the gentleman from Delaware (Mr. CASTLE).

(Mr. CASTLE asked and was given permission to revise and extend his remarks.)

Mr. CASTLE. Mr. Chairman, I thank the gentleman very much for yielding me time. I join the gentleman in his strong support for H.R. 3150.

Mr. Chairman, I must say that hearing these arguments, we need to understand that when anybody files for bankruptcy, somebody else has to suffer. Generally when you had it up, the entire United States of America suffers. We have heard some facts, but I think we need to repeat some of these facts as well as to what is happening in bankruptcy in the United States today.

It is incontrovertible in my mind that we are in a bankruptcy crisis in this country. Personal bankruptcy's have risen 400 percent since 1980. Over 1 million people filed for bankruptcy in 1997, which cost consumers $40 billion in higher prices and interest rates from the debts that was erased. That averages to $400 per household in the United States of America. Some studies estimate that 14 responsible borrowers are needed to support each irresponsible borrower who files for bankruptcy. Those are unbelievable figures in a time of perhaps the greatest economic prosperity in the history of the United States of America.

What we have here in this legislation is a very strong first step. This is not

an ultimate solution to the bankruptcy problems. There is wide disagreement and too few facts right now for Congress to fashion an omnibus bankruptcy reform act that pinpoints exact causes of bankruptcy, and we do not know what that is. We need to look whether or not it is credit cards, and there may be some evidence of that, or gambling or other debts that caused that. But this legislation allows us to do it and it strengthens the system.

First, it establishes a system of data collection in the Federal bankruptcy courts to determine who, when, where, why and how people file for bankruptcy. We absolutely need to have that information and that knowledge. We do not have it today.

Second, it forces debtors to receive private credit counseling before filing for bankruptcy and unloading their debts on American consumers. That also is needed. Perhaps people need to be told what they have to do.

Third, it forces people who have the ability, the ability to pay for their unsecured debts, to file under Chapter 13 of the bankruptcy code and repay their creditors. These are good things. We should do it and support this legislation.

Mr. Chairman, I rise today to express my strong support for H.R. 3150, the Bankruptcy Reform Act of 1998. The facts are incontrovertible that the United States is in a bankruptcy crisis. Personal bankruptcies have risen 400 percent since 1980. Over a million people filed for bankruptcy in 1997 which cost consumers $40 billion in higher prices and interest rates from the debt that was erased. That averages to $400 per household. Some studies estimate that 14 responsible borrowers are needed to support each irresponsible borrower who files for bankruptcy.

Congressional oversight of this issue is long past due, and I am pleased to see that the House Judiciary Committee, through the leadership of Representative GEORGE GEKAS, Chairman HENRY HYDE, and Representative RICK BOUCHER, has reported H.R. 3150 as a strong first step toward addressing the bankruptcy crisis.

I say ''strong first step'' because no one should be disillusioned that H.R. 3150 is the ultimate solution to the bankruptcy crisis. There is wide disagreement and too few facts for Congress to fashion a omnibus bankruptcy reform bill that pinpoints the exact causes of bankruptcy. Despite evidence that only 1 percent of credit card holders file for bankruptcy in any given year, some have suggested that credit card companies who overextend credit to irresponsible borrowers are to blame. Others point to casinos and gambling institutions as the principal cause. Still others blame our culture of consumerism and a lack of education about managing money and personal finance. The truth is we do not know the cause, but we know the problem is serious.

Herein lies the strength of H.R. 3150. The bill takes the only steps we can all agree on. First, it establishes a system of data collection in the Federal bankruptcy courts to determine who, when, where, why and how people file for bankruptcy. With this data, Congress in the years to come can address the root cause of bankruptcies with wisdom and confidence we do not have today.

Second, it forces debtors to receive private credit counseling before filing for bankruptcy and unloading their debts on American consumers.

Third, it forces people who have the ability to pay more of their unsecured debts to file under Chapter 13 of the Bankruptcy Code and repay their creditors over 5 years according to a court-approved repayment plan. According to the bill's means-testing formula, debtors whose income is greater than 100 percent of the national median family income must develop a plan to repay their unsecured creditors if they have the ability to pay at least 20 percent of their unsecured debt and have more than $50 in their pocket each month after paying their secured debts (car payments, home mortgage, etc.), priority debts (alimony, child support, back taxes, etc.), living expenses.

A recent Consumers League Poll reports that 76 percent of Americans believe that individuals should not be allowed to erase all their debts if they are able to repay a portion of what they owe. With such a groundswell of support from the American people the choice is simple. A vote against H.R. 3150 is a vote for irresponsible debtors and a vote against the 14 responsible consumers needed to pay for each bankruptcy filed. I urge you to vote in favor of H.R. 3150.

Mr. NADLER. Mr. Chairman, I yield 5½ minutes to the gentleman from Massachusetts (Mr. DELAHUNT).

(Mr. DELAHUNT asked and was given permission to revise and extend his remarks.)

Mr. DELAHUNT. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, we have heard a lot today about personal responsibility and that individuals must be held accountable. Now, no one disagrees with the principles of personal accountability and responsibility. The problem, however, with the rhetoric, is that there is no data, no evidence, no credible research. The gentleman from Delaware was absolutely correct. But there is no information to establish a link between the dramatic increase in personal bankruptcy and the change we are told that has taken place in people's attitudes about bankruptcy.

There is an additional issue of accountability and responsibility here, but it is one of corporate responsibility. Because while no one really knows the cause of the increase in bankruptcy filings, I submit it is more likely that the increase is the result of irresponsible lending practices by the credit card industry.

I agree with a noted consultant to the industry itself who stated, ''The principal factor in the increase of bankruptcies has been the dramatic lowering of loan standards over the past five years.''

A respected Wall Street analyst agreed with him and was quoted recently in the Congressional Quarterly. ''The bank and other credit card lending institutions brought this problem upon themselves. They shot themselves in the foot by using some of the weakest and most pitiful loan underwriting techniques that I have ever witnessed.''

Well, as others have said, we have all experienced the aggressive marketing tactics of the credit card industry. More than 3 billion solicitations were issued last year, 30 for every family in America.

Let us talk about responsibility. Let us look at just one of these solicitations. It is in the form of a check. It was sent to my daughter. Let me highlight some of the comments on the check.

''This $2,875 check is real. Your signature on the back is all that it takes to turn your live check into cash.''

Another observation: ''Book a terrific spring break vacation.''

Another comment: ''Treat yourself, your family or friends.''

Another statement: ''Need more than $2,875? Just call us if you want to make even bigger plans for this spring.''

There is a p.s. too. ''This offer expires May 18, 1998. Have a question about this offer? Just call.'' ''Just call.'' ''For your protection, please destroy this check if you decide not to cash it.''

Is this corporate responsibility? Is this sound responsible lending? Well, my daughter is a full-time student who lives at home and has no regular income. It is so ironic to hear representatives of the credit card companies and others here pontificate about personal responsibility.

You all know from your own personal responsibility that they are relentless in their pursuit of customers and profit, and that is good. But regardless of the target's age, lack of sophistication, vulnerability, and even bad credit history?

Let me just read a story for you for a moment from the Wall Street Journal of March of this year. ''Rick and Christie Fetterhoff of Harrisburg, Pennsylvania,'' and I think the Chair of the subcommittee is from Pennsylvania, I do not know if he knows this couple, but it has been reported, ''have been in Chapter 13 bankruptcy protection since November 1995. But within the last several months, they have received, among other pitches, $5,000 loan offer checks from Banc One Corporation and Capital One Corporation and the promise of $250,000 to $500,000 from New Century Mortgage Corporation if they would just sign up.

''I was going to try to send some in, admits Mrs. Fetterhoff, who has more than $160,000 in debt, but I said no, no. It is tempting.'' And the credit card industry preaches personal responsibility?

Now, few in this chamber are sympathetic to that sort of hypocritical argument when it comes from the tobacco companies or the liquor industry or the gaming interests. Well, we should not let the credit card industry get away with it either.

If this bill becomes law, the result will be the use of hundreds of millions of dollars of taxpayer dollars to create a publicly funded collection agency to increase the profitability of credit card companies. So let us focus on responsibility ourselves and defeat this bill.

Mr. GEKAS. Mr. Chairman, I yield three minutes to the gentleman from New Jersey (Mr. ROTHMAN).

(Mr. ROTHMAN asked and was given permission to revise and extend his remarks.)

Mr. ROTHMAN. Mr. Chairman, I thank the gentleman from Pennsylvania for yielding me time.

Mr. Chairman, there is something wrong with the following picture. Last year, in the midst of our country's greatest economic growth of this generation, America saw a record number of bankruptcies, 1.4 million. This year, as America's economic expansion continues, America will set a new record for bankruptcies. But record number of Americans are not going broke. They are simply taking advantage of a bankruptcy system that encourages people to avoid paying their debts. That is what is wrong, and we have to stop those abuses.

When people who can afford to pay their debts do not, guess who picks up the tab? Working and middle class families, because companies charge higher prices to make up for those losses.

We need a bankruptcy system to give truly needy Americans a fresh start. But it must be a bankruptcy system with integrity, designed to encourage personal responsibility, not to discourage it.

The new bankruptcy reform bill, H.R. 3150, will do just that. It still gives people who cannot afford to pay their debts the ability to declare bankruptcy and to get a fresh start. But it will require people who can pay back their debts to do so.

Make no mistake about it. Under this bill, any American who chooses to go bankrupt can still go bankrupt. But if the person has the means after they pay their child support and alimony, after they pay off their secured debts and living expenses, if they still can pay off 20 percent of their remaining debt, then they should be required to pay back that debt. It is simply good personal responsibility.

Hard-working middle-class taxpayers who play by the rules have a hard enough time paying their own bills. They should not have to pay the bills of those who run up debts they can afford to repay, but who simply choose not to repay the debts.

When I was practicing law, I worked with a great many small business people who were taken advantage of by someone or some company who owed them money, but who simply misused and abused the out-of-control bankruptcy system to make victims out of those small business people.

□ 1500

We need to protect the hardworking Americans and consumers who are the innocent victims of our present out-of-control bankruptcy system.

Therefore, I urge my colleagues to support the Bankruptcy Reform Act of 1998. It protects our families, it protects our small businesses, and it restores some measure of personal responsibility to our out-of-control U.S. bankruptcy system.

Mr. GEKAS. Mr. Chairman, I yield 2 minutes to the gentlewoman from New York (Mrs. KELLY) with the promise that she will come back later.

Mrs. KELLY. Mr. Chairman, I thank the gentleman from Pennsylvania for yielding to me the time to clarify some very important provisions of this legislation.

Mr. Chairman, I rise today in strong support of H.R. 3150, the Bankruptcy Reform Act. Some of my colleagues would have us believe that this legislation would undermine alimony and child support. All arguments to this effect are pure distortion of the actual language of this bill.

This bankruptcy reform legislation before us today does nothing of the sort. In reality, it strengthens the Bankruptcy Code's protections for ex-spouses and children.

I will quote to my colleagues a May 13 nonpartisan Congressional Research Service memorandum: ''No provisions in H.R. 3150 would repeal the current protections that child support receives. The bill would reinforce the legal status of these payments in some ways.''

H.R. 3150 is quite clear that the child support and alimony must be paid first and in their entirety before a single dollar is paid out to nonpriority, unsecured creditors. This priority holds even where an ex-spouse who has the obligation to pay alimony has drawn on an unsecured credit line to pay marital obligations.

As a constant fighter for the rights of ex-spouses to have first priority to every cent of assets, I would vehemently oppose any legislation that would reduce the ability of women and children to receive support payments.

If people would take the time to read this legislation, they would see that H.R. 3150 will benefit, not harm, child support and ex-spousal support.

Members can speak to the possibility that future Congresses may change bankruptcy law, but let us keep the debate focused on the effects of this bill. H.R. 3150 strengthens the rights of ex-spouses and children to receive support before any other creditor.

Mr. NADLER. Mr. Chairman, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, the best of all worlds would be that this is a distortion, that in fact we could conclude at the end of this debate that we were just spewing out words and in fact we could vote for H.R. 3150 as the right kind of legislation.

But might I share with my colleagues some of the facts that are real in this issue. We do all need and are committed to personal responsibility, each and every one of us. In fact, we teach it to our children. The last thing we want to get is a phone call at work saying we owe some money.

But let me share with my colleagues, Mr. Chairman, the real truth of the American public. Some years ago, the American public filed bankruptcy with only 70 percent debt. Today, the American public waits and strains themselves and only files bankruptcy when their debt is 164 percent of income. That is the average working man and woman who every day brings home under $50,000 a year and tries as they may to make ends meet.

This bankruptcy bill kicks them out of the courthouse and tells them, off to the curb with you, smother yourselves with debt. You are nothing but deadbeats.

H.R. 3150 could have been a bipartisan bill if we had the opportunity to have hearings and documentation of how best to treat this problem. There are 3 billion contacts with Americans every day promoting utilization of credit over and over again.

This is why I am against this particular legislation, because 300,000 people engaged in the bankruptcy filings of 1.3 million are divorcees and mothers and custodial parents seeking to get child support and alimony.

It does impact child support and alimony. It is not corrected by any of these amendments. Once the bankruptcy proceeding is over, once the prioritization has been made, when people have to pay their debts, credit card monies are equal to their child support.

While one is in the bankrupt situation, one is required and is responsible for paying both of them. Who has a greater leverage to force one to pay? That parent with the child who is trying to get their child support payments? Absolutely not. It is the credit card company and others who can call over and over and over again.

I have heard from my constituents in Texas and across this Nation how they have lost jobs because of the credit card companies who have sought to over and over again be able to repeat to them that they have not paid.

If this bill was the kind of bill that all of us could support, my colleagues can rest assured we would be right here, because we believe in the American system and the American way of doing what is right, making sure that small businesses are protected.

I support an amendment to study what happens to small businesses when they go into bankruptcy. But we have so many groups that are against this. We have the Lawyers for Children In America, Federally Employed Women, Legal Defense and Education Fund, the American Nurses Association, Women United for Action, Women's Policy Center, Church Women United. We have the Clearinghouse on Women's Issues, Coalition of Labor Union Women.

This is a bad bill. The administration is against this bill. I simply ask, send it back to committee. Let us do what is right for the country.

I am strongly opposed to H.R. 3150 and I encourage my colleagues to also vote against the bill. H.R. 3150 unnecessarily burdens the right of bankrupt debtors to have a fresh start by creating a formula which forces bankruptcy filers to involuntarily enter Chapter 13 if they meet certain arbitrary income qualifications.

This approach to bankruptcy reform has been opposed by the Executive Office of the President, 110 federal Bankruptcy Judges as well as a coalition of 57 well respected Bankruptcy Law professors.

This bill is not about personal responsibility, it is about the redirection of bankruptcy filers, to banks, credit card companies and credit lending institutions, and in turn, this bill will hurt a lot of women and children who are dependent on child and spousal support.

This bill subordinates the needs of support recipients to credit card companies like Master-card and Visa. As the First Lady said in a May 7 article, ''I have no quarrel with responsible bankruptcy reform, but I do quarrel with aspects of this bill that would force single parents to compete for their child support payments with big banks trying to collect credit card debt.

I have received numerous letters from my constituents in Houston, who are concerned about the effects of this legislation. One such letter is from a student graduate supporting a wife on a limited income, worried that with new changes in the code, he will not be able to adequately support his family. Another is from a debtor whose financial responsibilities became overwhelming and is concerned that he will be unable to support his children and his ex-wife and pay off his non-domestic creditors under the new code.

Any effort to reform the bankruptcy system must protect the obligations of parents to support their children. This bill is a new and catastrophic threat to our children who rely on child support.

According to a recent study by the U.S. Department of Health and Human Services, between 1978 and 1991, 21–28 percent of poor children in America did not receive any child support from their non-custodial parent, and child support is an issue critical to the well-being of our nation's children. During 1997, an estimated 300,000 bankruptcy cases involved child support and alimony orders. In about half these cases, women were creditors trying to collect alimony and child support from their bankrupt ex-husbands and others. In about half of these cases, women were forced to file for bankruptcy themselves as they tried to stabilize their post divorce economic condition. In the past five years, well over a million women collecting alimony and child support have been involved in bankruptcy cases.

In 1994, one in every four children lived in a family with only one parent present in the home. Half of all children in the United States spend at least a portion of their childhood in single-parent homes.

While these figures are truly striking in their own right, we cannot begin to truly understand their impact on our nation's children without considering the fact that half of the 18.7 million children living in single-parent homes in 1994 were poor, and 70 percent of African American children growing up in a single parent household lived at or below the poverty line. Poor children in single-parent families rely on child support from their non-custodial parent as a crucial source of income.

In 1997, I co-sponsored H.R. 2487, the Child Support Incentive Act, legislation which reformed the child support incentive payment plan and improved state collection performance. And today, I am speaking before you because children's access to child support is once again being threatened. We need to keep our children a priority.

According to records from the U.S. Department of Health and Human Services, 31 million children are currently owed over 41 billion dollars in unpaid child support. When credit card companies and children compete for the same money, we know that it is likely that the most aggressive and powerful creditors will succeed.

We must counter this potential disaster to children relying on their parent's continued support. We need to maintain the priority of those parents seeking to collect owed child support from a bankrupt debtor. This can be done without removing the tools needed for credit card companies to effectively root out fraudulent debtors. Our children are our future and when it comes to paying off debt, children and women should come first, and we must remember this when we are voting today.

Mr. GEKAS. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. CHABOT). I am glad to do that. The gentleman from Ohio (Mr. CHABOT) has produced innovative and powerful concepts in the work of the Committee on the Judiciary over a period of years, and I am glad to have his support on this legislation.

(Mr. CHABOT asked and was given permission to revise and extend his remarks.)

Mr. CHABOT. Mr. Chairman, I would first like to thank the gentleman from Illinois (Mr. HYDE) and the gentleman from Pennsylvania (Mr. GEKAS) for their hard work and leadership in putting this bipartisan, and it clearly is bipartisan, legislation together and moving it forth so expeditiously.

This important legislation will protect consumers and businesses from creditors who are capable of paying their debts but who choose to hide behind bankruptcy protection instead of paying. In particular, this legislation would reestablish the link between one's ability to pay and one's ability to discharge debt by instituting a needs-based reform in the bankruptcy system.

In a time of solid economic growth and low inflation and low unemployment, it is absolutely astounding that there were a record 1.4 million consumer bankruptcies in 1997. This represents a sevenfold increase in the number of consumer bankruptcies since 1978 when the bankruptcy laws were last reformed. These numbers are expected to increase even further this year.

The primary culprit for this dramatic increase in the number of consumer bankruptcies is a system that discourages personal responsibility. Our current bankruptcy laws often allow those who can afford to pay their bills to, instead, declare bankruptcy and walk away debt free.

When someone who can afford to pay their bills does not and they file bankruptcy, who pays? We all do. We all pay for it at about $400 a year per American family in higher prices; and it is, in essence, a tax on the American public, a tax on debt.

Mr. Chairman, I believe that H.R. 3150 makes significant steps in ending this practice, and I hope the President will sign this legislation quickly, although one never knows, so that we can give hardworking American families protection from those who abuse the bankruptcy system and leave others holding the bill. There clearly are many instances in which people truly need bankruptcy. But let us stop the abuses. That is what this legislation does.

Mr. NADLER. Mr. Chairman, could I inquire how much time I have remaining?

The CHAIRMAN. The gentleman from New York (Mr. NADLER) has 2 minutes remaining, and the gentleman from Pennsylvania (Mr. GEKAS) has 3½ minutes remaining.

Mr. GEKAS. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Mrs. TAUSCHER), but with the invitation to return to the floor later for an additional period of time.

Mrs. TAUSCHER. Mr. Chairman, I accept the gentleman's invitation.

Mr. Chairman, I rise to strongly support this legislation to reform bankruptcy. This legislation would change bankruptcy laws to promote personal responsibility, ensure that more of the people who file for bankruptcy repay at least a portion of what they owe.

If, after accounting for all reasonable household expenses each month, the filer has enough money to pay some of his debt, he will be required to do so. This fair and reasonable test protects the most needy while it insists on repayment by the most irresponsible.

The stigma that was once attached to bankruptcy has disappeared. The growing number of filers indicates that people today are less concerned about the social implications of bankruptcy. It is our job to replace that social stigma with legislation that fills the gaps in bankruptcy law and demands responsible behavior by individuals.

I urge my colleagues to support this important legislation.

Mr. GEKAS. Mr. Chairman, I must at the risk of boring the Chair ask how much time is remaining.

The CHAIRMAN. The gentleman from Pennsylvania (Mr. GEKAS) has 2½ minutes remaining. The gentleman from New York (Mr. NADLER) has 2 minutes remaining.

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, everyone should remember that the debate in this House today is not over personal responsibility. The debate is not over whether people who can pay their debts should pay their debts. Everyone agrees to that.

The debate, Mr. Chairman, is over the measure of the test. That is the first debate. Should it be, as the bill

before us has it, an automatic test with no judge there? Should it be a test that looks not at actual expenses and actual facts, but at what the Internal Revenue Service says in its guidelines might be the facts, not at what your rent is, what your child expenses are, but what the Internal Revenue Service says that for an average person in the Northeast and Southwest of the country it might be?

I submit that this bill does not make sense in saying that we are going to decide how much someone can afford to pay off on his debts by looking at theories as to what his rent might be, what his child expenses might be instead of what they actually are. That is the first question.

The second question is that this bill jumps the line. It takes credit cards and puts them in preference to other debtors, says you cannot have a Chapter 13 plan confirmed unless you can pay $50 minimum for the credit cards. It puts it in preference in practical terms over the child support, over the victims, over the secured debt. It makes no sense except as a reflection of the lobbying and the campaign contributions by the banks and the credit card companies; and that is not the way we ought to distort the law.

Mr. Chairman, I would remind my colleagues that every bankruptcy association, the Bankruptcy College, the Bankruptcy Institute, the trustees, the Chapter 13 trustees, the judges, they all tell us this bill should be rethought and makes no sense.

I would also remind my colleagues the CBO says this is an unfunded mandate in the private sector between $260 million and $1.3 billion and on the public sector of $214 million.

I urge my colleague to think better of it and to vote against this bill.

The CHAIRMAN. The time of the gentleman from New York (Mr. NADLER) has expired.

The gentleman from Pennsylvania (Mr. GEKAS) has 2½ minutes remaining.

Mr. GEKAS. Mr. Chairman, I yield 1 minute to the gentleman from Tennessee (Mr. BRYANT), who has been, whether he knows it or not, an unofficial consultant to me personally on the issues surrounding bankruptcy in all its phases.

□ 1515

Mr. BRYANT. Mr. Chairman, I thank the chairman for yielding time to me.

Mr. Chairman, on this issue of child support, let me reference a letter from the California Family Support Council which speaks directly to this point.

I have been informed that there is some opposition to H.R. 3150 based on the premise that support creditors would be worse off if certain credit card debts were made nondischargeable and credit card creditors and support creditors were in competition for the same post-discharge assets.

I can only say that we are in competition with those creditors prior to bankruptcy now. We do not see debts as impairing our ability to collect support, especially in view of the advantages child support creditors have under current State and Federal laws as outlined above. Our problems stem not from the competition with credit card creditors outside bankruptcy, but from the disadvantages we incur as collectors of support under current bankruptcy law during bankruptcy. Your proposed amendments would give support creditors an enormous advantage over other creditors during bankruptcy and greatly aid us in the discharge of our support enforcement responsibilities.

Mr. Chairman, I urge support of this bankruptcy reform.

Mr. GEKAS. Mr. Chairman, I yield the remainder of my time to the gentleman from Michigan (Mr. SMITH), and he and I will engage in a colloquy.

The CHAIRMAN. The gentleman from Michigan (Mr. SMITH) is recognized for 1½ minutes.

Mr. SMITH of Michigan. Mr. Chairman, I thank the gentleman for his efforts to pass comprehensive and common sense bankruptcy reform that will greatly benefit our economy and our taxpayers by lowering interest rates and increasing availability.

On a particular issue, many States such as my home State of Michigan have experienced a sharp increase in the number of long-term placements of children by court order. Tom Robison, the Eaton County, Michigan, probate court administrator, tells me that the cost of just one placement can be as high as $50,000 per year.

Federal courts have determined that when parents declare bankruptcy, they are currently allowed to discharge the debts owed to that particular court and the taxpayer for the costs of this long-term placement.

I introduced H.R. 3711 last April to specifically state in law that such expenses of caring for children could not be discharged by bankruptcy. I thank the chairman for agreeing to this provision we have asked for to make sure that debts owed to the State and municipality or State court of proper jurisdiction for this purpose are not dischargeable.

I wanted to clarify, however, that the definition of ''municipality'' is meant to include probate courts and other local governmental units that have to pay the cost of this care. For that purpose, I would like to enter into this colloquy with the distinguished chairman of the subcommittee, the gentleman from Pennsylvania (Mr. GEKAS).

Mr. Chairman, I would ask the gentleman from Pennsylvania (Mr. GEKAS), if the term ''municipality'' as defined by section 101 of the Bankruptcy Code includes State courts?

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Michigan. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. I thank the gentleman, Mr. Chairman, for bringing this issue to full debate here on the floor, and this colloquy. I agree that that is a correct interpretation of the law, and commend the gentleman for bringing the issue as far as it has come. We will work together to consider the full ramifications of the issue before conference.

Mr. SMITH of Michigan. Mr. Chairman, I thank the gentleman.

Mr. DAVIS of Florida. Mr. Chairman, I rise in support of H.R. 3150, the Bankruptcy Reform Act, which, although not perfect, is a strong step in the right direction. The principle behind this legislation is simple. If you can afford to repay some of your debts, you should be required to do so. The fact that in this booming economy there has been a meteoric rise in bankruptcy filings is simply unacceptable. Yes, there are credit companies which unscrupulously dangle credit in front of high-risk consumers; however, the individual must ultimately take responsibility for his or her spending habits.

Protecting the status quo is tantamount to telling all consumers, including low and moderate income families struggling hard to pay their bills, that they will have to continue to pay for the unpaid debts of others, even if those filing for bankruptcy are more affluent and actually capable of paying off some of those debts. Last year, a total of $44 billion in consumer debt was erased through bankruptcy filings. Of course, erasing these debts means transfering that burden to every other consumer—a burden which amounts to roughly $400 for every American household.

While I have concerns over certain provisions included in this legislation, such as the preemption of my home state's constitution with respect to the homestead exemption, I believe it is important to move this process forward and work with the Senate to craft a strong bi-partisan bankruptcy reform bill which returns a sense of personal responsibility to our Nation's bankruptcy system.

Mr. WOLF. Mr. Chairman. I want to express my extreme disappointment with this rule. Representative NADLER had an amendment to this bill which was not made in order. That amendment would have eliminated bankruptcy claims on debts incurred in or adjacent to gambling facilities, or debts that the creditor should have known were intended to be used by the debtor for gambling purposes.

A 1997 SMR Research Corporation study on personal bankruptcy, which I will include for the record, examined the high-risk activities which contribute to bankruptcy. The report reviewed three serious addiction problems in America—drugs, alcohol and gambling—and their effects on personal bankruptcies. Of gambling, the report said, ''It now appears that gambling may be the single-fastest growing driver of bankruptcy.'' It also showed a definite correlation between the presence of gambling facilities and a growth in personal bankruptcies.

The report made a number of recommendations for dealing with the rapid increase in personal bankruptcies related to gambling. The first was, ''Make it tougher for customers to obtain cash advances at gambling casinos.''

Mr. Chairman, Mr. NADLER'S amendment would have been a very important step in stemming the tide of gambling-related bankruptcy. But since it was not made in order, we have been denied the full and open debate that is crucial to better understanding this problem. Therefore, I will vote against this rule.

THE PERSONAL BANKRUPTCY CRISIS, 1997

DEMOGRAPHICS, CAUSES, IMPLICATIONS, & SOLUTIONS

Wild Growth In Filings: More Bad News Ahead.

Age, Income, Education, Population Density, & Geography.

Lawyer Advertising & The Loss Of Stigma.

Why The Tide Of Financial Catastrophes Is Rising.

New Ideas To Reduce Bankruptcy Losses.

THE PURPOSE OF THIS STUDY

In 1996, SMR Research issued a 56-page study on the causes of wildly rising personal bankruptcy filings. We knew the subject was timely, but little did we imagine the media coverage that would follow.

The 1996 study was mentioned in major newspapers and magazines across the land, on television, and even became the subject of two stories in the Wall Street Journal.

Fate is strange. Publicity is nice, but the 1996 study was not exactly a typical SMR production. The explosion in bankruptcies had caused a lot of demand for information from our lending industry clients, especially unsecured lenders. We put together the 56-page piece as a section of our 1996 annual credit card market study, and later offered the bankruptcy section by itself to non-credit card issuers.

Although 56 pages might look big to some folks, it was the shortest research study we have done since 1985. We found ourselves making conclusions in the 1996 study with some statistical backing, but not always definitive proof.

This study, by contrast, is indeed a standard SMR Research work. The scope is much greater, and allows us to cover the subject completely, with a meaty section on solving (or at least mitigating) the personal bankruptcy dilemma. Where the 1996 study focused solely on some of the core causes of bankruptcy, this study covers the full nature of the problem.

We look at the common misperceptions about bankruptcy and provide the statistics that show why they are such vast over-statements. Unemployment is not the primary driver of bankruptcy, nor is the overall consumer debt load. Lender marketing and easy credit also are not the prime cause.

In fact, there is no single prime cause of bankruptcy. In this study, you'll see coverage of many things that result in bankruptcy, with some quantification of which ones are the worst. The additional space allows us to cover things we couldn't cover last year, like the connection between bankruptcy and gambling—perhaps the fastest-growing problem of all.

In addition, this study, for the first time we know of, shows the demographics of bankruptcy, using our county-level statistical database that goes back to 1989.

Regarding solutions to the problem, they are not easy. The bankruptcy spike is based at least in part on serious, intransigent, worsening socio-economic problems. This underlying core puts upward pressure on filings, and the upward pressure really explodes when you throw lawyer advertising and bankruptcy's loss of social stigma into the mix.

Still, we are quite confident that there are steps available to creditors to help control their own bankruptcy loss exposure. We think the best solution of all may be the most radical, which is for creditors to adopt some of the risk-control techniques of the insurance industry. This would mean using actual geographic loss statistics as a supplemental aid in credit scoring, pricing, and marketing. This material appears starting on Page 157.

SMR has been following the bankruptcy subject, and has been building its databases of filings, for eight years. After all that time, we finally have created a research study that we believe addresses all the central issues in the bankruptcy crisis.

We appreciate your patronage and hope you get good value from the research.

STU FELDSTEIN,
President.

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GAMBLING AND BANKRUPTCY

It now appears that gambling may be the single fastest-growing driver of bankruptcy.

Once limited to Nevada and New Jersey, casino gambling has spread very rapidly through many states. Indian reservation casinos have been one new mode for this growth, and riverboat and coastal gambling boats have added more.

If you have not been tracking the spread of gambling, you may be in a shock about how pervasive gambling facilities have become.

Note that in the state of Nevada, there are only 17 counties (most of them very large). But across the nation, there are now 298 counties that have at least one major legal gambling facility; a casino, a horse or dog racing track, or a jai alai game. That's the count in one recent guide to U.S. gambling facilities, and it does not include such things as places where state lotteries or bingo parlors are available. The lotteries and bingo parlors tend to involve small-ticket gambling, whereas the other facilities obviously involve the larger dollars per customer.

THE THREE ADDITIONS & CHANGED MORES

When we published our shorter study on the causes of bankruptcy in 1996, we had suspicions about gambling. But we had not yet put together enough solid data and information to make conclusions, therefore we said little about the subject.

Actually, since we were looking at events that can cause insolvency, we were suspicious in 1996 about all three of the serious addiction problems in America: alcoholism and drug and gambling addiction. We remain suspicious about all three of those problems. But of the three, it's quite clear that gambling is the fastest-growing phenomenon.

For those who make and supply alcohol, drugs, and gambling, all are very large businesses. But you don't have to be a sociologist to see that societal mores are changing most rapidly on gambling. Over the last 20 years, state governments themselves have entered the gambling business with lotteries. We see no states as yet that have gone into the heroin trade or where the government itself advertises Jim Beam. So, the concept of gambling now has the tacit blessing of government.

Meanwhile, private entrepreneurs have created dazzling and sophisticated facilities that have eliminated the ''sleaze'' from gambling and turned it into a recreation. Las Vegas is now a city-sized adult theme park with attractions for the kids, too. American Indians, operating on reservations beyond the authority of state laws, have seized on casinos as a new method to generate cash and improve their standard of living. Cruise ships of all sorts have set up table games and slot machines.

Hard-bitten gamblers of old played poker at tables in a friend's kitchen or sat in cold bleachers to watch the horses. Today's gamblers enjoy the finest food, free drinks, the best entertainment, super-quality hotels, and the widest variety of gambling adventures that have ever been available. And, of course, all of this now happens at places much closer to most of the larger population centers. Gambling can indeed be fun these days—but some smallish percentage of gamblers do develop problems that translate into bankruptcy.

STATISTICS, GAMBLING, AND BANKRUPTCY

As in so many aspects of bankruptcy, perfect data related to the gambling problem don't exist. No one has asked all the bankruptcy filers if gambling contributed to their financial problems, and we strongly suspect that if filers were asked that question, many would be too embarrassed to answer honestly.

But we can look at evidence in many other ways. Recently, for example, we input into our county-level records the numbers of gambling places that exist in each county, if any. We obtained the information, covering more than 800 casinos, race tracks, and jai alai ''frontons'' from the 1997 edition of The Gaming Guide: Where to Play in the US of A, published by Facts on Demand Press of Tempe, AZ. The directory provides street addresses and zip codes for the gaming establishments. We used the zips against SMR's Zip Code/County Matching database to put the right numbers of facilities in the right counties.

Then, we aggregated the bankruptcy rates of those places and compared them to those of counties that have no gambling at all. The bankruptcy rate was 18% higher in counties with one gambling facility and it was 35% higher in counties with five or more gambling establishments.

This exercise probably understates the seriousness of the problem, since many counties that have gambling facilities also have very small populations and actually draw their customers from other places.

So, when we look only at counties with more sizeable resident populations and gambling facilities, we see even greater evidence of the problem.

A LOOK AT THE MAP

The effect of gambling on bankruptcy seems quite clear when you look at a map. Among all the counties in Nevada, for instance, we find that the closer you come to Las Vegas and Reno, the higher the bankruptcy rate.

In New Jersey, casinos are permitted only in Atlantic City—and that's also where the resident population has by far the highest bankruptcy rate. Generally speaking, the closer you come to Atlantic City, the higher the bankruptcy rate in New Jersey. One exception to this rule is Cape May County, just south of Atlantic City, where the bankruptcy rate is not so high. But Cape May also is a big retirement place with a high average age in the population. As shown in our demographics section, high-age populations do not have high bankruptcy rates.

In California, the two counties with the highest bankruptcy rates are Riverside and San Bernardino. They also happen to be the two counties closest to Las Vegas. The

fourth-highest bankruptcy rate in California is in Sacramento County, which is closest to Reno.

In Connecticut, the map hardly matters. Connecticut is so tiny that everyone has access to the gambling parlors in the middle of the state. This is a state that used to have a bankruptcy rate far below the national average. But Indian casino gambling is now huge and well-entrenched. The smaller of the Indian casinos, the Mohican Sun in Uncasville, boasts 3,000 slot machines. In Connecticut, the bankruptcy rate per capita has risen more than twice as fast as the national rate of increase since 1990.

WHAT THE EXPERTS SAY: SCOPE OF THE PROBLEM, AND THE CREDIT CARD CONNECTION

Aside from these observations, we set out this year to interview many of the leading U.S. experts on gambling, gambling addition, and the financial impact of gambling.

Their studies have suggested, fairly consistently, that more than 20% of compulsive gamblers have filed for bankruptcy as a result of their gambling losses. They also show that upwards of 90% of compulsive gamblers had used their credit card lines to obtain funds for gambline and then lost. The same studies show that problem gamblers have a lot of credit cards on which to draw.

''One of the things we know about problem gamblers is that they tend to have lots and lots of credit cards and those credit cards have been maxed out in terms of their credit limits,'' said Rachel Volberg, one of the leading researchers into problem gambling in the U.S. and internationally. Volberg is president of Gemini Research, a consulting firm in Roaring Spring, PA. She is a frequent ''expert witness'' on the problem in state legislative hearings and has done research under contract for various government units in Oregon, Colorado, New York, California, Michigan, Mississippi, Georgia, Louisiana, Iowa, Connecticut, and Canadian provinces.

Volberg is not the only researcher to note the connection with credit cards. ''It's not unusual for problem gamblers to have eight to 10 credit cards,'' adds Henry Lesieur, professor of criminal justice at the University of Illinois, Normal, another leading authority on compulsive gambling.

The amount gamblers owe is quite large. According to studies of Gamblers Anonymous members in Illinois conducted in 1993 and 1995 by Lesieur, the median average lifetime gambling debt of those surveyed was $45,000, and the median amount owed at the time they entered GA was $18,000. The median is the midpoint of a list of numbers, with 50% of the numbers being higher and the other 50% being lower.

However, the mean average debts of problem gamblers were far higher than the median amounts. The mean average lifetime gambling debt of those surveyed was $215,406, with three people saying they owed $1 million or more. The mean debt upon entering GA was $113,640, including one person who said he owed $1 million and another admitting to owing an incredible $7.5 million.

In another study dated April 1996 by the University of Minnesota Medical School, a survey of problem gamblers in Minnesota found the average lifetime gambling debt was $47,855, although individual amounts ran into the hundreds of thousands of dollars. The median amount was $19,000. Recent debts—those accumulated in the past six months—averaged $10,008, while the median amount was $4,500.

In late 1995, the Minneapolis Star Tribune examined 105 bankruptcy filings made in that city in which it was determined that gambling was a factor. The results of the study appeared in a five-part series that ran in the paper in December 1995.

The newspaper found that of the $4.2 million of total debt declared by the 105 filers, $1.14 million—or 27%—was comprised of gambling losses. Almost half of the 105 filiers—52, to be exact—claimed they had gambling losses. Their average debt was $40,066, which was more than the average annual income of $35,244. The average gambling loss was more than $22,000. Filers carried an average of eight credit cards, although many had 10 or 15 cards and one person had 25. And heavy debts were being carried on each card.

COUNTIES WITH GAMBLING HAVE HIGHER BANKRUPTCY RATES

Let's return to the county-level data. In the table that follows, we divided up the country amount counties with gambling facilities and those without. The differences in bankruptcy rates between them are striking. It's quite clear that those counties with legal big-ticket gambling have higher bankruptcy rates than those counties that don't have gambling, and those counties with many gambling houses have higher bankruptcy rates than those places with just a few.

We examined more than 3,100 counties. For the entire United States, the personal bankruptcy filing rate per 1,000 population in 1996 was 4.20. But the national rate for purposes of comparison to counties was 4.22 (using 1996 bankruptcies divided by 1995 populations; the 1996 county populations were not available when we did this analysis). For the 2,844 counties without gambling, the bankruptcy rate was lower, at 3.96.

According to The Gaming Guide, there were 298 counties that had legalized gambling within their borders. In these counties, the bankruptcy filing rate in 1996 was 4.67, or 18% higher than for those counties with no gambling. When we subdivide the universe of counties with gambling between those with five or more locations and those with four or less, we learn more. The places with the most gambling facilities have a much higher bankruptcy rate.

Of the 298 counties with gambling, 275 had only one to four facilities. Their combined 1996 bankruptcy filing rate was 4.53 per 1,000 residents, or 14% greater than the 3.96 rate among counties without gambling. However, in the 23 other counties with five or more gambling facilities, the combined bankruptcy rate was 4.33, a whopping 26% higher than the 4.22 national bankruptcy rate and 35% higher than at counties with no gambling at all. Many of these counties with 5+ gambline facilities are in Nevada, but most of them are not.

BANKRUPTCY FILING RATES IN U.S. COUNTIES WITH GAMBLING FACILITIES VERSUS COUNTIES WITH NO GAMING ESTABLISHMENTS

[Gambling facilities include land, tribal, and boat casinos; dog, horse, and harness race tracks, and jai alai frontons]

	No. of counties	Aggregate population	1996 bankruptcy filings	1996 filings per 1000
All Counties with Gaming Facilities	298	97,385,935	454,384	4.67
Counties with 5+ Gaming Facilities	23	16,391,661	87,435	5.33
Counties with 1–4 Gaming Facilities	275	80,994,274	366,949	4.53
Counties with No Gaming Facilities	2,844	166,526,572	658,724	3.96
All U.S. Counties	3,142	263,912,507	1,113,108	4.22

Again, these data tell only part of the story, since some gambling parlors (especially tribal casinos) are located in thinly populated places and draw almost all their customers from other places.

So, it's important to also look at more populous areas located very near to gaming facilities. Indeed, not only do many gambling facilities draw from other nearby population centers within the U.S., but in addition there are many legal casinos in several Canadian provinces. These often are located just beyond the U.S. border and cater to American gamblers in the Detroit area, upstate New York, and other northern states.

Thus, we believe many counties have high bankruptcy rates tied in part to gambling, yet the county doesn't register in our table as a ''gambling'' county. If we included counties contiguous to those places with legalized gambling, we're sure the numbers would show an even stronger correlation between high bankruptcy rates and gambling. The following mini study of the Memphis, TN, area illustrates our point.

LAS VEGAS EAST: WOULD YOU BELIEVE IT'S TUNICA COUNTY, MS?

In the table below, we show the 24 counties in the U.S. with the worst U.S. bankruptcy filing rates in 1996 (10.0 or more filings per thousand residents) and where the population is greater than 25,000.

A significant number of these worst places share one trait—all are within easy reach of major gambling casinos. This is true of just about all of the counties on the list that are located in Tennessee, Mississippi, and Arkansas.

Neither Tennessee nor Arkansas has legal casino gambling within its borders. In fact, neither state even has a lottery, for that matter. Yet, several of their biggest counties are located near the 10 major riverboat casinos in Tunica County, MS. Tunica is located in the extreme northwest corner of Mississippi, just south of Memphis, TN. According to The Gaming Guide, Mississippi has the largest amount of ''gaming area''—that is, square feet of casino gambling—in any state outside Nevada. And most of that gaming is centered in Tunica County. Major casinos are also located in the Biloxi-Gulfport area on the Gulf of Mexico.

The profusion of super-high bankruptcy rates among the counties located near the Mississippi River casinos in Tunica County is quite remarkable. Indeed, the counties in the tristate area within the Memphis metropolitan area have some of the highest personal bankruptcy rates in the nation. We view their close proximity to the Tunica casinos as very meaningful.

Shelby County, TN, where Memphis is situated, easily had the highest county bankruptcy rate in the nation in 1996, at 17.28 per 1,000 population—more than four times the national average. It's also by far the biggest county in terms of population among the most bankrupt counties. Memphis also happens to be the headquarters of Harrah's, one of the biggest casino operators.

Also on the list of worst counties are two Mississippi counties. DeSoto, with a December 1996 filing rate of 10.65, borders Tunica County. Marshall County, at 11.47, is adjacent to DeSoto. Tunica County itself, the

likely source of some of this trouble, has a population of just 8,132 souls, and a bankruptcy rate of just 5.78, less than the state average of 6.16.

Also high on the list of most bankrupt counties is Crittenden County, AR, at 11.16. It's the county located just across the Mississippi River from Shelby County. Tipton County, TN, at 10.96, is adjacent to Shelby County on the north. Madison County, TN, at 10.73, is located just east of Shelby. But other counties located near Shelby in Tennessee sport high bankruptcy rates, including Haywood, Lauderdale, Fayette, and Crockett, to name a few. These counties don't appear on our list of worst counties because their populations were less than 25,000.

The Tunica casinos aren't the only ones catering to Tennessee residents. There's also a casino located upriver in Caruthersville, MO, in the state's southeastern panhandle. It may be part of the reason for the 10.56/1,000 bankruptcy rate in Dyer County, TN, which is located just across the river. Also, Gibson County, TN, just east of Dyer, has a bankruptcy filing rate of 10.12. It's worth mentioning that both Dyer and Gibson Counties are also both within a two-hour drive of the Tunica casinos.

The next table shows that 9 of the 24 U.S. counties with the highest bankruptcy rates in 1996 also were places located very close to three gambling sites.

COUNTIES WITH HIGHEST BANKRUPTCY FILING RATES, 1996

[Minimum population 25,000]

County name	Code	Population	Filings	Filings per 1000
Shelby County, TN	1	865,058	14,952	17.28
Coffee County, GA		32,697	432	13.21
Jefferson County, AL		657,827	8,124	12.35
Bibb County, GA		135,066	1,912	12.33
Troup County, GA		57,882	705	12.18
Walker County, GA		60,654	705	11.62
Marshall County, MS	1	32,078	368	11.47
Crittenden County, AR	1	49,889	557	11.16
Clayton County, GA		198,551	2,209	11.13
Liberty County, GA		58,749	650	11.06
Coweta County, GA		72,021	789	10.96
Tipton County, TN	1	43,423	476	10.96
Murray County, GA		30,032	325	10.82
Madison County, TN	1	83,715	898	10.73
Baldwin County, GA		41,854	448	10.70
DeSoto County, MS	1	83,567	890	10.65
Dyer County, TN	2	35,900	379	10.56
Manassas city, VA		32,657	333	10.20
Gibson County, TN	2	47,728	483	10.12
Scott County, MS	3	25,042	253	10.10
Rhea County, TN		26,833	271	10.10
Talladega County, AL		76,737	774	10.09
Spalding County, GA		57,306	575	10.03
Ware County, GA		35,589	357	10.03

Key to Codes: [1] Located near casinos in Tunica County, MS; [2] Located near casino in Caruthersville, MO; and [3] Located near casino in Philadelphia, MS.

MORE EXAMPLES

Of course, scenarios like this can be seen in other areas of the country. Atlantic County, NJ, is a leading example. It is home to all of that state's legalized gambling casinos, and the 1996 bankruptcy rate was 7.10 filings per 1,000 residents. That was 71% higher than the state average bankruptcy rate of 4.16. And most of the time, counties located closest to Atlantic had higher bankruptcy rates than others further away.

Of course, Atlantic City draws customers from all kinds of places, including many from New York City. Our point is that the resident population in a gambling county has the easiest and most frequent opportunity to use the facilities, therefore we should expect to see some result in the per capita bankruptcy rate.

Similarly, the 1996 bankruptcy rate in Nevada is more than 50% higher than the national average. In Clark County, where Las Vegas is located and where more than half of the state's more than 300 casinos are based, we see the highest bankruptcy rate within the state. Nor is it surprising that the two counties with the highest bankruptcy rates in California are those just across the border from Las Vegas, San Bernardino (7.04) and Riverside (6.77). Those two counties also now have tribal casinos of their own.

Moving to Maryland, Prince Georges County has by far the highest bankruptcy rate among counties in that state—6.72 filings per 1,000 population in 1996, almost 50% higher than the state average of 4.57. By way of comparison, the next highest county bankruptcy rate in Maryland is 5.27, a significantly lower figure. What's going on in Prince Georges?

The answer is that Prince Georges is the only county in Maryland where casino gambling is legal. Legal casinos are located at charitable organizations, such as Elks and Knights of Columbus halls and volunteer fire departments. These casinos have strict limits on operating hours and betting and don't have the glitz of Las Vegas or Atlantic City, yet they do now exist and the casinos are used. Prince Georges County also has harness racing.

GAMBLING & LOW-BANKRUPTCY STATES: WOULD THEY BE EVEN BETTER WITHOUT IT?

All of the prior information is highly suggestive that gambling influences bankruptcy. Yet, as all the rest of this study shows, there are many other bankruptcy drivers. Therefore, the correlation between bankruptcy and the physical location of gambling facilities is certainly imperfect.

There are some states, for instance, where there are gambling facilities, yet the bankruptcy rates are reasonably low. These states include South Dakota, Minnesota, and Iowa—all located in the moderate bankruptcy ''corridor'' of the upper Midwest.

It's hard to tell in these areas whether gambling has no effect on bankruptcy, or if, on the other hand, bankruptcy would be even less of a problem without the casinos. The Minnesota university study referenced earlier in this section suggests that bankruptcies in that state are caused at times by gambling.

Indeed, the notion that gambling is a major negative for bankruptcy in all geographies is supported by information from our interviews and from a lot of local newspaper articles we have reviewed. The actual gambling debts may have become credit card debts prior to the filer entering bankruptcy court, but that doesn't change the cause of the financial trouble. The following material will add more from this review of experts and news articles.

QUANTIFYING THE PROBLEM: 10 PERCENT OF FILINGS MIGHT BE LINKED TO GAMBLING; 20 PERCENT OF PROBLEM GAMBLERS GO BANKRUPT

Articles we studied, often quoting attorneys who specialize in personal bankruptcy, suggested that about 10% of bankruptcy filings are linked to gambling losses. That figure could be higher depending on location. Most of the debt is racked up on credit cards.

According to the experts on compulsive gambling with whom we talked, no comprehensive national study on problem gambling has been conducted in the U.S. since the early 1970s. However, several state studies have been done, all concluding that 20% or more of compulsive gamblers were forced to file for bankruptcy protection because of the losses they had incurred.

In the April 1996 study of compulsive gamblers in Minnesota conducted by two professors at the University of Minnesota Medical School, the researchers reported that 21% of the people in the study had filed for bankruptcy. In addition, a disturbing 94% said they had at least one gambling-related financial problem in their lifetime. Furthermore, 9 out of 10 of the subjects said they had borrowed from banks, credit cards, and loan companies to finance their gambling. And, 77% said they had written bad checks to finance gambling sprees.

The University of Illinois in Normal conducted two surveys of members of Gamblers Anonymous in 1993 and 1995. The combined results found that 21% had filed for bankruptcy, and that another 17% had been sued for gambling-related debts. Additionally, 16% said their gambling led to divorce—another big driver of bankruptcy filings—and another 10% said it led to separation. Compulsive gamblers also have very high rates of attempted suicides, higher even than for drug addicts, the experts said.

Rachel Volberg, the Pennsylvania-based compulsive gambling consultant we referenced earlier, told us that a study in Wisconsin had found that 23% of compulsive gamblers had filed for bankruptcy, and that 35% of the gamblers said they had used credit cards for gambling money. She also said a study conducted in the Canadian province of Quebec found that 28% of problem gamblers there had sought bankruptcy protection.

One of the really scary things about these studies is that they are conducted only with people who had sought out professional help for gambling addiction. So, there may be other problem gamblers at risk, too.

According to several lawyers specializing in bankruptcy who were quoted in newspaper articles that we studied, 10% to 20% of their clients did so due to gambling debts they couldn't pay. These lawyers were located in

areas near casinos, so the 10% to 20% figures probably doesn't hold for the U.S. population at large. Nevertheless, its probably not a stretch to say that at least in those areas near major casinos, gambling-related bankruptcies account for a good 10% to 20% of the filings.

THE EXPLOSION IN IOWA

It's also not a stretch to say that the number of people with financial problems stemming from gambling is on the rise, tracking the spread of legalized gambling.

Tom Coates, executive director of the nonprofit Consumer Credit Counseling Service of Des Moines, IA, told us that 10% to 15% of the people his agency counsels have financial problems ''directly related to gambling.'' That's up dramatically from 2–3% when the agency opened its doors 10 years ago, before casino gambling was legalized in Iowa. Coates also told us that his service's business is up 30–40% over a year ago, at a time when Iowa's unemployment rate is at an all-time low and its economy stronger than the nation's at large. He blames gambling for much of the surge.

Probably, much of what we've reported about problem gamblers will not surprise the experienced credit executive. People with gambling addiction are rather obviously at risk to lose a lot of money. But how many such people exist? And how many gamble occasionally? Let's take a look at the numbers, below.

2.6 MILLION ADULTS MAY HAVE A GAMBLING PROBLEM

According to the most recent statistics released by the American Gaming Association, the casino industry's trade group, U.S. households made 154 million visits to casinos in 1995. That number was up 23% from the previous year and up an astounding 235% from 1990.

The AGA said 31% of U.S. households gambled at a casino in 1995, up from just 17% in 1990. ''Gaming households,'' as the AGA calls them, also made an average 4.5 trips to casinos in 1995, up from 3.9 times the year before and 2.7 in 1990.

Of course, it is difficult to pinpoint how many of these people have a problem or compulsion—terms that can be a matter of degree or interpretation. Most estimates range from 1% of the adult population to as high as 7%.

The University of Minnesota study estimated that 1% of the state's entire population were ''problem pathological gamblers,'' meaning that they lose control and continue gambling in spite of adverse consequences. If this 1% figure were true for the entire U.S. population, it would represent about 2.7 million people at risk.

The gaming industry itself says that 2% to 4% of practicing gamblers develop compulsion problems. Since 31% of households gambled at a casino in 1995, the 2% to 4% range would yield numbers very similar to the Minnesota study. (31% of 265 million people = 82.15 million 3% = 2.5 million compulsive gamblers.)

Needless to say, people don't become compulsive gamblers until they're first exposed to gambling. Therefore, the rapid spread of casino gambling right now is a major concern.

Coates, the credit consultant, told us that Iowa commissioned a study of problem gambling in 1989, two years before the state's first riverboat and Indian casinos opened. In that study, it was estimated that 1.7% of the state's adult population were compulsive gamblers.

In 1995, by which time many casinos had dotted the state, Iowa did a similar study. Using the same methodology, the second study found that 5.4% of the state's entire adult population—not just the population that gambles—were problem or compulsive gamblers, a more than tripling of the rate in just six years.

LOSING EVERYTHING IS COMMON

For creditors, another problem with gambling-driven bankruptcy is that it is highly likely to result in total loss.

Even though most bankruptcy filings will represent near-total loss of amounts owed to unsecured creditors, the gambling-driven bankruptcies may be the worst. That's because addicted gamblers tend to ''tap out'' completely on debt and deplete savings, leading them into Chapter 7 liquidation.

These are logical observations, but also are supported by findings in a July 1996 study conducted in Wisconsin. We reviewed this study.

DEALING WITH THE GAMBLING ISSUES

Like so many of the drivers of bankruptcy, gambling is a frustratingly tough problem to solve.

Casino gambling is spreading rapidly in part because so many people enjoy it. Most gamblers also are responsible and know their limits. People like gambling and most do it safely, so how do you argue against the further spread of casinos?

The central problem for bankruptcy is that gambling adds another socio-economic minority group to the high-risk mix.

Bankruptcy is always driven by socio-economic and demographic minority groups. Most people have health insurance, but the 40 million Americans who don't are a large high-credit-risk minority. Most people don't get divorced, but the 10% of adults who are divorced are a sizable at-risk minority. If there also are 2.6 million compulsive gamblers, this is just another high-risk group to throw in—and perhaps the most rapidly growing group. Bankruptcies are rising in part because, when you add up all these at-risk minority groups, you end up with a very large number that's no longer minor.

Still, we believe that much could be done by active creditors to combat the level of the risk. At the moment, if anything, creditors enable and even encourage the problem gambler to go too far. And some state governments seem even more eager than the casinos themselves to encourage irresponsible gambling behavior—as we'll see in a moment in New Jersey.

Here are some of out thoughts on combating the gambling/bankruptcy problem:

1. Make it tougher for customers to obtain cash advances at gambling casinos.

According to the gaming industry itself, more than half of the money that gamblers play with at casinos is not money they brought with them. It is money they obtained inside the casino or close by from automated teller machines, cash advances from credit terminals, and the like.

''It is no secret in the casino industry that patrons will continue to play a game until their cash runs out. What some operators have discovered, however, is if a consumer is provided with efficient and easy ways to access cash, often a 'last time' player will wager for longer than he or she originally planned,'' states a recent article about cash advances in International Gambling and Wagering Business, a gaming industry monthly magazine. In addition, the article says, ''credit customers tend to be more liberal money-users.''

Credit card issuers have been very accommodating to gamblers, making it easy for them to get their hands on large sums of money very quickly. And it may well be that most of this business is profitable for the card issuers. But that may be changing now. In an era of very rapidly increasing bankruptcies, it does not take long for the net losses from bankruptcy filers to exceed the profits from gamblers who responsibly use their cash advances.

Here is some admittedly over-simplified card issuer math: Let's hypothesize that 1,000 gamblers have used credit card cash advances to obtain $1,000 each. Total receivables for this group will be $1 million. At a 1.5% return on assets, this $1 million will generate $15,000 of net income.

But the gaming industry itself says that 2% to 4% of these gamblers have an addiction problem. If the average is 3%, then 3% of the 1,000 gamblers we've just looked at are very high risk. This will be 30 people. If, as the earlier data suggests, 20% of these 30 people will file for bankruptcy, then 6 of the original 1,000 gamblers will wind up in bankruptcy court. Against the $15,000 of net income, what will the loss be from the 6 bankrupt compulsive gamblers? Probably, it will be more than $15,000—or at least close enough to make this little piece of the credit card business insufficiently profitable.

This tells us that card issuers and the ATM associations they partially control may want to reconsider their placement of so many cash machines in casino hotels. Or, at least, card issuers may need to institute new early warning indicators specific to those locations. The heavy users of casino hotel cash machines should be the ones stopped sooner.

''If I were a credit guy, I would check better on the ATM transactions,'' said Edward Looney, executive director of the Council on Compulsive Gambling of New Jersey. ''Banks ought to immediately pick up on someone in trouble. You can tell just from the transactions.'' Coates was quoted in the Des Monies Register newspaper in late 1995 claiming that banking sources told him that eight of the 10 busiest ATMs in Iowa were located at the casinos.

2. Help defeat actions in states that would make it easier for gamblers to get credit card cash advances on casino floors.

Here is perhaps the craziest credit risk story yet.

In New Jersey last September, the state Casino Control Commission passed a regulation that would allow casino patrons to utilize ATM and credit card cash advance machines placed right at the Atlantic City gaming tables.

Previously, customers had to walk to a different part of the building to use these machines. Under the new proposal, borrowing for blackjack would be faster than ordering a drink from a cocktail waitress. Not even Las Vegas casinos allow this. And, the Atlantic City casinos themselves don't support the measure, which they believe would lead to increased gambling compulsion and would tarnish the industry's reputation.

In other words, the state government is more eager to push money into the gambler's hands than the casinos who would profit most in the short run. What's wrong with the New Jersey regulators—and why didn't the banking industry object?

So far, no Atlantic City casino has taken advantage of the rule change, nor is any likely to in the future, said Keith Whyte, director of research at the American Gaming Association, the industry's trade group.

''We definitely opposed in principle New Jersey's regulatory rule change that would let casinos put ATM card swipes right at the table. And in fact no casinos are doing that, and none will, I can almost guarantee you.'' Whyte told us. ''It wasn't a casino-initiated thing. Everybody [in the industry] realized that is probably not a step we would want to take.''

According to Looney, the New Jersey Compulsive Gambling Council chief, not a single credit card or banking industry representative raised any objection to this rule when it

was being debated. Yet, Atlantic City has the highest concentration of big casinos outside Las Vegas and serves millions of gamblers per year. You get the feeling no one in the credit community is paying close attention to gambling's effect on bankruptcy.

3. Maybe cash machines should be move out of the casino hotels entirely.

Many of the experts we talked to for this study agreed that the worst thing for a compulsive gambler to have is immediate access to cash when he's on a binge. To the extent that banks control or influence where cash machines are placed, it may be time to reconsider their currently wide availability around the casino hotels.

If the gambler had to walk down the street to get cash, no doubt some would. But some of the people we interviewed strongly contend that the walk itself would impose a ''cooling off' period that would stop some compulsive gambling losses.

''It's a vulnerable thing for a compulsive gambler to get credit,'' said Looney of the New Jersey council and himself a recovering gambling addict. ''They will be so focused on their gambling that they will gamble everything they can, including all the credit cards they have in their possession. It is important to have ATM and credit card terminal at least some distance form where gambling actually takes place. To some this might seem a small point, but to those of us who deal with compulsive gamblers, this is huge. For many compulsive gamblers, just being forced to walk a couple of hundred feet away from where the gambling is actually taking place is sufficient time for them to rethink whether they really want to gamble any further. That break from gambling is a crucial time for many.''

4. Challenge more aggressively those bankruptcy filings where it appears that gambling losses are the main reason why the person is filing.

Inside the bankruptcy court, at least some folks contend, creditors should be even tougher on gamblers than they already are.

''I think lenders should push for slightly different treatment [in bankruptcy court] for someone who has been shown to run up his debts for gambling,'' said Tom Coates, the Des Moines credit counselor. Credit card lenders would not only be helping themselves but doing the problem gambler a favor, too, he noted.

Coates, who recently testified before the National Bankruptcy Commission, tried to impress on the panel that discharging gambling debts through a bankruptcy filing doesn't do the gambler any good. ''I tried to impress on the Commission that the compulsive, problem gambler is living in a fantasy world and to go ahead and discharge this debt in bankruptcy court continues to propagate this atmosphere of fantasy land. It will abort the recovery process for that individual. The process of recovery is to bring that person our of their fantasy world into the world of reality, and by discharging those debts, none of it seems real to them.''

Indeed, in a recent article in the St. Louis Post-Dispatch about gambling and bankruptcy, one gambler was quoted counseling another with money troubles: ''Go file bankruptcy. Then you'll have money to gamble with.''

U.S. credit card issuers should consider lobbying to change U.S. bankruptcy laws to make it illegal for people to discharge gambling debts in bankruptcy court. That is the current law in Australia, according to Henry Lesieur, the University of Illinois professor. Of course, the care issuers would have to be able to prove that a card cash advance was used for gambling purposes, which might often be difficult. On the other hand, if the law were changed, perhaps filers who lie about gambling losses would risk penalties, so at least some might be honest.

5. Finance research into problem gambling and finance help for compulsive gamblers.

From time to time, creditors provide funds to all sorts of charitable outfits. If they helped finance research into compulsive gambling, such spending would play a dual role. It would be a public contribution, and it would help creditors learn more about the seriousness of the tie between gambling and bankruptcy.

Quite a bit of money is spent on alcohol and drug addiction research and rehabilitation. Both of those problems are viewed (at least by some people) as medical. Apparently, the public view toward gambling addiction is quite different. There's no drug involved, and little is spent on research or rehab. Yet, gambling addiction can indeed be viewed as a form of emotional or mental illness—and it's the one addiction that is growing most quickly in its impact on creditors.

In our research for this study, we found very little new research being conducted on compulsive gambling. The experts we interviewed said that no national survey of compulsive gamblers has been done in more than 20 years; only a handful of studies have been done by various states from time to time. Much of the available research has been done in academia with modest financial support, and it gets little followup attention.

Card issuers spend millions on sporting events, the Olympics, and even on the Smithsonian museums (Discover Card). These expenditures have a marketing value. A fractional amount diverted to gambling research could have an even better bottom line impact.

Ms. KILPATRICK. Mr. Chairman, I rise today in strong opposition to H.R. 3150, the Bankruptcy Reform Act of 1998. This legislation does nothing to address the aggressive marketing of credit cards, home equity loans, and other forms of credit to consumers. While we all support individual responsibility, this bill makes it even tougher for persons to eradicate their debts and get started on a new financial slate.

First of all, I must inform my colleagues that, many, many years ago, I had to file for bankruptcy. For me, the debate on the floor today is no hypothetical, nor theoretical, exercise. Fortunately, I was able to repay my creditors and get back into excellent fiscal standing. But having to go through the wringer of bankruptcy has helped me better form an opinion on how we can better serve both debtors and creditors. H.R. 3150 is not that bill. Among other things, H.R. 3150 includes a means-test to determine whether a family can file for bankruptcy protection that eliminates debts and gives families a fresh, new financial start, commonly referred to as ''Chapter Seven,'' or whether the family must enter into a stringent repayment plan, referred to as ''Chapter 13.'' Most of our constituents who have to file for bankruptcy will have this fact listed on their credit report for at least seven years. Although a family may have their debts eliminated, for the next seven years it is difficult, if not impossible, to rent a car, rent a house or apartment, buy a business, or sometimes get a job. Having a bankruptcy filing listed on your credit report is tough to remove and tough to live with.

During House Rules Committee consideration of this bill, I offered an amendment that was not made part of this debate. My amendment would have allowed consumers to keep those electronic entertainment items that were purchased three months before the filing of a bankruptcy, and has a value of $500.00 or less. Certainly, a person knows at least three months in advance of a bankruptcy filing that he or she is in severe financial straits. My amendment would have also allowed for the disposition to creditors of recently-purchased electronic entertainment goods that have a higher value. While my amendment did not recognize fax machines or personal computers into this equation, we certainly know the volatility of the prices of these electronic goods. A computer that was purchased a year ago for $3,000 is now worth less that half that. Along those same lines, computers purchased years ago are now worth less than $1,000, and in many instances, you cannot even give them away. My amendment sets a limit of $500 to be consistent with the rest of current bankruptcy law. Unfortunately, it was not accepted by the House Rules Committee.

Bankruptcy is a very personal, dehumanizing, and emotionally draining experience. Despite the great strides that our economy, in general, has made with record unemployment and a stock market soaring into the stratosphere, bankruptcies are hitting all-time highs. It is important that we protect consumers and creditors. Unfortunately, the Bankruptcy Reform Act of 1998 does not protect consumers or creditors, and the wisdom of Congress should prevail in the defeat of this onerous bill.

Mr. POMEROY. Mr. Chairman, my vote today on behalf of H.R. 3150 is a vote to advance the process of bankruptcy reform in this Congress. I strongly believe that there is a need to reform our nation's bankruptcy laws. Passage of H.R. 3150 will allow bankruptcy reform efforts to proceed in the Senate and will move us toward our ultimate goal of sensible, responsible bankruptcy reform. I am disappointed that my vote does not also represent wholehearted support for the bill before us, but I believe that a number of the provisions of H.R. 3150 are flawed and must be revisited as the process continues. If these flaws are not remedied in our negotiations with the Senate, I will be unable to support a final conference agreement.

My primary concern with H.R. 3150 is that it would endanger the payment of child support and alimony by those who have declared bankruptcy. While the bill does not directly reduce the priority of child support obligations, it does increase the rights of other creditors such as credit card lenders, setting up a competition for scarce resources between mothers and children owed support and commercial credit card companies. Under Chapter 7 proceedings, mothers and children entitled to alimony and child support will have to compete with new categories of nondischargeable debt. Under Chapter 13 proceedings, these individuals will have to compete with the required $50 monthly payment to non-priority unsecured creditors such as credit card companies. I fear that mothers and children will lose out in these contests.

Mr. Chairman, H.R. 3150 appropriately steps up the degree of personal responsibility that must be expected from those who engage in reckless spending and who seek to misuse the bankruptcy laws to escape the consequences of this conduct. I am concerned, however, that this legislation does not at the same time step up the degree of responsibility that must be expected from the credit card companies who today often facilitate this spending through aggressive marketing of

their cards. While we must ask individuals to be prudent with respect to their credit and spending behavior, we must also ask credit card companies to be prudent with respect to their lending behavior. These companies possess credit histories for those to whom they market and they should simply not be extending credit to individuals who they know to be financially overextended. I believe we must encourage credit card companies to exercise responsibility by making dischargeable credit card debt extended under these circumstances.

Mr. Chairman, it is my sincere hope that these issues will be remedied in the Senate and during any conference committee so that this Congress can truly achieve the goal of sensible, responsible bankruptcy reform.

Ms. CHRISTIAN-GREEN. Mr. Chairman, I rise today in opposition to H.R. 3150, the Bankruptcy Reform Act of 1998 because it supports creditors at the expense of the interest of women and children.

My colleagues, the Leadership Conference on Civil Rights in commenting on this bill points out, I think quite correctly, that it is economic discrimination which is suffered by disadvantaged groups in our society that often is the reason why such groups are forced to file bankruptcy.

In the case of women, for example, the cumulative effects of lower wages, reduced access to health insurance, the devastating economic consequences of divorce and the disproportionate financial strain of rearing children alone is often why women heads of households find themselves in bankruptcy.

Additionally, African-Americans and Hispanic families also suffering from discrimination in home mortgage lending and housing purchases and facing inequity in hiring opportunities, wages, and health insurance coverage, also turn to bankruptcy to stabilize their economic circumstances and protect the middle class lives they have struggled so hard to achieve.

Mr. Speaker, H.R. 3150 should be opposed because it would have a significant negative impact on these groups of economically disadvantaged Americans, all to the benefit of the credit industry. It is ironic that as the credit industry waged a high-profile campaign to rush this bill, which would punish debtors, to the floor of the House, total credit card profitability has grown. According to the Federal Reserve Board, credit card lending is now twice as profitable as all other lending activities.

H.R. 3150 should also be opposed, Mr. Speaker, because it places in jeopardy the ability of women and children who file for bankruptcy to receive child support and alimony payments. This will be devastating to children and women who rely on child care and alimony.

As a new member of the Small Business Committee I am particularly troubled that the Bankruptcy Reform Act of 1998 would also make it difficult for small businesses who are experiencing financial difficulties to get a fresh start. The small business provisions of the bill will impose massive new legal and paperwork burdens on small business and real estate concerns thereby increasing the potential for job loss.

Mr. Speaker, this isn't reform its deform. I urge my colleagues to join the Clinton Administration, the AFL-CIO, the National Bankruptcy Conference, the Leadership Conference on Civil Rights and countless other organizations in opposition to this bill.

Mr. BARCIA. Mr. Chairman, H.R. 3150, the Bankruptcy Reform Act of 1998, is not a perfect bill and I have reservations about the specific language. However, I am voting for the legislation because I strongly believe that people must take responsibility for their financial decisions.

Last year more than 1.33 million households filed for bankruptcy which amounted to over $44 billion. And when these consumers file for bankruptcy, the rest of us pay for it. We pay in the form of higher interest rates. We pay in the form higher credit card fees. We pay through a growing number of penalty charges for late payment even when the ''late payment'' is more the fault of the postal service than that of the consumer. I share my colleagues concerns about giving families a new beginning if they incurred debt beyond their control, such as high medical costs from an accident or recovery from a disaster. But when the reason for financial difficulty is a lack of personal financial responsibility and bankruptcy is viewed as an ''easy way out'' then the system has failed.

Our nation's bankruptcy laws play an important and necessary role in our society. We must ensure that our bankruptcy system does not unintentionally encourage those who can take responsibility for their financial obligations not to do so. Such an abuse of our bankruptcy laws is fundamentally unfair to those who play by the rules and take responsibility for their personal obligations.

As I said, this is not a perfect bill. As this bill progresses through the legislative process I will do all that I can to protect the innocent people from being caught up in the system and ensure that others are not taking advantage of an easy way out.

Mr. FILNER. Mr. Chairman, rather than reining in their own policies of ''easy credit,'' big banks and credit card companies want to come down on families who took their bait, and in many instances, began to rely on credit cards to pay for basic living expenses. This legislation before us would even allow credit card companies to make tragic victims of those who did not even rack up credit card debt—women and children who depend on alimony and child support payments to live.

There are many problems with this bill. The first is a rigid and arbitrary means test that would bounce many families into Chapter 13 without allowing judges to rule on the specifics of their cases, exposing their families to the potential of losing their family homes. Just as inhumane are the provisions that would make credit card debt non-dischargeable. This would place credit card debt on the same plane as child support and alimony payments and force women to fight credit card companies to maintain their right to receive payments for their families' sustenance.

H.R. 3150 would absolve credit card companies of problems largely of their own making. It would turn the bankruptcy system into a debt collection agency for credit companies—with taxpayers footing the bill! Our families, particularly women and children, deserve the right to fair bankruptcy laws, laws interpreted on a case by case basis by judges who *currently* have the power to ensure that children's needs are met first while the other debts are being repaid.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule by title, and each title shall be considered as read.

No amendment to the committee amendment is in order unless printed in the House Report 105–573. Each amendment may be offered only in the order specified, may be offered only by a Member designated in the report, shall be considered as read, debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question.

The chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment, and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

Mr. GEKAS. Mr. Chairman, I ask unanimous consent that the committee amendment in the nature of a substitute be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The text of the committee amendment in the nature of a substitute is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

Sec. 1. Short title; table of contents.

TITLE I—CONSUMER BANKRUPTCY PROVISIONS

Subtitle A—Needs-Based Bankruptcy

Sec. 101. Needs-based bankruptcy.
Sec. 102. Adequate income shall be committed to a plan that pays unsecured creditors.
Sec. 103. Definition of inappropriate use.
Sec. 104. Debtor participation in credit counseling program.

Subtitle B—Adequate Protections for Consumers

Sec. 111. Notice of alternatives.
Sec. 112. Debtor financial management training test program.
Sec. 113. Definitions.
Sec. 114. Disclosures.
Sec. 115. Debtor's bill of rights.
Sec. 116. Enforcement.
Sec. 117. Sense of the Congress.
Sec. 118. Charitable contributions.
Sec. 119. Reinforce the fresh start.
Sec. 119A. Chapter 11 discharge of debts arising from tobacco-related debts.

Subtitle C—Adequate Protections for Secured Creditors

Sec. 121. Discouraging bad faith repeat filings.
Sec. 122. Definition of household goods.
Sec. 123. Debtor retention of personal property security.
Sec. 124. Relief from stay when the debtor does not complete intended surrender of consumer debt collateral.

Sec. 125. Giving secured creditors fair treatment in chapter 13.
Sec. 126. Prompt relief from stay in individual cases.
Sec. 127. Stopping abusive conversions from chapter 13.
Sec. 128. Restraining abusive purchases on secured credit.
Sec. 129. Fair valuation of collateral.
Sec. 130. Protection of holders of claims secured by debtor's principal residence.
Sec. 131. Aircraft equipment and vessels.

Subtitle D—Adequate Protections for Unsecured Creditors

Sec. 141. Debts incurred to pay nondischargeable debts.
Sec. 142. Credit extensions on the eve of bankruptcy presumed nondischargeable.
Sec. 143. Fraudulent debts are nondischargeable in chapter 13 cases.
Sec. 144. Applying the codebtor stay only when it protects the debtor.
Sec. 145. Credit extensions without a reasonable expectation of repayment made nondischargeable.
Sec. 146. Debts for alimony, maintenance, and support.
Sec. 147. Nondischargeability of certain debts for alimony, maintenance, and support.
Sec. 148. Other exceptions to discharge.
Sec. 149. Fees arising from certain ownership interests.
Sec. 150. Protection of child support and alimony.
Sec. 151. Adequate protection for investors.

Subtitle E—Adequate Protections for Lessors

Sec. 161. Giving debtors the ability to keep leased personal property by assumption.
Sec. 162. Adequate protection of lessors and purchase money secured creditors.
Sec. 163. Adequate protection for lessors.

Subtitle F—Bankruptcy Relief Less Frequently Available for Repeat Filers

Sec. 171. Extend period between bankruptcy discharges.

Subtitle G—Exemptions

Sec. 181. Exemptions.
Sec. 182. Limitation.

TITLE II—BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Provisions

Sec. 201. Limitation relating to the use of fee examiners.
Sec. 202. Sharing of compensation.
Sec. 203. Chapter 12 made permanent law.
Sec. 204. Meetings of creditors and equity security holders.
Sec. 205. Creditors' and equity security holders' committees.
Sec. 206. Postpetition disclosure and solicitation.
Sec. 207. Preferences.
Sec. 208. Venue of certain proceedings.
Sec. 209. Period for filing plan under chapter 11.
Sec. 210. Period for filing plan under chapter 12.
Sec. 211. Cases ancillary to foreign proceedings involving foreign insurance companies that are engaged in the business of insurance or reinsurance in the United States.
Sec. 212. Rejection of executory contracts affecting intellectual property rights to recordings of artistic performance.
Sec. 213. Unexpired leases of nonresidential real property.
Sec. 214. Definition of disinterested person.

Subtitle B—Specific Provisions

CHAPTER 1—SMALL BUSINESS BANKRUPTCY

Sec. 231. Definitions.
Sec. 232. Flexible rules for disclosure statement and plan.
Sec. 233. Standard form disclosure statements and plans.
Sec. 234. Uniform national reporting requirements.
Sec. 235. Uniform reporting rules and forms.
Sec. 236. Duties in small business cases.
Sec. 237. Plan filing and confirmation deadlines.
Sec. 238. Plan confirmation deadline.
Sec. 239. Prohibition against extension of time.
Sec. 240. Duties of the United States trustee and bankruptcy administrator.
Sec. 241. Scheduling conferences.
Sec. 242. Serial filer provisions.
Sec. 243. Expanded grounds for dismissal or conversion and appointment of trustee.

CHAPTER 2—SINGLE ASSET REAL ESTATE

Sec. 251. Single asset real estate defined.
Sec. 252. Payment of interest.

TITLE III—MUNICIPAL BANKRUPTCY PROVISIONS

Sec. 301. Petition and proceedings related to petition.

TITLE IV—BANKRUPTCY ADMINISTRATION

Subtitle A—General Provisions

Sec. 401. Adequate preparation time for creditors before the meeting of creditors in individual cases.
Sec. 402. Creditor representation at first meeting of creditors.
Sec. 403. Filing proofs of claim.
Sec. 404. Audit procedures.
Sec. 405. Giving creditors fair notice in chapter 7 and 13 cases.
Sec. 406. Debtor to provide tax returns and other information.
Sec. 407. Dismissal for failure to file schedules timely or provide required information.
Sec. 408. Adequate time to prepare for hearing on confirmation of the plan.
Sec. 409. Chapter 13 plans to have a 5-year duration in certain cases.
Sec. 410. Sense of the Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.
Sec. 411. Jurisdiction of courts of appeals.
Sec. 412. Establishment of official forms.
Sec. 413. Elimination of certain fees payable in chapter 11 bankruptcy cases.

Subtitle B—Data Provisions

Sec. 441. Improved bankruptcy statistics.
Sec. 442. Bankruptcy data.
Sec. 443. Sense of the Congress regarding availability of bankruptcy data.

TITLE V—TAX PROVISIONS

Sec. 501. Treatment of certain liens.
Sec. 502. Enforcement of child and spousal support.
Sec. 503. Effective notice to Government.
Sec. 504. Notice of request for a determination of taxes.
Sec. 505. Rate of interest on tax claims.
Sec. 506. Tolling of priority of tax claim time periods.
Sec. 507. Assessment defined.
Sec. 508. Chapter 13 discharge of fraudulent and other taxes.
Sec. 509. Chapter 11 discharge of fraudulent taxes.
Sec. 510. The stay of tax proceedings.
Sec. 511. Periodic payment of taxes in chapter 11 cases.
Sec. 512. The avoidance of statutory tax liens prohibited.
Sec. 513. Payment of taxes in the conduct of business.
Sec. 514. Tardily filed priority tax claims.
Sec. 515. Income tax returns prepared by tax authorities.
Sec. 516. The discharge of the estate's liability for unpaid taxes.
Sec. 517. Requirement to file tax returns to confirm chapter 13 plans.
Sec. 518. Standards for tax disclosure.
Sec. 519. Setoff of tax refunds.

TITLE VI—ANCILLARY AND OTHER CROSS-BORDER CASES

Sec. 601. Amendment to add a chapter 6 to title 11, United States Code.
Sec. 602. Amendments to other chapters in title 11, United States Code.

TITLE VII—MISCELLANEOUS

Sec. 701. Technical amendments.
Sec. 702. Application of amendments.

TITLE I—CONSUMER BANKRUPTCY PROVISIONS

Subtitle A—Needs-Based Bankruptcy

SEC. 101. NEEDS-BASED BANKRUPTCY.

Title 11, United States Code, is amended—

(1) in section 101 as follows:

(A) by inserting after paragraph (10) the following:

''(10A) 'current monthly total income' means the average monthly income from all sources derived which the debtor, or in a joint case, the debtor and the debtor's spouse, receive without regard to whether it is taxable income, in the six months preceding the date of determination, and includes any amount paid by anyone other than the debtor or, in a joint case, the debtor and the debtor's spouse on a regular basis to the household expenses of the debtor or the debtor's dependents and, in a joint case, the debtor's spouse if not otherwise a dependent;''; and

(B) by inserting after paragraph (40) the following:

''(40A) 'national median family income' and 'national median household income for 1 earner' shall mean during any calendar year, the national median family income and the national median household income for 1 earner which the Bureau of the Census has reported as of January 1 of such calendar year for the most recent previous calendar year;'';

(2) in section 104(b)(1) by striking ''109(e)'' and inserting ''subsections (b), (e), and (h) of section 109'';

(3) in section 109(b)—

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

(B) in paragraph (3) by striking the period and inserting ''; or''; and

(C) by adding at the end the following:

''(4) an individual or, in a joint case, an individual and such individual's spouse, who have income available to pay creditors as determined under subsection (h).'';

(4) by adding at the end of section 109 the following:

''(h)(1) An individual or, in a joint case, an individual and such individual's spouse, have income available to pay creditors if the individual, or, in a joint case, the individual and the individual's spouse combined, as of the date of the order for relief, have—

''(A) current monthly total income of not less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, of not less than the national median household income for 1 earner, as of the date of the order for relief;

''(B) projected monthly net income greater than $50; and

''(C) projected monthly net income sufficient to repay twenty percent or more of unsecured nonpriority claims during a five-year repayment plan.

''(2) Projected monthly net income shall be sufficient under paragraph (1)(C) if, when multiplied by 60 months, it equals or exceeds 20 percent of the total amount scheduled as payable to unsecured nonpriority creditors.

''(3) 'Projected monthly net income' means current monthly total income less—

''(A) the expense allowances under the applicable National Standards, Local Standards and Other Necessary Expenses allowance (excluding payments for debts) for the debtor, the debtor's dependents, and, in a joint case, the debtor's spouse if not otherwise a dependent, in the area in which the debtor resides as determined under the Internal Revenue Service financial analysis for expenses in effect as of the date of the order for relief;

''(B) the average monthly payment on account of secured creditors, which shall be calculated as the total of all amounts scheduled as contractually payable to secured creditors in each month of the 60 months following the date of the petition by the debtor, or, in a joint case, by the debtor and the debtor's spouse combined, and dividing that total by 60 months; and

''(C) the average monthly payment on account of priority creditors, which shall be calculated as the total amount of debts entitled to priority, reasonably estimated by the debtor as of the date of the petition, and dividing that total by 60 months.

''(4) In the event that the debtor establishes extraordinary circumstances that require allowance for additional expenses or adjustment of current monthly income, projected monthly net income for purposes of this section shall be the amount calculated under paragraph (3) less such additional expenses or income adjustment as such extraordinary circumstances require.

''(A) This paragraph shall not apply unless the debtor files with the petition—

''(i) a written statement that this paragraph applies in determining the debtor's eligibility for relief under chapter 7 of this title;

''(ii) if adjustment of current monthly income is claimed, an explanation of what income has been lost in the 6 months preceding the date of determination and any replacement income that has been offered or secured, or is expected, and an itemization of such lost and replacement income;

''(iii) if allowance for additional expenses is claimed, a list itemizing each additional expense which exceeds the expenses allowances provided under paragraph (3)(A);

''(iv) a detailed description of the extraordinary circumstances that explain why each loss of income described under clause (ii) will not be replaced or each additional expense itemized under clause (iii) requires allowance; and

''(v) a sworn statement signed by the debtor and, if the debtor is represented by counsel, by the debtor's attorney, that the information required under this paragraph is true and correct.

''(B) Until the trustee or any party in interest objects to the debtor's statement that this paragraph applies and the court rejects or modifies the debtor's statement, the projected monthly net income in the debtor's statement shall be the projected monthly net income for the purposes of this section. If an objection is filed with the court within 60 days after the debtor has provided all the information required under subsections (a)(1) and (c)(1)(A) of section 521, the court, after notice and hearing, shall determine whether such extraordinary circumstances exist and shall establish the amount of the additional expense allowance, if any. The burden of proving such extraordinary circumstances shall be on the debtor.'';

(5) in section 704—

(A) by striking ''and'' at the end of paragraph (8);

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

(C) by adding at the end the following:

''(10) with respect to an individual debtor, review all materials provided by the debtor under subsections (a)(1) and (c)(1) of section 521, investigate and verify the debtor's projected monthly net income and within 30 days after such materials are so provided—

''(A) file a report with the court as to whether the debtor qualifies for relief under this chapter under section 109(b)(4); and

''(B) if the trustee determines that the debtor does not qualify for such relief, the trustee shall provide a copy of such report to the parties in interest.'';

(6) in section 1302(b)—

(A) in paragraph (4) by striking ''and'' at the end;

(B) in paragraph (5) by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

''(6) investigate and verify the debtor's monthly net income and other information provided by the debtor pursuant to sections 521 and 1322, and pursuant to section 111, if applicable; and

''(7) file annual reports with the court, with copies to holders of claims under the plan, as to whether a modification of the amount paid creditors under the plan is appropriate because of changes in the debtor's monthly net income.''.

SEC. 102. ADEQUATE INCOME SHALL BE COMMITTED TO A PLAN THAT PAYS UNSECURED CREDITORS.

Title 11, United States Code, is amended—

(1) in section 101 by inserting after paragraph (39) the following:

''(39A) 'monthly net income' means the amount determined by taking the current monthly total income of the debtor less—

''(A) the expense allowances under the applicable National Standards, Local Standards and Other Necessary Expenses allowance (excluding payments for debts) for the debtor, the debtor's dependents, and, in a joint case, the debtor's spouse if not otherwise a dependent, in the area in which the debtor resides as determined under the Internal Revenue Service financial analysis for expenses in effect as of the date it is being determined;

''(B) the average monthly payment on account of secured creditors, which shall be calculated as of the date of determination as the total of all amounts then remaining to be paid on account of secured claims pursuant to the plan less any of such amounts to be paid from sources other than the debtor's income, divided by the total months remaining of the plan; and

''(C) the average monthly payment on account of priority creditors, which shall be calculated as the total of all amounts then remaining to be paid on account of priority claims pursuant to the plan less any of such amounts to be paid from sources other than the debtor's income, divided by the total months remaining of the plan;'';

(2) in section 104(b)(1) by striking ''and 523(a)(2)(C)'' and inserting ''523(a)(2)(C), and 1325(b)(1)'';

(3) by adding after section 110 the following:

''§ 111. Adjustment to monthly net income

''(a) Monthly net income for purposes of a plan under chapter 13 of this title shall be adjusted under this section when the debtor's extraordinary circumstances require adjustment as determined herein. Under this section, monthly net income shall be determined by subtracting therefrom such loss of income or additional expenses as the debtor's extraordinary circumstances require as determined under this section. This section shall not apply unless—

''(1) the debtor files with the court and, in a case in which a trustee has been appointed, with the trustee at the times required in subsection (b) a statement of extraordinary circumstances as follows—

''(A) a written statement that this section applies in determining the debtor's monthly net income;

''(B) if applicable, an explanation of what income has been lost in the six months preceding the date of determination and any replacement income which has been secured or is expected, and an itemization of such lost and replacement income;

''(C) if applicable, a list itemizing each additional expense which exceeds the expense allowance provided in determining monthly net income under section 101(39A);

''(D) if applicable, a detailed description of the extraordinary circumstances which explains why each of the additional expenses itemized under paragraph (C) requires allowance; and

''(E) a sworn statement signed by the debtor and, if the debtor is represented by counsel, by the debtor's attorney, of the amount of monthly net income that the debtor has pursuant to this subsection and that the information provided under this subsection is true and correct; and

''(2) until the trustee or any party in interest objects to the debtor's request that this section be applied and the court rejects or modifies the debtor's statement, the monthly net income in the debtor's statement shall be the monthly net income for the purposes of the debtor's plan. If an objection is filed with the court within the times provided in subsection (b), the court, after notice and hearing, shall determine whether such extraordinary circumstances asserted by the debtor exist and establish the amount of the loss of income and such additional expense allowance, if any. The burden of proving such extraordinary circumstances and the amount of the loss of income and the additional expense allowance, if any, shall be on the debtor. The court may award to the party that prevails with respect to such objection a reasonable attorney's fee and costs incurred by the prevailing party in connection with such objection if the court finds that the position of the nonprevailing party was not substantially justified, but the court shall not award such fee or such costs if special circumstances make the award unjust.

''(b) For the purposes of chapter 13 of this title, the statement of extraordinary circumstances shall be filed with the court and served on the trustee on or before 45 days before each anniversary of the confirmation of the plan in order to be applicable during the next year of the plan. Any objection thereto shall be filed 30 days after the statement is filed with the trustee. Whenever a statement is timely filed with the trustee, the trustee shall give notice to creditors that such statement has been filed and the amount of monthly net income stated therein within 15 days of receipt of the statement.'';

(4) in section 1322(a)—

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

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

(C) by adding at the end the following:

''(4) state, under penalties of perjury, the amount of monthly net income, which may be as adjusted under section 111, if applicable, of this title and the amount of monthly net income which will be paid per month to unsecured nonpriority creditors under the plan.''; and

(5) by amending section 1325(b)(1)(B) to read as follows:

''(B) the plan provides—

''(i) that payments to unsecured nonpriority creditors who are not insiders shall equal or exceed $50 in each month of the plan;

''(ii) that during the applicable commitment period beginning on the date that the first payment is due under the plan, the total amount of monthly net income received by the debtor shall be paid to unsecured nonpriority creditors under the plan less only payments pursuant to section 1326(b); the 'applicable commitment period' shall be not less than 5 years if the debtor's total current monthly income is not less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, is not less than the national median household income for 1 earner, as of the date of confirmation of the plan and shall be not less than 3 years if the debtor's total current monthly income is less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, is less than the national median household income for 1 earner, as of the date of confirmation of the plan;

''(iii) that the amount payable to each class of unsecured nonpriority claims under the plan

shall be increased or decreased during the plan proportionately to the extent the debtor's monthly net income during the plan increases or decreases as reasonably determined by the trustee, subject to section 111 of this title, no less frequently than as of each anniversary of the confirmation of the plan based on monthly net income as of 45 days before such anniversary; and

''(iv) nothing in subparagraph (i) or (ii) shall prevent the payment of obligations described in section 507(a)(7) at the times provided for in the plan, and the plan shall specify how payments to other creditors under subparagraph (ii) will be accordingly adjusted.''; and

(6) by striking section 1325(b)(2).

SEC. 103. DEFINITION OF INAPPROPRIATE USE.

Section 707(b) of title 11, United States Code, is amended to read as follows:

''(b)(1) After notice and a hearing, the court—

''(A) on its own motion or on the motion of the United States trustee or any party in interest, shall dismiss a case filed by an individual debtor under this chapter; or

''(B) with the debtor's consent, convert the case to a case under chapter 13 of this title;

if the court finds that the granting of relief would be an inappropriate use of the provisions of this chapter.

''(2) The court shall determine that inappropriate use of the provisions of this chapter exists if—

''(A) the debtor is excluded from this chapter pursuant to section 109 of this title; or

''(B) the totality of the circumstances of the debtor's financial situation demonstrates such inappropriate use.

''(3) In the case of a motion filed by a party in interest other than the trustee or United States trustee under paragraph (1) that is denied by the court, the court shall award against the moving party a reasonable attorney's fee and costs that the debtor incurred in opposing the motion if the court finds that the position of the moving party was not substantially justified, but the court shall not award such fee and costs if special circumstances would make the award unjust.

''(4)(A) If a trustee appointed under this title or the United States Trustee files a motion under this subsection and the case is subsequently dismissed or converted to another chapter, the court shall award to such party in interest a reasonable attorney's fee and costs incurred in connection with such motion, payable by the debtor, unless the court finds that awarding such fee and costs would impose an unreasonable hardship on the debtor, considering the debtor's conduct.

''(B) The signature of the debtor's attorney on any petition, pleading, motion, or other paper filed with the court in the case of the debtor shall constitute a certificate that the attorney has—

''(i) performed a reasonable investigation into the circumstances that gave rise to the petition and its schedules and statement of financial affairs or the pleading, as applicable; and

''(ii) determined that the petition and its schedules and statement of financial affairs or the pleading, as applicable, including the choice of this chapter—

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

''(II) is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law and does not constitute an inappropriate use of the provisions of this chapter.

''(C) If the court finds that the attorney for the debtor signed a paper in violation of subparagraph (B), at a minimum, the court shall order—

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

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

SEC. 104. DEBTOR PARTICIPATION IN CREDIT COUNSELING PROGRAM.

(a) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code, as amended by section 102, is amended by adding at the end the following:

''(i)(1) Subject to paragraph (2) and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has, during the 90-day period preceding the date of filing of the petition, made a good-faith attempt to create a debt repayment plan outside the judicial system for bankruptcy law (commonly referred to as the 'bankruptcy system'), through a credit counseling program offered through credit counseling services described in section 342(b)(2) that has been approved by—

''(A) the United States trustee; or

''(B) the bankruptcy administrator for the district in which the petition is filed.

''(2) The United States trustee or bankruptcy administrator may not approve a program for inclusion on the list under paragraph (1) unless the counseling service offering the program offers the program without charge, or at an appropriately reduced charge, if payment of the regular charge would impose a hardship on the debtor or the debtor's dependents.

''(3) The United States trustee or bankruptcy administrator shall designate any geographical areas in the United States trustee region or judicial district, as the case may be, as to which the United States trustee or bankruptcy administrator has determined that credit counseling services needed to comply with this subsection are not available or are too geographically remote for debtors residing within the designated geographical areas. The clerk of the bankruptcy court for each judicial district shall maintain a list of the designated areas within the district.

''(4) The clerk shall exclude a particular counseling service from the list maintained under section 342(b)(2) of this title if the United States trustee or bankruptcy administrator orders that the counseling service not be included in the list.

''(5) The court may waive the requirement specified in paragraph (1) if—

''(A) no credit counseling services are available as designated under paragraphs (2) and (3);

''(B) the providers of credit counseling services available in the district are unable or unwilling to provide such services to the debtor in a timely manner; or

''(C) foreclosure, garnishment, attachment, eviction, levy of execution, or similar claim enforcement procedure that would have deprived the individual of property had commenced before the debtor could complete a good-faith attempt to create such a repayment plan.

''(6) A debtor who is subject to the exemption under paragraph (5)(C) shall be required to make a good-faith attempt to create a debt repayment plan outside the judicial system in the manner prescribed in paragraph (1) during the 30-day period beginning on the date of filing of the petition of that debtor.

''(7) A debtor shall be exempted from the bad faith presumption for repeat filing under section 362(c) of title 11 if the case is dismissed due to the creation of a debt repayment plan.

''(8) Only the United States trustee may make a motion for dismissal on the ground that the debtor did not comply with this subsection.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 406 and 407, is amended by adding at the end the following:

''(g)(1) In addition to the requirements under subsection (a), an individual debtor shall file with the court—

''(A) a certificate from the credit counseling services that provided the debtor services under section 109(i), or a verified statement as to why such attempt was not required under section 109(i) or other substantial evidence of a good-faith attempt to create a debt repayment plan outside the bankruptcy system in the manner prescribed in section 109(i); and

''(B) a copy of the debt repayment plan, if any, developed under section 109(i) through the credit counseling service referred to in paragraph (1).

''(2) Only the United States trustee may make a motion for dismissal on the ground that the debtor did not comply with this subsection.''.

Subtitle B—Adequate Protections for Consumers

SEC. 111. NOTICE OF ALTERNATIVES.

(a) Section 342(b) of title 11, United States Code, is amended to read as follows:

''(b)(1) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, the individual shall be given or obtain (as required to be certified under section 521(a)(1)(B)(viii)) a written notice that is prescribed by the United States trustee for the district in which the petition is filed pursuant to section 586 of title 28 and that contains the following:

''(A) A brief description of chapters 7, 11, 12 and 13 of this title and the general purpose, benefits, and costs of proceeding under each of such chapters.

''(B) A brief description of services that may be available to the individual from an independent nonprofit debt counselling service.

''(C) The name, address, and telephone number of each nonprofit debt counselling service (if any)—

''(i) with an office located in the district in which the petition is filed; or

''(ii) that offers toll-free telephone communication to debtors in such district.

''(2) Any such nonprofit debt counselling service that registers with the clerk of the bankruptcy court on or before December 10 of the preceding year shall be included in such list unless the chief bankruptcy judge of the district, after notice to the debt counselling service and the United States trustee and opportunity for a hearing, for good cause, orders that such debt counselling service shall not be so listed.

''(3) The clerk shall make such notice available to individuals whose debts are primarily consumer debts.''.

(b) Section 586(a) of title 28, United States Code, is amended—

(1) in paragraph (5) by striking ''and'' at the end;

(2) in paragraph (6) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(7) on or before January 1 of each calendar year, and also within 30 days of any change in the nonprofit debt counselling services registered with the bankruptcy court, prescribe and make available on request the notice described in section 342(b)(1) of title 11 for each district included in the region.''.

SEC. 112. DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM.

(a) DEVELOPMENT OF FINANCIAL MANAGEMENT AND TRAINING CURRICULUM AND MATERIALS.—The Director of the Executive Office for United States Trustees (in this section referred to as the ''Director'') shall consult with a wide range of individuals who are experts in the field of debtor education, including trustees who are appointed under chapter 13 of title 11 of the United States Code and who operate financial management education programs for debtors, and shall develop a financial management training curriculum and materials that can be used to educate individual debtors on how to better manage their finances.

(b) TEST—(1) The Director shall select 3 judicial districts of the United States in which to test the effectiveness of the financial management training curriculum and materials developed under subsection (a).

(2) For a 1-year period beginning not later than 60 days after the date of the enactment of this Act, such curriculum and materials shall be made available by the Director, directly or indirectly, on request to individual debtors in cases filed in such 1-year period under chapter 7 or 13 of title 11 of the United States Code.

(3) The bankruptcy courts in each of such districts may require individual debtors in such cases to undergo such financial management training as a condition to receiving a discharge in such case.

(c) EVALUATION.—(1) During the 1-year period referred to in subsection (b), the Director shall evaluate the effectiveness of—

(A) the financial management training curriculum and materials developed under subsection (a); and

(B) a sample of existing consumer education programs such as those described in the Report of the National Bankruptcy Review Commission (October 20, 1997) that are representative of consumer education programs carried out by the credit industry, by trustees serving under chapter 13 of title 11 of the United States Code, and by consumer counselling groups.

(2) Not later than 3 months after concluding such evaluation, the Director shall submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate, for referral to the appropriate committees of the Congress, containing the findings of the Director regarding the effectiveness of such curriculum, such materials, and such programs.

SEC. 113. DEFINITIONS.

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

(1) by inserting after paragraph (3) the following:

''(3A) 'assisted person' means any person whose debts consist primarily of consumer debts and whose non-exempt assets are less than $150,000;'';

(2) by inserting after paragraph (4) the following:

''(4A) 'bankruptcy assistance' means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation or filing, or attendance at a creditors' meeting or appearing in a proceeding on behalf of another or providing legal representation with respect to a proceeding under this title;''; and

(3) by inserting after paragraph (12A) the following:

''(12B) 'debt relief counselling agency' means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer pursuant to section 110 of this title, but does not include any person that is any of the following or an officer, director, employee or agent thereof—

''(A) any nonprofit organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

''(B) any creditor of the person to the extent the creditor is assisting the person to restructure any debt owed by the person to the creditor; or

''(C) any depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such a depository institution or credit union;''.

(b) CONFORMING AMENDMENT.—In section 104(b)(1) by inserting ''101(3),'' after ''sections''.

SEC. 114. DISCLOSURES.

(a) DISCLOSURES.—Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

''§ 526. Disclosures

''(a) A debt relief counselling agency providing bankruptcy assistance to an assisted person shall provide the following notices to the assisted person:

''(1) the written notice required under section 342(b)(1) of this title; and

''(2) to the extent not covered in the written notice described in paragraph (1) of this section and no later than three business days after the first date on which a debt relief counselling agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons of the following—

''(A) all information the assisted person is required to provide with a petition and thereafter during a case under this title must be complete, accurate and truthful;

''(B) all assets and all liabilities must be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 of this title must be stated in those documents where requested after reasonable inquiry to establish such value;

''(C) current monthly total income, projected monthly net income and, in a chapter 13 case, monthly net income must be stated after reasonable inquiry; and

''(D) that information an assisted person provides during their case may be audited pursuant to this title and that failure to provide such information may result in dismissal of the proceeding under this title or other sanction including, in some instances, criminal sanctions.

''(b) A debt relief counselling agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) with the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:

'''IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER

'''If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.

'''The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

'''Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief made available by the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a ''trustee'' and by creditors.

'''If you select a chapter 7 proceeding, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so.

'''If you select a chapter 13 proceeding in which you repay your creditors what you can afford over three to seven years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.'

'''If you select another type of proceeding under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what needs to be done from someone familiar with that type of proceeding.

'''Your bankruptcy proceeding may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can represent you in litigation.'.

''(c) Except to the extent the debt relief counselling agency provides the required information itself after reasonably diligent inquiry of the assisted person or others so as to obtain such information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, a debt relief counselling agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the time required for the notice required under subsection (a)(1) reasonably sufficient information (which may be provided orally or in a clear and conspicuous writing) to the assisted person on how to provide all the information the assisted person is required to provide under this title pursuant to section 521, including—

''(1) how to value assets at replacement value, determine current monthly total income, projected monthly income and, in a chapter 13 case, net monthly income, and related calculations;

''(2) how to complete the list of creditors, including how to determine what amount is owed and what address for the creditor should be shown; and

''(3) how to determine what property is exempt and how to value exempt property at replacement value as defined in section 506 of this title.

''(d) A debt relief counselling agency shall maintain a copy of the notices required under subsection (a) of this section for two years after the later of the date on which the notice is given the assisted person.''.

(b) CONFORMING AMENDMENT.—The table of section for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 525 the following:

''526. Disclosures.''.

SEC. 115. DEBTOR'S BILL OF RIGHTS.

(a) DEBTOR'S BILL OF RIGHTS.—Subchapter II of chapter 5 of title 11, United States Code, as amended by section 114, is amended by adding at the end the following:

''§ 527. Debtor's bill of rights

''(a) A debt relief counselling agency shall—

''(1) no later than three business days after the first date on which a debt relief counselling agency provides any bankruptcy assistance services to an assisted person, execute a written contract with the assisted person specifying clearly and conspicuously the services the agency will provide the assisted person and the basis on which fees or charges will be made for such services and the terms of payment, and give the assisted person a copy of the fully executed and completed contract in a form the person can keep;

''(2) disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages or otherwise) that the services or benefits are with respect to proceedings under this title, clearly and conspicuously using the following statement: 'We are a debt relief counselling agency. We help people file Bankruptcy petitions to obtain relief under the Bankruptcy Code.' or a substantially similar statement. An advertisement shall be of bankruptcy assistance services if it describes or offers bankruptcy assistance with a chapter 13 plan, regardless of whether chapter 13 is specifically mentioned, including such statements as 'federally supervised repayment plan' or 'Federal debt restructuring help' or other similar statements which would lead a reasonable consumer to believe that help with debts was being offered when in fact in most cases the help available is bankruptcy assistance with a chapter 13 plan; and

''(3) if an advertisement directed to the general public indicates that the debt relief counselling agency provides assistance with respect to credit defaults, mortgage foreclosures, lease eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer

debt, disclose conspicuously in that advertisement that the assistance is with respect to or may involve proceedings under this title, using the following statement: ''We are a debt relief counselling agency. We help people file Bankruptcy petitions to obtain relief under the Bankruptcy Code.'' or a substantially similar statement.

''(b) A debt relief counselling agency shall not—

''(1) fail to perform any service which the debt relief counseling agency has told the assisted person or prospective assisted person the agency would provide that person in connection with the preparation for or activities during a proceeding under this title;

''(2) make any statement, or counsel or advise any assisted person to make any statement in any document filed in a proceeding under this title, which is untrue or misleading or which upon the exercise of reasonable care, should be known by the debt relief counselling agency to be untrue or misleading;

''(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, what services the debt relief counselling agency can reasonably expect to provide that person, or the benefits an assisted person may obtain or the difficulties the person may experience if the person seeks relief in a proceeding pursuant to this title; or

''(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of that person filing a proceeding under this title or in order to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a proceeding under this title.''.

(b) CONFORMING AMENDMENT.—The table of section for chapter 5 of title 11, United States Code, as amended by section 114, is amended by inserting after the item relating to section 526, the following:

''527. Debtor's bill of rights.''.

SEC. 116. ENFORCEMENT.

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, as amended by sections 114 and 115, is amended by adding at the end the following:

''§ 528. Debt relief counselling agency enforcement

''(a) ASSISTED PERSON WAIVERS INVALID.—Any waiver by any assisted person of any protection or right provided by or under section 526 or 527 of this title shall be void and may not be enforced by any Federal or State court or any other person.

''(b) NONCOMPLIANCE.—

''(1) Any contract between a debt relief counselling agency and an assisted person for bankruptcy assistance which does not comply with the requirements of section 526 or 527 of this title shall be treated as void and may not be enforced by any Federal or State court or by any other person.

''(2) Any debt relief counselling agency which has been found, after notice and hearing, to have—

''(A) failed to comply with any provision of section 526 or 527 with respect to a bankruptcy case or related proceeding of an assisted person;

''(B) provided bankruptcy assistance to an assisted person in a case or related proceeding which is dismissed or converted in lieu of dismissal under section 707 of this title or because of a failure to file bankruptcy papers, including papers specified in section 521 of this title; or

''(C) negligently or intentionally disregarded the requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such debt relief counselling agency shall be liable to the assisted person in the amount of any fees and charges in connection with providing bankruptcy assistance to such person which the debt relief counselling agency has already been paid on account of that proceeding and if the case has not been closed, the court may in addition require the debt relief counselling agency to continue to provide bankruptcy assistance services in the pending case to the assisted person without further fee or charge or upon such other terms as the court may order.

''(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating section 526 or 527 of this title, the State—

''(A) may bring an action to enjoin such violation;

''(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and

''(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

''(4) The United States District Court for any district located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).

''(c) RELATION TO STATE LAW.—This section and sections 526 and 527 shall not annul, alter, affect or exempt any person subject to those sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency.''.

(b) CONFORMING AMENDMENT.—The table of section for chapter 5 of title 11, United States Code, as amended by sections 114 and 115, is amended by inserting after the item relating to section 527, the following:

''528. Debt relief counselling agency enforcement.''.

SEC. 117. SENSE OF THE CONGRESS.

It is the sense of the Congress that States should develop curricula relating to the subject of personal finance, designed for use in elementary and secondary schools.

SEC. 118. CHARITABLE CONTRIBUTIONS.

(a) DEFINITIONS.—Section 548(d) of title 11, United States Code, is amended by adding at the end the following:

''(3) In this section, the term 'charitable contribution' means a charitable contribution as defined in section 170(c) of the Internal Revenue Code of 1986, if such contribution—

''(A) is made by a natural person; and

''(B) consists of—

''(i) a financial instrument (as defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986); or

''(ii) cash.

''(4) In this section, the term 'qualified religious or charitable entity or organization' means—

''(A) an entity described in section 170(c)(1) of the Internal Revenue Code of 1986; or

''(B) an entity or organization described in section 170(c)(2) of the Internal Revenue Code of 1986.''.

(b) TREATMENT OF PREPETITION QUALIFIED CHARITABLE CONTRIBUTIONS.

(1) IN GENERAL.—Section 548(a) of title 11, United States Code, is amended—

(A) by inserting ''(1)'' after ''(a)'';

(B) by striking ''(1) made'' and inserting ''(A) made'';

(C) by striking ''(2)(A)'' and inserting ''(B)(i)'';

(D) by striking ''(B)(i)'' and inserting ''(ii)(I)'';

(E) by striking ''(ii) was'' and inserting ''(II) was'';

(F) by striking ''(iii)'' and inserting ''(III)''; and

(G) by adding at the end the following:

''(2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which—

''(A) the amount of such contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or

''(B) the contribution made by a debtor exceeded the percentage amount of gross annual income specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making charitable contributions.''.

(2) TRUSTEE AS LIEN CREDITOR AND AS SUCCESSOR TO CERTAIN CREDITORS AND PURCHASERS.—Section 544(b) of title 11, United States Code, is amended—

(A) by striking ''(b) The trustee'' and inserting ''(b)(1) Except as provided in paragraph (2), the trustee''; and

(B) by adding at the end the following:

''(2) Paragraph (1) shall not apply to a transfer of a charitable contribution (as defined in section 548(d)(3) of this title) that is not covered under section 548(a)(1)(B) of this title by reason of section 548(a)(2) of this title. Any claim by any person to recover a transferred contribution described in the preceding sentence under Federal or State law in a Federal or State court shall be preempted by the commencement of the case.''.

(3) CONFORMING AMENDMENTS.—Section 546 of title 11, United States Code, is amended—

(A) in subsection (e)—

(i) by striking ''548(a)(2)'' and inserting ''548(a)(1)(B)''; and

(ii) by striking ''548(a)(1)'' and inserting ''548(a)(1)(A)'';

(B) in subsection (f)—

(i) by striking ''548(a)(2)'' and inserting ''548(a)(1)(B)''; and

(ii) by striking ''548(a)(1)'' and inserting ''548(a)(1)(A)''; and

(C) in the first subsection (g)—

(i) by striking ''section 548(a)(1)'' and inserting ''section 548(a)(1)(A)''; and

(ii) by striking ''548(a)(2)'' and inserting ''548(a)(1)(B)''.

(c) TREATMENT OF POST-PETITION CHARITABLE CONTRIBUTIONS UNDER CHAPTER 7.—Section 707 of title 11, United States Code, is amended by adding at the end the following:

''(c) In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3)) to any qualified religious or charitable entity or organization (as defined in section 548(d)(4)).''.

(d) TREATMENT OF POST-PETITION CHARITABLE CONTRIBUTIONS UNDER CHAPTER 13.—Section 111 of title 11, United States Code, as added by section 102, is amended by adding at the end the following:

''(c) For purposes of subsection (a), charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3)) to any qualified religious or charitable entity or organization (defined in section 548(d)(4)), but not to exceed 15 percent of the debtor's gross income for the year in which such contributions are made, shall be considered to be additional expenses of the debtor required by extraordinary circumstances.''.

(e) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section is intended to limit the applicability of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2002bb et seq.).

SEC. 119. REINFORCE THE FRESH START.

(a) RESTORATION OF AN EFFECTIVE DISCHARGE.—Section 523(a)(17) of title 11, United States Code, is amended—

(1) by striking ''by a court'' and inserting ''on a prisoner by any court'',

(2) by striking ''section 1915(b) or (f)'' and inserting ''subsection (b) or (f)(2) of section 1915'', and

(3) by inserting ''(or a similar non-Federal law)'' after ''title 28'' each place it appears.

(b) PROTECTION OF RETIREMENT FUNDS IN BANKRUPTCY.—Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)(2)—

(A) in subparagraph (A) by striking ''and'' at the end;

(B) in subparagraph (B) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(C) retirement funds to the extent exempt from taxation under section 401, 403, 408, 414, 457, or 501(a) of the Internal Revenue Code of 1986.''; and

(2) in subsection (d) by adding at the end the following:

''(12) Retirement funds to the extent exempt from taxation under 401, 403, 408, 414, 457, or 501(a) of the Internal Revenue Code of 1986.''.

(c) EFFECTIVE PROTECTION FOR UTILITY SERVICE IN THE WAKE OF DEREGULATION.—Section 366 of title 11, United States Code, is amended by adding at the end the following:

''(c) For the purposes of this section, the term 'utility' includes any provider of gas, electric, telephone, telecommunication, cable television, satellite communication, water, or sewer service, whether or not such service is a regulated monopoly.''.

SEC. 119A. CHAPTER 11 DISCHARGE OF DEBTS ARISING FROM TOBACCO-RELATED DEBTS.

Section 1141(d) of title 11, United States Code, is amended by adding at the end the following:

''(5) The confirmation of a plan does not discharge a debtor that is a corporation from any debt arising from a judicial, administrative, or other action or proceeding that is—

''(A) related to the consumption or consumer purchase of a tobacco product; and

''(B) based in whole or in part on false pretenses, a false representation, or actual fraud.''.

Subtitle C—Adequate Protections for Secured Creditors

SEC. 121. DISCOURAGING BAD FAITH REPEAT FILINGS.

Section 362(c) of title 11, United States Code, is amended—

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

(2) in paragraph (2) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

''(3) If a single or joint case is filed by or against an individual debtor under chapter 7, 11, or 13, and if a single or joint case of that debtor was pending within the previous 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) of this title, the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease will terminate with respect to the debtor on the 30th day after the filing of the later case. If a party in interest requests, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. A case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(A) as to all creditors if—

''(i) more than 1 previous case under any of chapters 7, 11, or 13 in which the individual was a debtor was pending within such 1-year period;

''(ii) a previous case under any of chapters 7, 11, or 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

''(iii) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under any of chapters 7, 11, or 13 of this title, or any other reason to conclude that the later case will be concluded, if a case under chapter 7 of this title, with a discharge, and if a chapter 11 or 13 case, a confirmed plan which will be fully performed;

''(B) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of that case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of that creditor.

''(4) If a single or joint case is filed by or against an individual debtor under this title, and if 2 or more single or joint cases of that debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b) of this title, the stay under subsection (a) will not go into effect upon the filing of the later case. On request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect. If a party in interest requests within 30 days of the filing of the later case, the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. A stay imposed pursuant to the preceding sentence will be effective on the date of entry of the order allowing the stay to go into effect. A case is presumptively not filed in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(A) as to all creditors if—

''(i) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

''(ii) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to pay adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

''(iii) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

''(B) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of that case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to action of that creditor.

''(5)(A) If a request is made for relief from the stay under subsection (a) with respect to real or personal property of any kind, and such request is granted in whole or in part, the court may order in addition that the relief so granted shall be in rem either for a definite period not less than 1 year or indefinitely. After the issuance of such an order, the stay under subsection (a) shall not apply to any property subject to such an in rem order in any case of the debtor under this title. If such an order so provides, such stay shall also not apply in any pending or later-filed case of any entity under this title that claims or has an interest in the subject property other than those entities identified in the court's order.

''(B) The court shall cause any order entered pursuant to this paragraph with respect to real property to be recorded in the applicable real property records, which recording shall constitute notice to all parties having or claiming an interest in such real property for purpose of this section.

''(6) For the purposes of this section, a case is pending from the time of the order for relief until the case is closed.''.

SEC. 122. DEFINITION OF HOUSEHOLD GOODS.

Section 101 of title 11, United States Code, is amended by inserting after paragraph (27) the following:

''(27A) 'household goods' has the meaning given such term in the Trade Regulation Rule on Credit Practices promulgated by the Federal Trade Commission (16 C.F.R. 444.1(i)), as in effect on the effective date of this paragraph;''.

SEC. 123. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.

Title 11, United States Code, is amended—

(1) in section 521—

(A) in paragraph (4) by striking ''and'' at the end;

(B) in paragraph (5) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(6) in an individual case under chapter 7 of this title, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in that personal property unless, in the case of an individual debtor, the debtor takes 1 of the following actions within 30 days after the first meeting of creditors under section 341(a)—

''(A) enters into a reaffirmation agreement with the creditor pursuant to section 524(c) of this title with respect to the claim secured by such property; or

''(B) redeems such property from the security interest pursuant to section 722 of this title.

''If the debtor fails to so act within the 30-day period, the personal property affected shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee, and after notice and a hearing, that such property is of consequential value or benefit to the estate.''; and

(2) in section 722 by inserting ''in full at the time of redemption'' before the period at the end.

SEC. 124. RELIEF FROM STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.

Title 11, United States Code, is amended as follows—

(1) in section 362—

(A) by striking ''(e), and (f)'' in subsection (c) and inserting in lieu thereof ''(e), (f), and (h)''; and

(B) by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following:

''(h) In an individual case pursuant to chapter 7, 11, or 13 the stay provided by subsection (a) is terminated with respect to property of the estate securing in whole or in part a claim, or subject to an unexpired lease, if the debtor fails within the applicable time set by section 521(a)(2) of this title—

''(1) to file timely any statement of intention required under section 521(a)(2) of this title with respect to that property or to indicate therein that the debtor will either surrender the property or retain it and, if retaining it, either redeem the property pursuant to section 722 of

this title, reaffirm the debt it secures pursuant to section 524(c) of this title, or assume the unexpired lease pursuant to section 365(p) of this title if the trustee does not do so, as applicable; or

''(2) to take timely the action specified in that statement of intention, as it may be amended before expiration of the period for taking action, unless the statement of intention specifies reaffirmation and the creditor refuses to reaffirm on the original contract terms;

unless the court determines on the motion of the trustee, and after notice and a hearing, that such property is of consequential value or benefit to the estate.'';

(2) in section 521, as amended by sections 104, 406, and 407—

(A) in paragraph (2) by striking ''consumer'';

(B) in paragraph (2)(B)—

(i) by striking ''forty-five days after the filing of a notice of intent under this section'' and inserting ''30 days after the first date set for the meeting of creditors under section 341(a)''; and

(ii) by striking ''forty-five day'' the second place it appears and inserting ''30-day'';

(C) in paragraph (2)(C) by inserting ''except as provided in section 362(h)'' before the semicolon; and

(D) by adding at the end the following:

''(h) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h) of this title, with respect to property which a lessor or bailor owns and has leased, rented, or bailed to the debtor or as to which a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agreement which has the effect of placing the debtor in default under such lease or agreement by reason of the occurrence, pendency, or existence of a proceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to justify limiting such a provision in any other circumstance.''.

SEC. 125. GIVING SECURED CREDITORS FAIR TREATMENT IN CHAPTER 13.

Section 1325(a)(5)(B)(i) of title 11, United States Code, is amended to read as follows:

''(i) the plan provides that the holder of such claim retain the lien securing such claim until the earlier of payment of the underlying debt determined under nonbankruptcy law or discharge under section 1328, and that if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law; and''.

SEC. 126. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.

Section 362(e) of title 11, United States Code, is amended by inserting at the end the following:

''Notwithstanding the foregoing, in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate 60 days after a request under subsection (d) of this section, unless—

''(1) a final decision is rendered by the court within such 60-day period; or

''(2) such 60-day period is extended either by agreement of all parties in interest or by the court for a specific time which the court finds is required by compelling circumstances.''.

SEC. 127. STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.

Section 348(f)(1) of title 11, United States Code, is amended—

(1) by striking in subparagraph (B) ''in the converted case, with allowed secured claims'' and inserting in lieu thereof ''only in a case converted to chapter 11 or 12 but not in one converted to chapter 7, with allowed secured claims in cases under chapters 11 and 12''; and

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

(3) in subparagraph (B) by striking the period and inserting ''; and''; and

(4) by adding at the end the following:

''(C) with respect to cases converted from chapter 13, the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of that claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter of this title. Unless a prebankruptcy default has been fully cured pursuant to the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.''.

SEC. 128. RESTRAINING ABUSIVE PURCHASES ON SECURED CREDIT.

Section 506 of title 11, United States Code, is amended by adding at the end the following:

''(e) In an individual case under chapter 7, 11, 12, or 13—

''(1) subsection (a) shall not apply to an allowed claim to the extent attributable in whole or in part to the purchase price of personal property acquired by the debtor within 180 days of the filing of the petition, except for the purpose of applying paragraph (3) of this subsection;

''(2) if such allowed claim attributable to the purchase price is secured only by the personal property so acquired, the value of the personal property and the amount of the allowed secured claim shall be the sum of the unpaid principal balance of the purchase price and accrued and unpaid interest and charges at the contract rate;

''(3) if such allowed claim attributable to the purchase price is secured by the personal property so acquired and other property, the value of the security may be determined under subsection (a), but the value of the security and the amount of the allowed secured claim shall be not less than the unpaid principal balance of the purchase price of the personal property acquired and unpaid interest and charges at the contract rate; and

''(4) in any subsequent case under this title that is filed by or against the debtor in the 2-year period beginning on the date the petition is filed in the original case, the value of the personal property and the amount of the allowed secured claim shall be deemed to be not less than the amount provided under paragraphs (2) and (3).''.

SEC. 129. FAIR VALUATION OF COLLATERAL.

Section 506(a) of title 11, United States Code, is amended by adding at the end the following:

''In the case of an individual debtor under chapters 7 and 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of filing the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purpose, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.''.

SEC. 130. PROTECTION OF HOLDERS OF CLAIMS SECURED BY DEBTOR'S PRINCIPAL RESIDENCE.

Title 11, United States Code, is amended—

(1) in section 101 by inserting after paragraph (13) the following:

''(13A) 'debtor's principal residence' means a residential structure including incidental property when the structure contains 1 to 4 units, whether or not that structure is attached to real property, and includes, without limitation, an individual condominium or cooperative unit or mobile or manufactured home or trailer;

''(13B) 'incidental property' means property incidental to such residence including, without limitation, property commonly conveyed with a principal residence where the real estate is located, window treatments, carpets, appliances and equipment located in the residence, and easements, appurtenances, fixtures, rents, royalties, mineral rights, oil and gas rights, escrow funds and insurance proceeds;'';

(2) in section 362(b)—

(A) in paragraph (17) by striking ''or'' at the end thereof;

(B) in paragraph (18) by striking the period at the end and inserting ''; or''; and

(C) by inserting after paragraph (18) the following:

''(19) under subsection (a), until a prepetition default is cured fully in a case under chapter 13 of this title case by actual payment of all arrears as required by the plan, of the postponement, continuation or other similar delay of a prepetition foreclosure proceeding or sale in accordance with applicable nonbankruptcy law, but nothing herein shall imply that such postponement, continuation or other similar delay is a violation of the stay under subsection (a).''; and

(3) by amending section 1322(b)(2) to read as follows:

''(2) modify the rights of holders of secured claims, other than a claim secured primarily by a security interest in property used as the debtor's principal residence at any time during 180 days prior to the filing of the petition, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;''.

SEC. 131. AIRCRAFT EQUIPMENT AND VESSELS.

Section 1110(a)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A) by striking ''that become due on or after the date of the order'';

(2) in subparagraph (B)—

(A) in clause (i) by striking ''and'' at the end; and

(B) in clause (ii)—

(i) by inserting ''and within such 60-day period'' after ''order''; and

(ii) in subclause (II) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(iii) that occurs after the date of the order and such 60-day period is cured in accordance with the terms of such security agreement, lease, or conditional sale contract.''.

Subtitle D—Adequate Protections for Unsecured Creditors

SEC. 141. DEBTS INCURRED TO PAY NONDISCHARGEABLE DEBTS.

(a) PRIORITY OF CLAIMS FOR DEBTS INCURRED TO PAY NONDISCHARGEABLE DEBTS.—Section 507(a) of title 11, United States Code, is amended by adding at the end the following:

''(10) Tenth, remaining allowed unsecured claims for debts that are nondischargeable under section 523(a)(19), but which shall be payable under this paragraph in the higher order of priority (if any) as the respective claims paid by incurring such debts.''.

(b) NONDISCHARGEABILITY OF DEBTS INCURRED TO PAY NONDISCHARGEABLE DEBTS.—Section 523(a) of title 11, United States Code, is amended—

(1) in paragraph (17) by striking ''or'' at the end;

(2) in paragraph (18) by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(19) incurred to pay a debt that is nondischargeable under any other paragraph of this subsection.''.

SEC. 142. CREDIT EXTENSIONS ON THE EVE OF BANKRUPTCY PRESUMED NONDISCHARGEABLE.

Section 523(a)(2)(C) of title 11, United States Code, is amended to read as follows:

''(C) for purposes of subparagraph (A), consumer debts owed to a single creditor incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable, except that such

presumption shall not apply to consumer debts owed to a single creditor which are incurred for necessaries and aggregate $250 or less.''.

SEC. 143. FRAUDULENT DEBTS ARE NONDISCHARGEABLE IN CHAPTER 13 CASES.

Section 1328(a)(2) of title 11, United States Code, is amended—

(1) by inserting ''(2), (3)(B), (4),'' after ''paragraph''; and

(2) by inserting ''(6),'' after ''(5),''.

SEC. 144. APPLYING THE CODEBTOR STAY ONLY WHEN IT PROTECTS THE DEBTOR.

Section 1301(b) of title 11, United States Code, is amended—

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

(2) by adding at the end the following:

''(2) When the debtor did not receive the consideration for the claim held by a creditor, the stay provided by subsection (a) does not apply to such creditor, notwithstanding subsection (c), to the extent the creditor proceeds against the individual which received such consideration or against property not in the possession of the debtor which secures such claim, but this subsection shall not apply if the debtor is primarily obligated to pay the creditor in whole or in part with respect to the claim under a legally binding separation agreement, or divorce or dissolution decree, with respect to such individual or the person who has possession of such property.

''(3) When the debtor's plan provides that the debtor's interest in personal property subject to a lease as to which the debtor is the lessee will be surrendered or abandoned or no payments will be made under the plan on account of the debtor's obligations under the lease, the stay provided by subsection (a) shall terminate as of the date of confirmation of the plan notwithstanding subsection (c).''.

SEC. 145. CREDIT EXTENSIONS WITHOUT A REASONABLE EXPECTATION OF REPAYMENT MADE NONDISCHARGEABLE.

Section 523(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A) by striking ''or actual fraud,'' and inserting ''actual fraud, or use of a credit or charge card or other device to access a credit line without a reasonable expectation or ability to repay unless access to such credit, credit or charge card or other device to access the credit line was extended without an application therefor and reasonable evaluation of the debtor's ability to repay,'', and

(2) in subparagraph (B)(iv) by striking ''with intent to deceive'' and inserting ''without taking reasonable steps to ensure the accuracy of the statement''.

SEC. 146. DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

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

(1) in section 523(a)(18)—

(A) by inserting ''(including interest)'' after ''law''; and

(B) in subparagraph (A) by striking ''and'' at the end and inserting ''or''; and

(2) in section 1328(a)(2) by striking ''or (9)'' and inserting ''(9), or (18)''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 130, is amended—

(1) in paragraph (19) by striking ''or'' at the end;

(2) in paragraph (19) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(20) under subsection (a) with respect to the withholding of income pursuant to an order as specified in section 466(b) of the Social Security Act; or

''(21) under subsection (a) with respect to the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses pursuant to State law as specified in section 466(a)(15) of the Social Security Act or with respect to the reporting of overdue support owed by an absent parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act.''.

(c) CONTINUED LIABILITY OF PROPERTY.—Section 522(c) of title 11, United States Code, is amended by striking ''section 523(a)(1) or 523(a)(5)'' and inserting ''paragraph (1), (5), or (18) of section 523(a)''.

(d) PRIORITY OF CLAIMS.—Section 507(a) of title 11, United States Code, as amended by section 141, is amended—

(1) in paragraph (10) by striking ''(10) Tenth'' and inserting ''(11) Eleventh'';

(2) in paragraph (9) by striking ''(9) Ninth'' and inserting ''(10) Tenth'';

(3) in paragraph (8) by striking ''(8) Eighth '' and inserting ''(9) Ninth''; and

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

''(8) Eighth, allowed unsecured claims for debts that are nondischargeable under section 523(a)(18).''.

(e) CONFIRMATION OF PLANS.—Title 11 of the United States Code is amended—

(1) in section 1129(a) by adding at the end the following:

''(14) If the debtor is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, the debtor has paid all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed.'';

(2) in section 1225(a)—

(A) in paragraph (5) by striking ''and'' at the end;

(B) in paragraph (6) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(7) the debtor is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, the debtor has paid all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed.''; and

(3) in section 1325(a)—

(A) in paragraph (5) by striking ''and'' at the end;

(B) in paragraph (6) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(7) if the debtor is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, the debtor has paid all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed.''.

(f) DISCHARGE.—Title 11 United States Code is amended—

(1) in section 1228(a) by inserting ''and only after a debtor who is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, certifies that all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed have been paid,'' after ''this title,''; and

(2) in section 1328(a) by inserting ''and only after a debtor who is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, certifies that all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed have been paid,'' after ''plan,'' the 1st place it appears.

(g) CONFORMING AMENDMENTS.—Section 456(b) of the Social Security Act (42 U.S.C. 656(b)) is amended—

(1) by inserting '', including interest,'' after ''Code)'';

(2) by striking ''and'' and inserting ''or''; and

(3) by striking ''released by a discharge'' and inserting ''dischargeable''.

SEC. 147. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

Section 523(a)(5) of title 11, United States Code, is amended to read as follows:

''(5) to a spouse, former spouse, or child of the debtor for alimony to, maintenance for, or support of such spouse or child, or to a spouse, former spouse, or child of the debtor, to the extent such debt is the result of a property settlement agreement, a hold harmless agreement, or any other type of debt that is not in the nature of alimony, maintenance, or support in connection with or incurred by the debtor in the course of a separation agreement, divorce decree, any modifications thereof, or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, but not to the extent that such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or such debt that has been assigned to the Federal government, or to a State or political subdivision of such State, or the creditor's attorney);''.

SEC. 148. OTHER EXCEPTIONS TO DISCHARGE.

Section 523 of title 11, United States Code, is amended—

(1) by striking subsection (a)(15), as added by section 304(e)(1) of Public Law 103–394;

(2) in subsection (a)(7) by inserting ''(including property or funds required to be disgorged)'' after ''penalty''; and

(3) in subsection (c)(1) by striking ''(6), or (15)'' and inserting ''or (6)''.

SEC. 149. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.

(a) EXCEPTION TO DISCHARGE.—Section 523(a)(16) of title 11, United States Code, is amended—

(1) by striking ''dwelling'' the 1st place it appears;

(2) by striking ''ownership or'' and inserting ''ownership,'';

(3) by striking ''housing'' the 1st place it appears; and

(4) by striking ''but only'' and all that follows through ''such period,'', and inserting ''or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot,''.

(b) EXECUTORY CONTRACTS.—Section 365 of title 11, United States Code, as amended by section 161, is amended by adding at the end the following:

''(q) A debt of a kind described in section 523(a)(16) of this title shall not be considered to be a debt arising from an executory contract.''

SEC. 150. PROTECTION OF CHILD SUPPORT AND ALIMONY.

(a) AMENDMENT.—Title 11 of the United States Code, as amended by section 116, is amended by inserting after section 528 the following:

''§529. Protection of child support and alimony payments after the discharge

''Notwithstanding the provisions of the constitution or law of any State providing a different priority, any debts of the individual who has received a discharge under this title to a spouse, former spouse, or child for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree, or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

''(1) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

''(2) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support,

shall have priority in payment and collection over a creditor's claim which is not discharged

in the individual's case pursuant to paragraph (2), (4), or (14) of section 523(a) of this title, but such priority shall not affect the priority of any consensual lien, mortgage, or security interest securing such creditor's claim.''.

(b) CONFORMING AMENDMENT.—The table of sections of chapter 5 of title 11, United States Code, as amended by section 116, is amended by inserting after the item relating to section 528 the following:

''529. Protection of child support and alimony.''.

SEC. 151. ADEQUATE PROTECTION FOR INVESTORS.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (48) the following:

''(48A) 'securities self regulatory organization' means either a securities association registered with the Securities and Exchange Commission pursuant to section 15A of the Securities Exchange Act of 1934 or a national securities exchange registered with the Securities and Exchange Commission pursuant to section 6 of the Securities Exchange Act of 1934;''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by sections 130 and 146, is amended—

(1) in paragraph (20) by striking ''or'' at the end;

(2) in paragraph (21) by striking the period at the end and a inserting ''; or''; and

(3) by adding at the end the following:

''(22) under subsection (a) of this section, of the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power; of the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by the securities self regulatory organization to enforce such organization's regulatory power; or of any act taken by the securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements.''.

Subtitle E—Adequate Protections for Lessors

SEC. 161. GIVING DEBTORS THE ABILITY TO KEEP LEASED PERSONAL PROPERTY BY ASSUMPTION.

Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p)(1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) of this title is automatically terminated.

''(2) In the case of an individual under chapter 7, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the lessor. If within 30 days of such notice the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate. The stay under section 362 of this title and the injunction under section 524(a)(2) of this title shall not be violated by notification of the debtor and negotiation of cure under this subsection.

''(3) In a case under chapter 11 of this title in which the debtor is an individual and in a case under chapter 13 of this title, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 of this title and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.''.

SEC. 162. ADEQUATE PROTECTION OF LESSORS AND PURCHASE MONEY SECURED CREDITORS.

Title 11, United States Code, is amended by adding after section 1307 the following:

''§ 1307A. Adequate protection in chapter 13 cases

''(a)(1) On or before 30 days after the filing of a case under this chapter, the debtor shall make cash payments in the amount described below to any lessor of personal property and to any creditor holding a claim secured by personal property to the extent such claim is attributable to the purchase of such property by the debtor. The debtor or the plan shall continue such payments until the earlier of—

''(A) the time at which the creditor begins to receive actual payments under the plan; or

''(B) the debtor relinquishes possession of such property to the lessor or creditor, or to any third party acting under claim of right, as applicable.

''(2) Such cash payments shall be in the amount of any weekly, biweekly, monthly or other periodic payment scheduled as payable under the contract between the debtor and creditor; shall be paid at the times at which such payments are scheduled to be made; and shall not include any arrearages, penalties, or default or delinquency charges. Such payments shall be deemed to be adequate protection payments under section 362 of this title.

''(b) The court may, after notice and hearing, change the amount and timing of the adequate protection payment under subsection (a), but in no event shall it be payable less frequently than monthly or in an amount less than the reasonable depreciation of such property month to month.

''(c) Notwithstanding section 1326(b) of this title, if a confirmed plan provides for payments to a creditor or lessor described in subsection (a) and provides that payments to such creditor or lessor under the plan will be deferred until payment of amounts described in section 1326(b) of this title, the payments required hereunder shall nonetheless be continued in addition to plan payments until actual payments to the creditor begin under the plan.

''(d) Notwithstanding sections 362, 542, and 543 of this title, a lessor or creditor described in subsection (a) may retain possession of property described in subsection (a) which was obtained rightfully prior to the date of filing of the petition until the first such adequate protection payment is received by the lessor or creditor. Such retention of possession and any acts reasonably related thereto shall not violate the stay imposed under section 362(a) of this title, nor any obligations imposed under section 542 or 543 of this title.

''(e) On or before 60 days after the filing of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in part to the purchase price of that property shall provide each creditor or lessor reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property and continue to do so for so long as the debtor retains possession of such property.''.

SEC. 163. ADEQUATE PROTECTION FOR LESSORS.

Section 362(b)(10) of title 11, United States Code, is amended by striking ''nonresidential''.

Subtitle F—Bankruptcy Relief Less Frequently Available for Repeat Filers

SEC. 171. EXTEND PERIOD BETWEEN BANKRUPTCY DISCHARGES.

Title 11, United States Code, is amended—

(1) in section 727(a)(8) by striking ''six'' and inserting ''10''; and

(2) in section 1328 by adding at the end the following:

''(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for by the plan or disallowed under section 502 of this title if the debtor has received a discharge in any case filed under this title within 5 years of the order for relief under this chapter.''.

Subtitle G—Exemptions

SEC. 181. EXEMPTIONS.

Section 522(b)(2)(A) of title 11, United States Code, is amended—

(1) by striking ''180'' and inserting ''365''; and

(2) by striking '', or for a longer portion of such 180-day period than in any other place''.

SEC. 182. LIMITATION.

Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)(2)(A) by inserting ''subject to subsection (n),'' before ''any property''; and

(2) by adding at the end the following:

''(n)(1) Except as provided in paragraph (2), as a result of electing under subsection (b)(2)(A) to exempt property under State or local law, a debtor may not exempt any interest to the extent that such interest exceeds $100,000 in value, in the aggregate, in—

''(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

''(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

''(C) a burial plot for the debtor or a dependent of the debtor.

''(2) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(2)(A) by a family farmer for the principal residence of that farmer.''.

TITLE II—BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Provisions

SEC. 201. LIMITATION RELATING TO THE USE OF FEE EXAMINERS.

Section 330 of title 11, United States Code, is amended by adding at the end the following:

''(e) The court may not appoint any person to examine any request for compensation or reimbursement payable under this section.''.

SEC. 202. SHARING OF COMPENSATION.

Section 504 of title 11, United States Code, is amended by adding at the end the following:

''(c) This section shall not apply with respect to sharing, or agreeing to share, compensation with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.''.

SEC. 203. CHAPTER 12 MADE PERMANENT LAW.

Section 302(f) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (11 U.S.C. 1201 note) is repealed.

SEC. 204. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

Section 341 of title 11, United States Code, is amended by adding at the end the following:

''(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.''.

SEC. 205. CREDITORS' AND EQUITY SECURITY HOLDERS' COMMITTEES.

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

''(3) The court on its own motion or on request of a party in interest, and after notice and a hearing, may order a change in membership of a committee appointed under subsection (a) if necessary to ensure adequate representation of creditors or of equity security holders.''.

SEC. 206. POSTPETITION DISCLOSURE AND SOLICITATION.

Section 1125 of title 11, United States Code, is amended by adding at the end the following:

''(g) Notwithstanding subsection (b), an acceptance or rejection of the plan may be solicited from a holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the commencement of the case in a manner complying with applicable nonbankruptcy law.''.

SEC. 207. PREFERENCES.

Section 547(c) of title 11, United States Code, is amended—

(1) by amending paragraph (2) to read as follows:

''(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

''(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

''(B) made according to ordinary business terms;'';

(2) in paragraph (7) by striking ''or'' at the end;

(3) in paragraph (8) by striking the period at the end and inserting ''; or''; and

(4) by adding at the end the following:

''(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $5000.''.

SEC. 208. VENUE OF CERTAIN PROCEEDINGS.

Section 1409(b) of title 28, United States Code, is amended by inserting '', or a nonconsumer debt against a noninsider of less than $10,000,'' after ''$5,000''.

SEC. 209. PERIOD FOR FILING PLAN UNDER CHAPTER 11.

Section 1121(d) of title 11, United States Code, is amended—

(1) by striking ''On'' and inserting ''(1) Subject to paragraph (1), on''; and

(2) by adding at the end the following:

''(2)(A) Such 120-day period may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

''(B) Such 180-day period may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.''.

SEC. 210. PERIOD FOR FILING PLAN UNDER CHAPTER 12.

(a) EXTENSION OF PERIOD.—Section 1221 of title 11, United States Code, is amended by inserting ''to any period not later than 150 days after the order for relief'' after ''period''.

(b) RELIEF FROM THE STAY.—Section 362(d) of title 11, United States Code, is amended—

(1) in paragraph (2) by striking ''or'' at the end;

(2) in paragraph (3) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(4) with respect to a stay of an act against property under subsection (a) of a debtor in a case under chapter 12, by a creditor whose claim is secured by an interest in such property, unless the debtor has filed a plan in accordance with section 1221.''.

(c) SPECIAL TREATMENT OF SECURED CLAIMS.—(1) Chapter 12 of title 11, United States Code, is amended by inserting after section 1231 the following:

''§ 1232. Special treatment of secured claims

''(a)(1) A claim secured by a lien on property of the estate shall be allowed or disallowed under section 502 of this title the same as if the holder of such claim had recourse against the debtor on account of such claim, whether or not such holder has such recourse, unless—

''(A) subject to paragraph (2), the holder of such claim elects to apply subsection (b); or

''(B) such holder does not have such recourse, and such property is sold under section 363 of this title or is to be sold under the plan.

''(2) A holder of a claim may not elect to apply subsection (b) if—

''(A) such claim is of inconsequential value; or

''(B) the holder of a claim has recourse against the debtor on account of such claim, and such property is sold under section 363 of this title or is to be sold under the plan.

''(b) If such an election is made to apply this subsection, then notwithstanding section 506(a) of this title, such claim is a secured claim to the extent such claim is allowed.''.

(2) The table of sections of chapter 12 of title 11, United States Code, is amended by inserting after the item relating to section 1231 the following:

''1232. Special treatment of secured claims.''.

SEC. 211. CASES ANCILLARY TO FOREIGN PROCEEDINGS INVOLVING FOREIGN INSURANCE COMPANIES THAT ARE ENGAGED IN THE BUSINESS OF INSURANCE OR REINSURANCE IN THE UNITED STATES.

Section 304 of title 11, United States Code, is amended—

(1) in subsection (b) by striking ''provisions of subsection (c)'' and inserting ''subsections (c) and (d)''; and

(2) by adding at the end the following:

''(d) The court may not grant to a foreign representative of the estate of an insurance company that is not organized under the law of a State and that is engaged in the business of insurance, or reinsurance, in the United States relief under subsection (b) with respect to property that is—

''(1) a deposit required by a State law relating to insurance or reinsurance;

''(2) a multibeneficiary trust required by a State law relating to insurance or reinsurance to protect holders of insurance policies issued in the United States or to protect holders or claimants against such policies; or

''(3) a multibeneficiary trust authorized by a State law relating to insurance or reinsurance to allow a person engaged in the business of insurance in the United States—

''(A) to cede reinsurance to such an insurance company; and

''(B) to treat so ceded reinsurance as an asset, or deduction from liability, in financial statements of such person.''.

SEC. 212. REJECTION OF EXECUTORY CONTRACTS AFFECTING INTELLECTUAL PROPERTY RIGHTS TO RECORDINGS OF ARTISTIC PERFORMANCE.

Section 365(n) of title 11, United States Code, is amended at the end the following:

''(5) The rejection by the trustee of an executory contract affecting the intellectual property rights to recordings of artistic performance shall not in any way diminish or impair any applicable nonbankruptcy law rights to enforce noncompetition provision or provisions regarding the rendering of exclusive services as a performing artist that may be contained in such contracts, except that such enforcement shall be subject to the nondebtor party providing to the debtor notice of an offer to perform the contract under all of its original terms. The rights to enforce such noncompetition or exclusivity provision shall not be treated as claims that can be discharged under this title.''.

SEC. 213. UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY.

Section 365(d)(4) of title 11, United States Code, is amended to read as follows:

''(4) In a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee before the earlier of (A) 120 days after the date of the order for relief, or (B) the entry of an order confirming a plan, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor but in no event shall such time period exceed 120 days. Notwithstanding the immediately preceding sentence, and provided no plan has been confirmed, upon debtor's motion, and after notice and a hearing, the court may within such 120-day period extend the 120-day period by a period not to exceed 150 days, contingent upon written consent of the affected lessor or with the approval of the court, and provided trustee has timely performed all post-petition lease obligations, but in no circumstance shall such period extend beyond the earlier of (i) 270 days from the date of the order for relief or (ii) the entry of an order approving a disclosure statement, without the consent of the lessor.''.

SEC. 214. DEFINITION OF DISINTERESTED PERSON.

Section 101(14) of title 11, United States Code, is amended to read as follows:

''(14) 'disinterested person' means a person that—

''(A) is not a creditor, an equity security holder, or an insider;

''(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

''(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason;''.

Subtitle B—Specific Provisions

CHAPTER 1—SMALL BUSINESS BANKRUPTCY

SEC. 231. DEFINITIONS.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraph (51C) and inserting the following:

''(51C) 'small business case' means a case filed under chapter 11 of this title in which the debtor is a small business debtor;

''(51D) 'small business debtor' means—

''(A) a person (including affiliates of such person that are also debtors under this title) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief in an amount not more than $5,000,000 (excluding debts owed to 1 or more affiliates or insiders); or

''(B) a debtor of the kind described in paragraph (51B) but without regard to the amount of such debtor's debts;

except that if a group of affiliated debtors has aggregate noncontingent liquidated secured and unsecured debts greater than $5,000,000 (excluding debt owed to 1 or more affiliates or insiders), then no member of such group is a small business debtor;''.

(b) CONFORMING AMENDMENT.—Section 1102(a)(3) of title 11, United States Code, is amended by inserting ''debtor'' after ''small business''.

SEC. 232. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.

Section 1125(f) of title 11, United States Code, is amended to read as follows:

''(f) Notwithstanding subsection (b), in a small business case—

''(1) in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information;

''(2) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

''(3) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted pursuant to section 2075 of title 28; and

''(4)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

''(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not

less than 20 days before the date of the hearing on confirmation of the plan; and

''(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.''.

SEC. 233. STANDARD FORM DISCLOSURE STATEMENTS AND PLANS.

The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall, within a reasonable period of time after the date of the enactment of this Act, propose for adoption standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101) of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between—

(1) the reasonable needs of the courts, the United States trustee or bankruptcy administrator, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors.

SEC. 234. UNIFORM NATIONAL REPORTING REQUIREMENTS.

(a) REPORTING REQUIRED.—(1) Title 11 of the United States Code is amended by inserting after section 307 the following:

''§ 308. Debtor reporting requirements

''A small business debtor shall file periodic financial and other reports containing information including—

''(1) the debtor's profitability, that is, approximately how much money the debtor has been earning or losing during current and recent fiscal periods;

''(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;

''(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

''(4) whether the debtor is—

''(A) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

''(B) timely filing tax returns and paying taxes and other administrative claims when due, and, if not, what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

''(5) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.''.

(2) The table of sections of chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 307 the following:

''308. Debtor reporting requirements.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed pursuant to section 2075, title 28, United States Code to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

SEC. 235. UNIFORM REPORTING RULES AND FORMS.

After consultation with the Director of the Executive for United States Trustees and with the Judicial Conference of the United States, the Attorney General of the United States shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to comply with section 308 of title 11, United States Code, as added by section 234 of this Act to achieve a practical balance between—

(1) the reasonable needs of the courts, the United States trustee or bankruptcy administrator, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors in cases under such title.

SEC. 236. DUTIES IN SMALL BUSINESS CASES.

(a) DUTIES IN CHAPTER 11 CASES.—Title 11 of the United States Code is amended by inserting after section 1114 the following:

''§ 1115. Duties of trustee or debtor in possession in small business cases

''In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

''(1) append to the voluntary petition or, in an involuntary case, file within 3 days after the date of the order for relief—

''(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

''(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

''(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 of this title;

''(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

''(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

''(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

''(6)(A) timely file tax returns;

''(B) subject to section 363(c)(2), timely pay all administrative expense tax claims, except those being contested by appropriate proceedings being diligently prosecuted; and

''(C) subject to section 363(c)(2), establish 1 or more separate deposit accounts not later than 10 business days after the date of order for relief (or as soon thereafter as possible if all banks contacted decline the business) and deposit therein, not later than 1 business day after receipt thereof, all taxes payable for periods beginning after the date the case is commenced that are collected or withheld by the debtor for governmental units; and

''(7) allow the United States trustee or bankruptcy administrator, or its designated representative, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.''.

(b) TECHNICAL AMENDMENT.—The table of sections of chapter 11, United States Code, is amended by inserting after the item relating to section 1114 the following:

''1115. Duties of trustee or debtor in possession in small business cases.''.

SEC. 237. PLAN FILING AND CONFIRMATION DEADLINES.

Section 1121(e) of title 11, United States Code, is amended to read as follows:

''(e) In a small business case—

''(1) only the debtor may file a plan until after 90 days after the date of the order for relief, unless shortened on request of a party in interest made during the 90-day period, or unless extended as provided by this subsection, after notice and hearing the court, for cause, orders otherwise;

''(2) the plan, and any necessary disclosure statement, shall be filed not later than 90 days after the date of the order for relief; and

''(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) of this title, within which the plan shall be confirmed may be extended only if—

''(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable time;

''(B) a new deadline is imposed at the time the extension is granted; and

''(C) the order extending time is signed before the existing deadline has expired.''.

SEC. 238. PLAN CONFIRMATION DEADLINE.

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

''(e) In a small business case, the plan shall be confirmed not later than 150 days after the date of the order for relief unless such 150-day period is extended as provided in section 1121(e)(3) of this title.''.

SEC. 239. PROHIBITION AGAINST EXTENSION OF TIME.

Section 105(d) of title 11, United States Code, is amended—

(1) in paragraph (2)(B)(vi) by striking the period at the end and inserting ''; and''; and

(2) by adding at the end the following:

''(3) in a small business case, not extend the time periods specified in sections 1121(e) and 1129(e) of this title except as provided in section 1121(e)(3) of this title.''.

SEC. 240. DUTIES OF THE UNITED STATES TRUSTEE AND BANKRUPTCY ADMINISTRATOR.

(a) DUTIES OF THE UNITED STATES TRUSTEE.—Section 586(a) of title 28, United States Code, as amended by section 111, is amended—

(1) in paragraph (3)—

(A) in subparagraph (G) by striking ''and'' at the end;

(B) by redesignating subparagraph (H) as subparagraph (I); and

(C) by inserting after subparagraph (G) the following:

''(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases;'',

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

(3) in paragraph (7) by striking the period at the end and inserting ''; and'', and

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

''(8) in each of such small business cases—

''(A) conduct an initial debtor interview as soon as practicable after the entry of order for relief but before the first meeting scheduled under section 341(a) of title 11 at which time the United States trustee shall begin to investigate the debtor's viability, inquire about the debtor's business plan, explain the debtor's obligations to file monthly operating reports and other required reports, attempt to develop an agreed scheduling order, and inform the debtor of other obligations;

''(B) when determined to be appropriate and advisable, visit the appropriate business premises of the debtor and ascertain the state of the debtor's books and records and verify that the debtor has filed its tax returns;

''(C) review and monitor diligently the debtor's activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and

''(D) in cases where the United States trustee finds material grounds for any relief under section 1112 of title 11 move the court promptly for relief.''.

(b) DUTIES OF THE BANKRUPTCY ADMINISTRATOR.—In a small business case (as defined in section 101 of title 11 of the United States Code), the bankruptcy administrator shall perform the duties specified in section 586(a)(6) of title 28 of the United States Code.

SEC. 241. SCHEDULING CONFERENCES.

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1) by striking '', may'';

(2) by amending paragraph (1) to read as follows:

''(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and''; and

(3) in paragraph (2) by striking ''unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure,'' and inserting ''may''.

SEC. 242. SERIAL FILER PROVISIONS.

Section 362 of title 11, United States Code, is amended—

(1) in subsection (i) as so redesignated by section 124—

(A) by striking ''An'' and inserting ''(1) Except as provided in paragraph (2), an''; and

(B) by adding at the end the following:

''(2) If such violation is based on an action taken by an entity in the good-faith belief that subsection (h) applies to the debtor, then recovery under paragraph (1) against such entity shall be limited to actual damages.''; and

(2) by inserting after subsection (i), as redesignated by section 124, the following:

''() The filing of a petition under chapter 11 of this title operates as a stay of the acts described in subsection (a) only in an involuntary case involving no collusion by the debtor with creditors and in which the debtor—

''(1) is a debtor in a small business case pending at the time the petition is filed;

''(2) was a debtor in a small business case which was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

''(3) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

''(4) is an entity that has succeeded to substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C) unless the debtor proves, by a preponderance of the evidence, that the filing of such petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and that it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable time.''.

SEC. 243. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE.

(a) EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION.—Section 1112(b) of title 11, United States Code, is amended to read as follows:

''(b)(1) Except as provided in paragraph (2), in subsection (c), and in section 1104(a)(3) of this title, on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 of this title or dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, if the movant establishes cause.

''(2) The relief provided in paragraph (1) shall not be granted if the debtor or another party in interest objects and establishes, by a preponderance of the evidence that—

''(A) it is more likely than not that a plan will be confirmed within a time as fixed by this title or by order of the court entered pursuant to section 1121(e)(3), or within a reasonable time if no time has been fixed; and

''(B) if the reason is an act or omission of the debtor that—

''(i) there exists a reasonable justification for the act or omission; and

''(ii) the act or omission will be cured within a reasonable time fixed by the court not to exceed 30 days after the court decides the motion, unless the movant expressly consents to a continuance for a specific period of time, or compelling circumstances beyond the control of the debtor justify an extension.

''(3) For purposes of this subsection, cause includes—

''(A) substantial or continuing loss to or diminution of the estate;

''(B) gross mismanagement of the estate;

''(C) failure to maintain appropriate insurance;

''(D) unauthorized use of cash collateral harmful to 1 or more creditors;

''(E) failure to comply with an order of the court;

''(F) failure timely to satisfy any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

''(G) failure to attend the meeting of creditors convened under section 341(a) of this title or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure;

''(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee;

''(I) failure timely to pay taxes due after the date of the order for relief or to file tax returns due after the order for relief;

''(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

''(K) failure to pay any fees or charges required under chapter 123 of title 28;

''(L) revocation of an order of confirmation under section 1144 of this title, and denial of confirmation of another plan or of a modified plan under section 1129 of this title;

''(M) inability to effectuate substantial consummation of a confirmed plan;

''(N) material default by the debtor with respect to a confirmed plan; and

''(O) termination of a plan by reason of the occurrence of a condition specified in the plan.

''(4) The court shall commence the hearing on any motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion within 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.''.

(b) ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE.—Section 1104(a) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking ''or'' at the end;

(2) in paragraph (2) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(3) if grounds exist to convert or dismiss the case under section 1112 of this title, but the court determines that the appointment of a trustee is in the best interests of creditors and the estate.''.

CHAPTER 2—SINGLE ASSET REAL ESTATE

SEC. 251. SINGLE ASSET REAL ESTATE DEFINED.

Section 101(51B) of title 11, United States Code, is amended to read as follows:

''(51B) 'single asset real estate' means undeveloped real property or other real property constituting a single property or project, other than residential real property with fewer than 4 residential units, on which is located a single development or project which property or project generates substantially all of the gross income of a debtor and on which no substantial business is being conducted by a debtor, or by a commonly controlled group of entities all of which are concurrently debtors in a case under chapter 11 of this title, other than the business of operating the real property and activities incidental thereto;''.

SEC. 252. PAYMENT OF INTEREST.

Section 362(d)(3) of title 11, United States Code, is amended—

(1) by inserting ''or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later'' after ''90-day period)''; and

(2) by amending subparagraph (B) to read as follows:

''(B) the debtor has commenced monthly payments (which payments may, in the debtor's sole discretion, notwithstanding section 363(c)(2) of this title, be made from rents or other income generated before or after the commencement of the case by or from the property) to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien), which payments are in an amount equal to interest at the then-applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or''.

TITLE III—MUNICIPAL BANKRUPTCY PROVISIONS

SEC. 301. PETITION AND PROCEEDINGS RELATED TO PETITION.

(a) TECHNICAL AMENDMENT RELATING TO MUNICIPALITIES.—Section 921(d) of title 11, United States Code, is amended by inserting ''notwithstanding section 301(b)'' before the period at the end.

(b) CONFORMING AMENDMENT.—Section 301 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''A voluntary''; and

(2) by amending the last sentence to read as follows:

''(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.''.

TITLE IV—BANKRUPTCY ADMINISTRATION

Subtitle A—General Provisions

SEC. 401. ADEQUATE PREPARATION TIME FOR CREDITORS BEFORE THE MEETING OF CREDITORS IN INDIVIDUAL CASES.

Section 341(a) of title 11, United States Code, is amended by inserting after the first sentence the following: ''If the debtor is an individual in a voluntary case under chapter 7, 11, or 13, the meeting of creditors shall not be convened earlier than 60 days (or later than 90 days) after the date of the order for relief, unless the court, after notice and hearing, determines unusual circumstances justify an earlier meeting.''.

SEC. 402. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.

Section 341(c) of title 11, United States Code, is amended by inserting after the first sentence the following: ''Notwithstanding any local court rule, provision of a State constitution, any other State or Federal nonbankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or its representatives (which representatives may include an entity or an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13 either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.''.

SEC. 403. FILING PROOFS OF CLAIM.

Section 501 of title 11, United States Code, is amended by adding at the end the following:

''(e) In a case under chapter 7 or 13, a proof of claim or interest is deemed filed under this section for any claim or interest that appears in the schedules filed under section 521(a)(1) of this title, except a claim or interest that is scheduled as disputed, contingent, or unliquidated.''.

SEC. 404. AUDIT PROCEDURES.

(a) AMENDMENT.—Section 586 of title 28, United States Code, as amended by sections 111 and 240, is amended—

(1) by amending subsection (a)(6) to read as follows:

''(6) make such reports as the Attorney General directs, including the results of audits performed under subsection (f),'';

(2) by inserting at the end the following:

''(f)(1) The Attorney General shall establish procedures for the auditing of the accuracy and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322, and, if applicable, section 111, of title 11 in individual cases

filed under chapter 7 or 13 of such title. Such audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants. Such procedures shall—

''(A) establish a method of selecting appropriate qualified persons to contract with the United States trustee to perform such audits;

''(B) establish a method of randomly selecting cases to be audited according to generally accepted audit standards, provided that no less than 1 out of every 100 cases in each Federal judicial district shall be selected for audit;

''(C) require audits for schedules of income and expenses which reflect higher than average variances from the statistical norm of the district in which the schedules were filed;

''(D) establish procedures for reporting the results of such audits and any material misstatement of income, expenditures or assets of a debtor to the Attorney General, the United States Attorney and the court, as appropriate, and for providing public information no less than annually on the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported; and

''(E) establish procedures for fully funding such audits.

''(2) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee according to the procedures established under paragraph (1) of this subsection.

''(3) According to procedures established under paragraph (1), upon request of a duly appointed auditor, the debtor shall cause the accounts, papers, documents, financial records, files and all other papers, things or property belonging to the debtor as the auditor requests and which are reasonably necessary to facilitate an audit to be made available for inspection and copying.

''(4) The report of each such audit shall be filed with the court, the Attorney General, and the United States Attorney, as required under procedures established by the Attorney General under paragraph (1). If a material misstatement of income or expenditures or of assets is reported, a statement specifying such misstatement shall be filed with the court and the United States trustee shall give notice thereof to the creditors in the case and, in an appropriate case, in the opinion of the United States trustee, requires investigation with respect to possible criminal violations, the United States Attorney for the district.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of the enactment of this Act.

SEC. 405. GIVING CREDITORS FAIR NOTICE IN CHAPTER 7 AND 13 CASES.

Section 342 of title 11, United States Code, is amended—

(1) in subsection (c)—

(A) by striking '', but the failure of such notice to contain such information shall not invalidate the legal effect of such notice''; and

(B) by adding the following at the end:

''If the credit agreement between the debtor and the creditor or the last communication before the filing of the petition in a voluntary case from the creditor to a debtor who is an individual states an account number of the debtor which is the current account number of the debtor with respect to any debt held by the creditor against the debtor, the debtor shall include such account number in any notice to the creditor required to be given under this title. If the creditor has specified to the debtor an address at which the creditor wishes to receive correspondence regarding the debtor's account, any notice to the creditor required to be given by the debtor under this title shall be given at such address. For the purposes of this section, 'notice' shall include, but shall not be limited to, any correspondence from the debtor to the creditor after the commencement of the case, any statement of the debtor's intention under section 521(a)(2) of this title, notice of the commencement of any proceeding in the case to which the creditor is a party, and any notice of the hearing under section 1324.'';

(2) by adding at the end the following:

''(d) At any time, a creditor in a case of an individual debtor under chapter 7 or 13 may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case. Five days after receipt of such notice, if the court or the debtor is required to give the creditor notice, such notice shall be given at that address.

''(e) An entity may file with the court a notice stating its address for notice in cases under chapters 7 and 13. After 30 days following the filing of such notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (d) with respect to a particular case.

''(f) Notice given to a creditor other than as provided in this section shall not be effective notice until it has been brought to the attention of the creditor. If the creditor has designated a person or department to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that bankruptcy notices received by the creditor will be delivered to such department or person, notice will not be brought to the attention of the creditor until received by such person or department. No sanction under section 362(h) of this title or any other sanction which a court may impose on account of violations of the stay under section 362(a) of this title or failure to comply with section 542 or 543 of this title may be imposed on any action of the creditor unless the action takes place after the creditor has received notice of the commencement of the case effective under this section.''.

SEC. 406. DEBTOR TO PROVIDE TAX RETURNS AND OTHER INFORMATION.

Section 521 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''The'';

(2) by amending paragraph (1) to read as follows:

''(1) file—

''(A) a list of creditors, and

''(B) unless the court orders otherwise—

''(i) a schedule of assets and liabilities;

''(ii) a schedule of current income and current expenditures;

''(iii) a statement of the debtor's financial affairs;

''(iv) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days prior to the filing of the petition;

''(v) a statement of the amount of projected monthly net income, itemized to show how calculated;

''(vi) if applicable, any statement under paragraphs (3) and (4) of section 109(h);

''(vii) a statement disclosing any reasonably anticipated increase in income or expenditures over the next 12 months; and

''(viii) a certificate, if applicable—

''(I) of an attorney whose name is on the petition as the attorney for the debtor, or of any bankruptcy petition preparer who signed the petition pursuant to section 110(b)(1) of this title, indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b)(1) of this title; or

''(II) if no attorney for the debtor is indicated and no bankruptcy petition preparer signed the petition of the debtor, that such notice was obtained and read by the debtor;''; and

(3) by adding at the end the following:

''(b) At any time, a creditor in a case of an individual debtor under chapter 7 or 13 may file with the court and serve on the debtor notice that the creditor requests the petition, schedules, and statement of financial affairs filed by the debtor in the case. At any time, a creditor in a case under chapter 13 of this title may file with the court and serve on the debtor notice that the creditor requests the plan filed by the debtor in the case. Within 10 days of the first such request in a case under this subsection for the petition, schedules, and statement of financial affairs and the first such request for the plan under this subsection, the debtor shall serve on that creditor a conformed copy of the requested documents or plan and any amendments thereto as of that date, and shall thereafter promptly serve on that creditor at the time filed with the court—

''(1) any requested document or plan which is not filed with the court at the time requested; and

''(2) any amendment to any requested document or plan.

''(c)(1) An individual debtor in a case under chapter 7 or 13 shall provide to the United States trustee—

''(A) copies of all Federal tax returns (including any schedules and attachments) filed by the debtor for the 3 most recent tax years preceding the order for relief;

''(B) at the time the debtor files them with the Commissioner of Internal Revenue, all Federal tax returns (including any schedules and attachments) for the debtor's tax years ending while such case is pending; and

''(C) at the time the debtor files them with the Commissioner of Internal Revenue, all amendments to the tax returns (including schedules and attachments) described in subparagraphs (A) and (B).

''(2)(A) The United States trustee shall make such Federal tax returns (including schedules, attachments, and amendments) available to any party in interest for inspection and copying not later than 10 days after receiving a request by such party.

''(B) If the United States trustee does not comply with subparagraph (A), on the motion of such party, the court shall issue an order compelling the United States trustee to comply with subparagraph (A).

''(d) A debtor in a case under chapter 13 of this title shall file, from a time which is the later of 90 days after the close of the debtor's tax year or 1 year after the order for relief unless a plan has then been confirmed, and thereafter on or before 45 days before each anniversary of the confirmation of the plan until the case is closed, a statement subject to the penalties of perjury by the debtor of the debtor's income and expenditures in the preceding tax year and monthly net income, showing how calculated. Such statement shall disclose the amount and sources of income of the debtor, the identity of any persons responsible with the debtor for the support of any dependents of the debtor, and any persons who contributed and the amount contributed to the household in which the debtor resides. Such tax returns, amendments and statement of income and expenditures shall be available to the United States trustee, any bankruptcy administrator, any trustee and any party in interest for inspection and copying.''.

SEC. 407. DISMISSAL FOR FAILURE TO FILE SCHEDULES TIMELY OR PROVIDE REQUIRED INFORMATION.

Section 521 of title 11, United States Code, as amended by section 406, is amended by adding at the end the following:

''(e) Notwithstanding section 707(a) of this title, if an individual debtor in a voluntary case under chapter 7 or 13 fails to provide all of the information required under subsections (a)(1) and (c)(1)(A) within 45 days after the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the filing of the petition without the need for any order of court, but any party in interest may request the court to enter an order dismissing the case and the court shall, if so requested, enter an order of dismissal within 5 days of such request. Upon request of the debtor made within 45 days after

the filing of the petition, the court may allow the debtor up to an additional 15 days to provide the information required under subsections (a)(1) and (c)(1)(A) if the court finds compelling justification for doing so.

''(f) If an individual debtor in a case under chapter 7 or 13 fails to perform any of the duties imposed by subsections (b), (c)(1)(B), (c)(1)(C), and (d), any party in interest may request that the court order the debtor to comply. Within 10 days of such request the court shall order that the debtor do so within a period of time set by the court no longer than 30 days. If the debtor does not comply with that order within the period of time set by the court, the court shall, on request of any party in interest certifying that the debtor has not so complied, enter an order dismissing the case within 5 days of such request.''.

SEC. 408. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.

Section 1324 of title 11, United States Code, is amended—

(1) by striking ''After'' and inserting the following:

''(a) Except as provided in subsection (b) and after''; and

(2) by adding at the end the following:

''(b) The hearing on confirmation of the plan may be held not earlier than 20 days, and not later than 45 days, after the meeting of creditors under section 341(a) of this title.''.

SEC. 409. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.

Title 11, United States Code, is amended—

(1) by amending section 1322(d) to read as follows:

''(d) If the total current monthly income of the debtor and in a joint case, the debtor and the debtor's spouse combined, is not less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, not less than the national median household income for 1 earner, the plan may not provide for payments over a period that is longer than 5 years, unless the court, for cause, approves a longer period, but the court may not approve a period that exceeds 7 years. If the total current monthly income of the debtor or in a joint case, the debtor and the debtor's spouse combined, is less than the highest national median family income reported for a family of equal or lesser size, or in the case of a household of 1 person less than the national median household income for 1 earner, the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.'';

(2) in section 1329—

(A) by striking in subsection (c) ''three years'' and inserting ''the applicable commitment period under section 1325(b)(1)(B)(ii)'' and by striking ''five years'' and inserting ''maximum duration period''; and

(B) by inserting at the end of subsection (c) the following:

''The maximum duration period shall be 5 years if the total current monthly income of the debtor, and in a joint case, the debtor and the debtor's spouse combined, is not less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, not less than the national median household income for 1 earner, as of the date of the modification and shall be 3 years if the total current monthly income is less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, less than the national median household income for 1 earner as of the date of the modification.''.

SEC. 410. SENSE OF THE CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.

It is the sense of the Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App) should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to the court or to a trustee by debtors who represent themselves and debtors who are represented by an attorney be submitted only after the debtor or the debtor's attorney has made reasonable inquiry to verify that the information contained in such documents is well grounded in fact, and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.

SEC. 411. JURISDICTION OF COURTS OF APPEALS.

(a) JURISDICTION.—Title 28 of the United States Code is amended—

(1) by striking section 158;

(2) by inserting after section 1292 the following:

''§ 1293. Bankruptcy appeals

''The courts of appeals (other the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from the following:

''(1) Final orders and judgments of bankruptcy courts entered under—

''(A) section 157(b) of this title in core proceedings arising under title 11, or arising in or related to a case under title 11; or

''(B) section 157(c)(2) of this title in proceedings referred to such courts.

''(2) Final orders and judgments of district courts entered under section 157 of this title in—

''(A) core proceedings arising under title 11, or arising in or related to a case under title 11; or

''(B) proceedings that are not core proceedings, but that are otherwise related to a case under title 11.

''(3) Orders and judgments of bankruptcy courts or district courts entered under section 105 of title 11, or the refusal to enter an order or judgment under such section.

''(4) Orders of bankruptcy courts or district courts entered under section 1104(a) or 1121(d) of title 11, or the refusal to enter an order under such section.

''(5) An interlocutory order of a bankruptcy court or district court entered in a case under title 11, in a proceeding arising under title 11, or in a proceeding arising in or related to a case under title 11, if—

''(A) such court is of the opinion that—

''(i) such order involves a controlling question of law as to which there is substantial ground for difference of opinion; and

''(ii) an immediate appeal from such order may materially advance the ultimate termination of such case or such proceeding; or

''(B) the court of appeals that would have jurisdiction of an appeal of a final order entered in such case or such proceeding permits, in its discretion, appeal to be taken from such interlocutory order.''; and

(3) in—

(A) the table of sections for chapter 6 by striking the item relating to section 158; and

(B) the table of sections for chapter 83 by inserting after the item relating to section 1292 the following:

''1293. Bankruptcy appeals.''.

(b) CONFORMING AMENDMENTS.—(1) Section 305(c) of title 11, the United States Code, is amended by striking ''158(d), 1291, or 1292'' and inserting ''1291, 1292, or 1293''.

(2) Title 28, United States Code, is amended—

(A) in subsections (b)(1) and (c)(2) of section 157 by striking ''section 158'' and inserting ''section 1293'';

(B) in section 1334(d) by striking ''158(d), 1291, or 1292'' and inserting ''1291, 1292, or 1293''; and

(C) in section 1452(b) by striking ''158(d), 1291, or 1292'' and inserting ''1291, 1292, or 1293''.

SEC. 412. ESTABLISHMENT OF OFFICIAL FORMS.

The Judicial Conference of the United States shall establish official forms to facilitate compliance with the amendments made by sections 101 and 102.

SEC. 413. ELIMINATION OF CERTAIN FEES PAYABLE IN CHAPTER 11 BANKRUPTCY CASES.

(a) AMENDMENTS.—Section 1930(a)(6) of title 28, United States Code, is amended—

(1) in the 1st sentence by striking ''until the case is converted or dismissed, whichever occurs first'', and

(2) in the 2d sentence—

(A) by striking ''The'' and inserting ''Until the plan is confirmed or the case is converted (whichever occurs first) the'', and

(B) by striking ''less than $300,000;'' and inserting ''less than $300,000. Until the case is converted or dismissed (whichever occurs first and without regard to confirmation of the plan) the fee shall be''.

(b) DELAYED EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1999.

Subtitle B—Data Provisions

SEC. 441. IMPROVED BANKRUPTCY STATISTICS.

(a) AMENDMENT.—Title 28, United States Code, is amended by adding after section 158 the following new section:

''§ 159. Bankruptcy statistics

''The Director of the Executive Office for United States Trustees shall compile statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Such statistics shall be in a form prescribed by the Administrative Office of the United States Courts. The Office shall compile such statistics, and make them public, and report annually to the Congress on the information collected, and on its analysis thereof, no later than October 31 of each year. Such compilation shall be itemized by chapter of title 11, shall be presented in the aggregate and for each district, and shall include the following:

''(1) Total assets and total liabilities of such debtors, and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by such debtors.

''(2) The current total monthly income, projected monthly net income, and average income and average expenses of such debtors as reported on the schedules and statements the debtor has filed under sections 111, 521, and 1322 of title 11.

''(3) The aggregate amount of debt discharged in the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable.

''(4) The average time between the filing of the petition and the closing of the case.

''(5) The number of cases in the reporting period in which a reaffirmation was filed and the total number of reaffirmations filed in that period, and of those cases in which a reaffirmation was filed, the number in which the debtor was not represented by an attorney, and of those the number of cases in which the reaffirmation was approved by the court.

''(6) With respect to cases filed under chapter 13 of title 11—

''(A) the number of cases in which a final order was entered determining the value of property securing a claim less than the claim, and the total number of such orders in the reporting period; and

''(B) the number of cases dismissed for failure to make payments under the plan.

''(7) The number of cases in which the debtor filed another case within the 6 years previous to the filing.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 18 months after the date of the enactment of this Act.

SEC. 442. BANKRUPTCY DATA.

(a) AMENDMENT.—Title 28 of the United States Code is amended by inserting after section 589a the following:

''§ 589b. Bankruptcy data

''(a) RULES.—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

''(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

''(2) periodic reports by debtors in possession or trustees, as the case may be, in cases under chapter 11 of title 11.

''(b) REPORTS.—All reports referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at 1 or more central filing locations, and by electronic access through the Internet or other appropriate media.

''(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

''(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system; and

''(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports.

''(d) FINAL REPORTS.—Final reports proposed for adoption by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General, shall propose, include with respect to a case under such title—

''(1) information about the length of time the case was pending;

''(2) assets abandoned;

''(3) assets exempted;

''(4) receipts and disbursements of the estate;

''(5) expenses of administration;

''(6) claims asserted;

''(7) claims allowed; and

''(8) distributions to claimants and claims discharged without payment;

in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

''(e) PERIODIC REPORTS.—Periodic reports proposed for adoption by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General, in the discretion of the Attorney General, shall propose, include—

''(1) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

''(2) length of time the case has been pending;

''(3) number of full-time employees as at the date of the order for relief and at end of each reporting period since the case was filed;

''(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

''(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

''(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, in for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

''(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.''.

(b) TECHNICAL AMENDMENT.—The table of sections of chapter 39 of title 28, United States Code, is amended by adding at the end the following:

''589b. Bankruptcy data.''.

SEC. 443. SENSE OF THE CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.

It is the sense of the Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11 of the United States Code), should be released in a usable electronic form in bulk to the public subject to such appropriate privacy concerns and safeguards as the Judicial Conference of the United States may determine; and

(2) there should be established a bankruptcy data system in which—

(A) a single set of data definitions and forms are used to collect data nationwide; and

(B) data for any particular bankruptcy case are aggregated in the same electronic record.

TITLE V—TAX PROVISIONS

SEC. 501. TREATMENT OF CERTAIN LIENS.

(a) TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting ''(other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate)'' after ''under this title'';

(2) in subsection (b)(2), after ''507(a)(1)'', insert ''(except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)''; and

(3) by adding at the end the following:

''(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—

''(1) exhaust the unencumbered assets of the estate; and

''(2) in a manner consistent with section 506(c) of this title, recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.

''(f) Notwithstanding the exclusion of ad valorem tax liens set forth in this section and subject to the requirements of subsection (e)—

''(1) claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(3) of this title; or

''(2) claims for contributions to an employee benefit plan entitled to priority under section 507(a)(4) of this title,

may be paid from property of the estate which secures a tax lien, or the proceeds of such property.''.

(b) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

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

(3) by adding at the end the following:

''(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.''.

SEC. 502. ENFORCEMENT OF CHILD AND SPOUSAL SUPPORT.

Section 522(c)(1) of title 11, United States Code, is amended by inserting '', except that, notwithstanding any other Federal law or State law relating to exempted property, exempt property shall be liable for debts of a kind specified in paragraph (1) or (5) of section 523(a) of this title'' before the semicolon at the end.

SEC. 503. EFFECTIVE NOTICE TO GOVERNMENT.

(a) EFFECTIVE NOTICE TO GOVERNMENTAL UNITS.—Section 342 of title 11, United States Code, as amended by section 405, is amended by adding at the end the following:

''(g) If a debtor lists a governmental unit as a creditor in a list or schedule, any notice required to be given by the debtor under this title, any rule, any applicable law, or any order of the court, shall identify the department, agency, or instrumentality through which the debtor is indebted. The debtor shall identify (with information such as a taxpayer identification number, loan, account or contract number, or real estate parcel number, where applicable), and describe the underlying basis for the governmental unit's claim. If the debtor's liability to a governmental unit arises from a debt or obligation owed or incurred by another individual, entity, or organization, or under a different name, the debtor shall identify such individual, entity, organization, or name.

''(h) The clerk shall keep and update quarterly, in the form and manner as the Director of the Administrative Office of the United States Courts prescribes, and make available to debtors, a register in which a governmental unit may designate a safe harbor mailing address for service of notice in cases pending in the district. A governmental unit may file a statement with the clerk designating a safe harbor address to which notices are to be sent, unless such governmental unit files a notice of change of address.''.

(b) ADOPTION OF RULES PROVIDING NOTICE.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference shall, within a reasonable period of time after the date of the enactment of this Act, propose for adoption enhanced rules for providing notice to State, Federal, and local government units that have regulatory authority over the debtor or which may be creditors in the debtor's case. Such rules shall be reasonably calculated to ensure that notice will reach the representatives of the governmental unit, or subdivision thereof, who will be the proper persons authorized to act upon the notice. At a minimum, the rules should require that the debtor—

(1) identify in the schedules and the notice, the subdivision, agency, or entity in respect of which such notice should be received;

(2) provide sufficient information (such as case captions, permit numbers, taxpayer identification numbers, or similar identifying information) to permit the governmental unit or subdivision thereof, entitled to receive such notice, to identify the debtor or the person or entity on behalf of which the debtor is providing notice where the debtor may be a successor in interest or may not be the same as the person or entity which incurred the debt or obligation; and

(3) identify, in appropriate schedules, served together with the notice, the property in respect of which the claim or regulatory obligation may have arisen, if any, the nature of such claim or regulatory obligation and the purpose for which notice is being given.

(c) EFFECT OF FAILURE OF NOTICE.—Section 342 of title 11, United States Code, as amended by subsection (a) and section 405, is amended by adding at the end the following:

''(i)(1) A notice that does not comply with subsections (d) and (e) shall have no effect unless the debtor demonstrates, by clear and convincing evidence, that timely notice was given in a manner reasonably calculated to satisfy the requirements of this section was given, and that—

''(A) either the notice was timely sent to the safe harbor address provided in the register maintained by the clerk of the district in which the case was pending for such purposes; or

''(B) no safe harbor address was provided in such list for the governmental unit and that an officer of the governmental unit who is responsible for the matter or claim had actual knowledge of the case in sufficient time to act.

''(2) No sanction under section 362(h) of this title or any other sanction which a court may impose on account of violations of the stay under section 362(a) of this title or failure to comply with section 542 or 543 of this title may be imposed unless the action takes place after notice of the commencement of the case as required by this section has been received.''.

SEC. 504. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.

Section 505(b) of title 11, United States Code, is amended by striking ''Unless'' at the beginning of the second sentence thereof and inserting ''If the request is made in the manner designated by the governmental unit and unless''.

SEC. 505. RATE OF INTEREST ON TAX CLAIMS.

Chapter 5 of title 11, United States Code, is amended by adding at the end the following:

''§ 511. Rate of interest on tax claims

''Notwithstanding any provision of this title that requires the payment of interest on a claim, if interest is required to be paid on a tax claim, the rate of interest shall be as follows:

''(1) In the case of ad valorem tax claims, whether secured or unsecured, other unsecured tax claims where interest is required to be paid under section 726(a)(5) of this title and secured tax claims the rate shall be determined under applicable nonbankruptcy law.

''(2) In the case of unsecured claims for taxes arising before the date of the order for relief and paid under a plan of reorganization, the minimum rate of interest to be applied during the period after the filing of the petition shall be the Federal short-term rate rounded to the nearest full percent, determined under section 1274(d) of the Internal Revenue Code of 1986, for the calendar month in which the plan is confirmed, plus 3 percentage points.''.

SEC. 506. TOLLING OF PRIORITY OF TAX CLAIM TIME PERIODS.

Section 507(a)(9)(A) of title 11, United States Code, as so redesignated, is amended—

(1) in clause (i) by inserting after ''petition'' and before the semicolon '', plus any time, plus 6 months, during which the stay of proceedings was in effect in a prior case under this title''; and

(2) amend clause (ii) to read as follows:

''(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

''(I) any time plus 30 days during which an offer in compromise with respect of such tax, was pending or in effect during such 240-day period;

''(II) any time plus 30 days during which an installment agreement with respect of such tax was pending or in effect during such 240-day period, up to 1 year; and

''(III) any time plus 6 months during which a stay of proceedings against collections was in effect in a prior case under this title during such 240-day period.''.

SEC. 507. ASSESSMENT DEFINED.

(a) ASSESSMENT DEFINED FOR PRIORITY PURPOSES.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (2) the following:

''(3) 'assessment'—

''(A) for purposes of State and local taxes, means that point in time when all actions required have been taken so that thereafter a taxing authority may commence an action to collect the tax, and

''(B) for Federal tax purposes has the meaning given such term in the Internal Revenue Code of 1986;

and 'assessed' and 'assessable' shall be interpreted in light of the definition of assessment in this paragraph;''.

(b) ASSESSMENT DEFINED FOR THE STAY OF PROCEEDINGS.—Section 362(b)(9)(D) of title 11, United States Code, is amended by inserting after ''the making of an assessment'' the following: ''as defined by applicable nonbankruptcy law notwithstanding the definition of an 'assessment' elsewhere in this title''.

SEC. 508. CHAPTER 13 DISCHARGE OF FRAUDULENT AND OTHER TAXES.

Section 1328(a)(2) of title 11, United States Code, is amended by inserting ''(1),'' after ''paragraph''.

SEC. 509. CHAPTER 11 DISCHARGE OF FRAUDULENT TAXES.

Section 1141(d) of title 11, United States Code, as amended by section 119A, is amended by adding at the end the following:

''(6) Notwithstanding the provisions of paragraph (1), the confirmation of a plan does not discharge a debtor which is a corporation from any debt for a tax or customs duty with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.''.

SEC. 510. THE STAY OF TAX PROCEEDINGS.

(a) THE SECTION 362 STAY LIMITED TO PREPETITION TAXES.—Section 362(a)(8) of title 11, United States Code, is amended by striking the period at the end and inserting '', in respect of a tax liability for a taxable period ending before the order for relief.''.

(b) THE APPEAL OF TAX COURT DECISIONS PERMITTED.—Section 362(b)(9) of title 11, United States Code, is amended—

(1) in subparagraph (C) by striking ''or'' at the end,

(2) in subparagraph (D) by striking the period at the end and inserting ''; or'', and

(3) by adding at the end the following:

''(E) the appeal of a decision by a court or administrative tribunal which determines a tax liability of the debtor without regard to whether such determination was made prepetition or postpetition.''.

SEC. 511. PERIODIC PAYMENT OF TAXES IN CHAPTER 11 CASES.

Section 1129(a)(9) of title 11, United States Code, is amended—

(1) in subparagraph (B) by striking ''and'' at the end; and

(2) in subparagraph (C)—

(A) by striking ''deferred cash payments, over a period not exceeding six years after the date of assessment of such claim,'' and inserting ''regular installment payments in cash, but in no case with a balloon provision, and no more than three months apart, beginning no later than the effective date of the plan and ending on the earlier of five years after the petition date or the last date payments are to be made under the plan to unsecured creditors,'';

(B) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(D) with respect to a secured claim which would be described in section 507(a)(8) of this title but for its secured status, the holder of such claim will receive on account of such claim cash payments of not less than is required in subparagraph (C) and over a period no greater than is required in such subparagraph.''.

SEC. 512. THE AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.

Section 545(2) of title 11, United States Code, is amended by striking the semicolon at the end and inserting '', except where such purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986 or similar provision of State or local law;''.

SEC. 513. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.

(a) PAYMENT OF TAXES REQUIRED.—Section 960 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Any''; and

(2) by adding at the end the following:

''(b) Such taxes shall be paid when due in the conduct of such business unless—

''(1) the tax is a property tax secured by a lien against property that is abandoned within a reasonable time after the lien attaches, by the trustee of a bankruptcy estate, pursuant to section 554 of title 11; or

''(2) payment of the tax is excused under a specific provision of title 11.

''(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11 if—

''(1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or

''(2) before the due date of the tax, the court has made a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as such tax.''.

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 503(b)(1)(B) of title 11, United States Code, is amended in clause (i) by inserting after ''estate,'' and before ''except'' the following: ''whether secured or unsecured, including property taxes for which liability is in rem only, in personam or both,''.

(c) REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of title 11, United States Code, is amended by adding at the end the following:

''(D) notwithstanding the requirements of subsection (a) of this section, a governmental unit shall not be required to file a request for the payment of a claim described in subparagraph (B) or (C);''.

(d) PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.—Section 506 of title 11, United States Code, is amended—

(1) in subsection (b) by inserting ''or State statute'' after ''agreement''; and

(2) in subsection (c) by inserting '', including the payment of all ad valorem property taxes in respect of the property'' before the period at the end.

SEC. 514. TARDILY FILED PRIORITY TAX CLAIMS.

Section 726(a)(1) of title 11, United States Code, is amended by striking ''before the date on which the trustee commences distribution under this section'' and inserting ''on or before the earlier of 10 days after the mailing to creditors of the summary of the trustee's final report or the date on which the trustee commences final distribution under this section''.

SEC. 515. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.

Section 523(a)(1)(B) of title 11, United States Code, is amended—

(1) by inserting ''or equivalent report or notice,'' after ''a return,'';

(2) in clause (i)—

(A) by inserting ''or given'' after ''filed''; and

(B) by striking ''or'' at the end;

(3) in clause (ii)—

(A) by inserting ''or given'' after ''filed'';

(B) by inserting '', report, or notice'' after ''return''; and

(4) by adding at the end the following:

''(iii) for purposes of this subsection, a return—

''(I) must satisfy the requirements of applicable nonbankruptcy law, and includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or similar State or local law, and

''(II) must have been filed in a manner permitted by applicable nonbankruptcy law; or''.

SEC. 516. THE DISCHARGE OF THE ESTATE'S LIABILITY FOR UNPAID TAXES.

Section 505(b) of title 11, United States Code, is amended in the second sentence by inserting ''the estate,'' after ''misrepresentation,''.

SEC. 517. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of title 11, United States Code, as amended by section 146, is amended—

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

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

(3) by adding at the end the following:

''(8) if the debtor has filed all Federal, State, and local tax returns as required by section 1308 of this title.''.

(b) ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.—(1) Chapter 13 of title 11, United States Code, is amended by adding at the end the following:

''§ 1308. Filing of prepetition tax returns

''(a) On or before the day prior to the day on which the first meeting of the creditors is convened under section 341(a) of this title, the debtor shall have filed with appropriate tax authorities all tax returns for all taxable periods ending in the 6-year period ending on the date of filing of the petition.

''(b) If the tax returns required by subsection (a) have not been filed by the date on which the first meeting of creditors is convened under section 341(a) of this title, the trustee may continue such meeting for a reasonable period of time, to allow the debtor additional time to file any unfiled returns, but such additional time shall be no more than—

''(1) for returns that are past due as of the date of the filing of the petition, 120 days from such date,

''(2) for returns which are not past due as of the date of the filing of the petition, the later of 120 days from such date or the due date for such returns under the last automatic extension of time for filing such returns to which the debtor is entitled, and for which request has been timely made, according to applicable nonbankruptcy law, and

''(3) upon notice and hearing, and order entered before the lapse of any deadline fixed according to this subsection, where the debtor demonstrates, by clear and convincing evidence, that the failure to file the returns as required is because of circumstances beyond the control of the debtor, the court may extend the deadlines set by the trustee as provided in this subsection for—

''(A) a period of no more than 30 days for returns described in paragraph (1) of this subsection, and

''(B) for no more than the period of time ending on the applicable extended due date for the returns described in paragraph (2).

''(c) For purposes of this section only, a return includes a return prepared pursuant to section 6020 (a) or (b) of the Internal Revenue Code of 1986 or similar State or local law, or a written stipulation to a judgment entered by a nonbankruptcy tribunal.''.

(2) The table of sections of chapter 13 of title 11, United States Code, is amended by inserting after the item relating to section 1307 the following:

''1308. Filing of prepetition tax returns.''.

(c) DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.—Section 1307 of title 11, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and

(2) by inserting after subsection (d) the following:

''(e) Upon the failure of the debtor to file tax returns under section 1308 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interests of creditors and the estate.''.

(d) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by striking the period at the end and inserting '', and except that in a case under chapter 13 of this title, a claim of a governmental unit for a tax in respect of a return filed under section 1308 of this title shall be timely if it is filed on or before 60 days after such return or returns were filed as required.''.

(e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.—It is the sense of Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference should, within a reasonable period of time after the date of the enactment of this Act, propose for adoption amended Federal Rules of Bankruptcy Procedure which provide that—

(1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, a governmental unit may object to the confirmation of a plan on or before 60 days after the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code, and

(2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, no objection to a tax in respect of a return required to be filed under such section 1308 shall be filed until such return has been filed as required.

SEC. 518. STANDARDS FOR TAX DISCLOSURE.

Section 1125(a) of title 11, United States Code, is amended in paragraph (1)—

(1) by inserting after ''records,'' the following: ''including a full discussion of the potential material Federal, State, and local tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor domiciled in the State in which the debtor resides or has its principal place of business typical of the holders of claims or interests in the case,'',

(2) by inserting ''such'' after ''enable'', and

(3) by striking ''reasonable'' where it appears after ''hypothetical'' and by striking ''typical of holders of claims or interests'' after ''investor''.

SEC. 519. SETOFF OF TAX REFUNDS.

Section 362(b) of title 11, United States Code, as amended by sections 130, 146, and 150 is amended—

(1) in paragraph (21) by striking ''or'',

(2) in paragraph (22) by striking the period at the end and inserting ''; or'', and

(3) by inserting after paragraph (22) (as so redesignated) the following:

''(23) under subsection (a) of the setoff of an income tax refund, by a governmental unit, in respect of a taxable period which ended before the order for relief against an income tax liability for a taxable period which also ended before the order for relief, unless—

''(A) prior to such setoff, an action to determine the amount or legality of such tax liability under section 505(a) was commenced; or

''(B) where the setoff of an income tax refund is not permitted because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action.''.

TITLE VI—ANCILLARY AND OTHER CROSS-BORDER CASES

SEC. 601. AMENDMENT TO ADD A CHAPTER 6 TO TITLE 11, UNITED STATES CODE.

(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 5 the following:

''CHAPTER 6—ANCILLARY AND OTHER CROSS-BORDER CASES

''Sec.
''601. Purpose and scope of application.
''SUBCHAPTER I—GENERAL PROVISIONS
''602. Definitions.
''603. International obligations of the United States.
''604. Commencement of ancillary case.
''605. Authorization to act in a foreign country.
''606. Public policy exception.
''607. Additional assistance.
''608. Interpretation.
''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT
''609. Right of direct access.
''610. Limited jurisdiction.
''611. Commencement of bankruptcy case under section 301 or 303.
''612. Participation of a foreign representative in a case under this title.
''613. Access of foreign creditors to a case under this title.
''614. Notification to foreign creditors concerning a case under this title.
''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF
''615. Application for recognition of a foreign proceeding.
''616. Presumptions concerning recognition.
''617. Order recognizing a foreign proceeding.
''618. Subsequent information.
''619. Relief that may be granted upon petition for recognition of a foreign proceeding.
''620. Effects of recognition of a foreign main proceeding.
''621. Relief that may be granted upon recognition of a foreign proceeding.
''622. Protection of creditors and other interested persons.
''623. Actions to avoid acts detrimental to creditors.
''624. Intervention by a foreign representative.
''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES
''625. Cooperation and direct communication between the court and foreign courts or foreign representatives.
''626. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.
''627. Forms of cooperation.
''SUBCHAPTER V—CONCURRENT PROCEEDINGS
''628. Commencement of a case under this title after recognition of a foreign main proceeding.
''629. Coordination of a case under this title and a foreign proceeding.
''630. Coordination of more than 1 foreign proceeding.
''631. Presumption of insolvency based on recognition of a foreign main proceeding.
''632. Rule of payment in concurrent proceedings.

''§ 601. Purpose and scope of application

''(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

''(1) cooperation between—

''(A) United States courts, United States Trustees, trustees, examiners, debtors, and debtors in possession; and

''(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

''(2) greater legal certainty for trade and investment;

''(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

''(4) protection and maximization of the value of the debtor's assets; and

''(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

''(b) This chapter applies where—

''(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

''(2) assistance is sought in a foreign country in connection with a case under this title;

''(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or

''(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

''(c) This chapter does not apply to—

''(1) a proceeding concerning an entity identified by exclusion in subsection 109(b); or

''(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in under section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States.

''SUBCHAPTER I—GENERAL PROVISIONS

''§ 602. Definitions

''For the purposes of this chapter, the term—

''(1) 'debtor' means an entity that is the subject of a foreign proceeding;

''(2) 'establishment' means any place of operations where the debtor carries out a nontransitory economic activity;

''(3) 'foreign court' means a judicial or other authority competent to control or supervise a foreign proceeding;

''(4) 'foreign main proceeding' means a foreign proceeding taking place in the country where the debtor has the center of its main interests;

''(5) 'foreign nonmain proceeding' means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

''(6) 'trustee' includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapters 9 or 13 of this title; and

''(7) 'within the territorial jurisdiction of the United States' when used with reference to property of a debtor refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

''§ 603. International obligations of the United States

''To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with 1 or more other countries, the requirements of the treaty or agreement prevail.

''§ 604. Commencement of ancillary case

''A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 615.

''§ 605. Authorization to act in a foreign country

''A trustee or another entity (including an examiner) authorized by the court may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

''§ 606. Public policy exception

''Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

''§ 607. Additional assistance

''(a) Nothing in this chapter limits the power of the court, upon recognition of a foreign proceeding, to provide additional assistance to a foreign representative under this title or under other laws of the United States.

''(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

''(1) just treatment of all holders of claims against or interests in the debtor's property;

''(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

''(3) prevention of preferential or fraudulent dispositions of property of the debtor;

''(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

''(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

''§ 608. Interpretation

''In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

''§ 609. Right of direct access

''(a) A foreign representative is entitled to commence a case under section 604 by filing a petition for recognition under section 615, and upon recognition, to apply directly to other Federal and State courts for appropriate relief in those courts.

''(b) Upon recognition, and subject to section 610, a foreign representative has the capacity to sue and be sued, and shall be subject to the laws of the United States of general applicability.

''(c) Recognition under this chapter is prerequisite to the granting of comity or cooperation to a foreign proceeding in any State or Federal court in the United States. Any request for comity or cooperation in any court shall be accompanied by a sworn statement setting forth whether recognition under section 615 has been sought and the status of any such petition.

''(d) Upon denial of recognition under this chapter, the court may issue appropriate orders necessary to prevent an attempt to obtain comity or cooperation from courts in the United States without such recognition.

''§ 610. Limited jurisdiction

''The sole fact that a foreign representative files a petition under sections 615 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

''§ 611. Commencement of case under section 301 or 303

''(a) Upon filing a petition for recognition, a foreign representative may commence—

''(1) an involuntary case under section 303; or

''(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

''(b) The petition commencing a case under subsection (a) of this section must be accompanied by a statement describing the petition for recognition and its current status. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) of this section prior to such commencement.

''(c) A case under subsection (a) shall be dismissed unless recognition is granted.

''§ 612. Participation of a foreign representative in a case under this title

''Upon recognition of a foreign proceeding, the foreign representative in that proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

''§ 613. Access of foreign creditors to a case under this title

''(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

''(b)(1) Subsection (a) of this section does not change or codify present law as to the priority of claims under section 507 or 726 of this title, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

''(2)(A) Subsection (a) of this section and paragraph (1) of this subsection do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

''(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

''§ 614. Notification to foreign creditors concerning a case under this title

''(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

''(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other similar formality is required.

''(c) When a notification of commencement of a case is to be given to foreign creditors, the notification shall—

''(1) indicate the time period for filing proofs of claim and specify the place for their filing;

''(2) indicate whether secured creditors need to file their proofs of claim; and

''(3) contain any other information required to be included in such a notification to creditors pursuant to this title and the orders of the court.

''(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

''§ 615. Application for recognition of a foreign proceeding

''(a) A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

''(b) A petition for recognition shall be accompanied by—

''(1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

''(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

''(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

''(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

''(d) The documents referred to in paragraphs (1) and (2) of subsection (b) must be translated into English. The court may require a translation into English of additional documents.

''§ 616. Presumptions concerning recognition

''(a) If the decision or certificate referred to in section 615(b) indicates that the foreign proceeding is a foreign proceeding within the meaning of section 101(23) and that the person or body is a foreign representative within the meaning of

section 101(24), the court is entitled to so presume.

''(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.

''(c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

''§ 617. Order recognizing a foreign proceeding

''(a) Subject to section 606, an order recognizing a foreign proceeding shall be entered if—

''(1) the foreign proceeding is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 602;

''(2) the foreign representative applying for recognition is a person or body within the meaning of section 101(24); and

''(3) the petition meets the requirements of section 615.

''(b) The foreign proceeding shall be recognized—

''(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or

''(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 602 in the foreign country where the proceeding is pending.

''(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding shall constitute recognition under this chapter.

''(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the granting of recognition. The case under this chapter may be closed in the manner prescribed for a case under section 350.

''§ 618. Subsequent information

''From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

''(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and

''(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

''§ 619. Relief that may be granted upon petition for recognition of a foreign proceeding

''(a) From the time of filing a petition for recognition until the petition is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

''(1) staying execution against the debtor's assets;

''(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

''(3) any relief referred to in paragraph (3), (4), or (7) of section 621(a).

''(b) Unless extended under section 621(a)(6), the relief granted under this section terminates when the petition for recognition is decided upon.

''(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

''§ 620. Effects of recognition of a foreign main proceeding

''(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

''(1) section 362 applies with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States; and

''(2) transfer, encumbrance, or any other disposition of an interest of the debtor in property within the territorial jurisdiction of the United States is restrained as and to the extent that is provided for property of an estate under sections 363, 549, and 552.

Unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the powers of a trustee under section 549, subject to sections 363 and 552.

''(b) The scope, and the modification or termination, of the stay and restraints referred to in subsection (a) of this section are subject to the exceptions and limitations provided in subsections (b), (c), and (d) of section 362, subsections (b) and (c) of section 363, and sections 552, 555 through 557, 559, and 560.

''(c) Subsection (a) of this section does not affect the right to commence individual actions or proceedings in a foreign country to the extent necessary to preserve a claim against the debtor.

''(d) Subsection (a) of this section does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

''§ 621. Relief that may be granted upon recognition of a foreign proceeding

''(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

''(1) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 620(a);

''(2) staying execution against the debtor's assets to the extent it has not been stayed under section 620(a);

''(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 620(a);

''(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

''(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

''(6) extending relief granted under section 619(a); and

''(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

''(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

''(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

''§ 622. Protection of creditors and other interested persons

''(a) In granting or denying relief under section 619 or 621, or in modifying or terminating relief under subsection (c) of this section, the court must find that the interests of the creditors and other interested persons or entities, including the debtor, are sufficiently protected.

''(b) The court may subject relief granted under section 619 or 621 to conditions it considers appropriate.

''(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 619 or 621, or at its own motion, modify or terminate such relief.

''§ 623. Actions to avoid acts detrimental to creditors

''(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a pending case under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, and 724(a).

''(b) When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) of this section relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

''§ 624. Intervention by a foreign representative

''Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

''§ 625. Cooperation and direct communication between the court and foreign courts or foreign representatives

''(a) In all matters included within section 601, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.

''(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.

''§ 626. Cooperation and direct communication between the trustee and foreign courts or foreign representatives

''(a) In all matters included in section 601, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

''(b) The trustee or other person, including an examiner, designated by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

''(c) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

"§ 627. Forms of cooperation

''Cooperation referred to in sections 625 and 626 may be implemented by any appropriate means, including—

''(1) appointment of a person or body, including an examiner, to act at the direction of the court;

''(2) communication of information by any means considered appropriate by the court;

''(3) coordination of the administration and supervision of the debtor's assets and affairs;

''(4) approval or implementation of agreements concerning the coordination of proceedings; and

''(5) coordination of concurrent proceedings regarding the same debtor.

''SUBCHAPTER V—CONCURRENT PROCEEDINGS

"§ 628. Commencement of a case under this title after recognition of a foreign main proceeding

''After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of that case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 625, 626, and 627, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

"§ 629. Coordination of a case under this title and a foreign proceeding

''Where a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 625, 626, and 627, and the following shall apply:

''(1) When the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—

''(A) any relief granted under sections 619 or 621 must be consistent with the case in the United States; and

''(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 620 does not apply.

''(2) When a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—

''(A) any relief in effect under sections 619 or 621 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

''(B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 620(a) shall be modified or terminated if inconsistent with the case in the United States.

''(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(4) In achieving cooperation and coordination under sections 628 and 629, the court may grant any of the relief authorized under section 305.

"§ 630. Coordination of more than 1 foreign proceeding

''In matters referred to in section 601, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 625, 626, and 627, and the following shall apply:

''(1) Any relief granted under section 619 or 621 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

''(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 619 or 621 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

''(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

"§ 631. Presumption of insolvency based on recognition of a foreign main proceeding

''In the absence of evidence to the contrary, recognition of a foreign main proceeding is for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts.

"§ 632. Rule of payment in concurrent proceedings

''Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.''.

(b) CLERICAL AMENDMENT.—The table of chapters for title 11, United States Code, is amended by inserting after the item relating to chapter 5 the following:

"6. Ancillary and Other Cross-Border Cases ..... 601".

SEC. 602. AMENDMENTS TO OTHER CHAPTERS IN TITLE 11, UNITED STATES CODE.

(a) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: ''and this chapter, sections 307, 555 through 557, 559, and 560 apply in a case under chapter 6''; and

(2) by adding at the end the following:

''(j) Chapter 6 applies only in a case under that chapter, except that section 605 applies to trustees and to any other entity authorized by the court, including an examiner, under chapters 7, 11, and 12, to debtors in possession under chapters 11 and 12, and to debtors or trustees under chapters 9 and 13 who are authorized to act under section 605.''.

(b) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraphs (23) and (24) and inserting the following:

''(23) 'foreign proceeding' means a collective judicial or administrative proceeding in a foreign state, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

''(24) 'foreign representative' means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;''.

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking ''and'' at the end;

(B) in subparagraph (O), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(P) recognition of foreign proceedings and other matters under chapter 6 of title 11.''.

(2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1334(c)(1) of title 28, United States Code, is amended by striking ''Nothing in'' and inserting ''Except with respect to a case under chapter 6 of title 11, nothing in''.

(3) DUTIES OF TRUSTEES.—Section 586(a)(3) of title 28, United States Code, is amended by inserting ''6,'' after ''chapter''.

TITLE VII—MISCELLANEOUS

SEC. 701. TECHNICAL AMENDMENTS.

Title 11 of the United States Code is amended—

(1) in section 109(b)(2) by striking ''subsection (c) or (d) of'';

(2) in section 541(b)(4) by adding ''or'' at the end; and

(3) in section 552(b)(1) by striking ''product'' each place it appears and inserting ''products''.

SEC. 702. APPLICATION OF AMENDMENTS.

The amendments made by this Act shall apply only with respect to cases commenced under title 11 of the United States Code after the date of the enactment of this Act.

The CHAIRMAN. It is now in order to consider amendment No. 1 printed in House Report 103–573.

AMENDMENT NO. 1 OFFERED BY MR. GEKAS

Mr. GEKAS. Mr. Chairman, pursuant to the rule, I offer the Hyde amendment, the so-called manager's amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 printed in House Report 105–573 offered by Mr. GEKAS:

Page 6, line 8, strike ''spouse'' and insert ''spouse,''.

Page 8, line 13, insert '', issued by the Internal Revenue Service,'' after ''debts)''.

Page 8, line 16, strike ''under'' and insert ''by''.

Page 8, beginning on line 16, strike ''financial analysis for expenses'' and insert ''allowance for such expenses''.

Page 9, line 10, insert ''total'' after ''monthly''.

Page 9, line 20, insert ''total'' after ''monthly''.

Page 9, line 21, strike ''what income'' and insert ''any income that''.

Page 12, line 15, insert ''CHAPTER 13'' after ''A'' (and make such technical and conforming changes to the table of contents of the bill as may be appropriate).

Page 13, line 1, insert '', issued by the Internal Revenue Service,'' after ''debts)''.

Page 13, line 4, strike ''under'' and insert ''by''.

Page 13, beginning on line 5, strike ''financial analysis for expenses'' and insert ''allowance for such expenses''.

Page 13, line 15, strike ''of'' and insert ''under''.

Page 13, line 22, strike ''of'' and insert ''under''.

Page 14, line 3, insert ''and'' at the end.

Page 14, beginning on line 14, strike '', in a case in which a trustee has been appointed,''.

Page 14, beginning on line 21, strike ''what income'' and inserting ''any income that''.

Page 18, line 1, strike ''total current monthly'' and insert ''current monthly total''.

Page 18, beginning on line 7, strike ''total current monthly'' and insert ''current monthly total''.

Page 20, line 24, strike ''and'' at the end and insert a comma.

Page 21, line 1, strike ''its schedules'' and insert ''schedules,''.

Page 21, beginning on line 3, strike ''and its schedules'' and insert ''schedules,''.

Page 22, beginning on line 6, strike ''outside'' and all that follows through ''system)'' on line 7.

Page 24, line 21, insert ''by the debtor'' after ''statement''.

Page 25, after line 6, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 105. WHO MAY BE A DEBTOR UNDER CHAPTER 11.

Section 109(d) of title 11, United States Code, is amended by inserting '', or a person described in subsection (b)(4)),'' after ''chapter 7''.

Page 25, line 19, strike ''12'' and insert ''12,''.

Page 26, line 3, strike ''(i)'' and insert ''(i)(I)''.

Page 26, line 5, strike ''(ii)'' and insert ''(II)''.

Page 26, line 6, strike the period at the end and insert ''; and''.

Page 26, after line 6, insert the following:

''(ii) that offers its services to debtors without charge, or at an appropriately reduced charge if payment of any regular charge would impose a hardship on the debtor or a dependent of the debtor.''

Page 26, line 10, insert ''or on the motion of the United States trustee and'' after ''district''.

Page 26, beginning on line 11, strike ''the United States trustee and''.

Page 27, line 21, strike ''60'' and insert ''180''.

Page 33, line 22, strike ''select a chapter 7 proceeding'' and insert ''choose to file a chapter 7 case''.

Page 34, line 1, strike ''select a chapter 13 proceeding'' and insert ''choose to file a chapter 13 case''.

Page 34, line 6, strike ''proceeding'' and insert ''relief''.

Page 34, line 9, strike ''proceeding'' and insert ''relief''.

Page 34, line 10, strike ''procceding'' and insert ''case''.

Page 34, beginning on line 13, strike ''represent you in litigation'' and insert ''give you legal advice''.

Page 34, line 21, insert '', to the extent permitted by nonbankruptcy law,''.

Page 38, line 4, strike ''or'' and insert ''and''.

Page 41, after line 12, insert the following:

''(5) Notwithstanding any other provision of Federal law, if the court, on its own motion or on the motion of the United States trustee, finds that a person intentionally violated section 526 or 527 of this title, or engaged in a clear and consistent pattern or practice of violating section 526 or 527 of this title, the court may—

''(A) enjoin the violation of such section; or

''(B) impose an appropriate civil penalty against such person.''.

Page 43, line 17, insert '', together with any other such contribution,'' after ''contribution''.

Page 46, line 12, strike ''2002bb'' and insert ''2000bb''.

Page 49, beginning on line 8, strike ''If a party in interest requests'' and insert ''Upon motion by a party in interest for continuation of the automatic stay and upon notice and a hearing''.

Page 55, line 9, strike ''reaffirmation''.

Page 56, line 1, insert ''THE AUTOMATIC'' after ''FROM'' (and make such technical and conforming changes to the table of contents of the bill as may be appropriate).

Page 59, line 7, insert ''THE AUTOMATIC'' after ''FROM'' (and make such technical and conforming changes to the table of contents of the bill as may be appropriate).

Page 59, line 20, insert ''as described in findings made by the court'' after ''circumstances''.

Page 60, line 12, strike ''cases'' and insert ''a case''.

Page 64, line 3, strike ''case''.

Page 66, line 19, insert '', excluding debts incurred for necessaries that do not exceed $250 in the aggregate,'' after ''creditor''.

Page 66, beginning on line 22, strike '', except'' and all that follows through ''less'' on line 25.

Page 67, line 23, strike ''or divorce or dissolution decree'' and insert ''divorce decree, or other order of a court of record''.

Page 68, strike lines 8 through 23 (and make such technical and conforming changes as may be appropriate).

Page 74, strike lines 13 through 15, and insert the following:

(2) in subsection (a)(7) by inserting ''an order of disgorgement or restitution obtained by a governmental unit,'' after ''such debt is for''; and

Page 75, line 20, strike ''the''.

Page 76, line 14, strike ''(14)'' and insert ''(19)''.

Page 76, in the matter after line 21, insert ''payments after discharge'' after ''alimony''.

Page 78, after line 2, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 152. HIGHER PRIORITY FOR DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

Section 507(a) of title 11, United States Code, is amended—

(1) by striking paragraph (7);

(2) in paragraph (6) by striking ''(6) Sixth'' and inserting ''(7) Seventh'';

(3) in paragraph (5) by striking ''(5) Fifth'' and inserting ''(6) Sixth'';

(4) in paragraph (4) by striking ''(4) Fourth'' and inserting ''(5) Fifth'';

(5) in paragraph (3) by striking ''(3) Third'' and inserting ''(4) Fourth''; and

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

''(3) Third, allowed claims for debts to a spouse, former spouse, or child of the debtor for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

''(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

''(B) includes a liability designed as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support.''.

Page 83, strike lines 17 through 19, and insert the following:

apply to—

''(A) an exemption claimed under subsection (b)(2)(A) by a family farmer for the principal residence of that farmer; or

''(B) an involuntary case.''.

Page 84, strike lines 8 through 10, and insert the following:

''(e) A person appointed to examine a request for compensation or reimbursement payable under this section may not be paid on the basis of the amount of any reduction recommended by such person in the amount or rate of such compensation or such reimbursement.''.

Page 85, line 16, strike ''(3)'' and insert ''(3)(A)''.

Page 85, line 16, insert '', subject to subparagraph (B),'' after ''or''.

Page 85, line 20, strike the close quotation marks and the period at the end.

Page 85, after line 20, insert the following:

''(B) A request to change the membership of a committee appointed under subsection (a) may be made under subparagraph (A) by a party in interest only after such request is submitted to and denied by the United States trustee.''.

Beginning on page 90, strike line 24 and all that follows through line 10 on page 91, and insert the following:

''(5) Where the court finds that a personal services contract is property of the estate, the trustee may not reject an executory contract for personal services in which advances are paid for the creation of copyrighted sound recordings in the future if a material purpose for commencing a case under this title is to reject such contract, unless, absent such rejection, economic rehabilitation of the debtor's finances, including such contract, cannot be achieved.''.

Page 91, beginning on line 24, strike ''debtor's motion'' and insert ''motion of the trustee''.

Page 92, line 4, insert ''the'' after ''provided''.

Page 92, after line 24, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 215. DEFAULTS BASED ON NONMONETARY OBLIGATIONS.

(a) EXECUTORY CONTRACTS AND UNEXPIRED LEASES.—Section 365 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A) by striking the semicolon at the end and inserting the following:

''other than a default that is a breach of a provision relating to—

''(i) the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption; or

''(ii) the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an executory contract, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption and if the court determines, based on the equities of the case, that this subparagraph should not apply with respect to such default;'', and

(B) by amending paragraph (2)(D) to read as follows:

''(D) the satisfaction of any penalty rate or penalty provision relating to a default arising from a failure to perform nonmonetary obligations under an executory contract or under an unexpired lease of real or personal property.'',

(2) in subsection (c)—

(A) in paragraph (2) by adding ''or'' at the end,

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

(C) by striking paragraph (4),

(3) in subsection (d)—

(A) by striking paragraphs (5) through (9), and

(B) by redesignating paragraph (10) as paragraph(5).

(4) in subsection (f)(1) by striking ''; except that'' and all that follows through the end of the paragraph and inserting a period.

(b) IMPAIRMENT OF CLAIMS OR INTERESTS.—Section 1124(2) of title 11, United States Code, is amended—

(1) in subparagraph (A) by inserting ''or of a kind that section 365(b)(1)(A) of this title expressly does not require to be cured'' before the semicolon at the end,

(2) in subparagraph (C) by striking ''and'' at the end,

(3) by redesignating subparagraph (D) as subparagraph (E), and

(4) by inserting after subparagraph (C) the following:

''(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and''.

Page 95, beginning on line 14, strike ''STATEMENTS AND PLANS'' and insert ''STATEMENT AND PLAN'' (and make such technical and conforming changes to the table of contents of the bill as may be appropriate).

Beginning on page 97, strike line 17 and all that follows through line 6 on page 98, and insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 235. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.

(a) PROPOSAL OF RULES AND FORMS.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to file periodic financial and other reports containing information, including information relating to—

(1) the debtor's profitability;

(2) the debtor's cash receipts and disbursements; and

(3) whether the debtor is timely filing tax returns and paying taxes and other administrative claims when due.

(b) PURPOSE.—The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance between—

(1) the reasonable needs of the bankruptcy court, the United States trustee or bankruptcy administrator, creditors, and other parties in interest for reasonably complete information;

(2) the small business debtor's interest that required reports be easy and inexpensive to complete; and

(3) the interest of all parties that the required reports help the small business debtor to understand its financial condition and plan its future.

Page 103, line 22, insert ''and'' at the end.

Page 104, strike lines 3 through 6, and insert the following:

''(9) in cases in which the United States trustee finds material grounds for any relief under section 1112 of title 11, the United States trustee shall apply promptly to the court for relief.''.

Page 105, line 15, strike ''()'' and insert ''(j)''.

Page 106, line 5, strike ''(C) un-'' and insert ''(C);''.

Page 106, strike lines 6 through 12, and insert the following:

unless the debtor proves, by a preponderance of the evidence, that the filing of such petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and that it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable time.''.

Page 108, line 24, strike '', and'' and all that follows through line 2 on page 109, and insert a semicolon.

Page 112, after line 6, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 302. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.

Section 901 of title 11, United States Code, is amended—

(1) by inserting ''555, 556,'' after ''553,''; and

(2) by inserting ''559, 560,'' after ''557,''.

Page 125, line 8, strike ''total current monthly'' and insert ''current monthly total''.

Page 125, line 17, strike ''total current monthly'' and insert ''current monthly total''.

Page 126, beginning on line 11, strike ''total current monthly'' and insert ''current monthly total''.

Page 126, line 18, strike ''total current monthly'' and insert ''current monthly total''.

Page 131, line 3, strike ''or dismissed'' and insert '', dismissed, or closed''.

Page 131, beginning on line 17, strike ''Such'' and all that follows through ''Courts.'' on line 19.

Page 131, line 20, insert ''in such form as shall be determined by such Office, in consultation with the Administrative Office of the United States Courts,'' after ''tics,''.

Page 131, line 19, strike ''Office'' and insert ''Executive Office for United States Trustees''.

Page 132, line 5, strike ''total current monthly'' and insert ''current monthly total''.

Page 133, line 16, insert ''UNIFORM RULES FOR THE COLLECTION OF'' after ''SEC. 442.'' (and make such technical and conforming changes to the table of contents of the bill as may be appropriate).

Page 140, strike lines 6 through 10, and insert the following:

amended to read as follows:

''(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) of this title, and such property shall be liable for a debt of a kind specified in such paragraph (5) notwithstanding any State law to the contrary;''

Page 161, line 16, strike ''or'' at the end.

Page 161, line 21, strike the period at the end and insert ''; or''.

Page 161, after line 21, insert the following:

''(3) an entity subject to a proceeding under the Securities Investor Protection Act, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.

Page 164, line 2, strike ''Nothing in this chapter limits the power of'' and insert ''Subject to the specific limitations stated elsewhere in this chapter''.

Page 165, after line 15, insert the following:

''(c) Subject to section 610 of this title, a foreign representative is subject to laws of general application.

Page 165, line 16, strike ''(c)'' and insert ''(d)''.

Page 165, beginning on line 17, strike ''proceeding'' and insert ''representative''.

Page 165, line 19, insert ''by a foreign representative'' after ''cooperation''.

Page 166. line 5, strike ''sections'' and insert ''section''.

Page 166, line 10, strike ''filing a petition for''.

Page 166, strike lines 22 and 23.

Page 170, line 24, insert ''after notice and a hearing'' after ''606,''.

Page 177, strike lines 11 through 17, and insert the following:

''(a) The court may grant relief under section 619 or 621, or may modify or terminate relief under subsection (c) of this section, only if the interests of the creditors and other interested persons or entities, including the debtor, are sufficiently protected.

''(b) The court may subject relief granted under section 619 or 621, or the operation of the debtor's business under section 620(a)(2) of this title, to conditions it considers appropriate, including the giving of security or the filing of a bond.

Page 177, after line 21, insert the following:

''(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

Page 178, line 19, strike ''In all matters included within'' and insert ''Consistent with''.

Page 179, line 6, strike ''In all matters included within'' and insert ''Consistent with''.

Page 179, line 12, strike ''designated'' and insert ''authorized''.

Page 179, strike lines 15 through 18.

Page 181, line 8, insert ''the relief granted in'' after ''with''.

Page 181, line 24, insert ''the relief granted in'' after ''with''.

Page 186, line 11, strike ''The'' and insert ''Except as otherwise provided in this Act, the''.

The CHAIRMAN. Pursuant to House Resolution 462, the gentleman from Pennsylvania (Mr. GEKAS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. GEKAS).

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I have consulted with the gentleman from New York on the purport of the manager's amendment. It has several technical amendments that need attention and to which we have agreed, and it puts into the RECORD the concerns that the Justice Department has voiced with respect to some of the provisions. We have incorporated those into the manager's amendment, and made those known to the gentleman from New York and the minority.

On that, then, we would ask for a vote on the manager's amendment.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Does the gentleman from New York (Mr. NADLER) seek time in opposition?

Mr. NADLER. Yes, I do, Mr. Chairman.

The CHAIRMAN. The gentleman from New York (Mr. NADLER) is recognized for 5 minutes.

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we do not object to this amendment. I just want to point out that, like a number of other amendments, this amendment deals with the problem of child support and spouse support, but does not deal adequately with it.

This amendment would raise the priority of support, child and spouse support, above several priorities. It would raise it above several existing priorities that are rarely relevant in consumer cases. It would make it have a higher priority than wages owed by the debtor to people, to workers he did not pay, and payments involving grain elevators and fishermen.

It does not change the Chapter 13 payment formula, which still requires payment of credit card debt concurrently with child support. It does not deal with the larger problems created by other provisions of the bill that require payments so great that a Chapter 13 plan may be rendered infeasible.

It also does not deal with ''adequate protection payments'' required by Section 320 of the bill that would compete with support at the outset of the plan,

so that the debtor could not devote significant funds to payment of even the first priority support claims.

If such adequate protection payments failed to provide adequate protection, in fact, a creditor, such as a credit card creditor, who took a security interest in minor household items could argue it was entitled to a still higher superpriority under section 507(b).

So in other words, Mr. Chairman, there is nothing wrong with this amendment. It goes a fiftieth of the way towards helping the terrible problems this bill puts in the way of adequately collecting child and spouse support, but it does not deal with the basic problems. So while we have no objection to it and we certainly would not ask for a recorded vote, it does not do very much at all.

Mr. Chairman, I yield back the balance of my time.

Mr. GEKAS. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. Gekas).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 2 printed in House Report 105–573.

AMENDMENT NO. 2 OFFERED BY MR. NADLER

Mr. NADLER. Mr. Chairman, I offer amendment No. 2.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment 2 printed in House Report 105–573 offered by Mr. NADLER:

Page 13, strike line 23 and insert the following:

plan; and

''(D) if the debtor is engaged in business, the payment of expenditures necessary for the continuation, preservation, and operation of such business;'';

Beginning on page 93, strike line 5 and all that follows through line 2 on page 94, and insert the following:

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

(1) by redesignating paragraph (51C) as paragraph (51D); and

(2) by inserting after paragraph (51B) the following:

''(51C) 'small business case' means a case filed under chapter 11 of this title in which the debtor is a small business debtor;''.

Beginning on page 98, strike line 7 and all that follows through the matter preceding line 15 on page 100 (and make such technical and conforming changes as may be appropriate).

Beginning on page 100, strike line 15 and all that follows through line 11 on page 104 (and make such technical and conforming changes as may be appropriate).

Beginning on page 105, strike line 1 and all that follows through line 12 on page 106 (and make such technical and conforming changes as may be appropriate).

Beginning on page 106, strike line 13 and all that follows through line 16 on page 109, and insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 243. ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE.

Section 1104(a) of title 11, United States Code,

The CHAIRMAN. Pursuant to House Resolution 462, the gentleman from New York (Mr. NADLER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

(Mr. NADLER asked and was given permission to revise and extend his remarks.)

Mr. NADLER. Mr. Chairman, this amendment strikes several sections of the small business title. We have heard testimony from the National Bankruptcy Conference, and we also have received a letter from the Small Business Administration that indicates that the bureaucratic burdens placed by this bill on small businesses, the short time lines for filing many more documents than are necessary for larger businesses, the higher standard for getting an extension of the automatic stay so that the small business, in order to get an extension, would have to pass what amounts to a mini-confirmation hearing, a real catch-22, and the inclusion of a new definition of single-asset real estate in the definition of small business, so that, for example, Rockefeller Center would have to be reorganized under the small business rules if it were involved in a bankruptcy, all combine to make this title a virtual death sentence for thousands of small businesses.

I know my colleagues on the other side of the aisle like to oppose regulations that protect the environment or worker safety by arguing they are burdensome on small businesses. We have had several hearings this year attacking clean air regulations and attacking regulations to keep workers from falling off of roofs, and regulations to keep asbestos from being released into the atmosphere.

At every point we have heard moving speeches about the fate of small businesses under these regulations. Some members of the committee have opposed increasing our shamefully low minimum wage for the same reasons.

Here is a chance to put our words into action. This small business title threatens every small business and independent contractor in America. We should strike its most offending sections. The amendment restores the current definition of small business to a business of $2 million. The increase to $5 million would pull in 85 percent of businesses into this section, and make it involuntary. It will be transforming small business bankruptcy from a safety net for small businesses to a tiger cage.

The amendment strikes the burdensome and costly meeting and filing requirements imposed on small businesses for the first time, and it also gets the U.S. Trustee out of the business of essentially running a small business in Chapter 11. It strikes the definition of monthly net income in the bill, and restores the existing definition so that an individual debtor in Chapter 13 may continue to use his or her personal income for a small business.

As we may know, many small businesses are either unincorporated or are small businesses which the debtor personally guarantees. They end up in Chapter 13, not Chapter 11. The bill as written would not allow them to use their personal resources to reorganize the business, as current law does. This change would kill many small businesses.

Finally, the amendment restores current law in the appointing of a trustee.

Mr. Chairman, small business is the engine for job growth in America. There is not a single Member of this House who has not spoken out in defense of small business. That is the right thing to do. But we should not move forward with these costly, onerous, and burdensome new rules that the Small Business Administration and the National Bankruptcy Conference tell us will kill many small businesses unnecessarily, instead of letting them be reorganized. We ought to pass this amendment so as not to impose these new burdens and this death sentence on thousands of small businesses.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Does the gentleman from Pennsylvania (Mr. GEKAS) seek time in opposition?

Mr. GEKAS. I rise in opposition to the amendment, Mr. Chairman.

The CHAIRMAN. The gentleman from Pennsylvania (Mr. GEKAS) is recognized for 5 minutes.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, in this particular case the gentleman from New York (Mr. NADLER) full well knows that the recommendations of the bankruptcy commission, which worked 2 years on just this kind of provision, made certain recommendations in filing their report late last year.

It is those provisions, those recommendations, which we have incorporated into H.R. 3150, and which themselves have received the blessing of the NFIB, and other organizations, such as, and this is important, the National Federation of Independent Businesses, NFIB, which I mentioned; the American Bankruptcy Institute, the Executive Office for United States Trustees, and various bankruptcy judges.

But more importantly than that, the NFIB language that they employed in the letter of support to us says this, and this is a better speech than I could make, or any combination of Members could make:

''The legislation,'' and this is the NFIB speaking, the National Federation of Independent Business, ''The legislation strikes a fair balance by giving small business owners more of a chance to get back what is rightfully theirs while still providing bankruptcy protection to those small businesses who truly need it.''

I endorse the NFIB endorsement of the endorsed bill that we now endorse, and reendorse by asking for a negative vote on the proposal at hand.

Mr. Chairman, I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am surprised to hear the gentleman from Pennsylvania (Mr. GEKAS) point out that the National Bankruptcy Review Commission supports this. The National Bankruptcy Review Commission rejected the central concept of the bill, the so-called means-based testing. But that he does not care about.

Let me simply say this. The Small Business Administration of the United States says the provisions of this bill, without this amendment, would add

> such substantial additional costs to the reorganization process that many small businesses may forgo reorganization under Chapter 11 and immediately file for Chapter 7 liquidation proceedings.

They would be forced to close their doors, leaving their creditors without recourse. The nonbipartisan and widely respected National Bankruptcy Conference says,

> These cost-raising changes ultimately could deny tens of thousands of small businesses a meaningful opportunity to restructure that have obligations and continue in business. This would close the door on thousands of businesses that would have been able to reorganize successfully if given the chance.

The AFL-CIO says,

> The potentially broad reach of these provisions and the manner in which they restrict the workings of the bankruptcy case for these businesses will likely place numerous jobs at risk.

So the AFL-CIO, the Small Business Administration, and the National Bankruptcy Conference, which is probably the greatest expert on this, all tell us these provisions which this amendment would strike will kill thousands of small businesses by denying them the realistic opportunity to reorganize, and forcing them instead to liquidate.

I urge my colleagues to vote for this amendment so these small businesses are not thrown into liquidation, instead of reorganization, killing thousands and thousands of jobs.

□ 1530

Mr. GEKAS. Mr. Chairman, I yield back the balance of my time in opposition to the amendment.

Mr. NADLER. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. NADLER).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. NADLER. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present

The CHAIRMAN. Pursuant to the rule, further proceedings on the amendment offered by the gentleman from New York (Mr. NADLER) will be postponed.

The point of no quorum is considered withdrawn.

The CHAIRMAN. It is now in order to consider amendment No. 3 printed in House Report 105–573. Does any Member seek recognition to offer amendment No. 3?

PARLIAMENTARY INQUIRIES

Mr. NADLER. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. NADLER. Mr. Chairman, which amendment are you referring to? The Boucher-Gekas amendment?

The CHAIRMAN. The Delahunt amendment No. 3.

Mr. NADLER. Mr. Chairman, we will come back to that.

The CHAIRMAN. According to the rule, amendment No. 3 is now in order to be offered by the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. NADLER. Mr. Chairman, I have a further parliamentary inquiry. On the list that I have, the Boucher-Gekas amendment is next, and then Gekas and then Shaw-Camp, Paul, Gekas-McCollum-Smith, Scott, Velázquez, Baldacci, and Delahunt is last according to this.

The CHAIRMAN. According to the rule adopted by the House, it is now in order to consider amendment No. 3 to be offered by the gentleman from Massachusetts (Mr. DELAHUNT) or his designee, debatable for 10 minutes.

Mr. NADLER. Mr. Chairman, I ask unanimous consent that that amendment be considered later when the gentleman from Massachusetts (Mr. DELAHUNT) can come to the floor, because the list we have does not indicate that order.

The CHAIRMAN. The Chair does not have the authority to entertain that request in the Committee of the Whole.

Mr. NADLER. Mr. Chairman, I believe that with unanimous consent, the Chair could entertain that request.

The CHAIRMAN. The Committee of the Whole cannot change the order of the amendments as approved under the special order adopted by the House.

Mr. GEKAS. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. GEKAS. Mr. Chairman, if the gentleman from Massachusetts (Mr. DELAHUNT), who was supposed to have an amendment made in order at this time, would strike the last word or change the text of the amendment that he wishes to offer, could it be made in order in the Committee of the Whole?

The CHAIRMAN. Permission cannot be sought to offer a new amendment. Permission might be sought to modify a pending amendment in the Committee of the Whole. But the Committee of the Whole is operating under the rule adopted earlier in the House.

If there is no Member here to offer amendment No. 3, the Committee will move on to amendment No. 4.

Mr. GEKAS. Mr. Chairman, I have a further parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. GEKAS. Mr. Chairman, I wish to express to the gentleman from New York (Mr. NADLER) that when the time comes that the gentleman from Massachusetts (Mr. DELAHUNT) is prepared to proceed, we will coordinate whatever it takes, even a motion to rise, in order to accommodate that amendment. So at this point, why do we not proceed?

Mr. NADLER. Mr. Chairman, I have a further parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. NADLER. Mr. Chairman, I appreciate the cooperation of the gentleman from Pennsylvania (Mr. GEKAS). My parliamentary inquiry is if we go on to the next amendment now, and 10 or 15 or 20 minutes from now when the gentleman from Massachusetts arrives, if a motion to rise is made, we can then entertain that amendment in the House?

The CHAIRMAN. At a later time, if the Committee rises and then the gentleman seeks permission to offer the amendment, that request could be entertained in the full House.

Mr. NADLER. Mr. Chairman, I appreciate that offer from the distinguished gentleman from Pennsylvania, and I think it is a good idea, and we should go on to the next amendment now with the understanding that when the gentleman from Massachusetts arrives at the conclusion of the amendment that we are now discussing, that we move that the House rises.

The CHAIRMAN. It is now in order——

Mr. NADLER. Mr. Chairman, I am told that I need to move that the House rise now.

The CHAIRMAN. It does not have to be done now.

Mr. NADLER. Mr. Chairman, it is okay to go to the next amendment then, as far as I am concerned.

The CHAIRMAN. It is now in order to consider amendment No. 4 printed in House Report 105–573.

AMENDMENT NO. 4 OFFERED BY MR. BOUCHER.

Mr. BOUCHER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

> Amendment No. 4 printed in House Report 105–573 offered by Mr. BOUCHER:
>
> Page 54, line 15, before the semicolon insert the following:
>
> ''; except that the term shall also include any tangible personal property reasonably

necessary for the maintenance and support of a dependent child''.

Page 66, strike lines 11 through 13 and insert the following:

''(19) incurred to pay a debt that is nondischargeable by reason of any other provision of this subsection or section 727, 1141, 1228(a), 1228(b), or 1328(b), except for any debt incurred to pay such a nondischargeable debt in any case in which—

''(A)(i) the debtor who paid the nondischargeable debt is a single custodial parent who has 1 or more dependent children at the time of the order for relief, or

''(ii) there is an allowed claim for alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor payable under a judicial or administrative order to such spouse or child (but not to any other person) which was unpaid as of the date of the petition; and

''(B) the creditor is unable to demonstrate that the debtor intentionally incurred the debt to pay the debt which is nondischargeable;''.

Page 70, after line 12, insert the following (and make such technical and conforming changes as may be appropriate):

(1) in the matter preceding paragraph (1) by inserting before the colon the following:

'', except that, notwithstanding any other provision of this title, any expense or claim entitled to priority under paragraph (7) shall have first priority over any other expense or claim that has priority under any other provision of this subsection'';

Page 70, after line 22, insert the following (and make such technical and conforming changes as may be appropriate):

(e) CONTENTS OF PLANS.—Section 1322(b)(1) of title 11, United States Code, is amended by striking the semicolon at the end and inserting the following:

''and provide for the payment of any claim entitled to priority under section 507(a)(7) of this title before the payment of any other claim entitled to priority under section 507(a), notwithstanding the priorities established under section 507(a);''.

The CHAIRMAN. Pursuant to the rule, the gentleman from Virginia (Mr. BOUCHER), and the gentleman from New York (Mr. NADLER) each will control 5 minutes.

The Chair recognizes the gentleman from Virginia (Mr. BOUCHER).

Mr. BOUCHER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment relates to the priority of child support and alimony recipients in association with bankruptcy proceedings.

During consideration of the bill in the House Judiciary Committee, provisions were adopted which not only assured no disadvantage from this reform for the recipient of alimony or the recipient of child support payments, but which in very significant respects improved that person's ability to receive child support and alimony payments in comparison to current law.

For example, the bill provides that unlike current law, Chapter 13 plans cannot be confirmed unless all child support payments due since the bankruptcy filing have been paid. The Chapter 13 plan cannot be discharged until all arrearages that were due prior to the filing have been paid as well.

These are very significant improvements with regard to current law for the condition of the child support and alimony recipient.

Another example: Under current law child support and alimony wage orders which require that an employer withhold from an employee's salary amounts that are due under child support or alimony are stayed when a bankruptcy petition is filed under any of the various chapters. The bill creates an exemption from this stay for wage orders and assures that payment of child support or alimony under them will continue.

A third example: Under current law the property which is exempt under State law which is owned by a spouse who owes child support or alimony may not be subjected to the other spouse's child support or alimony claim after the spouse who owns the property has been discharged in bankruptcy. The bill improves upon current law by subjecting that exempt property to the child support or alimony claim.

A fourth example: Under current law a debt one spouse owes to another that arises from something other than child support or alimony and is incorporated in a separation agreement or divorce decree is dischargeable in bankruptcy and may not be enforced against property that is exempt under State law. The bill says these debts owed to the spouse may never be discharged and may be enforced against exempt property.

In each of these four instances, the situation of the recipient of child support or alimony is improved with regard to current law.

The amendment that I am pleased to be offering now with the gentleman from Pennsylvania (Mr. GEKAS) makes four additional improvements in current law from the standpoint of the child support or alimony recipient.

First, we clearly give the child support or alimony recipient top priority to receive payment during the pendency of the bankruptcy proceeding. Today, she is seventh behind farmers who have claims against grain elevators, fishermen who have claims against wholesalers, and others. We, with this amendment, clearly make her the first priority.

The second change we make will require that child support and alimony be first in line for payment in Chapter 13 plans. That also is an improvement with respect to current law.

Third, we help the single parent who files for bankruptcy by expanding the definition of ''household goods'' to include items that are needed in child rearing. Unlike under current law, with this amendment she will be able to keep those items.

We also provide that nonsecured debt which is acquired to pay nondischargeable debt, such as taxes, is nondischargeable against single parents and debtors who owe child support or alimony only if the debt was acquired intentionally to pay nondischargeable debt.

In each of these four areas we are making improvements with regard to current law, better assuring the priority of the child support or alimony recipient.

And because of the changes made in the committee, the various organizations around the country numbering several that are responsible for aiding child support and alimony recipients and enforcing those obligations have endorsed this bill, including the Child Support and Family Council of California, the City of New York Law Department, and others.

Mr. Chairman, they understand that the changes that are made in the committee, as amplified by these changes on the floor, will actually improve the circumstance of the child support or alimony recipient as compared to current law.

Mr. Chairman, I urge the adoption of this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this, again, is another one of those amendments that may do a little good. It is probably harmless, but it does not solve any of the fundamental problems.

For instance, we are told that on the provision of this amendment regarding debts incurred to pay nondischargeable debts, it amends another of the provisions, creating large categories of new nondischargeable debts, mostly credit card debts.

This amendment, which purports to protect women and children dependent on support from the debtor, does nothing to change this provision of the bill. Besides being limited only to cases in which debtors are single parents or are in arrears on support, it simply requires the creditor to show that the debtor ''intentionally'' incurred the debt in question. Virtually no debts incurred to pay other debts are not incurred intentionally, so the change is meaningless.

Then we have the provision that states that alimony and support claims should be paid before other priority claims in Chapter 13. But this does not change the Chapter 13 payment formula, which still requires payment of nonpriority credit card debt concurrently with support. In other words, the requirement in section 102 that support be paid concurrently with credit card debts is not changed at all.

The amendment does not deal with the larger problems created by other provisions that required payments so great that a Chapter 13 plan may not be feasible, in which case no creditors may be paid.

This amendment makes a new section that places child support and alimony ahead of all other unsecured priority claims in the distribution of the assets in a Chapter 7 case. While this is a worthy idea, and I commend the author for this, it will have little effect since it is rare, very rare, for any assets at all to be distributed in a Chapter 7 case.

Also, because the amendment places child support and alimony ahead of administrative expenses, like the trustee's commission, we are going to have trustees abandoning these assets rather if there are not sufficient additional assets to compensate the trustee. The amendment, therefore, could cause, and in many cases would cause, women and children to receive even less support in some cases.

In summary, Mr. Chairman, as the administration has said in its letter that we received today, and as most of the organizations concerned with child support agree, this amendment, the manager's amendment, the amendments in committee do not really deal with the problem of child support collection.

Let me just add one comment, since the gentleman referred to the Law Department of my own city, the City of New York. The Law Department of the City of New York has one concern overriding everything else: collecting taxes. That is what they care about, not child support. So I do not credit what they say about how this will deal with child support. I know the Law Department of my own city only too well.

Mr. Chairman, I reserve the balance of my time.

Mr. BOUCHER. Mr. Chairman, I yield the balance of my time to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Speaker, since the gentleman from New York (Mr. NADLER) has chosen to cite the administration's statement of policy, let me quote it. ''If debtors truly have the ability to repay a portion of their debt, after taking into account all relevant factors, including child support and alimony payments, a successful, supervised repayment plan under Chapter 13 rules could result in a more reliable payment of child support and alimony than would the unsupervised situation after Chapter 7 discharge.''

□ 1545

That is the point of this bill. With the Boucher amendment this Statement of Administration Policy is, in effect, an endorsement of this bill, certainly as it relates to child support. I thank the administration for its good judgment. I would bring this to the attention of all the Members of this body.

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

I am constrained to correct what the gentleman from Virginia said a moment ago. He quoted half a paragraph. What this paragraph says in the statement from the administration is, the formulaic approach in this bill, as currently written, could result in moving to Chapter 13 those debtors who are likely to fail to complete required repayment plans. These debtors would return to Chapter 7 with a diminished ability to repay their nondischarged debt, including child support and alimony. There are other approaches to limiting access to Chapter 7 that would not have this result.

And they are referring not to the needs-based approach of this bill but to the approach of the Democratic substitute.

Then it continues: If debtors truly have the ability to repay a portion of their debt after taking into account all the relevant factors, including child support and alimony payments, a successful, supervised repayment plan under Chapter 13 could result in a more reliable payment, et cetera.

They are talking about under a different system from this bill, under a system such as under the Democratic substitute that we will be offering a little later. Frankly, it is not accurate to refer only to the second half of the paragraph in saying that.

The fact remains that the administration and most of the women's groups, the NOW, the Children's Defense Fund, the American Association of University Women, the YWCA, they all oppose this bill because of the problem of child support. They all say that these amendments do not solve that problem.

Having said that, again, I will observe, this is not a terrible amendment. I do not think it does much good, but it does not do any harm. I will not ask for a vote against it. All I am saying is I do not think it solves any problems.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. BOUCHER).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 5 printed in House Report 105–573.

Does any Member wish to offer amendment No. 5?

It is now in order to consider amendment No. 6 printed in House Report 105–573.

AMENDMENT NO. 6 OFFERED BY MR. SHAW

Mr. SHAW. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 6 printed in House Report 105–573 offered by Mr. SHAW:

Page 76, line 17, insert the following before the 1st period: except with respect to any property of the debtor acquired after the date of the filing of the petition. A creditor that receives a payment, or collects money or property, in satisfaction of all or part of any debt excepted from discharge under paragraph (2), (4), or (14) of section 523(a) of this title shall hold such payment, such money, or such property in trust and, not later than 20 days after receiving such payment or collecting such money or property, shall distribute such payment, such money, or such property ratably to individuals who then hold debts entitled to priority under this section. Not later than 5 years after receiving such payment or collecting such money or property, such creditor shall make the distribution required by this section to all individuals whose identity is known to such creditor, or is reasonably ascertainable by such creditor, at the time of distribution.

The CHAIRMAN. Pursuant to House Resolution 462, the gentleman from Florida (Mr. SHAW) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Florida (Mr. SHAW).

Modification to Amendment No. 6 Offered by Mr. Shaw

Mr. SHAW. Mr. Chairman, I ask unanimous consent that the amendment be modified in the form that I have placed at the desk and which was, just a few minutes ago, supplied to each side.

The CHAIRMAN. The Clerk will report the modification.

The Clerk read as follows:

Modification to Amendment No. 6 Offered by Mr. SHAW:

Page 76, line 17, insert the following before the 1st period: except with respect to any property of the debtor acquired after the date of the filing of the petition. A creditor that receives a payment, or collects money or property, in satisfaction of all or part of any debt excepted from discharge under paragraph (2), (4), or (14) of section 523(a) of this title shall, not later than 20 days after receiving such payment or collecting such money or property, distribute such payment, such money, or such property ratably to individuals who then hold debts entitled to priority under section 507(a)(3) of this title. Not later than 2 years after receiving such payment or collecting such money or property, such creditor shall make the distribution required by this section to all individuals whose identify is known to such creditor at the time of distribution.

Mr. SHAW (during the reading). Mr. Chairman, I ask unanimous consent that the modification be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN. Is there objection to the modification of the amendment?

Mr. NADLER. Mr. Chairman, I have no objection.

The CHAIRMAN. Without objection, the modification is agreed to.

There was no objection.

(Mr. SHAW asked and was given permission to revise and extend his remarks.)

Mr. SHAW. Mr. Chairman, I yield myself such time as I may consume.

I rise to offer the Shaw-Camp-English amendment that is central to the Committee on Ways and Means' work on the collection of child support.

Under the leadership of the gentleman from Pennsylvania (Mr. GEKAS), the Committee on the Judiciary has succeeded in not only maintaining existing child support priorities but in creating a new priority to help custodial mothers who are owed child support after bankruptcy. While the legislation creates a post-bankruptcy priority for child support, it does not contain a procedure for the enforcement of same.

We are afraid that credit card companies will outperform mothers, especially poor mothers, in securing the father's money, the very money that Congress has determined should go first to the mothers and to the children.

Our amendment is really just a perfecting amendment to the amendments

already adopted by the Committee on the Judiciary. If the credit card companies obtain payments from the parents who owe past due child support, the companies are required to hold the payments and distribute the payments to the custodial mothers if they surface at a later date and invoke their legal claim to the money already obtained by the companies.

This amendment would protect the limited number of custodial mothers who are owed child support but who are not in the Federal child support program and whose children's father was involved in a bankruptcy. These mothers and their children are at risk of losing money, and they cannot afford to lose this important support.

This amendment, as modified, varies from the original amendment that was made in order by the Committee on Rules. In doing so, I eliminated the need of the trust, which was provided in that particular bill, which has caused great heartburn, and I think rightfully so, to some of the banks and credit card companies that would be holding these particular funds. We also reduced from 5 years to 2 years the period of time in which these claims have to be made and we also require, as a condition for this liability, that they have actual notice of the claim of the parent.

I think this is a very reasonable amendment, and I would urge its adoption.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Who seeks time in opposition to the amendment?

Mr. GEKAS. Mr. Chairman, I rise in opposition to the amendment. I rise in opposition to the bill as it is now constructed.

Mr. NADLER. Mr. Chairman, I rise in opposition.

The CHAIRMAN. Is the gentleman from Pennsylvania (Mr. GEKAS) opposed to the amendment offered by the gentleman from Florida (Mr. SHAW)?

Mr. GEKAS. I am opposed to it in the first instance in the structure that it now contains. I am opposed to it. I reserve the right to change my mind after I make some remarks for the RECORD.

The CHAIRMAN. The gentleman from Pennsylvania (Mr. GEKAS) is recognized for 5 minutes.

PARLIAMENTARY INQUIRY

Mr. NADLER. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. NADLER. Mr. Chairman, I assume that side of the aisle is not going to control 100 percent of the time.

Mr. GEKAS. Mr. Chairman, I will yield to the gentleman myself if I have some time. I will yield to the gentleman from New York.

Mr. NADLER. Mr. Chairman, is not the normal practice to, in this case, to have three people controlling time?

The CHAIRMAN. The 5 minutes in opposition is controlled by an opponent and in this case the gentleman from Pennsylvania (Mr. GEKAS) is recognized.

Mr. GEKAS. Mr. Chairman, I am an opponent, and I am going to yield to the gentleman from New York, if I have some time left, and I will try to reserve some time for him.

Mr. Chairman, I yield myself such time as I may consume.

The only reason I oppose the amendment in its original concept, now I am being converted slowly but surely to the thrust of the bill, was that it was so inflexible. It was too difficult to implement, in our judgment. It would cause more trouble than it would solve.

Now that the language has been improved in which some of the language that would have made a credit or a trustee for the support payment has been eliminated, I feel a little better about it. So in the final context of it, after I yield to the gentleman from New York, I may change my mind and agree to the bill or at least not vote against it.

Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Chairman, I simply want to point out, this amendment originally required that the credit card company that obtained payment from a parent who owed past due child support, a nondischargeable debt, and they obtained the payment from someone who owed child support, had to hold this money in trust for up to 5 years in case they found and made due diligent efforts to find the parent owed the child support and then turned it over to her.

The amendment is simply eliminating the due diligence effort and is shortening the time period to 2 years, and what it is really doing is making a real admission. The admission is that when all is said and done, the nondischargeability, making credit card debt nondischargeable, as this bill does, makes it impossible in the post-discharge situation to enforce the child support.

The change in this amendment recognizes this, because it would be a real burden to hold it for 5 years. But why would you want to hold it for 5 years? Because the credit card company has gotten to the bank first, and they may not know where or who the child support owed the custodial parent is. This is just throwing in the towel and admitting that we cannot enforce the child support, and there is no point in this situation. And there is no point holding the money in trust for 5 years so we will only do it for 2 years.

I do not oppose the amendment, but, again, I think it just illustrates that what we are saying about the provision of the bill, that making that credit card debt undischargeable makes it impossible, makes it very difficult to collect the child support despite all the cosmetic amendments that we have heard about.

Mr. SHAW. Mr. Chairman, I yield 1 minute to the gentleman from Michigan (Mr. CAMP), coauthor of the amendment.

Mr. CAMP. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I rise in support of the Shaw-Camp-English amendment. The collection of child support has been central to the work of the gentleman from Florida (Mr. SHAW) on the Committee on Ways and Means, to all of our work on the Committee on Ways and Means. And the gentleman from Florida (Mr. SHAW) and I appreciate the efforts of the Committee on the Judiciary in making the collection of child support payments the number one priority for debtors in reorganizing their debt.

We should make absolutely sure that kids receive the support they are entitled to. Our perfecting amendment would merely require credit card companies which obtain payments from debtors who owe past due child support to pay custodial parents if they surface at a later date. Without this additional protection, parents with children living on tight budgets, who cannot afford to bring legal action, may not be able to collect the money they desperately need.

I urge the House to pass this important amendment and ensure that children continue to be this Congress's top priority.

Mr. SHAW. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania (Mr. ENGLISH), the other coauthor of the amendment.

Mr. ENGLISH of Pennsylvania. Mr. Chairman, I rise in strong support of the amendment offered by the distinguished chairman of the Committee on Ways and Means' Subcommittee on Human Resources that will build on efforts initiated in our subcommittee to further strengthen our Nation's child support system.

I appreciate that H.R. 3150 provides for a new Federal priority for child support debt. Under our amendment, though, if credit card companies obtain payments from parents who owe past due child support, the companies are required to distribute the payment to custodial mothers, if they surface at a later date, and invoke their legal claim to the money already obtained by the companies.

This amendment will protect approximately 150,000 mothers who are owed child support and whose children's father was involved in a bankruptcy. In my view, this is a critical part of closing the loop, offering additional protection to mothers and their children, and making sure that these collections will go forward.

I hope this amendment will pass with bipartisan support.

Mr. SHAW. Mr. Chairman, I yield myself such time as I may consume.

I would urge the passage of this most important amendment. There is no greater responsibility that people have in their lives than to take care of the children and help support the children

that they have helped bring into this world. I think it sets the priorities right, and this offers a mechanism by which this money can be made available for the support of the children.

Mr. Chairman, I yield back the balance of my time.

Mr. GEKAS. Mr. Chairman, I yield myself the balance of my time.

Let me reiterate, the intent and purpose of the Shaw amendment is of the highest import, because we have attempted in different ways to parallel that intent in language that we have already incorporated either in the basic bill or in amendments to that bill.

All of us are interested in making certain of the priority, highest priority for support payments. I still have reservations about the workability of the amendment that the gentleman from Florida (Mr. SHAW) has offered, but he has now created new language which may make it more acceptable.

I will continue to monitor it between now and the time of conference and work with the gentleman from Florida (Mr. SHAW) for even more perfect language, for the perfection that he has already accomplished, and still reserve the right to work against it if I think it hurts the overall concept of the bill.

In other words, I do not know where I am on the gentleman's amendment.

Mr. SHAW. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Florida.

Mr. SHAW. Mr. Chairman, I can appreciate the gentleman's position at this late date, coming in, particularly, with the new language. But I thank him for his consideration of this new language, and I thank him for holding fire at this particular time. And also I would like to thank the gentleman from New York (Mr. NADLER). I think this is a very, very good addition to the bill that is on the floor.

□ 1600

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. SHAW).

The amendment as modified was agreed to.

Mr. GEKAS. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. SHAW) having assumed the chair, Mr. MILLER of Florida, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 3150) to amend title 11 of the United States Code, and for other purposes, had come to no resolution thereon.

PERMISSION FOR MEMBER TO OFFER AMENDMENT OUT OF ORDER DURING FURTHER CONSIDERATION OF H.R. 3150, BANKRUPTCY REFORM ACT OF 1998

Mr. GEKAS. Mr. Speaker, I ask unanimous consent that, during further consideration of the bill, H.R. 3150, pursuant to House Resolution 462, that the gentleman from Massachusetts (Mr. DELAHUNT) or his designee may be permitted to offer the amendment numbered 3 in House Report 105–573 out of the specified order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

BANKRUPTCY REFORM ACT OF 1998

The SPEAKER pro tempore. Pursuant to House Resolution 462 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 3150.

□ 1601

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 3150) to amend title 11 of the United States Code, and for other purposes, with Mr. MILLER of Florida in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose earlier today, amendment number 6 printed in House Report 105–573 had been disposed of.

Pursuant to the previous order of the House, it is now in order to consider amendment number 3 printed in House Report 105–573.

AMENDMENT NO. 3 OFFERED BY MR. DELAHUNT

Mr. DELAHUNT. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. DELAHUNT:

Page 25, after line 6, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 105. AUTHORITY TO IMPOSE FEES PAYABLE FOR COSTS INCURRED TO ADMINISTER THE AMENDMENTS MADE BY SECTIONS 101 AND 102.

Section 1930(b) of title 28, United States Code, is amended—

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

(2) by adding at the end the following:

''(2) The Judicial Conference of the United States may prescribe additional fees that are both—

''(A) payable from disbursements to unsecured, nonpriority creditors in cases under chapter 13 of title 11; and

''(B) based on the estimated increased costs incurred in cases under chapters 7 and 13 of title 11 of the United States Code, by the Government to carry out the amendments made by title I and subtitle A of IV of the Bankruptcy Reform Act of 1998.''.

The CHAIRMAN. Pursuant to House Resolution 462, the gentleman from Massachusetts (Mr. DELAHUNT) and the gentleman from Pennsylvania (Mr. GEKAS) each will control 5 minutes.

The Chair recognizes the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me begin by acknowledging the courtesy extended to me by the gentleman from Pennsylvania (Mr. GEKAS), the chair of the Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary. I appreciate that and acknowledge that. I was misinformed. I thought that it was listed on today's report that it was to be last, but I am glad that I am not last, I am glad that I am here, and I appreciate his courtesy.

Mr. Chairman, this amendment is about credit cards. This is because, in many respects, the entire bill is about credit cards. Credit cards are the reason many people are in bankruptcy today, and credit cards are the reason we are here today.

We all know there are some individuals who abuse the bankruptcy system. And those who let their financial affairs get out of control should take responsibility for the consequences of their action.

But responsibility is a two-way street. I find it extraordinary that people who solicit relentlessly and indiscriminately, without hardly any limitations on their lending practices, should pontificate about the need for personal responsibility.

Few of us are sympathetic to that argument when we hear it from the tobacco companies or when we hear it from the liquor industry or from gambling interests, so why should the credit card industry get away with this sort of hypocrisy?

My amendment would require the credit card companies to assume their fair share of responsibility for the situation they have done so much to create. It would authorize the Judicial Conference of the United States to use a portion of the money paid to credit card companies and other unsecured creditors in Chapter 13 cases to pay for the additional costs of administering the new debt collection system the bill would create.

That is, after all, what this bill is about. It could be said that it deputizes Federal bankruptcy judges as collection agents for Visa and MasterCard. I do not think and submit that it is not unreasonable for the public to ask how this new service will be paid for.

It is not as though, in all likelihood, the public will actually see any of the proceeds. Despite the industry-funded advertising blitz and propaganda about the money that it will save every man, woman and child in America, there is absolutely no reason to believe that these companies will pass on any benefit to consumers in the form of lower interest rates. That is something that they have never done historically. As other interest rates have come down considerably, credit card interest rates have continued to either stagnate or

climb. In fact, I just received a solicitation today in the mail, 23 percent interest. So given the fact that the public is unlikely to see any benefits of this legislation, it seems only fair for those who will benefit to foot the bill.

Mr. Chairman, that bill is going to be substantial. While nobody really knows what the new collection system will cost, the CBO estimates a cost of $214 million over 5 years, and that not including the $40 million to $80 million to cover the salaries and expenses of the 25 or 30 additional bankruptcy judges who would be needed to meet the huge increase in workload that would result from the bill. We heard testimony that absolutely underscored the fact that this would require not just simply additional judges but support personnel and trustees. There were estimates that were provided to members of the committee during hearings that, in fact, the costs could very well be double what they are now. According to the CBO estimate, that would bring the total to between $254 million and $294 million over 5 years, over a quarter of a billion dollars. Those costs should not be borne by the American taxpayer. My amendment would ensure that they would not be borne by the American taxpayer.

Mr. Chairman, I do not want to suggest that the credit industry has been miserly regarding this legislation. Far from it. Visa and MasterCard have spent hundreds of thousands of dollars to draft this bill.

All my amendment says, having been so generous with their financial largess up until now, they should make one more payment, to reimburse the American people for increasing their bottom line.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the fullest expectation we have for H.R. 3150 is that in the long run, the provisions that we are going to put into the law will reduce the increase for sure of filings for bankruptcy, and with great luck, with the economy continuing to buzz on as it is, that we will actually be able to reduce the number of filings total across the land. While we are doing that, a natural accompaniment to that will be lower costs, lower costs to the taxpayers, lower costs to the consumers, lower costs to the interest lenders and creditors, and an impetus to further expansion of the economy.

That is why we say, in opposition to this amendment, that it is premature to add on a fail-safe for a possible cost that may or may not occur. On that basis, if we were to adopt this amendment, we who proposed these reforms, who want to reform the bankruptcy system, are second-guessing ourselves. We are saying we do not know if it is going to work or not. We know it is going to work.

If the gentleman from Massachusetts at some future date comes up to me and says, with a big downturn, ''I told you so, we should have anticipated these rising costs and you should have listened to my amendment,'' I will relent, I will tell him that I am ready to accept fault for that, and we will work together at that time to correct whatever fee shortage or cost shortage or revenue shortage that might occur as a result of this legislation.

But for the time being, I wish he would join with us in endorsing a concept and the language of the bill before us, H.R. 3150, so that we can get about the business of improving our bankruptcy laws, making sure that people have the fullest opportunity to get a fresh start where required, and on the other side of the ledger, to give full opportunity to repay some of the debt where and when possible.

Mr. Chairman, I ask everyone to vote ''no'' on the amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. CALVERT). The question is on the amendment offered by the gentleman from Massachusetts (Mr. DELAHUNT).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. DELAHUNT. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to House Resolution 462, further proceedings on the amendment offered by the gentleman from Massachusetts (Mr. DELAHUNT) will be postponed.

It is now in order to consider amendment number 7 printed in House Report 105–573.

AMENDMENT NO. 7 OFFERED BY MR. PAUL

Mr. PAUL. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 offered by Mr. PAUL:

Page 78, after line 2, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 152. PRIORITIES.

Section 507(a) of title 11, United States Code, as amended by any other provision of this Act, is amended—

(1) in paragraph (9), as so redesignated and amended by any other provision of this Act—

(A) by inserting ''firstly of local governmental units, secondly of State governmental units, and thirdly of all other governmental units, after ''claims'';

(B) by striking ''(9) Ninth'' and inserting ''(11) Eleventh''; and

(C) by transferring such paragraph so as to insert such paragraph at the end of subsection (a) of section 507;

(2) in paragraph (10), as so redesignated and amended by any other provision of this Act, by striking ''(10) Tenth'' and inserting ''(9) Ninth'';

(3) in paragraph (11), as so redesignated and amended by any other provision of this Act, by striking ''(11) Eleventh'' and inserting ''(10) Tenth''.

The CHAIRMAN pro tempore. Pursuant to House Resolution 462, the gentleman from Texas (Mr. PAUL) and the gentleman from Pennsylvania (Mr. GEKAS) each will control 5 minutes.

The Chair recognizes the gentleman from Texas (Mr. PAUL).

Mr. PAUL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my amendment is not a complicated amendment. It merely redesignates the priorities of governments as they line up in the receiving end of a bankruptcy. These are unsecured debts.

Basically the way the law states now and the way the bill is written is that the IRS is the top government agency that is going to receive the money, and then the State and then the local government. My suggestion in my amendment is very simple and very clear and makes a very strong philosophic point, is why should we hold the IRS in such high esteem? Why should they be on top of the list? Why should the money leave the local districts and go to Washington? Why should it go into the coffers of the IRS, funding programs that are basically unconstitutional when there are so many programs that we are not doing and take it out of our school districts?

If we reverse the order, the local government gets the money first, the money that would be left over from the bankruptcy, then the State government, and then the Federal Government. This merely states the point, which I hope we can get across someday in this Congress, that the priority in government should be local government, not a big, strong Federal Government.

Indeed, today there is a lot of resentment in this country against the IRS and the way we spend money up here, and this emphasizes a very important point, that money should be left in the district, money should be left in the States, and at last resort, the money should come here to the Federal Government.

One of the arguments used against this amendment is, ''Uh-oh, it is going to cost the Government some money.'' Cost the Government some money by leaving the money in the State or locally, or leaving it in the pockets of the American people as that same argument is used in tax increases? Hardly would it be difficult for the small amounts, I do not even know the exact amount of money that might be lost to the Treasury because some of these funds might not flow here in this direction, but it cannot be a tremendous amount. But what is wrong with the suggestion that we just cut something? There are so many places that we can cut. Instead, all we do around here is look around for more places to spend money. Today we are even talking about increasing taxes by three-quarters of a trillion dollars on a tobacco program. We are always looking for more revenues and more spending programs and we are worried about paying for a little less revenues coming into the Federal Government.

Once again, this amendment is very clear. It states that in the order of designating these funds on unsecured

creditors, local government would get the money first, then State government, and then the Federal Government.

□ 1615

In the 1980s, in the early 1990s, when Texas and California had trouble, money flowed up here in the middle of bankruptcies at the same time school districts were suffering, putting a greater burden on local school districts. So this is to me a very clear principled position to state that we should have local government, not Federal Government, that we should not enhance the power and the authority of the Federal Government and certainly should not put the IRS and the Federal Government on the top of the pecking order. They should be at the bottom where they deserve to be.

So I would ask my colleagues to endorse this legislation and this amendment to this legislation. I support the legislation. I am hopeful that this amendment will be passed.

Mr. Chairman, I reserve the balance of my time.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I might consume.

Mr. Chairman, I rise in friendly opposition to the amendment because down deep I agree with the gentleman's contentions about the tax structure and the relevant priorities that we have for too long imposed upon the American public with respect to the balance between local taxation and local interests and States for that matter and vis-a-vis the Federal overplay in both taxation and regulation and all the gamut of items that have harmed private enterprise over the years and have harmed actually the rights of citizens. So from that standpoint, I am in full agreement with the gentleman.

The reservations that I have stem about my duty in handling this bill which is a bill in bankruptcy which is embedded in the Constitution. Therefore, the entire panoply of provisions that have to do with bankruptcy have a national flavor, a national aegis, a national emblem, and so concomitant with that goes the Federal revenues and Federal Treasury that is a part of the total bankruptcy law. I am afraid that if we reverse these priorities as they are now constituted, that we will be infringing upon the Federal jurisdiction of bankruptcy itself, and I can not do that.

What I want to do is to assure the gentleman that wherever we can in pursuit of the finalization of this bill, in conference and thereafter, that we take into account what the gentleman has said, and perhaps in another forum and in another committee jurisdiction, Ways and Means for instance, we can try to work out his set of priorities in a different way. But now I am constrained to fight for the preservation of our bill as we have constructed it with the Federal jurisdiction both in taxation and in bankruptcy courts remaining paramount, and for that reason I would oppose the amendment at this juncture.

Mr. Chairman, I reserve the balance of my time.

Mr. PAUL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would just like to respond by saying I certainly do recognize responsibility of the U.S. Congress in dealing with national legislation dealing with bankruptcy and that bankruptcy laws should be uniform and fair. But this does not preclude us from thinking about the particulars of a piece of legislation designating the importance of the different governmental bodies, so everything I say about emphasizing local government over Federal Government is certainly legitimate and does not contradict in any way the notion that we should not deal with this at all because certainly we have this authority to do so.

And it still remains to be seen with much of a cost at all involved here; I happen to think not very much, but I would like to emphasize once again the importance of dealing with cutting spending rather than always resorting to say how do we pay something, pay for something, by merely raising taxes elsewhere if we happen to work in a benefit on a program such as this.

So I would say that it is very important that we do think about local government over Federal government, think about less taxes and less bureaucracy, because unless we change our mind set on this, we will continue to put the priorities of the Federal Government and the IRS up at the top. I want them at the bottom. That is where they deserve. They do not know how to spend their money. They do not know how to spend their money, and we ought to see to it that they get a lot less of it.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

The more I hear the gentleman speak, the more I am inclined to agree with him because he makes sense with respect to the priorities that we have allowed the IRS to grab for itself. But in any event, I will ask for a no vote with due honor to the proposition offered by the gentleman from Texas (Mr. PAUL).

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. PAUL).

The amendment was rejected.

The CHAIRMAN. It is now in order to consider Amendment No. 8 printed in House Report 105—573.

AMENDMENT NO. 8 OFFERED BY MR. GEKAS

Mr. GEKAS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 printed in House Report 105–573 offered by Mr. PAUL:

Beginning on page 82, strike line 23 and all that follows through line 19 on page 83, and insert the following:

SEC. 182. LIMITATION.

Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)(2)(A) by inserting ''subject to subsection (n),'' before ''any property''; and

(2) by adding at the end the following:

''(n) For purposes of subsection(b)(2)(A) and notwithstanding subsection (a), the value of an interest in—

''(1) real or personal property that the debtor or a dependent of the debtor uses as a residence;

''(2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

''(3) a burial plot for the debtor or a dependent of the debtor;

shall be reduced to the extent such value is attributable to any portion of any property that the debtor disposed of in the 365-day period ending of the date of the filing of the petition, with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b) if on such date the debtor had held the property so disposed of.''.

The CHAIRMAN. Pursuant to House Resolution 462, the gentleman from Pennsylvania (Mr. GEKAS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. GEKAS).

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, from the very first moment that I began to become involved in the bankruptcy issue and intent on preparing a product which we have before us now which will do a great deal of good over the next 10–15 years, I always wanted to maintain the States' rights to describe their own set of exemptions, particularly homestead exemptions, because I felt that was necessary for a variety of reasons to honor the State's determination of what it wanted to grant as an exemption, and the first proposal that I made that became a part of this bill did so, it did honor that.

At the full Committee on the Judiciary, after an offer of an amendment was made by the gentleman from Massachusetts (Mr. DELAHUNT) to put in a $100,000 figure that would be a cap that reflected what the Senate has done, that was adopted by the full committee mostly on the basis that it paralleled the Senate version, as I recall. At the same time I did indicate that I would not be bound, that I could reserve the right to change that when we came to the full floor. Hence we are here.

Mr. Chairman, I yield for a period of 2½ minutes to the gentleman from Florida (Mr. MCCOLLUM) to explain and to propound the amendment.

Mr. MCCOLLUM. Mr. Chairman, I thank the gentleman for yielding this time to me.

I want to explain this amendment. It strikes the $100,000 homestead exemption cap that is in the bill and reverts back to current law in that respect. But it does a little more than that.

In addition it denies the right of homestead exemption to somebody who within a year of filing bankruptcy

takes assets, cash or whatever and places that into a home for the purposes of defrauding creditors to avoid paying the creditors. I think that is a very important provision that will get around the problems we are seeing people complain about on homestead exemption law abuse, but at the same time it will not deny the States the right to do what they have done since 1792, and that is to decide what property is exempt.

I think that is a very important decision to be left to the States to decide. If we put this $100,000 cap in, we are going to dictate to the States; some States have no cap currently, some States have 100,000, some like Massachusetts have 100,000 until you are 62, and then they have 200,000.

And it also protects, our proposal to strike this cap, the situation where a widow or an elderly person has paid fully for their home. Let us say they have a modest priced home. In many States, very modest, $110,000 value. The entire thing is mortgage fee. And the creditors want to get at under this bill the way it is now written at the $10,000. They are going to force that widow to sell the home, and I do not think that is what we want to do. I think it is very important that we protect it and adopt the Gekas-McCollum-Smith amendment to strike the provisions in the bill as they are now on the cap and go to the provisions that I just indicated to deny fraudulent use of the homestead exemption.

Mr. BENTSEN. Mr. Chairman, will the gentleman yield?

Mr. MCCOLLUM. I yield to the gentleman from Texas.

Mr. BENTSEN. I appreciate the gentleman yielding to me.

It is no secret that I wish this bill had nothing to do with the homestead and we had dropped it out, but I will support the gentleman's amendment, but I do have a question that might give some clarification.

With respect to the transfer of assets within the 1-year period, would it be the intent if one were to prepay part of the mortgage or pay down or even a scheduled payment on a mortgage, would those funds be considered a transfer of assets?

Mr. MCCOLLUM. No, it would not be. It has to be done with the intent, a special extra amount of money, whatever it is, to defraud the creditors so it is actually going out and trying to get around the rules of the game, and that requires an element that would be far beyond a normal routine payment. They obviously can make their routine payments on their home, and this amendment would not affect that.

Mr. BENTSEN. Including prepayments.

Mr. MCCOLLUM. Including prepayments. It would not affect it if they have already got scheduled prepayments, and they have a right to make those prepayments now. Obviously somebody can come in and decide they are going to pay off the entire mortgage, and that might present a problem of intent where other evidence could come into play because, remember, the question here is the intent of the person who is trying to get around the law.

I urge the adoption of the amendment. It is a good amendment.

Mr. DELAHUNT. Mr. Chairman, I rise in opposition to the amendment and yield 2½ minutes to the distinguished gentleman from Wisconsin (Mr. BARRETT).

Mr. BARRETT of Wisconsin. Mr. Chairman, this is a doozie of an amendment. Please listen to the debate on this amendment. Supporters of this bill have said over and over again that the bankruptcy code should not be used as a financial planning tool. Yet the very people who are sponsoring the bill have offered this amendment to let wealthy debtors continue to use the bankruptcy system as a financial planning tool that enables them to shelter millions of dollars from the creditors. This bill makes it tougher for people of limited means to escape their debts by using the bankruptcy system.

Personal responsibility; that is what we all want. But what about the personal responsibility of people who have a lot of assets? If this amendment passes, wealthy individuals with expensive homes in one of the five States with an unlimited homestead exemption will be able to declare bankruptcy and enjoy a life of luxury at the expense of their creditors.

So who are these people? People like the owner of a failed S&L who paid off only a fraction of the $300 million in bankruptcy claims while keeping his multimillion dollar ranch in Florida, or the convicted Wall Street financier who filed bankruptcy while owing some $50 million in debts and fines but still kept his $5 million Florida mansion complete with 11 bedrooms and 21 baths, or the physician with no malpractice insurance who has been named in 4 separate lawsuits. He filed for bankruptcy protection and kept a $500,000 home with a 100-foot swimming pool.

The situation has become so notorious that one Miami bankruptcy judge told the New York Times, quote:

''Theoretically, you could shelter the Taj Mahal in this State, and no one could do anything about it.''

Fortunately, during its markup of H.R. 3150, the Committee on the Judiciary did do something about it, unanimously approving language recommended by the National Bankruptcy Review Commission to place a nationwide $100,000 cap on the amount a debtor can claim under the exemption. A similar bipartisan amendment was unanimously approved in the Senate. This cap would have no effect in the 43 States.

We hear two arguments against this. One is $100,000 is too low. This is $100,000 equity, and there are only 15 percent of the people in this country that have $100,000 equity in their home. The other is that it violates the Constitution or State rights. This is Federal bankruptcy courts, not State courts, Federal bankruptcy courts.

What this amendment allows someone to do if they are doing financial planning, they want to declare bankruptcy and they live in New York: buy a beautiful piece of property in Miami, stay in New York for 365 days, go down, live in that beautiful piece of property and rip off the people they owe money to.

This amendment is a sham.

Mr. DELAHUNT. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Pennsylvania (Mr. KANJORSKI).

(Mr. KANJORSKI asked and was given permission to revise and extend his remarks.)

□ 1630

Mr. KANJORSKI. Mr. Chairman, I am what I classify as a moderate Democrat, and I think that reform of bankruptcy is something that is necessary. I think there has been an abuse in the country. I would say some of the abusers are in the banking industry themselves, by sending out these credit cards to people that are even in bankruptcy are receiving credit cards.

But forgetting that, as we may, this is really a killer amendment for me and I think a lot of moderate people who would like to support bankruptcy. This is opening up the largest loophole in the whole bankruptcy act.

This is saying to people, come to Florida, Texas, figure out what you are going to do, and shelter your assets. You are saying to people in Pennsylvania and 45 other states that will not have any great benefit from this loophole, oh, you are going to be able to be wiped out in bankruptcy. You can only keep $16,500 of your exemption. But if you come to Florida, and even if you participated in fraud, abuse and theft in the savings and loan industry, you can remain living in your $5 million mansion and you have wiped out all other creditors through bankruptcy, because we have this exemption.

I understand we have this teetering and tottering here. We have some people that are for states' rights and they want the ability to have the exemption, but, on the other hand, they want to have a national statute that makes the credit card owner pay for it. I say pox on both our houses.

If we are going to do the fair thing, the underlying bill here gave a $100,000 exemption. How much more do you want? How much more blood from Pennsylvanians, from New Yorkers, from people in 45 states of this union that want to have responsible payment of debt, but do not want loopholes and favoritism?

I suggest, Mr. Chairman, that if you persist in this course and this amendment wins, here is one Member who is going to vote for no for this bill, who had been all along the support of this bill, because I think it should move

through the process so we can get some reform in bankruptcy. But if I see this type of extremity going in, I know we are not going to get the type of reform that the constituents in my State and district could allow.

The CHAIRMAN pro tempore. The gentleman from Pennsylvania (Mr. GEKAS) has 1 minute remaining and has the right to close, and the gentleman from Massachusetts (Mr. DELAHUNT) has 30 seconds remaining.

Mr. DELAHUNT. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, I will be very brief. I want to address the scenario that the gentleman from Florida raised about the poor widow and her family. The manager's amendment offered by the gentleman from Illinois (Mr. HYDE), which I think was accepted and will receive support from both sides of the aisle, if a creditor forced someone into involuntary bankruptcy, the cap on the homestead exemption is automatically lifted. I think it is very important that Members know that. We are not going to have the kind of scenarios that were put forth by the gentleman who has sponsored this bill, the gentleman from Florida (Mr. MCCOLLUM).

Mr. Chairman, I yield back the balance of my time.

Mr. GEKAS. I yield the balance of my time to the gentleman from Texas (Mr. SMITH).

The CHAIRMAN pro tempore (Mr. CALVERT). The gentleman from Texas is recognized for 1 minute.

Mr. SMITH of Texas. Mr. Chairman, I rise in support of the Gekas-McCollum-Smith amendment that preserves the rights of the states to set their own individual homestead exemptions.

H.R. 3150, the Bankruptcy Reform Act of 1998, is a necessary reform of our Nation's bankruptcy laws. But since 1867, Federal lawmakers have recognized the role of the states in determining what property is exempt under bankruptcy laws. Unfortunately, the language in this bill runs contrary to the Texas Constitution, as well as the Constitution of several other states.

The homestead exemption was originally intended to protect families by ensuring that if a family hit hard times, they would retain some means of support. The need to protect families is no less important today.

Our amendment simply preserves the right of states to provide a homestead exemption, and maintains a historical balance between the Federal Government and the states. It would also prevent State homestead exemptions from being abused by prohibiting the conversion of nonexempt assets into exempt homestead property within one year of filing for bankruptcy. That is a protection that needs to be emphasized.

Mr. Chairman, this amendment both prevents abuses of the exemption and protects states' rights, and I urge my colleagues to support this amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. GEKAS).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

Mr. DELAHUNT. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to House Resolution 462, further proceedings on the amendment offered by the gentleman from Pennsylvania (Mr. GEKAS) will be postponed.

It is now in order to consider Amendment No. 9 printed in House Report 105–573.

AMENDMENT NO. 9 OFFERED BY MR. SCOTT

Mr. SCOTT. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows.

Amendment No. 9 printed in House Report 105–573 offered by Mr. SCOTT:

Beginning on page 90, strike line 19 and all that follows through line 10 on page 91 (and make such technical and conforming changes as may be appropriate).

The CHAIRMAN pro tempore. Pursuant to House Resolution 462, the gentleman from Virginia (Mr. SCOTT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, this amendment would eliminate section 212 of the bill, which singles out the recording artists for detrimental treatment to the exclusive benefit of recording companies in regard to personal service contracts.

Although section 212 in this bill is an improvement over its original version, it still provides an exclusive benefit to recording companies and still singles out recording artists for harsher treatment than other debtors filing for bankruptcy protection. This is without any showing that recording companies are entitled to this exclusive benefit in bankruptcy or that artists are abusing bankruptcy laws in any way that cannot be addressed through other provisions of bankruptcy laws that apply to everybody else.

Furthermore, whereas approximately 1 percent of all American adults filed for bankruptcy in 1997, according to Billboard Magazine, not even one-tenth of 1 percent of recording artists file for bankruptcy annually. There have been no hearings on section 212. In fact, it was not even considered in subcommittee markup. This special interest provision only appeared in a 177 page substitute which was first presented at full committee consideration of the bill.

Section 212 provides a new legal standard which will penalize recording artists for using provisions of the bankruptcy code available without such penalty to all other debtors similarly situated. Section 2812 does not apply to actors, does not apply to athletes, doctors, lawyers, professors, authors or anyone else who signed a personal service contract.

No justification has been offered to explain why recording artists in bankruptcy should be forced into continued servitude under what may be totally unfair and unduly burdensome contracts, especially since the contract itself may have contributed to the bankruptcy in the first place.

I urge support for this amendment, which eliminates an unnecessary, unfair, undesirable and, in some cases, unconscionable provision.

Mr. GEKAS. Mr. Chairman, I seek the time in opposition.

The CHAIRMAN pro tempore. The gentleman from Pennsylvania is recognized for 5 minutes.

Mr. GEKAS. Mr. Chairman, I yield one minute to the gentleman from Florida (Mr. MCCOLLUM).

Mr. MCCOLLUM. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I want to oppose this amendment in the strongest of terms. The provision that is now in this bill based on the managers' amendment would provide a solution in a flexible manner for some very serious problems that we have with some recording artists who have just filed bankruptcy to get out of studio contracts. That is not right.

What we are providing in the bill that the gentleman from Virginia (Mr. SCOTT) wants to strike is a provision that allows, permits, does not require, but allows bankruptcy judges to stop recording artists' abuse of bankruptcy laws. The underlying provision only affects artists paid royalty advances on a promise to perform exclusively for a studio. Under those conditions, why should anybody be allowed to file bankruptcy, just for the purpose of getting out of a studio contract?

We may want to argue that there are other inequitable situations that occur in contract law concerning bankruptcies. I cannot profess to address all of them, but I can say we ought to address this one while we have the opportunity today, and give bankruptcy judges the discretion to decide if indeed somebody is trying to in essence defraud the system by using bankruptcy to break these contracts in situations where they have made a promise to perform exclusively for a studio.

Mr. Chairman, I urge a no vote in the strongest terms on the Scott amendment to allow this to continue to happen.

Mr. SCOTT. Mr. Chairman, I yield 2½ minutes to the gentleman from Michigan (Mr. CONYERS), the ranking member of the Committee on the Judiciary.

Mr. CONYERS. Mr. Chairman, I commend my good friend, the gentleman from Virginia (Mr. SCOTT) for this amendment.

Mr. Chairman, now, how outrageous can the gentleman from Florida (Mr. MCCOLLUM) get? Our friends in the record industry, and I am a friend of the record industry, they go to the gentleman to sneak in this amendment, not known to anybody until we discovered it; not a hearing, not a word. I do

not know who I am more disgusted at, the gentleman or them. I guess I will just be disgusted at both of you.

Now, why did the gentleman do it? For what reason? Section 707 protects everybody from phony filings. Everybody. Nobody in America has this exception but your buddies in the record industry. This is a disgrace, and I am really angry that you would try to pull this and that my friends in the entertainment industry would pull it on me.

I hope everybody votes against this amendment. There is absolutely no justification for it at all. Besides, it is directed at minority artists and entertainers, who frequently get cheated out of their earnings and have to go into bankruptcy, I would say to the gentleman from Pennsylvania (Mr. GEKAS).

So, please, have a heart.

Mr. GEKAS. Mr. Chairman, I yield one minute to the gentleman from Tennessee (Mr. CLEMENT).

Mr. CLEMENT. Mr. Chairman, I rise in opposition to the Scott amendment.

Mr. Chairman, as everyone in the chamber knows, I am proud to say I am from Nashville, Tennessee, Music City, USA, home of some of the best music and the best artists in the world. These artists work hard to earn their living and achieve success by virtue of their talent, ingenuity and just plain sweat.

Unfortunately, there are some cases of unscrupulous lawyers and agents who threaten to tarnish the reputation of many fine artists by declaring bankruptcy for some artists as a ploy to renegotiate a new contract. I am talking about some that have the money, but are willing to take short cuts and want a better contract and do not live up to their contract that they are in at the present time. That just is not right, and it threatens to spoil the reputation of the hard-working artists who play fairly.

Mr. Chairman, I urge my colleagues to vote against the Scott amendment.

Mr. SCOTT. Mr. Chairman, I yield one minute to the gentleman from Florida (Mr. SCARBOROUGH).

Mr. SCARBOROUGH. Mr. Chairman, I have heard the words ''outrageous'' and ''this is a disgrace.'' Well let me tell you what is outrageous and is a disgrace. What is outrageous is that you will have a multimillion dollar artist that is in the middle of a contract and decides, as I have read in one case, does not want to make $15 million in the next album, but they want to make $30 million on the next album so they go to bankruptcy court, and in bankruptcy court, they try to get it thrown out so they can go back and renegotiate a new contract and make $30 million.

Let us not talk about poor starving artists. We have documented cases of people that are making multi-multimillions on albums, and they just simply want to renegotiate their deal. That is outrageous. Sign a deal, and live by the terms of that deal.

Now, I have heard also the race card has been used. If there is any color involved in this issue, it is the color green, the color of money, because this affects every artist, whether they are black or white, or whether they are Hispanic, whether they are working in L.A., Nashville or New York. This is race neutral. It is simply saying to the bankruptcy court, you have the discretion to decide whether somebody is using the rules to break a valid contract. I oppose the Scott amendment.

□ 1645

Mr. GEKAS. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Mrs. TAUSCHER).

Mrs. TAUSCHER. Mr. Chairman, I rise to oppose the Scott amendment to strike section 212 of this bill.

Under section 212 of H.R. 3150, bankruptcy judges would have the right to deny the termination of contracts with recording artists if it is clear that the bankruptcy filing is a ploy to end the contract. It provides judges with the authority to prevent fraudulent filers from using the bankruptcy system simply to advance other business objectives.

At issue in this provision is not who is filing for bankruptcy, but why they are filing for bankruptcy. Regardless of the circumstances, bankruptcy judges should have the authority to prevent fraudulent filings.

Mr. Chairman, this provision would not deny anyone access to bankruptcy. It would not deny debtors in genuine economic stress the ability to rehabilitate their finances, and it would not deny or not give recording companies a preferred creditor position.

I urge my colleagues to oppose the Scott amendment and support H.R. 3150.

Mr. GEKAS. Mr. Chairman, I reserve the balance of my time.

Mr. SCOTT. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, to the extent that debtors are denied a new contract, other creditors are less likely to be paid. It is normal to renegotiate contracts in bankruptcy. In fact, in our Saturday paper, a race track in my district was in financial trouble, and the article pointed out that, if they filed bankruptcy, they would be able to renegotiate contracts that have put it into financial distress.

But whatever the merits of this argument, they ought to apply to everyone. There is nothing so unique about this particular special interest group that they should be given the advantage of section 212, a provision stuck into the bill without a hearing. For the merits of the argument in support of this section to make any sense, it ought to apply to everyone; otherwise, it just looks like a special favor for one particular special interest group, and that is why it ought it be struck. Mr. Chairman, I hope we can support this amendment.

The CHAIRMAN pro tempore (Mr. CALVERT). The gentleman from Virginia (Mr. SCOTT) yields back the balance of his time.

Mr. GEKAS. Mr. Chairman, I yield to myself the balance of the time remaining.

The CHAIRMAN pro tempore. The gentleman from Pennsylvania is recognized for 1 minute.

Mr. GEKAS. Mr. Chairman, as I recall the negotiations that were taking place during the time of consideration by the full committee, I thought that the gentleman from Florida (Mr. MCCOLLUM) and the gentleman from Virginia (Mr. SCOTT) had become on the verge of reaching some compromised language. Then I learned that, indeed, they had, or at least it looked like we had, and so that the manager's amendment did contain some language that would seem to satisfy both sides.

Now I find out that that was not the case; therefore, we have to rely on what is now in the manager's amendment, and we respectfully reject the Scott amendment, and I ask everybody to vote no.

Mr. SCOTT. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Virginia for the remaining time.

Mr. SCOTT. Mr. Chairman, I would acknowledge that the present version is not as bad as what we considered in committee, but we did not reach an agreement.

Mr. GEKAS. I know that. I know that.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Virginia (Mr. SCOTT).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. SCOTT. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to House Resolution 462, further proceedings on the amendment offered by the gentleman from Virginia (Mr. Scott) will be postponed.

It is now in order to consider amendment number 10 printed in House Report 105–573.

AMENDMENT NO. 10 OFFERED BY MS. VELAZQUEZ

Ms. VELÁZQUEZ. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 10 printed in House Report 105–573 offered by Ms. VELÁZQUEZ:

Page 110, after line 2, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 244. STUDY OF OPERATION OF TITLE 11 OF THE UNITED STATES CODE WITH RESPECT TO SMALL BUSINESSES.

Not later than 2 years after the date of the enactment of this Act, the 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 to become debtors in cases under title 11 of the United States Code and that cause certain small businesses to successfully complete cases under chapter 11 of such title; and

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

(2) submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report summarizing such study.

The CHAIRMAN pro tempore. Pursuant to House Resolution 462, the gentlewoman from New York (Ms. VELÁZQUEZ) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from New York (Ms. VELÁZQUEZ).

Ms. VELÁZQUEZ. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as we move to rewrite our Nation's bankruptcy laws, it is important that we make the proper changes. My amendment ensures that we have all the facts on how these revisions will affect small business. I urge its adoption.

The purpose of my amendment is to direct the Small Business Administrator 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 to conduct a study into the causes of small business bankruptcy.

This study will examine the internal and external factors that cause small businesses to become debtors under Chapter 11. It would also study the factors that enable viable businesses to successfully reorganize. From these findings, the SBA will make recommendations on how bankruptcy law can be made more effective and efficient to assist small businesses remain viable.

Mr. Chairman, small businesses have been a critical component in the recent upturn in our economy. They have created the vast majority of the jobs and economic growth.

If you couple this job growth with the current explosion of technology, where we see businesses constantly emerging and reinventing themselves, it becomes critical that we monitor how changes to our national bankruptcy system affect small business. More importantly, these changes must not be allowed to dampen the entrepreneurial spirit that our national economy relies on so heavily.

The fact remains that of the 1.4 million bankruptcies filed in 1997, only 9,694 of Chapter 11 and 11,095 in Chapter 13 were business related. That represents less than 1 percent of all bankruptcies. Taking into account that over the last 10 years business bankruptcies have actually declined, we must make sure that these trends continue.

It is true that the provisions in this legislation were taken on recommendation from the National Bankruptcy Review Commission Report. Unfortunately, the Commission developed these guidelines without obtaining any statistical information. They also failed to seek the recommendations from the Small Business Administration or the Office of Advocacy.

We should not move forward with such drastic changes to our bankruptcy system without the proper consultation and examination into the issue. My amendment will ensure that all factors are properly scrutinized. If we fail to act properly, the provisions contained in this bill could end up doing more harm than good.

Mr. Chairman, no one will deny that our Nation is in dire need of bankruptcy reform. What I am concerned about is that we do this in a manner that improves our system, not make it worse. While studying how these changes impact small business will not ensure success, it will provide a safety net for our Nation's small business.

I urge the adoption of this amendment.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN pro tempore. Does any Member rise in opposition?

Mr. GEKAS. Mr. Chairman, I rise in opposition only for the purpose of claiming the time, to tell the truth.

The CHAIRMAN pro tempore. The gentleman from Pennsylvania (Mr. GEKAS) is recognized for 5 minutes.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

(The gentleman from Pennsylvania spoke in Spanish.)

Ms. VELAZQUEZ. (The gentlewoman from New York spoke in Spanish.)

Mr. GEKAS. (The gentleman from Pennsylvania spoke in Spanish.)

We will accept the amendment as offered by the gentlewoman from New York in both English and Spanish.

Mr. Chairman, I yield back the balance of my time.

Ms. VELAZQUEZ. Mr. Chairman, I thank the gentleman from Pennsylvania for supporting my amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentlewoman from New York (Ms. VELÁZQUEZ).

The amendment was agreed to.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 11 printed in House Report 105–573.

AMENDMENT NO. 11 OFFERED BY MR. BALDACCI

Mr. BALDACCI. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 11 printed in House Report 105–573 offered by Mr. BALDACCI:

Page 131, after line 7, insert the following:

SEC. 414. STUDY OF BANKRUPTCY IMPACT OF CREDIT EXTENDED TO DEPENDENT STUDENTS.

Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall—

(1) conduct a study regarding the impact that the extension of credit to individuals who are—

(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and

(B) enrolled in post-secondary educational institutions;

has on the rate of cases filed under title 11 of the United States Code; and

(2) submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report summarizing such study.

The CHAIRMAN pro tempore. Pursuant to House Resolution 462, the gentleman from Maine (Mr. BALDACCI) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Maine (Mr. BALDACCI).

Mr. BALDACCI. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise to offer my student credit study amendment to bankruptcy reform legislation we are considering today.

My amendment directs the Comptroller General to conduct a study on the impact of the Nation's bankruptcy rate of the extension of credit to students enrolled in postsecondary education programs who are claimed as dependents for tax purposes by their parents or legal guardians.

The intent of my amendment is to compile information on the impact the extension of credit may have on families when it is extended to dependent students in college or trade school when they may have little or no income with which to pay debts from occurred through credit cards.

Again, I am not talking about students who are, for all intents and purposes on their own, financially independent, but those who are claimed as dependents by their parents for tax purposes.

I have received numerous inquiries from constituents who have expressed concern about the seemingly haphazard extension of credit to students who have no visible means of support, other than that of their family.

Some of you have seen the ''Dear Colleague'' sent out by the gentleman from Massachusetts (Mr. DELAHUNT) yesterday. Apparently, his college-aged daughter was sent an offer of credit in the form of a check for $2,875. That kind of money can be hard to resist for some students. You are away from home. Lots of strange new faces and very little cash. Those of you who are parents will probably understand where I am going with this.

I think the majority of students would be intelligent, responsible young adults. However, the temptation for some students to take on more debt than they could reasonably handle would be strong in some of these situations. As a dependent, your parents

may feel a moral obligation to pay that debt. I think it is incumbent upon us to see if this is in fact a problem and the extent to which it effects American families.

Having said that, Mr. Chairman, I would urge the adoption of the amendment that I have offered.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN pro tempore. Does any Member rise this opposition to the amendment?

Mr. GEKAS. Mr. Chairman, I rise in opposition only for the purpose of claiming the time.

The CHAIRMAN pro tempore. The gentleman from Pennsylvania (Mr. GEKAS) is recognized for 5 minutes.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to be intellectually honest about that, maybe for the first time in my career, but anyway, I agree with the concept that has been advanced by the gentleman from Maine and would urge a yes vote on his amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Maine (Mr. BALDACCI).

The amendment was agreed to.

The CHAIRMAN pro tempore. It is now in order to consider Amendment No. 12 printed in House Report 105–573.

AMENDMENT IN THE NATURE OF A SUBSTITUTE NO. 12 OFFERED BY MR. NADLER

Mr. NADLER. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN pro tempore. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment of the nature of a substitute is as follows:

Amendment in the nature of a substitute No. 12 printed in House Report 105–573 offered by Mr. NADLER:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

Sec. 1. Short title; table of contents.

TITLE I—CONSUMER BANKRUPTCY PROVISIONS

Subtitle A—Needs-Based Bankruptcy

Sec. 101. Dismissal or conversion of a chapter 7 case.
Sec. 102. Debtor participation in credit counseling program.

Subtitle B—Adequate Protections for Consumers

Sec. 111. Notice of alternatives.
Sec. 112. Debtor financial management training test program.
Sec. 113. Definitions.
Sec. 114. Disclosures.
Sec. 115. Debtor's bill of rights.
Sec. 116. Enforcement.
Sec. 117. Sense of the Congress.
Sec. 118. Charitable contributions.
Sec. 119. Reinforce the fresh start.
Sec. 119A. Chapter 11 discharge of debts arising from tobacco-related debts.

Subtitle C—Adequate Protections for Secured Creditors

Sec. 121. Discouraging bad faith repeat filings.
Sec. 122. Definition of household goods.
Sec. 123. Debtor retention of personal property security.
Sec. 124. Relief from stay when the debtor does not complete intended surrender of consumer debt collateral.
Sec. 125. Giving secured creditors fair treatment in chapter 13.
Sec. 126. Prompt relief from stay in individual cases.
Sec. 127. Stopping abusive conversions from chapter 13.
Sec. 128. Restraining abusive purchases on secured credit.
Sec. 129. Fair valuation of collateral.
Sec. 130. Protection of holders of claims secured by debtor's principal residence.
Sec. 131. Aircraft equipment and vessels.

Subtitle D—Adequate Protections for Unsecured Creditors

Sec. 141. Fraudulent debts are nondischargeable in chapter 13 cases.
Sec. 142. Applying the codebtor stay only when it protects the debtor.
Sec. 143. Nondischargeability of certain debts for alimony, maintenance, and support.
Sec. 144. Other exceptions to discharge.
Sec. 145. Fees arising from certain ownership interests.
Sec. 146. Adequate protection for investors.
Sec. 147. Super-priority for child and spousal support claims.
Sec. 148. Debts for alimony, maintenance, and support.
Sec. 149. Protection of child support and alimony.

Subtitle E—Adequate Protections for Lessors

Sec. 161. Giving debtors the ability to keep leased personal property by assumption.

Subtitle F—Bankruptcy Relief Less Frequently Available for Repeat Filers

Sec. 171. Extend period between bankruptcy discharges.

Subtitle G—Exemptions

Sec. 181. Exemptions.
Sec. 182. Limitation.
Sec. 183. Provide fair property exemptions and prevent high-rollers from abusing the system.

TITLE II—BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Provisions

Sec. 201. Limitation relating to the use of fee examiners.
Sec. 202. Sharing of compensation.
Sec. 203. Chapter 12 made permanent law.
Sec. 204. Meetings of creditors and equity security holders.
Sec. 205. Creditors' and equity security holders' committees.
Sec. 206. Postpetition disclosure and solicitation.
Sec. 207. Preferences.
Sec. 208. Venue of certain proceedings.
Sec. 209. Cases ancillary to foreign proceedings involving foreign insurance companies that are engaged in the business of insurance or reinsurance in the United States.
Sec. 210. Period for filing plan under chapter 11.
Sec. 211. Unexpired leases of nonresidential real property.
Sec. 212. Definition of disinterested person.

CHAPTER 1—SMALL BUSINESS BANKRUPTCY

Sec. 231. Definitions.
Sec. 232. Flexible rules for disclosure statement and plan.
Sec. 233. Standard form disclosure statements and plans.
Sec. 234. Uniform national reporting requirements.
Sec. 235. Uniform reporting rules and forms.
Sec. 236. Duties in small business cases.
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TITLE I—CONSUMER BANKRUPTCY PROVISIONS

Subtitle A—Needs-Based Bankruptcy

SEC. 101. DISMISSAL OR CONVERSION OF A CHAPTER 7 CASE.

(a) AMENDMENTS TO CHAPTER 7.—Section 707 of title 11, United States Code, is amended—

(1) by amending the heading to read as follows:

"§ 707 Dismissal or conversion of case";

(2) by amending subsection (b) to read as follows:

''(b)(1) In a case filed by an individual debtor who has regular income and whose debts are primarily consumer debts, the court—

''(A) on its own motion, or on a motion by the United States trustee or the trustee; or

''(B) on a motion filed by a party in interest, if the household income with respect to the debtor during the 1-year period ending on the date the case is commenced exceeds the sum of $60,000 and $5,000 for each household member exceeding 4, adjusted to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the period beginning on the 1st January 1 occurring after the effective date of this subparagraph and ending immediately before the most recent January 1 occurring before the commencement of the case;

and after notice and a hearing, shall dismiss the case, or convert the case with the consent of the debtor to a case under another chapter of this title, if the court finds that granting relief would be an abuse of the provisions of this chapter.

''(2) For purposes of paragraph (1)—

''(A) 'an abuse of the provisions of this chapter' means that—

''(i)(I) the debtor has, and is expected to have, disposable income that is sufficient, after paying allowed claims (whether secured or unsecured) for a debt secured only by the principal residence of the debtor, allowed secured claims, claims that have priority under section 507 of this title, allowed unsecured claims arising under not more than 1 motor vehicle lease in effect on the date the case is commenced, and debts arising in the 3-year period beginning on such date under not more than 1 motor vehicle lease in effect on the such date, to pay during such 3-year period not less than 30 percent of the aggregate amount of the remaining allowed unsecured claims; and

''(II) household income received with respect to the debtor during the 1-year period ending on the date the case is commenced exceeds the sum of $40,000 and $5,000 for each household member exceeding 2, adjusted to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the period beginning on the 1st January 1 occurring after the effective date of this subparagraph and ending immediately before the most recent January 1 occurring before the commencement of the case; or

''(ii) the debtor commenced a case under this chapter, or converted a case to a case under this chapter, in bad faith;

''(B) 'disposable income' means income that is received by the debtor and that is not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor;

''(C) 'household income' means—

''(i) in an individual case, the sum of—

''(I) the debtor's income; and

''(II) the income of any other household member of the debtor; and

''(ii) in a joint case, the sum of—

''(I) the debtor's income;

''(II) the income of the debtor's spouse; and

''(III) the income of any other household member of the debtor or of the debtor's spouse;

''(D) 'household member' means—

''(i) the debtor;

''(ii) the debtor's spouse if the debtor's spouse maintains a common principal residence with the debtor on the date the case is commenced; or

''(iii) a relative (by affinity, consanguinity, or adoption) of the debtor or the debtor's spouse who—

''(I) maintains a common principal residence with the debtor on the date the case is commenced; and

''(II) is dependent on the debtor, or on the debtors' spouse if the debtor's spouse maintains a common principal residence with the debtor on the date the case is commenced, for substantially all financial support during the 180-day period ending on the date the case is commenced.

''(3) Except as provided in paragraph (2)(C), this subsection shall apply jointly to debtors in a joint case.''; and

(3) by adding at the end the following:

''(c) If the court denies a motion filed under this section by a party in interest, the court shall award to the debtor—

''(1) costs and a reasonable attorney's fee incurred by the debtor to oppose the motion; and

''(2) damages of not less than $5000;

unless the position of such party in interest is substantially justified.''.

SEC. 102. DEBTOR PARTICIPATION IN CREDIT COUNSELING PROGRAM.

(a) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code is amended by adding at the end the following:

''(i)(1) Subject to paragraph (2) and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has, during the 90-day period preceding the date of filing of the petition, made a good-faith attempt to create a debt repayment plan outside the judicial system for bankruptcy law (commonly referred to as the 'bankruptcy system'), through a credit counseling program offered through credit counseling services described in section 342(b)(2) that has been approved by—

''(A) the United States trustee; or

''(B) the bankruptcy administrator for the district in which the petition is filed.

''(2) The United States trustee or bankruptcy administrator may not approve a program for inclusion on the list under paragraph (1) unless the counseling service offering the program offers the program without charge, or at an appropriately reduced charge, if payment of the regular charge would impose a hardship on the debtor or the debtor's dependents.

''(3) The United States trustee or bankruptcy administrator shall designate any geographical areas in the United States trustee region or judicial district, as the case may be, as to which the United States trustee or bankruptcy administrator has determined that credit counseling services needed to comply with this subsection are not available or are too geographically remote for debtors residing within the designated geographical areas. The clerk of the bankruptcy court for each judicial district shall maintain a list of the designated areas within the district.

''(4) The clerk shall exclude a particular counseling service from the list maintained under section 342(b)(2) of this title if the United States trustee or bankruptcy administrator orders that the counseling service not be included in the list.

''(5) The court may waive the requirement specified in paragraph (1) if—

''(A) no credit counseling services are available as designated under paragraphs (2) and (3);

''(B) the providers of credit counseling services available in the district are unable or unwilling to provide such services to the debtor in a timely manner; or

''(C) foreclosure, garnishment, attachment, eviction, levy of execution, utility termination, repossession, or similar claim enforcement procedure that would have deprived the individual of property had commenced or threatened to commence before the debtor could complete a good-faith attempt to create such a repayment plan.

''(6) A debtor who is subject to the exemption under paragraph (5)(C) shall be required to make a good-faith attempt to create a debt repayment plan outside the judicial system in the manner prescribed in paragraph (1) during the 30-day period beginning on the date of filing of the petition of that debtor.

''(7) A debtor shall be exempted from the bad faith presumption for repeat filing under section 362(c) of title 11 if the case is dismissed due to the creation of a debt repayment plan.

''(8) Only the United States trustee may make a motion for dismissal on the ground that the debtor did not comply with this subsection.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 406 and 407, is amended by adding at the end the following:

''(g)(1) In addition to the requirements under subsection (a), an individual debtor shall file with the court—

''(A) a certificate from the credit counseling services that provided the debtor services under section 109(i), or a verified statement as to why such attempt was not required under section 109(i) or other substantial evidence of a good-faith attempt to create a debt repayment plan outside the bankruptcy system in the manner prescribed in section 109(i); and

''(B) a copy of the debt repayment plan, if any, developed under section 109(i) through the credit counseling service referred to in paragraph (1).

''(2) Only the United States trustee may make a motion for dismissal on the ground that the debtor did not comply with this subsection.''.

Subtitle B—Adequate Protections for Consumers

SEC. 111. NOTICE OF ALTERNATIVES.

(a) Section 342(b) of title 11, United States Code, is amended to read as follows:

''(b)(1) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, the individual shall be given or obtain (as required to be certified under section 521(a)(1)(B)(viii)) a written notice that is prescribed by the United States trustee for the district in which the petition is filed pursuant to section 586 of title 28 and that contains the following:

''(A) A brief description of chapters 7, 11, 12 and 13 of this title and the general purpose, benefits, and costs of proceeding under each of such chapters.

''(B) A brief description of services that may be available to the individual from an independent nonprofit debt counselling service.

''(C) The name, address, and telephone number of each nonprofit debt counselling service (if any)—

''(i)(I)with an office located in the district in which the petition is filed; or

''(ii)(II) that offers toll-free telephone communication to debtors in such district; and

''(ii) that provides such service without charge or on an appropriate reduced fee basis.

''(2) Any such nonprofit debt counselling service that registers with the clerk of the bankruptcy court on or before December 10 of the preceding year shall be included in such list unless the chief bankruptcy judge of the district, after notice to the debt counselling service and the United States trustee and opportunity for a hearing, for good cause, orders that such debt counselling service shall not be so listed.

''(3) The clerk shall make such notice available to individuals whose debts are primarily consumer debts.

''(4) The United States trustee may file a motion with the bankruptcy court to request the removal of any debt counseling service from such list.''.

(b) Section 586(a) of title 28, United States Code, is amended—

(1) in paragraph (5) by striking ''and'' at the end;

(2) in paragraph (6) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(7) on or before January 1 of each calendar year, and also within 30 days of any change in the nonprofit debt counselling services registered with the bankruptcy court, prescribe and make available on request the notice described in section 342(b)(1) of title 11 for each district included in the region.''.

SEC. 112. DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM.

(a) DEVELOPMENT OF FINANCIAL MANAGEMENT AND TRAINING CURRICULUM AND MATERIALS.—The Director of the Executive Office for United States Trustees (in this section referred to as the ''Director'') shall consult with a wide range of individuals who are experts in the field of debtor education, including trustees who are appointed under chapter 13 of title 11 of the United States Code and who operate financial management education programs for debtors, and shall develop a financial management training curriculum and materials that can be used to educate individual debtors on how to better manage their finances.

(b) TEST—(1) The Director shall select 3 judicial districts of the United States in which to test the effectiveness of the financial management training curriculum and materials developed under subsection (a).

(2) For a 1-year period beginning not later than 180 days after the date of the enactment of this Act, such curriculum and materials shall be made available by the Director, directly or indirectly, on request to individual debtors in cases filed in such 1-year period under chapter 7 or 13 of title 11 of the United States Code.

(3) The bankruptcy courts in each of such districts may require individual debtors in such cases to undergo such financial management training as a condition to receiving a discharge in such case.

(c) EVALUATION.—(1) During the 1-year period referred to in subsection (b), the Director shall evaluate the effectiveness of—

(A) the financial management training curriculum and materials developed under subsection (a); and

(B) a sample of existing consumer education programs such as those described in the Report of the National Bankruptcy Review Commission (October 20, 1997) that are representative of consumer education programs carried out by the credit industry, by trustees serving under chapter 13 of title 11 of the United States Code, and by consumer counselling groups.

(2) Not later than 3 months after concluding such evaluation, the Director shall submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate, for referral to the appropriate committees of the Congress, containing the findings of the Director regarding the effectiveness of such curriculum, such materials, and such programs.

SEC. 113. DEFINITIONS.

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

(1) by inserting after paragraph (3) the following:

''(3A) 'assisted person' means any person whose debts consist primarily of consumer debts and whose non-exempt assets are less than $150,000;'';

(2) by inserting after paragraph (4) the following:

''(4A) 'bankruptcy assistance' means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation or filing, or attendance at a creditors' meeting or appearing in a proceeding on behalf of another or providing legal representation with respect to a proceeding under this title;''; and

(3) by inserting after paragraph (12A) the following:

''(12B) 'debt relief counselling agency' means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer pursuant to section 110 of this title, but does not include any person that is any of the following or an officer, director, employee or agent thereof—

''(A) any nonprofit organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

''(B) any creditor of the person to the extent the creditor is assisting the person to restructure any debt owed by the person to the creditor; or

''(C) any depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such a depository institution or credit union;''.

(b) CONFORMING AMENDMENT.—In section 104(b)(1) by inserting ''101(3),'' after ''sections''.

SEC. 114. DISCLOSURES.

(a) DISCLOSURES.—Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

''§ 526. Disclosures

''(a) A debt relief counselling agency providing bankruptcy assistance to an assisted person shall provide the following notices to the assisted person:

''(1) the written notice required under section 342(b)(1) of this title; and

''(2) to the extent not covered in the written notice described in paragraph (1) of this section and no later than three business days after the first date on which a debt relief counselling agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons of the following—

''(A) all information the assisted person is required to provide with a petition and thereafter during a case under this title must be complete, accurate and truthful;

''(B) all assets and all liabilities must be completely and accurately disclosed in the documents filed to commence the case, and the value of each asset as defined in section 506 of this title must be stated in those documents where requested after reasonable inquiry to establish such value;

''(C) household income, and, in a chapter 13 case, disposable income, must be stated after reasonable inquiry; and

''(D) that information an assisted person provides during their case may be audited pursuant to this title and that failure to provide such information may result in dismissal of the proceeding under this title or other sanction including, in some instances, criminal sanctions.

''(b) A debt relief counselling agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) with the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:

''''IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER

''''If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.

''''The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

''''Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief made available by the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a ''trustee'' and by creditors.

''''If you select a chapter 7 proceeding, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so.

''''If you select a chapter 13 proceeding in which you repay your creditors what you can afford over three to seven years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.'

''''If you select another type of proceeding under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out

what needs to be done from someone familiar with that type of proceeding.

''`Your bankruptcy proceeding may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can represent you in litigation.'.

''(c) Except to the extent the debt relief counselling agency provides the required information itself after reasonably diligent inquiry of the assisted person or others so as to obtain such information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, a debt relief counselling agency providing bankruptcy assistance to an assisted person, to the extent authorized by applicable nonbankruptcy law, shall provide each assisted person at the time required for the notice required under subsection (a)(1) reasonably sufficient information (which may be provided orally or in a clear and conspicuous writing) to the assisted person on how to provide all the information the assisted person is required to provide under this title pursuant to section 521, including—

''(1) how to value assets at replacement value, determine household income and, in a chapter 13 case, disposable income, and related calculations;

''(2) how to complete the list of creditors, including how to determine what amount is owed and what address for the creditor should be shown;

''(3) how to determine what property is exempt and how to value exempt property as defined in section 506 of this title; and

''(4) a clear and conspicuous statement that an employee of such service may not provide legal advice unless such employee is an attorney.

''(d) A debt relief counselling agency shall maintain a copy of the notices required under subsection (a) of this section for two years after the later of the date on which the notice is given the assisted person.''.

(b) CONFORMING AMENDMENT.—The table of section for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 525 the following:

''526. Disclosures.''.

SEC. 115. DEBTOR'S BILL OF RIGHTS.

(a) DEBTOR'S BILL OF RIGHTS.—Subchapter II of chapter 5 of title 11, United States Code, as amended by section 114, is amended by adding at the end the following:

''§ 527. Debtor's bill of rights

''(a) A debt relief counselling agency shall—

''(1) no later than three business days after the first date on which a debt relief counselling agency provides any bankruptcy assistance services to an assisted person, execute a written contract with the assisted person specifying clearly and conspicuously the services the agency will provide the assisted person and the basis on which fees or charges will be made for such services and the terms of payment, and give the assisted person a copy of the fully executed and completed contract in a form the person can keep;

''(2) disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages or otherwise) that the services or benefits are with respect to proceedings under this title, clearly and conspicuously using the following statement: 'We are a debt relief counselling agency. We help people file Bankruptcy petitions to obtain relief under the Bankruptcy Code.' or a substantially similar statement. An advertisement shall be of bankruptcy assistance services if it describes or offers bankruptcy assistance with a chapter 13 plan, regardless of whether chapter 13 is specifically mentioned, including such statements as 'federally supervised repayment plan' or 'Federal debt restructuring help' or other similar statements which would lead a reasonable consumer to believe that help with debts was being offered when in fact in most cases the help available is bankruptcy assistance with a chapter 13 plan; and

''(3) if an advertisement directed to the general public indicates that the debt relief counselling agency provides assistance with respect to credit defaults, mortgage foreclosures, lease eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt, disclose conspicuously in that advertisement that the assistance is with respect to or may involve proceedings under this title, using the following statement: ''We are a debt relief counselling agency. We help people file Bankruptcy petitions to obtain relief under the Bankruptcy Code.'' or a substantially similar statement.

''(b) A debt relief counselling agency shall not—

''(1) fail to perform any service which the debt relief counseling agency has told the assisted person or prospective assisted person the agency would provide that person in connection with the preparation for or activities during a proceeding under this title;

''(2) make any statement, or counsel or advise any assisted person to make any statement in any document filed in a proceeding under this title, which is untrue or misleading and which upon the exercise of reasonable care, should be known by the debt relief counselling agency to be untrue or misleading;

''(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, what services the debt relief counselling agency can reasonably expect to provide that person, or the benefits an assisted person may obtain or the difficulties the person may experience if the person seeks relief in a proceeding pursuant to this title; or

''(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of that person filing a proceeding under this title or in order to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a proceeding under this title.''.

(b) CONFORMING AMENDMENT.—The table of section for chapter 5 of title 11, United States Code, as amended by section 114, is amended by inserting after the item relating to section 526, the following:

''527. Debtor's bill of rights.''.

SEC. 116. ENFORCEMENT.

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, as amended by sections 114 and 115, is amended by adding at the end the following:

''§ 528. Debt relief counselling agency enforcement

''(a) ASSISTED PERSON WAIVERS INVALID.—Any waiver by any assisted person of any protection or right provided by or under section 526 or 527 of this title shall be void and may not be enforced by any Federal or State court or any other person.

''(b) NONCOMPLIANCE.—

''(1) Any contract between a debt relief counselling agency and an assisted person for bankruptcy assistance which does not comply with the requirements of section 526 or 527 of this title shall be treated as void and may not be enforced by any Federal or State court or by any other person.

''(2) Any debt relief counselling agency which has been found, after notice and hearing, to have—

''(A) failed to comply with any provision of section 526 or 527 with respect to a bankruptcy case or related proceeding of an assisted person; or

''(B) negligently or intentionally disregarded the requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such debt relief counselling agency shall be liable to the assisted person in the amount of any fees and charges in connection with providing bankruptcy assistance to such person which the debt relief counselling agency has already been paid on account of that proceeding and if the case has not been closed, the court may in addition require the debt relief counselling agency to continue to provide bankruptcy assistance services in the pending case to the assisted person without further fee or charge or upon such other terms as the court may order.

''(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating section 526 or 527 of this title, the State—

''(A) may bring an action to enjoin such violation;

''(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and

''(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

''(4) The United States District Court for any district located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).

''(5) The rights and remedies provided in this section are in addition to any rights and remedies provided under any other provision of Federal law.

''(c) RELATION TO STATE LAW.—This section and sections 526 and 527 shall not annul, alter, affect or exempt any person subject to those sections from complying with any law of any State.''.

(b) CONFORMING AMENDMENT.—The table of section for chapter 5 of title 11, United States Code, as amended by sections 114 and 115, is amended by inserting after the item relating to section 527, the following:

''528. Debt relief counselling agency enforcement.''.

SEC. 117. SENSE OF THE CONGRESS.

It is the sense of the Congress that States should develop curricula relating to the subject of personal finance, designed for use in elementary and secondary schools.

SEC. 118. CHARITABLE CONTRIBUTIONS.

(a) DEFINITIONS.—Section 548(d) of title 11, United States Code, is amended by adding at the end the following:

''(3) In this section, the term 'charitable contribution' means a charitable contribution, as that term is defined in section 170(c) of the Internal Revenue Code of 1986, if that contribution—

''(A) is made by a natural person; and

''(B) consists of—

''(i) a financial instrument (as that term is defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986); or

''(ii) cash.

''(4) In this section, the term 'qualified religious or charitable entity or organization' means—

''(A) an entity described in section 170(c)(1) of the Internal Revenue Code of 1986; or

''(B) an entity or organization described in section 170(c)(2) of the Internal Revenue Code of 1986.''.

(b) TREATMENT OF PREPETITION QUALIFIED CHARITABLE CONTRIBUTIONS.—

(1) IN GENERAL.—Section 548(a) of title 11, United States Code, is amended—

(A) by inserting ''(1)'' after ''(a)'';

(B) by striking ''(1) made'' and inserting ''(A) made'';

(C) by striking ''(2)(A)'' and inserting ''(B)(i)'';

(D) by striking ''(B)(i)'' and inserting ''(ii)(I)'';

(E) by striking ''(ii) was'' and inserting ''(II) was'';

(F) by striking ''(iii)'' and inserting ''(III)''; and

(G) by adding at the end the following:

''(2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which—

''(A) the aggregate annual amount of all contributions to qualified religious or charitable entities or organizations does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or

''(B) the contribution made by a debtor exceeded the maximum amount specified in subparagraph (A), but the transfer was consistent with the practices of the debtor in making charitable contributions.''.

(2) TRUSTEE AS LIEN CREDITOR AND AS SUCCESSOR TO CERTAIN CREDITORS AND PURCHASERS.—Section 544(b) of title 11, United States Code, is amended—

(A) by striking ''(b) The trustee'' and inserting ''(b)(1) Except as provided in paragraph (2), the trustee''; and

(B) by adding at the end the following:

''(2) Paragraph (1) shall not apply to a transfer of a charitable contribution (as that term is defined in section 548(d)(3)) that is not covered under section 548(a)(1)(B), by reason of section 548(a)(2). Any claim by any person to recover a transferred contribution described in the preceding sentence under Federal or State law in a Federal or State court shall be preempted by the commencement of the case.''.

(3) CONFORMING AMENDMENTS.—Section 546 of title 11, United States Code, is amended—

(A) in subsection (e)—

(i) by striking ''548(a)(2)'' and inserting ''548(a)(1)(B)''; and

(ii) by striking ''548(a)(1)'' and inserting ''548(a)(1)(A)'';

(B) in subsection (f)—

(i) by striking ''548(a)(2)'' and inserting ''548(a)(1)(B)''; and

(ii) by striking ''548(a)(1)'' and inserting ''548(a)(1)(A)''; and

(C) in subsection (g)—

(i) by striking ''section 548(a)(1)'' each place it appears and inserting ''section 548(a)(1)(A)''; and

(ii) by striking ''548(a)(2)'' and inserting ''548(a)(1)(B)''.

(d) TREATMENT OF POSTPETITION CHARITABLE CONTRIBUTIONS.—

(1) CONFIRMATION OF CHAPTER 13 PLAN.—Section 1325(b)(2)(A) of title 11, United States Code, is amended by inserting before the semicolon the following: '', including charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3)) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of the gross income of the debtor for the year in which the contributions are made''.

(2) DISMISSAL OF CHAPTER 7 CASE.—Section 707(b) of title 11, United States Code, is amended by adding at the end the following: ''In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).''.

(3) CONTENTS OF CHAPTER 11 PLAN.—Section 1123 of title 11, United States Code, is amended by adding at the end the following:

''(e) In a case concerning an individual, the plan may provide for charitable contributions (as defined in section 548(d)(3) of this title) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4) of this title) in an aggregate annual amount not to exceed 15 percent of the gross income of the debtor for the year in which such contributions are made.''.

(4) CONFIRMATION OF CHAPTER 12 PLAN.—Section 1225(b)(2) of title 11, United States Code, is amended—

(A) in subparagraph (A) by striking ''or'' at the end;

(B) in subparagraph (B) by striking the period at the end and inserting ''; or''; and

(C) by inserting adding at the end the following

''(C) for charitable contributions (as defined in section 548(d)(3) of this title) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4) of this title) in an aggregate annual amount not to exceed 15 percent of the gross income of the debtor for the year in which such contributions are made.''.

(e) APPLICABILITY.—

This section and the amendments made by this section shall apply to any case brought under an applicable provision of title 11, United States Code, that is pending or commenced on or after the date of enactment of this Act.

(f) RULE OF CONSTRUCTION.—

Nothing in the amendments made by this section is intended to limit the applicability of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2002bb et seq.).

SEC. 119. REINFORCE THE FRESH START.

(a) RESTORATION OF AN EFFECTIVE DISCHARGE.—Section 523(a)(17) of title 11, United States Code, is amended—

(1) by striking ''by a court'' and inserting ''on a prisoner by any court'',

(2) by striking ''section 1915(b) or (f)'' and inserting ''subsection (b) or (f)(2) of section 1915'', and

(3) by inserting ''(or a similar non-Federal law)'' after ''title 28'' each place it appears.

(b) PROTECTION OF RETIREMENT FUNDS IN BANKRUPTCY.—Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)(2)—

(A) in subparagraph (A) by striking ''and'' at the end;

(B) in subparagraph (B) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(C) retirement funds to the extent exempt from taxation under section 401, 403, 408, 414, 457, or 501(a) of the Internal Revenue Code of 1986.''; and

(2) in subsection (d) by adding at the end the following:

''(12) Retirement funds to the extent exempt from taxation under 401, 403, 408, 414, 457, or 501(a) of the Internal Revenue Code of 1986.''.

(c) EFFECTIVE PROTECTION FOR UTILITY SERVICE IN THE WAKE OF DEREGULATION.—Section 366 of title 11, United States Code, is amended by adding at the end the following:

''(c) For the purposes of this section, the term 'utility' includes any provider of gas, electric, telephone, telecommunication, cable television, satellite communication, water, or sewer service, whether or not such service is a regulated monopoly.''.

SEC. 119A. CHAPTER 11 DISCHARGE OF DEBTS ARISING FROM TOBACCO-RELATED DEBTS.

Section 1141(d) of title 11, United States Code, is amended by adding at the end the following:

''(5) The confirmation of a plan does not discharge a debtor that is a corporation from any debt arising from a judicial, administrative, or other action or proceeding that is—

''(A) related to the consumption or consumer purchase of a tobacco product; and

''(B) based in whole or in part on false pretenses, a false representation, or actual fraud.''.

Subtitle C—Adequate Protections for Secured Creditors

SEC. 121. DISCOURAGING BAD FAITH REPEAT FILINGS.

Section 362(c) of title 11, United States Code, is amended—

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

(2) in paragraph (2) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

''(3) If a single or joint case is filed by or against an individual debtor under chapter 7, 11, or 13, and if a single or joint case of that debtor was pending within the previous 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) of this title, the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease will terminate with respect to the debtor on the 30th day after the filing of the later case. If a party in interest requests, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. A case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(A) as to all creditors if—

''(i) more than 1 previous case under any of chapters 7, 11, or 13 in which the individual was a debtor was pending within such 1-year period;

''(ii) a previous case under any of chapters 7, 11, or 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

''(iii) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under any of chapters 7, 11, or 13 of this title, or any other reason to conclude that the later case will be concluded, if a case under chapter 7 of this title, with a discharge, and if a chapter 11 or 13 case, a confirmed plan which will be fully performed;

''(B) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of that case, that

action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of that creditor.

''(4) If a single or joint case is filed by or against an individual debtor under this title, and if 2 or more single or joint cases of that debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b) of this title, the stay under subsection (a) will not go into effect upon the filing of the later case. On request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect. If a party in interest requests within 30 days of the filing of the later case, the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. A stay imposed pursuant to the preceding sentence will be effective on the date of entry of the order allowing the stay to go into effect. A case is presumptively not filed in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(A) as to all creditors if—

''(i) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

''(ii) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to pay adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

''(iii) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

''(B) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of that case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to action of that creditor.

''(5)(A) If a request is made for relief from the stay under subsection (a) with respect to real or personal property of any kind, and such request is granted in whole or in part, the court may order in addition that the relief so granted shall be in rem either for a definite period not less than 1 year or indefinitely. After the issuance of such an order, the stay under subsection (a) shall not apply to any property subject to such an in rem order in any case of the debtor under this title. If such an order so provides, such stay shall also not apply in any pending or later-filed case of any entity under this title that claims or has an interest in the subject property other than those entities identified in the court's order.

''(B) The court shall cause any order entered pursuant to this paragraph with respect to real property to be recorded in the applicable real property records, which recording shall constitute notice to all parties having or claiming an interest in such real property for purpose of this section.

''(6) For the purposes of this section, a case is pending from the time of the order for relief until the case is closed.''.

SEC. 122. DEFINITION OF HOUSEHOLD GOODS.

Section 101 of title 11, United States Code, is amended by inserting after paragraph (27) the following:

''(27A) 'household goods' has the meaning given such term in the Trade Regulation Rule on Credit Practices promulgated by the Federal Trade Commission (16 C.F.R. 444.1(i)), as in effect on the effective date of this paragraph, but includes any tangible personal property reasonably necessary for the maintenance or support of a dependent child, including children's toys;''.

SEC. 123. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.

Title 11, United States Code, is amended—

(1) in section 521—

(A) in paragraph (4) by striking ''and'' at the end;

(B) in paragraph (5) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(6) in an individual case under chapter 7 of this title, not retain possession of personal property having a value exceeding $5,000 as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in that personal property unless, in the case of an individual debtor, the debtor takes 1 of the following actions within 30 days after the first meeting of creditors under section 341(a)—

''(A) enters into a reaffirmation agreement with the creditor pursuant to section 524(c) of this title with respect to the claim secured by such property; or

''(B) redeems such property from the security interest pursuant to section 722 of this title.

''If the debtor fails to so act within the 30-day period, the personal property affected shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee, and after notice and a hearing, that such property is of consequential value or benefit to the estate.''; and

(2) in section 722 by inserting ''in full at the time of redemption'' before the period at the end.

SEC. 124. RELIEF FROM STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.

Title 11, United States Code, is amended as follows—

(1) in section 362—

(A) by striking ''(e), and (f)'' in subsection (c) and inserting in lieu thereof ''(e), (f), and (h)''; and

(B) by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following:

''(h) In an individual case pursuant to chapter 7, 11, or 13 the stay provided by subsection (a) is terminated with respect to property of the estate having a value exceeding $5000 and securing in whole or in part a claim, or subject to an unexpired lease, if the debtor fails within the applicable time set by section 521(a)(2) of this title—

''(1) to file timely any statement of intention required under section 521(a)(2) of this title with respect to that property or to indicate therein that the debtor will either surrender the property or retain it and, if retaining it, either redeem the property pursuant to section 722 of this title, reaffirm the debt it secures pursuant to section 524(c) of this title, or assume the unexpired lease pursuant to section 365(p) of this title if the trustee does not do so, as applicable; or

''(2) to take timely the action specified in that statement of intention, as it may be amended before expiration of the period for taking action, unless the statement of intention specifies reaffirmation and the creditor refuses to reaffirm on the original contract terms;

unless the court determines on the motion of the trustee, and after notice and a hearing, that such property is of consequential value or benefit to the estate.'';

(2) in section 521, as amended by sections 104, 406, and 407—

(A) in paragraph (2) by striking ''consumer'';

(B) in paragraph (2)(B)—

(i) by striking ''forty-five days after the filing of a notice of intent under this section'' and inserting ''30 days after the first date set for the meeting of creditors under section 341(a)''; and

(ii) by striking ''forty-five day'' the second place it appears and inserting ''30-day'';

(C) in paragraph (2)(C) by inserting ''except as provided in section 362(h)'' before the semicolon; and

(D) by adding at the end the following:

''(h) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h) of this title, with respect to property which a lessor or bailor owns and has leased, rented, or bailed to the debtor or as to which a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agreement which has the effect of placing the debtor in default under such lease or agreement by reason of the occurrence, pendency, or existence of a proceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to justify limiting such a provision in any other circumstance.''.

SEC. 125. GIVING SECURED CREDITORS FAIR TREATMENT IN CHAPTER 13.

Section 1325(a)(5)(B)(i) of title 11, United States Code, is amended to read as follows:

''(i) the plan provides that the holder of such claim retain the lien securing such claim until the earlier of payment of the underlying debt determined under nonbankruptcy law or discharge under section 1328, and that if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law; and''.

SEC. 126. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.

Section 362(e) of title 11, United States Code, is amended by inserting at the end the following:

''Notwithstanding the foregoing, in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate 60 days after a request under subsection (d) of this section, unless—

''(1) a final decision is rendered by the court within such 60-day period; or

''(2) such 60-day period is extended either by agreement of all parties in interest or by the court for a specific time which the court finds is required by compelling circumstances.''.

SEC. 127. STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.

Section 348(f)(1) of title 11, United States Code, is amended—

(1) by striking in subparagraph (B) ''in the converted case, with allowed secured claims'' and inserting in lieu thereof ''only in a case converted to chapter 11 or 12 but not in one converted to chapter 7, with allowed secured claims in cases under chapters 11 and 12''; and

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

(3) in subparagraph (B) by striking the period and inserting ''; and''; and

(4) by adding at the end the following:

''(C) with respect to cases converted from chapter 13, the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of that claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter of this title. Unless a prebankruptcy default has been fully cured pursuant to the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.''.

SEC. 128. RESTRAINING ABUSIVE PURCHASES ON SECURED CREDIT.

Section 506 of title 11, United States Code, is amended by adding at the end the following:

''(e) In an individual case under chapter 7, 11, 12, or 13—

''(1) subsection (a) shall not apply to an allowed claim to the extent attributable in whole or in part to the purchase price of personal property acquired by the debtor within 90 days of the filing of the petition, except for the purpose of applying paragraph (3) of this subsection;

''(2) if such allowed claim attributable to the purchase price is secured only by the personal property so acquired, the value of the personal property and the amount of the allowed secured claim shall be the sum of the unpaid principal balance of the purchase price and accrued and unpaid interest and charges at the contract rate;

''(3) if such allowed claim attributable to the purchase price is secured by the personal property so acquired and other property, the value of the security may be determined under subsection (a), but the value of the security and the amount of the allowed secured claim shall be not less than the unpaid principal balance of the purchase price of the personal property acquired and unpaid interest and charges at the contract rate; and

''(4) in any subsequent case under this title that is filed by or against the debtor in the 2-year period beginning on the date the petition is filed in the original case, the value of the personal property and the amount of the allowed secured claim shall be deemed to be not less than the amount provided under paragraphs (2) and (3).''.

SEC. 129. FAIR VALUATION OF COLLATERAL.

The last sentence of section 506(a) of title 11, United States Code, is amended to read as follows:

''Such value shall be the liquidation value of the property which shall be not more than the cash wholesale value of the property and shall be determined in conjunction with any hearing on a plan or after notice and a hearing pursuant to any other provision of this title when they are paid in full.''.

SEC. 130. PROTECTION OF HOLDERS OF CLAIMS SECURED BY DEBTOR'S PRINCIPAL RESIDENCE.

Title 11, United States Code, is amended—

(1) in section 101 by inserting after paragraph (13) the following:

''(13A) 'debtor's principal residence' means a residential structure including incidental property when the structure contains 1 to 4 units, whether or not that structure is attached to real property, and includes, without limitation, an individual condominium or cooperative unit or mobile or manufactured home or trailer;

''(13B) 'incidental property' means property incidental to such residence including, without limitation, property commonly conveyed with a principal residence where the real estate is located, window treatments, carpets, appliances and equipment located in the residence, and easements, appurtenances, fixtures, rents, royalties, mineral rights, oil and gas rights, escrow funds and insurance proceeds;'';

(2) in section 362(b)—

(A) in paragraph (17) by striking ''or'' at the end thereof;

(B) in paragraph (18) by striking the period at the end and inserting ''; or''; and

(C) by inserting after paragraph (18) the following:

''(19) under subsection (a), until a prepetition default is cured fully in a case under chapter 13 of this title case by actual payment of all arrears as required by the plan, of the postponement, continuation or other similar delay of a prepetition foreclosure proceeding or sale in accordance with applicable nonbankruptcy law, but nothing herein shall imply that such postponement, continuation or other similar delay is a violation of the stay under subsection (a).''; and

(3) by amending section 1322(b)(2) to read as follows:

''(2) modify the rights of holders of secured claims, other than a claim secured primarily by a security interest in property used as the debtor's principal residence at any time during 180 days prior to the filing of the petition, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;''.

SEC. 131. AIRCRAFT EQUIPMENT AND VESSELS.

Section 1110(a)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A) by striking ''that become due on or after the date of the order'';

(2) in subparagraph (B)—

(A) in clause (i) by striking ''and'' at the end; and

(B) in clause (ii)—

(i) by inserting ''and within such 60-day period'' after ''order''; and

(ii) in subclause (II) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(iii) that occurs after the date of the order and such 60-day period is cured in accordance with the terms of such security agreement, lease, or conditional sale contract.''.

Subtitle D—Adequate Protections for Unsecured Creditors

SEC. 141. FRAUDULENT DEBTS ARE NONDISCHARGEABLE IN CHAPTER 13 CASES.

Section 1328(a)(2) of title 11, United States Code, is amended—

(1) by inserting ''(2), (3)(B), (4),'' after ''paragraph''; and

(2) by inserting ''(6),'' after ''(5),''.

SEC. 142. APPLYING THE CODEBTOR STAY ONLY WHEN IT PROTECTS THE DEBTOR.

Section 1301(b) of title 11, United States Code, is amended—

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

(2) by adding at the end the following:

''(2) When the debtor did not receive the consideration for the claim held by a creditor, the stay provided by subsection (a) does not apply to such creditor, notwithstanding subsection (c), to the extent the creditor proceeds against the individual which received such consideration or against property not in the possession of the debtor which secures such claim, after notice and a hearing to the person in possession of such property, but this subsection shall not apply if the debtor is primarily obligated to pay the creditor in whole or in part with respect to the claim under a legally binding separation agreement, or divorce or dissolution decree, with respect to such individual or the person who has possession of such property.

''(3) When the debtor's plan provides that the debtor's interest in personal property subject to a lease as to which the debtor is the lessee will be surrendered or abandoned or no payments will be made under the plan on account of the debtor's obligations under the lease, the stay provided by subsection (a) shall terminate as of the date of confirmation of the plan notwithstanding subsection (c).''.

SEC. 143. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

Section 523(a)(5) of title 11, United States Code, is amended to read as follows:

''(5) to a spouse, former spouse, or child of the debtor for alimony to, maintenance for, or support of such spouse or child, or to a spouse, former spouse, or child of the debtor, to the extent such debt is the result of a property settlement agreement, a hold harmless agreement, or any other type of debt that is not in the nature of alimony, maintenance, or support in connection with or incurred by the debtor in the course of a separation agreement, divorce decree, any modifications thereof, or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, but not to the extent that such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or such debt that has been assigned to the Federal government, or to a State or political subdivision of such State, or the creditor's attorney);''.

SEC. 144. OTHER EXCEPTIONS TO DISCHARGE.

Section 523 of title 11, United States Code, is amended—

(1) by striking subsection (a)(15), as added by section 304(e)(1) of Public Law 103–394;

(2) in subsection (a)(7) by inserting ''an order of disgorgement or restitution obtained by a governmental unit'' after ''such debt is for''; and

(3) in subsection (c)(1) by striking ''(6), or (15)'' and inserting ''or (6)''.

SEC. 145. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.

(a) EXCEPTION TO DISCHARGE.—Section 523(a)(16) of title 11, United States Code, is amended—

(1) by striking ''dwelling'' the 1st place it appears;

(2) by striking ''ownership or'' and inserting ''ownership,'';

(3) by striking ''housing'' the 1st place it appears; and

(4) by striking ''but only'' and all that follows through ''such period,'', and inserting ''or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot,''.

(b) EXECUTORY CONTRACTS.—Section 365 of title 11, United States Code, as amended by section 161, is amended by adding at the end the following:

''(q) A debt of a kind described in section 523(a)(16) of this title shall not be considered to be a debt arising from an executory contract.''

SEC. 146. ADEQUATE PROTECTION FOR INVESTORS.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (48) the following:

''(48A) 'securities self regulatory organization' means either a securities association registered with the Securities and Exchange Commission pursuant to section 15A of the Securities Exchange Act of 1934 or a national

securities exchange registered with the Securities and Exchange Commission pursuant to section 6 of the Securities Exchange Act of 1934;''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17) by striking ''or'' at the end;

(2) in paragraph (18) by striking the period at the end and a inserting ''; or''; and

(3) by adding at the end the following:

''(19) under subsection (a) of this section, of the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power; of the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by the securities self regulatory organization to enforce such organization's regulatory power; or of any act taken by the securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements.''.

SEC. 147. SUPER-PRIORITY FOR CHILD AND SPOUSAL SUPPORT CLAIMS.

Section 507 of title 11, United States Code, is amended by adding at the end the following:

''(e) Notwithstanding any other provision of this title, a claim entitled to priority under subsection (a)(7) shall have first priority over any expense or claim that has priority under any other provision of this title, except that administrative expenses may be paid under the priority provided in subsection (a)(1) if the failure to do so would result in less property being distributed to the holder of a claim of a kind specified in subsection (a)(7).''.

SEC. 148. DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

(a) NONDISCHARGEABILITY.—Section 523(a)(18) of title 11, United States Code, is amended—

(1) by inserting ''(including interest)'' after ''law''; and

(2) in subparagraph (A) by striking ''and'' at the end and inserting ''or''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 130, is amended—

(1) in paragraph (19) by striking ''or'' at the end;

(2) in paragraph (19) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(20) under subsection (a) with respect to the withholding of income pursuant to an order for support that is owed to a spouse, former spouse, or child of the debtor; or

''(21) under subsection (a) with respect to the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses pursuant to State law as specified in section 466(a)(15) of the Social Security Act or with respect to the reporting of overdue support owed by an absent parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act.''.

(c) CONTINUED LIABILITY OF PROPERTY.—Section 522(c) of title 11, United States Code, is amended by striking ''section 523(a)(1) or 523(a)(5)'' and inserting ''paragraph (1) or (5) of section 523(a)''.

(d) CONFIRMATION OF PLANS.—Title 11 of the United States Code is amended—

(1) in section 1129(a) by adding at the end the following:

''(14) If the debtor is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, the debtor has paid all amounts payable under such order for current alimony, maintenance, or support that are due after the date the petition is filed and owed to such spouse, former spouse, or child, unless such spouse, former spouse, or child waives the operation of this paragraph.'';

(2) in section 1225(a)—

(A) in paragraph (5) by striking ''and'' at the end;

(B) in paragraph (6) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(7) the debtor is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, the debtor has paid all amounts payable under such order for current alimony, maintenance, or support that are due after the date the petition is filed and owed to such spouse, former spouse, or child, unless such spouse, former spouse, or child waives the operation of this paragraph.''; and

(3) in section 1325(a)—

(A) in paragraph (5) by striking ''and'' at the end;

(B) in paragraph (6) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(7) if the debtor is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, the debtor has paid all amounts payable under such order for current alimony, maintenance, or support that are due after the date the petition is filed and owed to such spouse, former spouse, or child, unless such spouse, former spouse, or child waives the operation of this paragraph.''.

(f) DISCHARGE.—Title 11 United States Code is amended—

(1) in section 1228(a) by inserting ''and only after a debtor who is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, certifies that all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed have been paid unless such spouse, former spouse, or child waives the operation of this paragraph,'' after ''this title,''; and

(2) in section 1328(a) by inserting ''and only after a debtor who is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, certifies that all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed have been paid unless such spouse, former spouse, or child waives the operation of this paragraph,'' after ''plan,'' the 1st place it appears.

(g) CONFORMING AMENDMENTS.—Section 456(b) of the Social Security Act (42 U.S.C. 656(b)) is amended—

(1) by inserting '', including interest,'' after ''Code)'';

(2) by striking ''and'' and inserting ''or''; and

(3) by striking ''released by a discharge'' and inserting ''dischargeable''.

SEC. 149. PROTECTION OF CHILD SUPPORT AND ALIMONY.

(a) AMENDMENT.—Title 11 of the United States Code, as amended by section 116, is amended by inserting after section 528 the following:

''§ 529. Protection of child support and alimony payments after the discharge

''Notwithstanding the provisions of the constitution or law of any State providing a different priority, any debts of the individual who has received a discharge under this title to a spouse, former spouse, or child for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree, or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

''(1) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

''(2) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support,

and any debt of a kind specified in paragraph (6), (9), or (13) of section 523(a) of this title, shall have priority in payment and collection over a creditor's claim which is not discharged in the individual's case pursuant to paragraph (2) or (4) of section 523(a) of this title, but such priority shall not affect the priority of any consensual lien, mortgage, or security interest securing such creditor's claim.''.

(b) CONFORMING AMENDMENT.—The table of sections of chapter 5 of title 11, United States Code, as amended by section 116, is amended by inserting after the item relating to section 528 the following:

''529. Protection of child support and alimony.''.

Subtitle E—Adequate Protections for Lessors

SEC. 161. GIVING DEBTORS THE ABILITY TO KEEP LEASED PERSONAL PROPERTY BY ASSUMPTION.

Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p)(1) If a lease of personal property with an aggregate value of not less than $5,000 leased by the debtor is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) of this title is automatically terminated.

''(2) In the case of an individual under chapter 7, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the lessor. If within 30 days of such notice the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate. The stay under section 362 of this title and the injunction under section 524(a)(2) of this title shall not be violated by notification of the debtor and negotiation of cure under this subsection.

''(3) In a case under chapter 11 of this title in which the debtor is an individual and in a case under chapter 13 of this title, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 of this title and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.''.

Subtitle F—Bankruptcy Relief Less Frequently Available for Repeat Filers

SEC. 171. EXTEND PERIOD BETWEEN BANKRUPTCY DISCHARGES.

Section 727(a)(8) of title 11, United States Code, is amended by striking ''six'' and inserting ''7''.

Subtitle G—Exemptions

SEC. 181. EXEMPTIONS.

Section 522(b)(2)(A) of title 11, United States Code, is amended—

(1) by striking ''180'' and inserting ''365''; and

(2) by striking '', or for a longer portion of such 180-day period than in any other place''.

SEC. 182. LIMITATION.

Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)(2)(A) by inserting ''subject to subsection (n),'' before ''any property''; and

(2) by adding at the end the following:

''(n)(1) Except as provided in paragraph (2), as a result of electing under subsection (b)(2)(A) to exempt property under State or local law, a debtor may not exempt any interest to the extent that such interest exceeds $100,000 in value, in the aggregate, in—

''(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

''(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

''(C) a burial plot for the debtor or a dependent of the debtor.

''(2) The limitation under paragraph (1) shall not apply to—

''(A) an exemption claimed under subsection (b)(2)(A) by a family farmer for the principal residence of that farmer; or

''(B) a case commenced under section 303 of this title.''.

SEC. 183. PROVIDE FAIR PROPERTY EXEMPTIONS AND PREVENT HIGH-ROLLERS FROM ABUSING THE SYSTEM.

Section 522 of title 11, United States Code, is amended by adding at the end the following:

''(n) If, in the 1-year period ending on the date of the filing of the petition and while the debtor was insolvent, the debtor makes property exempt under subsection (b) by converting property to a form of property that is exempt in an unlimited amount, such property shall not be exempt under this section to the extent that the value of the debtor's interest in the property that is converted exceeds $100,000. Such conversion shall not otherwise be a basis for denying an exemption and shall not be the basis for denying the debtor other relief under this title.''.

TITLE II—BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Provisions

SEC. 201. LIMITATION RELATING TO THE USE OF FEE EXAMINERS.

Section 330 of title 11, United States Code, is amended by adding at the end the following:

''(e) The court may not appoint any person to examine any request for compensation or reimbursement payable under this section.''.

SEC. 202. SHARING OF COMPENSATION.

Section 504 of title 11, United States Code, is amended by adding at the end the following:

''(c) This section shall not apply with respect to sharing, or agreeing to share, compensation with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.''.

SEC. 203. CHAPTER 12 MADE PERMANENT LAW.

Section 302(f) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (11 U.S.C. 1201 note) is repealed.

SEC. 204. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

Section 341 of title 11, United States Code, is amended by adding at the end the following:

''(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.''.

SEC. 205. CREDITORS' AND EQUITY SECURITY HOLDERS' COMMITTEES.

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

''(3) The court on its own motion or on request of a party in interest, and after notice and a hearing, may order a change in membership of a committee appointed under subsection (a) if necessary to ensure adequate representation of creditors or of equity security holders.''.

SEC. 206. POSTPETITION DISCLOSURE AND SOLICITATION.

Section 1125 of title 11, United States Code, is amended by adding at the end the following:

''(g) Notwithstanding subsection (b), an acceptance or rejection of the plan may be solicited from a holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the commencement of the case in a manner complying with applicable nonbankruptcy law.''.

SEC. 207. PREFERENCES.

Section 547(c) of title 11, United States Code, is amended—

(1) by amending paragraph (2) to read as follows:

''(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

''(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

''(B) made according to ordinary business terms;'';

(2) in paragraph (7) by striking ''or'' at the end;

(3) in paragraph (8) by striking the period at the end and inserting ''; or''; and

(4) by adding at the end the following:

''(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $5000.''.

SEC. 208. VENUE OF CERTAIN PROCEEDINGS.

Section 1409(b) of title 28, United States Code, is amended by inserting '', or a nonconsumer debt against a noninsider of less than $10,000,'' after ''$5,000''.

SEC. 209. CASES ANCILLARY TO FOREIGN PROCEEDINGS INVOLVING FOREIGN INSURANCE COMPANIES THAT ARE ENGAGED IN THE BUSINESS OF INSURANCE OR REINSURANCE IN THE UNITED STATES.

Section 304 of title 11, United States Code, is amended—

(1) in subsection (b) by striking ''provisions of subsection (c)'' and inserting ''subsections (c) and (d)''; and

(2) by adding at the end the following:

''(d) The court may not grant to a foreign representative of the estate of an insurance company that is not organized under the law of a State and that is engaged in the business of insurance, or reinsurance, in the United States relief under subsection (b) with respect to property that is—

''(1) a deposit required by a State law relating to insurance or reinsurance;

''(2) a multibeneficiary trust required by a State law relating to insurance or reinsurance to protect holders of insurance policies issued in the United States or to protect holders or claimants against such policies; or

''(3) a multibeneficiary trust authorized by a State law relating to insurance or reinsurance to allow a person engaged in the business of insurance in the United States—

''(A) to cede reinsurance to such an insurance company; and

''(B) to treat so ceded reinsurance as an asset, or deduction from liability, in financial statements of such person.''.

SEC. 210. PERIOD FOR FILING PLAN UNDER CHAPTER 11.

Section 1121(d) of title 11, United States Code, is amended—

(1) by striking ''On'' and inserting ''(1) Subject to paragraph (1), on''; and

(2) by adding at the end the following:

''(2)(A) Such 120-day period may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter unless the court determines that there is substantial likelihood that the failure to extend such date would result in the loss of jobs in the operation of the debtor's business.

''(B) Such 180-day period may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter unless the court determines that there is substantial likelihood that the failure to extend such date would result in the loss of jobs in the operation of the the debtor's business.''.

SEC. 211. UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY.

Section 365(d)(4) of title 11, United States Code, is amended to read as follows:

''(4) In a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee before the earlier of (A) 120 days after the date of the order for relief, or (B) the entry of an order confirming a plan, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor but in no event shall such time period exceed 120 days unless the court determines that there is substantial likelihood that the failure to extend such date would result in the loss of jobs in the operation of the debtor's business. Notwithstanding the immediately preceding sentence, and provided no plan has been confirmed, upon debtor's motion, and after notice and a hearing, the court may within such 120-day period extend the 120-day period by a period not to exceed 150 days, contingent upon written consent of the affected lessor or with the approval of the court, and provided trustee has timely performed all post-petition lease obligations, but in no circumstance shall such period extend beyond the earlier of (i) 270 days from the date of the order for relief or (ii) the entry of an order approving a disclosure statement, without the consent of the lessor unless the court determines that there is substantial likelihood that the failure to extend such date would result in the loss of jobs in the operation of the debtor's business.''.

SEC. 212. DEFINITION OF DISINTERESTED PERSON.

Section 101(14) of title 11, United States Code, is amended to read as follows:

''(14) 'disinterested person' means a person that—

''(A) is not a creditor, an equity security holder, or an insider;

''(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

''(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect

relationship to, connection with, or interest in, the debtor, or for any other reason;''.

Subtitle B—Specific Provisions

CHAPTER 1—SMALL BUSINESS BANKRUPTCY

SEC. 231. DEFINITIONS.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraph (51C) and inserting the following:

''(51C) 'small business case' means a case filed under chapter 11 of this title in which the debtor is a small business debtor;

''(51D) 'small business debtor' means—

''(A) a person (including affiliates of such person that are also debtors under this title) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief in an amount not more than $5,000,000 (excluding debts owed to 1 or more affiliates or insiders); or

''(B) a debtor of the kind described in paragraph (51B) but without regard to the amount of such debtor's debts;

except that if a group of affiliated debtors has aggregate noncontingent liquidated secured and unsecured debts greater than $5,000,000 (excluding debt owed to 1 or more affiliates or insiders), then no member of such group is a small business debtor;''.

(b) CONFORMING AMENDMENT.—Section 1102(a)(3) of title 11, United States Code, is amended by inserting ''debtor'' after ''small business''.

SEC. 232. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.

Section 1125(f) of title 11, United States Code, is amended to read as follows:

''(f) Notwithstanding subsection (b), in a small business case—

''(1) in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information;

''(2) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

''(3) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted pursuant to section 2075 of title 28; and

''(4)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

''(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not less than 20 days before the date of the hearing on confirmation of the plan; and

''(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.''.

SEC. 233. STANDARD FORM DISCLOSURE STATEMENTS AND PLANS.

The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall, within a reasonable period of time after the date of the enactment of this Act, propose for adoption standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between—

(1) the reasonable needs of the courts, the United States trustee or bankruptcy administrator, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors.

SEC. 234. UNIFORM NATIONAL REPORTING REQUIREMENTS.

(a) REPORTING REQUIRED.—(1) Title 11 of the United States Code is amended by inserting after section 307 the following:

''§ 308. Debtor reporting requirements

''A small business debtor shall file periodic financial and other reports containing information including—

''(1) the debtor's profitability, that is, approximately how much money the debtor has been earning or losing during current and recent fiscal periods;

''(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;

''(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

''(4) whether the debtor is—

''(A) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

''(B) timely filing tax returns and paying taxes and other administrative claims when due, and, if not, what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

''(5) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.''.

(2) The table of sections of chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 307 the following:

''308. Debtor reporting requirements.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed pursuant to section 2075, title 28, United States Code to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

SEC. 235. UNIFORM REPORTING RULES AND FORMS.

After consultation with the Director of the Executive for United States Trustees and with the Judicial Conference of the United States, the Attorney General of the United States shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to comply with section 308 of title 11, United States Code, as added by section 234 of this Act to achieve a practical balance between—

(1) the reasonable needs of the courts, the United States trustee or bankruptcy administrator, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors in cases under such title.

SEC. 236. DUTIES IN SMALL BUSINESS CASES.

(a) DUTIES IN CHAPTER 11 CASES.—Title 11 of the United States Code is amended by inserting after section 1114 the following:

''§ 1115. Duties of trustee or debtor in possession in small business cases

''In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

''(1) append to the voluntary petition or, in an involuntary case, file within 3 days after the date of the order for relief—

''(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

''(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

''(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 of this title;

''(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

''(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

''(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

''(6)(A) timely file tax returns;

''(B) subject to section 363(c)(2), timely pay all administrative expense tax claims, except those being contested by appropriate proceedings being diligently prosecuted; and

''(C) subject to section 363(c)(2), establish 1 or more separate deposit accounts not later than 10 business days after the date of order for relief (or as soon thereafter as possible if all banks contacted decline the business) and deposit therein, not later than 1 business day after receipt thereof, all taxes payable for periods beginning after the date the case is commenced that are collected or withheld by the debtor for governmental units; and

''(7) allow the United States trustee or bankruptcy administrator, or its designated representative, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.''.

(b) TECHNICAL AMENDMENT.—The table of sections of chapter 11, United States Code, is amended by inserting after the item relating to section 1114 the following:

''1115. Duties of trustee or debtor in possession in small business cases.''.

SEC. 237. PLAN FILING AND CONFIRMATION DEADLINES.

Section 1121(e) of title 11, United States Code, is amended to read as follows:

''(e) In a small business case—

''(1) only the debtor may file a plan until after 90 days after the date of the order for relief, unless shortened on request of a party in interest made during the 90-day period, or unless extended as provided by this subsection, after notice and hearing the court, for cause, orders otherwise;

''(2) the plan, and any necessary disclosure statement, shall be filed not later than 90 days after the date of the order for relief; and

''(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) of this title, within which the plan shall be confirmed may be extended only if—

''(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable time;

''(B) a new deadline is imposed at the time the extension is granted; and

''(C) the order extending time is signed before the existing deadline has expired.''.

SEC. 238. PLAN CONFIRMATION DEADLINE.

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

''(e) In a small business case, the plan shall be confirmed not later than 150 days after

the date of the order for relief unless such 150-day period is extended as provided in section 1121(e)(3) of this title.''.

SEC. 239. PROHIBITION AGAINST EXTENSION OF TIME.

Section 105(d) of title 11, United States Code, is amended—

(1) in paragraph (2)(B)(vi) by striking the period at the end and inserting ''; and''; and

(2) by adding at the end the following:

''(3) in a small business case, not extend the time periods specified in sections 1121(e) and 1129(e) of this title except as provided in section 1121(e)(3) of this title.''.

SEC. 240. DUTIES OF THE UNITED STATES TRUSTEE AND BANKRUPTCY ADMINISTRATOR.

(a) DUTIES OF THE UNITED STATES TRUSTEE.—Section 586(a) of title 28, United States Code, as amended by section 111, is amended—

(1) in paragraph (3)—

(A) in subparagraph (G) by striking ''and'' at the end;

(B) by redesignating subparagraph (H) as subparagraph (I); and

(C) by inserting after subparagraph (G) the following:

''(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases;'',

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

(3) in paragraph (7) by striking the period at the end and inserting ''; and'', and

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

''(8) in each of such small business cases—

''(A) conduct an initial debtor interview as soon as practicable after the entry of order for relief but before the first meeting scheduled under section 341(a) of title 11 at which time the United States trustee shall begin to investigate the debtor's viability, inquire about the debtor's business plan, explain the debtor's obligations to file monthly operating reports and other required reports, attempt to develop an agreed scheduling order, and inform the debtor of other obligations;

''(B) when determined to be appropriate and advisable, visit the appropriate business premises of the debtor and ascertain the state of the debtor's books and records and verify that the debtor has filed its tax returns;

''(C) review and monitor diligently the debtor's activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and

''(D) in cases where the United States trustee finds material grounds for any relief under section 1112 of title 11 move the court promptly for relief.''.

(b) DUTIES OF THE BANKRUPTCY ADMINISTRATOR.—In a small business case (as defined in section 101 of title 11 of the United States Code), the bankruptcy administrator shall perform the duties specified in section 586(a)(6) of title 28 of the United States Code.

SEC. 241. SCHEDULING CONFERENCES.

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1) by striking '', may'';

(2) by amending paragraph (1) to read as follows:

''(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and''; and

(3) in paragraph (2) by striking ''unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure,'' and inserting ''may''.

SEC. 242. SERIAL FILER PROVISIONS.

Section 362 of title 11, United States Code, is amended—

(1) in subsection (i) as so redesignated by section 124—

(A) by striking ''An'' and inserting ''(1) Except as provided in paragraph (2), an''; and

(B) by adding at the end the following:

''(2) If such violation is based on an action taken by an entity in the good-faith belief that subsection (h) applies to the debtor, then recovery under paragraph (1) against such entity shall be limited to actual damages.''; and

(2) by inserting after subsection (i), as redesignated by section 124, the following:

''( ) The filing of a petition under chapter 11 of this title operates as a stay of the acts described in subsection (a) only in an involuntary case involving no collusion by the debtor with creditors and in which the debtor—

''(1) is a debtor in a small business case pending at the time the petition is filed;

''(2) was a debtor in a small business case which was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

''(3) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

''(4) is an entity that has succeeded to substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C) unless the debtor proves, by a preponderance of the evidence, that the filing of such petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and that it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable time.''.

SEC. 243. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE.

(a) EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION.—Section 1112(b) of title 11, United States Code, is amended to read as follows:

''(b)(1) Except as provided in paragraph (2), in subsection (c), and in section 1104(a)(3) of this title, on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 of this title or dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, if the movant establishes cause.

''(2) The relief provided in paragraph (1) shall not be granted if the debtor or another party in interest objects and establishes, by a preponderance of the evidence that—

''(A) it is more likely than not that a plan will be confirmed within a time as fixed by this title or by order of the court entered pursuant to section 1121(e)(3), or within a reasonable time if no time has been fixed; and

''(B) if the reason is an act or omission of the debtor that—

''(i) there exists a reasonable justification for the act or omission; and

''(ii) the act or omission will be cured within a reasonable time fixed by the court not to exceed 30 days after the court decides the motion, unless the movant expressly consents to a continuance for a specific period of time, or compelling circumstances beyond the control of the debtor justify an extension.

''(3) For purposes of this subsection, cause includes—

''(A) substantial or continuing loss to or diminution of the estate;

''(B) gross mismanagement of the estate;

''(C) failure to maintain appropriate insurance;

''(D) unauthorized use of cash collateral harmful to 1 or more creditors;

''(E) failure to comply with an order of the court;

''(F) failure timely to satisfy any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

''(G) failure to attend the meeting of creditors convened under section 341(a) of this title or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure;

''(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee;

''(I) failure timely to pay taxes due after the date of the order for relief or to file tax returns due after the order for relief;

''(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

''(K) failure to pay any fees or charges required under chapter 123 of title 28;

''(L) revocation of an order of confirmation under section 1144 of this title, and denial of confirmation of another plan or of a modified plan under section 1129 of this title;

''(M) inability to effectuate substantial consummation of a confirmed plan;

''(N) material default by the debtor with respect to a confirmed plan; and

''(O) termination of a plan by reason of the occurrence of a condition specified in the plan.

''(4) The court shall commence the hearing on any motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion within 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.''.

(b) ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE.—Section 1104(a) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking ''or'' at the end;

(2) in paragraph (2) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(3) if grounds exist to convert or dismiss the case under section 1112 of this title, but the court determines that the appointment of a trustee is in the best interests of creditors and the estate.''.

CHAPTER 2—SINGLE ASSET REAL ESTATE

SEC. 251. SINGLE ASSET REAL ESTATE DEFINED.

Section 101(51B) of title 11, United States Code, is amended to read as follows:

''(51B) 'single asset real estate' means undeveloped real property or other real property constituting a single property or project, other than residential real property with fewer than 4 residential units, on which is located a single development or project which property or project generates substantially all of the gross income of a debtor and on which no substantial business is being conducted by a debtor, or by a commonly controlled group of entities all of which are concurrently debtors in a case under chapter 11 of this title, other than the business of operating the real property and activities incidental thereto;''.

SEC. 252. PAYMENT OF INTEREST.

Section 362(d)(3) of title 11, United States Code, is amended—

(1) by inserting ''or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later'' after ''90-day period)''; and

(2) by amending subparagraph (B) to read as follows:

''(B) the debtor has commenced monthly payments (which payments may, in the debtor's sole discretion, notwithstanding section

363(c)(2) of this title, be made from rents or other income generated before or after the commencement of the case by or from the property) to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien), which payments are in an amount equal to interest at the then-applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or''.

CHAPTER 3—CONDITIONAL APPLICATION OF AMENDMENTS

SEC. 291. LOSS OF JOBS.

The amendments made by this subtitle shall not apply in a case under title 11 of the United States Code if the court determines that there is a substantial likelihood that the application of such amendments in such case would result in a loss of jobs in the operation of the debtor's business in such case.

TITLE III—MUNICIPAL BANKRUPTCY PROVISIONS

SEC. 301. PETITION AND PROCEEDINGS RELATED TO PETITION.

(a) TECHNICAL AMENDMENT RELATING TO MUNICIPALITIES.—Section 921(d) of title 11, United States Code, is amended by inserting ''notwithstanding section 301(b)'' before the period at the end.

(b) CONFORMING AMENDMENT.—Section 301 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''A voluntary''; and

(2) by amending the last sentence to read as follows:

''(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.''.

SEC. 302. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.

Section 901 of title 11, United States Code, is amended—

(1) by inserting ''555, 556,'' after ''553,''; and

(2) by inserting ''559, 560,'' after ''557,''.

TITLE IV—BANKRUPTCY ADMINISTRATION

Subtitle A—General Provisions

SEC. 401. ADEQUATE PREPARATION TIME FOR CREDITORS BEFORE THE MEETING OF CREDITORS IN INDIVIDUAL CASES.

Section 341(a) of title 11, United States Code, is amended by inserting after the first sentence the following: ''If the debtor is an individual in a voluntary case under chapter 7, 11, or 13, the meeting of creditors shall not be convened earlier than 60 days (or later than 90 days) after the date of the order for relief, unless the court, after notice and hearing, determines unusual circumstances justify an earlier meeting.''.

SEC. 402. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.

Section 341(c) of title 11, United States Code, is amended by inserting after the first sentence the following: ''Notwithstanding any local court rule, provision of a State constitution, any other State or Federal nonbankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or its representatives (which representatives may include an entity or an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13 either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.''.

SEC. 403. FILING PROOFS OF CLAIM.

Section 501 of title 11, United States Code, is amended by adding at the end the following:

''(e) In a case under chapter 7 or 13, a proof of claim or interest is deemed filed under this section for any claim or interest that appears in the schedules filed under section 521(a)(1) of this title, except a claim or interest that is scheduled as disputed, contingent, or unliquidated.''.

SEC. 404. AUDIT PROCEDURES.

(a) AMENDMENT.—Section 586 of title 28, United States Code, as amended by sections 111 and 240, is amended—

(1) by amending subsection (a)(6) to read as follows:

''(6) make such reports as the Attorney General directs, including the results of audits performed under subsection (f),'';

(2) by inserting at the end the following:

''(f)(1) The Attorney General shall establish procedures for the auditing of the accuracy and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322, and, if applicable, section 111, of title 11 in individual cases filed under chapter 7 or 13 of such title. Such procedures shall—

''(A) establish a method of selecting appropriate qualified persons to contract with the United States trustee to perform such audits;

''(B) establish a method of randomly selecting cases to be audited according to generally accepted audit standards, provided that no less than 1 out of every 1000 cases in each Federal judicial district shall be selected for audit and provided that such procedures shall ensure that the United States trustee may select such cases in which there is a high likelihood of fraud;

''(C) require audits for schedules of income and expenses which reflect higher than average variances from the statistical norm of the district in which the schedules were filed;

''(D) establish procedures for reporting the results of such audits and any material misstatement of income, expenditures or assets of a debtor to the Attorney General, the United States Attorney and the court, as appropriate, and for providing public information no less than annually on the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported; and

''(E) establish procedures for fully funding such audits.

''(2) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee according to the procedures established under paragraph (1) of this subsection.

''(3) According to procedures established under paragraph (1), upon request of a duly appointed auditor, the debtor shall cause the accounts, papers, documents, financial records, files and all other papers, things or property belonging to the debtor as the auditor requests and which are reasonably necessary to facilitate an audit to be made available for inspection and copying.

''(4) The report of each such audit shall be filed with the court, the Attorney General, and the United States Attorney, as required under procedures established by the Attorney General under paragraph (1). If a material misstatement of income or expenditures or of assets is reported, a statement specifying such misstatement shall be filed with the court and the United States trustee shall give notice thereof to the creditors in the case and, in an appropriate case, in the opinion of the United States trustee, requires investigation with respect to possible criminal violations, the United States Attorney for the district.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of the enactment of this Act.

SEC. 405. GIVING CREDITORS FAIR NOTICE IN CHAPTER 7 AND 13 CASES.

Section 342 of title 11, United States Code, is amended—

(1) in subsection (c)—

(A) by striking '', but the failure of such notice to contain such information shall not invalidate the legal effect of such notice''; and

(B) by adding the following at the end:

''If the credit agreement between the debtor and the creditor or the last communication before the filing of the petition in a voluntary case from the creditor to a debtor who is an individual states an account number of the debtor which is the current account number of the debtor with respect to any debt held by the creditor against the debtor, the debtor shall make a good faith effort to include such account number in any notice to the creditor required to be given under this title. If the creditor has specified to the debtor an address at which the creditor wishes to receive correspondence regarding the debtor's account, the debtor shall make a good faith effort to provide any notice required to be given under this title by the debtor to the creditor at such address. For the purposes of this section, 'notice' shall include, but shall not be limited to, any correspondence from the debtor to the creditor after the commencement of the case, any statement of the debtor's intention under section 521(a)(2) of this title, notice of the commencement of any proceeding in the case to which the creditor is a party, and any notice of the hearing under section 1324.'';

(2) by adding at the end the following:

''(d) At any time, a creditor in a case of an individual debtor under chapter 7 or 13 may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case. Five days after receipt of such notice, if the court or the debtor is required to give the creditor notice, such notice shall be given at that address.

''(e) An entity may file with the court a notice stating its address for notice in cases under chapters 7 and 13. After 30 days following the filing of such notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (d) with respect to a particular case.

''(f) Notice given to a creditor other than as provided in this section shall not be effective notice until it has been brought to the attention of the creditor unless the creditor knew or should have known of such notice. If the creditor has designated a person or department to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that bankruptcy notices received by the creditor will be delivered to such department or person, notice will not be brought to the attention of the creditor until received by such person or department. No sanction under section 362(h) of this title or any other sanction which a court may impose on account of violations of the stay under section 362(a) of this title or failure to comply with section 542 or 543 of this title may be imposed on any action of the creditor unless the action takes place after the creditor has received notice of the commencement of the case effective under this section unless the creditor knew or should have known of such notice.''.

SEC. 406. DEBTOR TO PROVIDE TAX RETURNS AND OTHER INFORMATION.

Section 521 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''The'';

(2) by amending paragraph (1) to read as follows:

''(1) file—

''(A) a list of creditors, and

''(B) unless the court orders otherwise—

''(i) a schedule of assets and liabilities;

''(ii) a schedule of current income and current expenditures;

''(iii) a statement of the debtor's financial affairs;

''(iv) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days prior to the filing of the petition;

''(v) a statement of the amount of disposable income, itemized to show how calculated;

''(vi) if applicable, any statement under paragraphs (3) and (4) of section 109(h);

''(vii) a statement disclosing any reasonably anticipated increase in income or expenditures over the next 12 months; and

''(viii) a certificate, if applicable—

''(I) of an attorney whose name is on the petition as the attorney for the debtor, or of any bankruptcy petition preparer who signed the petition pursuant to section 110(b)(1) of this title, indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b)(1) of this title; or

''(II) if no attorney for the debtor is indicated and no bankruptcy petition preparer signed the petition of the debtor, that such notice was obtained and read by the debtor;''; and

(3) by adding at the end the following:

''(b) At any time, a creditor in a case of an individual debtor under chapter 7 or 13 may file with the court and serve on the debtor notice that the creditor requests the petition, schedules, and statement of financial affairs filed by the debtor in the case. At any time, a creditor in a case under chapter 13 of this title may file with the court and serve on the debtor notice that the creditor requests the plan filed by the debtor in the case. Within 10 days of the first such request in a case under this subsection for the petition, schedules, and statement of financial affairs and the first such request for the plan under this subsection, the debtor shall serve on that creditor a conformed copy of the requested documents or plan and any amendments thereto as of that date, and shall thereafter promptly serve on that creditor at the time filed with the court—

''(1) any requested document or plan which is not filed with the court at the time requested; and

''(2) any amendment to any requested document or plan.

''(c) An individual debtor in a case under chapter 7 or 13 shall provide to the United States trustee, on the request of the United States trustee—

''(1) copies of all Federal tax returns (including any schedules and attachments) filed by the debtor for the 3 most recent tax years preceding the order for relief;

''(2) at the time the debtor files them with the Commissioner of Internal Revenue, all Federal tax returns (including any schedules and attachments) for the debtor's tax years ending while such case is pending; and

''(3) at the time the debtor files them with the Commissioner of Internal Revenue, all amendments to the tax returns (including schedules and attachments) described in subparagraphs (A) and (B).

''(d) A debtor in a case under chapter 13 of this title shall file, from a time which is the later of 90 days after the close of the debtor's tax year or 1 year after the order for relief unless a plan has then been confirmed, and thereafter on or before 45 days before each anniversary of the confirmation of the plan until the case is closed, a statement subject to the penalties of perjury by the debtor of the debtor's income and expenditures in the preceding tax year and monthly net income, showing how calculated. Such statement shall disclose the amount and sources of income of the debtor, the identity of any persons responsible with the debtor for the support of any dependents of the debtor, and any persons who contributed and the amount contributed to the household in which the debtor resides. Such tax returns, amendments and statement of income and expenditures shall be available to the United States trustee, any bankruptcy administrator, any trustee and any party in interest for inspection and copying.''.

SEC. 407. DISMISSAL FOR FAILURE TO FILE SCHEDULES TIMELY OR PROVIDE REQUIRED INFORMATION.

Section 521 of title 11, United States Code, as amended by section 406, is amended by adding at the end the following:

''(e) Notwithstanding section 707(a) of this title, if an individual debtor in a voluntary case under chapter 7 or 13 fails to provide all of the information required under subsections (a)(1) and (c)(1)(A) within 45 days after the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the filing of the petition without the need for any order of court unless the court for good cause beyond the debtor's control orders otherwise, but any party in interest may request the court to enter an order dismissing the case and the court shall, if so requested, enter an order of dismissal within 5 days of such request if the court finds compelling justification for doing so.

''(f) If an individual debtor in a case under chapter 7 or 13 fails to perform any of the duties imposed by subsections (b), (c)(1)(B), (c)(1)(C), and (d), any party in interest may request that the court order the debtor to comply. Within 10 days of such request the court shall order that the debtor do so within a period of time set by the court no longer than 30 days unless the court for good cause beyond the debtor's control orders otherwise. If the debtor does not comply with that order within the period of time set by the court, the court shall, on request of any party in interest certifying that the debtor has not so complied, enter an order dismissing the case within 5 days of such request.''.

SEC. 408. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.

Section 1324 of title 11, United States Code, is amended—

(1) by striking ''After'' and inserting the following:

''(a) Except as provided in subsection (b) and after''; and

(2) by adding at the end the following:

''(b) The hearing on confirmation of the plan may be held not earlier than 20 days, and not later than 45 days, after the meeting of creditors under section 341(a) of this title.''.

SEC. 409. SENSE OF THE CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.

It is the sense of the Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App) should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to the court or to a trustee by debtors who represent themselves and debtors who are represented by an attorney be submitted only after the debtor or the debtor's attorney has made reasonable inquiry to verify that the information contained in such documents is well grounded in fact, and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.

SEC. 410. JURISDICTION OF COURTS OF APPEALS.

(a) JURISDICTION.—Title 28 of the United States Code is amended—

(1) by striking section 158;

(2) by inserting after section 1292 the following:

''§ 1293. Bankruptcy appeals

''The courts of appeals (other the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from the following:

''(1) Final orders and judgments of bankruptcy courts entered under—

''(A) section 157(b) of this title in core proceedings arising under title 11, or arising in or related to a case under title 11; or

''(B) section 157(c)(2) of this title in proceedings referred to such courts.

''(2) Final orders and judgments of district courts entered under section 157 of this title in—

''(A) core proceedings arising under title 11, or arising in or related to a case under title 11; or

''(B) proceedings that are not core proceedings, but that are otherwise related to a case under title 11.

''(3) Orders and judgments of bankruptcy courts or district courts entered under section 105 of title 11, or the refusal to enter an order or judgment under such section.

''(4) Orders of bankruptcy courts or district courts entered under section 1104(a) or 1121(d) of title 11, or the refusal to enter an order under such section.

''(5) An interlocutory order of a bankruptcy court or district court entered in a case under title 11, in a proceeding arising under title 11, or in a proceeding arising in or related to a case under title 11, if—

''(A) such court is of the opinion that—

''(i) such order involves a controlling question of law as to which there is substantial ground for difference of opinion; and

''(ii) an immediate appeal from such order may materially advance the ultimate termination of such case or such proceeding; or

''(B) the court of appeals that would have jurisdiction of an appeal of a final order entered in such case or such proceeding permits, in its discretion, appeal to be taken from such interlocutory order.''; and

(3) in—

(A) the table of sections for chapter 6 by striking the item relating to section 158; and

(B) the table of sections for chapter 83 by inserting after the item relating to section 1292 the following:

''1293. Bankruptcy appeals.''.

(b) CONFORMING AMENDMENTS.—(1) Section 305(c) of title 11, the United States Code, is amended by striking ''158(d), 1291, or 1292'' and inserting ''1291, 1292, or 1293''.

(2) Title 28, United States Code, is amended—

(A) in subsections (b)(1) and (c)(2) of section 157 by striking ''section 158'' and inserting ''section 1293'';

(B) in section 1334(d) by striking ''158(d), 1291, or 1292'' and inserting ''1291, 1292, or 1293''; and

(C) in section 1452(b) by striking ''158(d), 1291, or 1292'' and inserting ''1291, 1292, or 1293''.

SEC. 411. ESTABLISHMENT OF OFFICIAL FORMS.

The Judicial Conference of the United States shall establish official forms to facilitate compliance with the amendments made by sections 101 and 102.

SEC. 412. ELIMINATION OF CERTAIN FEES PAYABLE IN CHAPTER 11 BANKRUPTCY CASES.

(a) AMENDMENTS.—Section 1930(a)(6) of title 28, United States Code, is amended—

(1) in the 1st sentence by striking ''until the case is converted or dismissed, whichever occurs first'', and

(2) in the 2d sentence—

(A) by striking ''The'' and inserting ''Until the plan is confirmed or the case is converted (whichever occurs first) the'', and

(B) by striking ''less than $300,000;'' and inserting ''less than $300,000. Until the case is converted, dismissed, or closed (whichever occurs first and without regard to confirmation of the plan) the fee shall be''.

(b) DELAYED EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1999.

Subtitle B—Data Provisions

SEC. 441. IMPROVED BANKRUPTCY STATISTICS.

(a) AMENDMENT.—Title 28, United States Code, is amended by adding after section 158 the following new section:

''§ 159. Bankruptcy statistics

''The Director of the Executive Office for United States Trustees shall compile statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Such statistics shall be in a form prescribed by the Executive Office for United States Trustees in consultation with the Administrative Office of the United States Courts. The Office shall compile such statistics, and make them public, and report annually to the Congress on the information collected, and on its analysis thereof, no later than October 31 of each year. Such compilation shall be itemized by chapter of title 11, shall be presented in the aggregate and for each district, and shall include the following:

''(1) Total assets and total liabilities of such debtors, and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by such debtors.

''(2) The current total monthly income, projected monthly net income, and average income and average expenses of such debtors as reported on the schedules and statements the debtor has filed under sections 111, 521, and 1322 of title 11.

''(3) The aggregate amount of debt discharged in the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable.

''(4) The average time between the filing of the petition and the closing of the case.

''(5) The number of cases in the reporting period in which a reaffirmation was filed and the total number of reaffirmations filed in that period, and of those cases in which a reaffirmation was filed, the number in which the debtor was not represented by an attorney, and of those the number of cases in which the reaffirmation was approved by the court.

''(6) With respect to cases filed under chapter 13 of title 11—

''(A) the number of cases in which a final order was entered determining the value of property securing a claim less than the claim, and the total number of such orders in the reporting period; and

''(B) the number of cases dismissed for failure to make payments under the plan.

''(7) The number of cases in which the debtor filed another case within the 6 years previous to the filing.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 18 months after the date of the enactment of this Act.

SEC. 442. BANKRUPTCY DATA.

(a) AMENDMENT.—Title 28 of the United States Code is amended by inserting after section 589a the following:

''§ 589b. Bankruptcy data

''(a) RULES.—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

''(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

''(2) periodic reports by debtors in possession or trustees, as the case may be, in cases under chapter 11 of title 11.

''(b) REPORTS.—All reports referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at 1 or more central filing locations, and by electronic access through the Internet or other appropriate media.

''(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

''(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system; and

''(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports.

''(d) FINAL REPORTS.—Final reports proposed for adoption by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General, shall propose, include with respect to a case under such title—

''(1) information about the length of time the case was pending;

''(2) assets abandoned;

''(3) assets exempted;

''(4) receipts and disbursements of the estate;

''(5) expenses of administration;

''(6) claims asserted;

''(7) claims allowed; and

''(8) distributions to claimants and claims discharged without payment;

in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

''(e) PERIODIC REPORTS.—Periodic reports proposed for adoption by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General, in the discretion of the Attorney General, shall propose, include—

''(1) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

''(2) length of time the case has been pending;

''(3) number of full-time employees as at the date of the order for relief and at end of each reporting period since the case was filed;

''(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

''(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

''(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, in for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

''(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.''.

(b) TECHNICAL AMENDMENT.—The table of sections of chapter 39 of title 28, United States Code, is amended by adding at the end the following:

''589b. Bankruptcy data.''.

SEC. 443. SENSE OF THE CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.

It is the sense of the Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11 of the United States Code), should be released in a usable electronic form in bulk to the public subject to such appropriate privacy concerns and safeguards as the Judicial Conference of the United States may determine; and

(2) there should be established a bankruptcy data system in which—

(A) a single set of data definitions and forms are used to collect data nationwide; and

(B) data for any particular bankruptcy case are aggregated in the same electronic record.

TITLE V—TAX PROVISIONS

SEC. 501. TREATMENT OF CERTAIN LIENS.

(a) TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting ''(other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate)'' after ''under this title'';

(2) in subsection (b)(2), after ''507(a)(1)'', insert ''(except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)''; and

(3) by adding at the end the following:

''(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—

''(1) exhaust the unencumbered assets of the estate; and

''(2) in a manner consistent with section 506(c) of this title, recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.

''(f) Notwithstanding the exclusion of ad valorem tax liens set forth in this section and subject to the requirements of subsection (e)—

''(1) claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(3) of this title; or

''(2) claims for contributions to an employee benefit plan entitled to priority under section 507(a)(4) of this title,

may be paid from property of the estate which secures a tax lien, or the proceeds of such property.''.

(b) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

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

(3) by adding at the end the following:

''(C) the amount or legality of any amount arising in connection with an ad valorem tax

on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.''.

SEC. 502. ENFORCEMENT OF CHILD AND SPOUSAL SUPPORT.

Section 522(c)(1) of title 11, United States Code, is amended by inserting '', except that, notwithstanding any other Federal law or State law relating to exempted property, exempt property shall be liable for debts of a kind specified in section 507(a)(7) of this title'' before the semicolon at the end.

SEC. 503. EFFECTIVE NOTICE TO GOVERNMENT.

(a) EFFECTIVE NOTICE TO GOVERNMENTAL UNITS.—Section 342 of title 11, United States Code, as amended by section 405, is amended by adding at the end the following:

''(g) If a debtor lists a governmental unit as a creditor in a list or schedule, any notice required to be given by the debtor under this title, any rule, any applicable law, or any order of the court, shall identify the department, agency, or instrumentality through which the debtor is indebted. The debtor shall identify (with information such as a taxpayer identification number, loan, account or contract number, or real estate parcel number, where applicable), and describe the underlying basis for the governmental unit's claim. If the debtor's liability to a governmental unit arises from a debt or obligation owed or incurred by another individual, entity, or organization, or under a different name, the debtor shall identify such individual, entity, organization, or name.

''(h) The clerk shall keep and update quarterly, in the form and manner as the Director of the Administrative Office of the United States Courts prescribes, and make available to debtors, a register in which a governmental unit may designate a safe harbor mailing address for service of notice in cases pending in the district. A governmental unit may file a statement with the clerk designating a safe harbor address to which notices are to be sent, unless such governmental unit files a notice of change of address.''.

(b) ADOPTION OF RULES PROVIDING NOTICE.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference shall, within a reasonable period of time after the date of the enactment of this Act, propose for adoption enhanced rules for providing notice to State, Federal, and local government units that have regulatory authority over the debtor or which may be creditors in the debtor's case. Such rules shall be reasonably calculated to ensure that notice will reach the representatives of the governmental unit, or subdivision thereof, who will be the proper persons authorized to act upon the notice. At a minimum, the rules should require that the debtor—

(1) identify in the schedules and the notice, the subdivision, agency, or entity in respect of which such notice should be received;

(2) provide sufficient information (such as case captions, permit numbers, taxpayer identification numbers, or similar identifying information) to permit the governmental unit or subdivision thereof, entitled to receive such notice, to identify the debtor or the person or entity on behalf of which the debtor is providing notice where the debtor may be a successor in interest or may not be the same as the person or entity which incurred the debt or obligation; and

(3) identify, in appropriate schedules, served together with the notice, the property in respect of which the claim or regulatory obligation may have arisen, if any, the nature of such claim or regulatory obligation and the purpose for which notice is being given.

(c) EFFECT OF FAILURE OF NOTICE.—Section 342 of title 11, United States Code, as amended by subsection (a) and section 405, is amended by adding at the end the following:

''(i)(1) A notice that does not comply with subsections (d) and (e) shall have no effect unless the debtor demonstrates, by clear and convincing evidence, that timely notice was given in a manner reasonably calculated to satisfy the requirements of this section was given, and that—

''(A) either the notice was timely sent to the safe harbor address provided in the register maintained by the clerk of the district in which the matter or proceeding with respect to which the notice was provided was pending for such purposes; or

''(B) no safe harbor address was provided in such list for the governmental unit and that an officer of the governmental unit who is responsible for the matter or claim had actual knowledge of the case in sufficient time to act or the taxpayer made a good faith effort to provide the required notice under subsections (d) and (e).

''(2) No sanction under section 362(h) of this title or any other sanction which a court may impose on account of violations of the stay under section 362(a) of this title or failure to comply with section 542 or 543 of this title may be imposed unless the action takes place after notice of the commencement of the case as required by this section has been received.''.

SEC. 504. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.

Section 505(b) of title 11, United States Code, is amended by striking ''Unless'' at the beginning of the second sentence thereof and inserting ''If the request is made in the manner designated by the governmental unit and the taxing authority has place in file with the clerk of the court a description of the manner in which the governmental unit requires such request and unless''.

SEC. 505. RATE OF INTEREST ON TAX CLAIMS.

Chapter 5 of title 11, United States Code, is amended by adding at the end the following:

''§ 511. Rate of interest on tax claims

''Notwithstanding any provision of this title that requires the payment of interest on a claim, if interest is required to be paid on a tax claim, the rate of interest shall be as follows:

''(1) In the case of ad valorem tax claims, whether secured or unsecured, other unsecured tax claims where interest is required to be paid under section 726(a)(5) of this title and secured tax claims the rate shall be determined under applicable nonbankruptcy law.

''(2) In the case of unsecured claims for taxes arising before the date of the order for relief and paid under a plan of reorganization, the minimum rate of interest to be applied during the period after the filing of the petition shall be the Federal short-term rate rounded to the nearest full percent, determined under section 1274(d) of the Internal Revenue Code of 1986, for the calendar month in which the plan is confirmed, plus 3 percentage points.''.

SEC. 506. TOLLING OF PRIORITY OF TAX CLAIM TIME PERIODS.

Section 507(a)(9)(A) of title 11, United States Code, as so redesignated, is amended—

(1) in clause (i) by inserting after ''petition'' and before the semicolon '', plus any time, plus 6 months, during which the stay of proceedings was in effect in a prior case under this title''; and

(2) amend clause (ii) to read as follows:

''(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

''(I) any time plus 30 days during which an offer in compromise with respect of such tax, was pending or in effect during such 240-day period;

''(II) any time plus 30 days during which an installment agreement with respect of such tax was pending or in effect during such 240-day period, up to 1 year; and

''(III) any time plus 6 months during which a stay of proceedings against collections was in effect in a prior case under this title during such 240-day period.''.

SEC. 507. ASSESSMENT DEFINED.

(a) ASSESSMENT DEFINED FOR PRIORITY PURPOSES.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (2) the following:

''(3) 'assessment'—

''(A) for purposes of State and local taxes, means that point in time when all actions required have been taken so that thereafter a taxing authority may commence an action to collect the tax, and

''(B) for Federal tax purposes has the meaning given such term in the Internal Revenue Code of 1986;

and 'assessed' and 'assessable' shall be interpreted in light of the definition of assessment in this paragraph;''.

(b) ASSESSMENT DEFINED FOR THE STAY OF PROCEEDINGS.—Section 362(b)(9)(D) of title 11, United States Code, is amended by inserting after ''the making of an assessment'' the following: ''as defined by applicable nonbankruptcy law notwithstanding the definition of an 'assessment' elsewhere in this title''.

SEC. 508. CHAPTER 13 DISCHARGE OF FRAUDULENT AND OTHER TAXES.

Section 1328(a)(2) of title 11, United States Code, is amended by inserting ''(1) to the extent that the debtor made a fraudulent return or fraudulently attempted in any manner to evade such taxes,'' after ''paragraph''.

SEC. 509. CHAPTER 11 DISCHARGE OF FRAUDULENT TAXES.

Section 1141(d) of title 11, United States Code, as amended by section 119A, is amended by adding at the end the following:

''(6) Notwithstanding the provisions of paragraph (1), the confirmation of a plan does not discharge a debtor which is a corporation from any debt for a tax or customs duty with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.''.

SEC. 510. THE STAY OF TAX PROCEEDINGS.

(a) THE SECTION 362 STAY LIMITED TO PREPETITION TAXES.—Section 362(a)(8) of title 11, United States Code, is amended by striking the period at the end and inserting '', in respect of a tax liability for a taxable period ending before the order for relief.''.

(b) THE APPEAL OF TAX COURT DECISIONS PERMITTED.—Section 362(b)(9) of title 11, United States Code, is amended—

(1) in subparagraph (C) by striking ''or'' at the end,

(2) in subparagraph (D) by striking the period at the end and inserting ''; or'', and

(3) by adding at the end the following:

''(E) the appeal of a decision by a court or administrative tribunal which determines a tax liability of the debtor without regard to whether such determination was made prepetition or postpetition.''.

SEC. 511. PERIODIC PAYMENT OF TAXES IN CHAPTER 11 CASES.

Section 1129(a)(9) of title 11, United States Code, is amended—

(1) in subparagraph (B) by striking ''and'' at the end; and

(2) in subparagraph (C)—

(A) by striking ''deferred cash payments, over a period not exceeding six years after the date of assessment of such claim,'' and inserting ''regular installment payments in cash, but in no case with a balloon provision, and no more than three months apart, beginning no later than the effective date of the plan and ending on the earlier of five years

after the petition date or the last date payments are to be made under the plan to unsecured creditors,'';

(B) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(D) with respect to a secured claim which would be described in section 507(a)(8) of this title but for its secured status, the holder of such claim will receive on account of such claim cash payments of not less than is required in subparagraph (C) and over a period no greater than is required in such subparagraph.''.

SEC. 512. THE AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.

Section 545(2) of title 11, United States Code, is amended by striking the semicolon at the end and inserting '', except where such purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986 or similar provision of State or local law;''.

SEC. 513. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.

(a) PAYMENT OF TAXES REQUIRED.—Section 960 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Any''; and

(2) by adding at the end the following:

''(b) Such taxes shall be paid when due in the conduct of such business unless—

''(1) the tax is a property tax secured by a lien against property that is abandoned within a reasonable time after the lien attaches, by the trustee of a bankruptcy estate, pursuant to section 554 of title 11; or

''(2) payment of the tax is excused under a specific provision of title 11.

''(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11 if—

''(1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or

''(2) before the due date of the tax, the court has made a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as such tax.''.

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 503(b)(1)(B) of title 11, United States Code, is amended in clause (i) by inserting after ''estate,'' and before ''except'' the following: ''whether secured or unsecured, including property taxes for which liability is in rem only, in personam or both,''.

(c) REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of title 11, United States Code, is amended by adding at the end the following:

''(D) notwithstanding the requirements of subsection (a) of this section, a governmental unit shall not be required to file a request for the payment of a claim described in subparagraph (B) or (C);''.

(d) PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.—Section 506 of title 11, United States Code, is amended—

(1) in subsection (b) by inserting ''or State statute'' after ''agreement''; and

(2) in subsection (c) by inserting '', including the payment of all ad valorem property taxes in respect of the property'' before the period at the end.

SEC. 514. TARDILY FILED PRIORITY TAX CLAIMS.

Section 726(a)(1) of title 11, United States Code, is amended by striking ''before the date on which the trustee commences distribution under this section'' and inserting ''on or before the earlier of 10 days after the mailing to creditors of the summary of the trustee's final report or the date on which the trustee commences final distribution under this section''.

SEC. 515. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.

Section 523(a)(1)(B) of title 11, United States Code, is amended—

(1) by inserting ''or equivalent report or notice,'' after ''a return,'';

(2) in clause (i)—

(A) by inserting ''or given'' after ''filed''; and

(B) by striking ''or'' at the end;

(3) in clause (ii)—

(A) by inserting ''or given'' after ''filed'';

(B) by inserting '', report, or notice'' after ''return''; and

(4) by adding at the end the following:

''(iii) for purposes of this subsection, a return—

''(I) must satisfy the requirements of applicable nonbankruptcy law, and includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or similar State or local law, and

''(II) must have been filed in a manner permitted by applicable nonbankruptcy law; or''.

SEC. 516. THE DISCHARGE OF THE ESTATE'S LIABILITY FOR UNPAID TAXES.

Section 505(b) of title 11, United States Code, is amended in the second sentence by inserting ''the estate,'' after ''misrepresentation,''.

SEC. 517. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of title 11, United States Code, as amended by section 146, is amended—

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

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

(3) by adding at the end the following:

''(8) if the debtor has filed all Federal, State, and local tax returns as required by section 1308 of this title.''.

(b) ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.—(1) Chapter 13 of title 11, United States Code, is amended by adding at the end the following:

''§ 1308. Filing of prepetition tax returns

''(a) On or before the day prior to the day on which the first meeting of the creditors is convened under section 341(a) of this title, the debtor shall have filed with appropriate tax authorities all tax returns for all taxable periods ending in the 6-year period ending on the date of filing of the petition which the debtor had been required to file under applicable nonbankruptcy law.

''(b) If the tax returns required by subsection (a) have not been filed by the date on which the first meeting of creditors is convened under section 341(a) of this title, the trustee may continue such meeting for a reasonable period of time, to allow the debtor additional time to file any unfiled returns, but such additional time shall be no more than—

''(1) for returns that are past due as of the date of the filing of the petition, 120 days from such date,

''(2) for returns which are not past due as of the date of the filing of the petition, the later of 120 days from such date or the due date for such returns under the last automatic extension of time for filing such returns to which the debtor is entitled, and for which request has been timely made, according to applicable nonbankruptcy law, and

''(3) upon notice and hearing, and order entered before the lapse of any deadline fixed according to this subsection, where the debtor demonstrates, by clear and convincing evidence, that the failure to file the returns as required is because of circumstances beyond the control of the debtor, the court may extend the deadlines set by the trustee as provided in this subsection for—

''(A) a period of no more than 30 days for returns described in paragraph (1) of this subsection, and

''(B) for no more than the period of time ending on the applicable extended due date for the returns described in paragraph (2).

''(c) For purposes of this section only, a return includes a return prepared pursuant to section 6020 (a) or (b) of the Internal Revenue Code of 1986 or similar State or local law, or a written stipulation to a judgment entered by a nonbankruptcy tribunal.''.

(2) The table of sections of chapter 13 of title 11, United States Code, is amended by inserting after the item relating to section 1307 the following:

''1308. Filing of prepetition tax returns.''.

(c) DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.—Section 1307 of title 11, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and

(2) by inserting after subsection (d) the following:

''(e) Upon the failure of the debtor to file tax returns under section 1308 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interests of creditors and the estate.''.

(d) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by striking the period at the end and inserting '', and except that in a case under chapter 13 of this title, a claim of a governmental unit for a tax in respect of a return filed under section 1308 of this title shall be timely if it is filed on or before 60 days after such return or returns were filed as required.''.

(e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.—It is the sense of Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference should, within a reasonable period of time after the date of the enactment of this Act, propose for adoption amended Federal Rules of Bankruptcy Procedure which provide that—

(1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, a governmental unit may object to the confirmation of a plan on or before 60 days after the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code, and

(2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, no objection to a tax in respect of a return required to be filed under such section 1308 shall be filed until such return has been filed as required.

SEC. 518. STANDARDS FOR TAX DISCLOSURE.

Section 1125(a) of title 11, United States Code, is amended in paragraph (1)—

(1) by inserting after ''records,'' the following: ''including a full discussion of the potential material Federal, State, and local tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor domiciled in the State in which the debtor resides or has its principal place of business typical of the holders of claims or interests in the case,'',

(2) by inserting ''such'' after ''enable'', and

(3) by striking ''reasonable'' where it appears after ''hypothetical'' and by striking ''typical of holders of claims or interests'' after ''investor''.

SEC. 519. SETOFF OF TAX REFUNDS.

Section 362(b) of title 11, United States Code, as amended by sections 130, 146, and 150 is amended—

(1) in paragraph (17) by striking ''or'',

(2) in paragraph (18) by striking the period at the end and inserting ''; or'', and

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a) of the setoff of an income tax refund, by a governmental unit, in respect of a taxable period which ended before the order for relief against an income tax liability for a taxable period which also ended before the order for relief, unless prior to such setoff the debt is listed by the debtor as disputed, contingent, or unliquidated.''.

TITLE VI—ANCILLARY AND OTHER CROSS-BORDER CASES

SEC. 601. AMENDMENT TO ADD A CHAPTER 6 TO TITLE 11, UNITED STATES CODE.

(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 5 the following:

''CHAPTER 6—ANCILLARY AND OTHER CROSS-BORDER CASES

''Sec.
''601. Purpose and scope of application.
''SUBCHAPTER I—GENERAL PROVISIONS
''602. Definitions.
''603. International obligations of the United States.
''604. Commencement of ancillary case.
''605. Authorization to act in a foreign country.
''606. Public policy exception.
''607. Additional assistance.
''608. Interpretation.
''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT
''609. Right of direct access.
''610. Limited jurisdiction.
''611. Commencement of bankruptcy case under section 301 or 303.
''612. Participation of a foreign representative in a case under this title.
''613. Access of foreign creditors to a case under this title.
''614. Notification to foreign creditors concerning a case under this title.
''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF
''615. Application for recognition of a foreign proceeding.
''616. Presumptions concerning recognition.
''617. Order recognizing a foreign proceeding.
''618. Subsequent information.
''619. Relief that may be granted upon petition for recognition of a foreign proceeding.
''620. Effects of recognition of a foreign main proceeding.
''621. Relief that may be granted upon recognition of a foreign proceeding.
''622. Protection of creditors and other interested persons.
''623. Actions to avoid acts detrimental to creditors.
''624. Intervention by a foreign representative.
''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES
''625. Cooperation and direct communication between the court and foreign courts or foreign representatives.
''626. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.
''627. Forms of cooperation.
''SUBCHAPTER V—CONCURRENT PROCEEDINGS
''628. Commencement of a case under this title after recognition of a foreign main proceeding.
''629. Coordination of a case under this title and a foreign proceeding.
''630. Coordination of more than 1 foreign proceeding.
''631. Presumption of insolvency based on recognition of a foreign main proceeding.
''632. Rule of payment in concurrent proceedings.

''§ 601. Purpose and scope of application

''(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

''(1) cooperation between—

''(A) United States courts, United States Trustees, trustees, examiners, debtors, and debtors in possession; and

''(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

''(2) greater legal certainty for trade and investment;

''(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

''(4) protection and maximization of the value of the debtor's assets; and

''(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

''(b) This chapter applies where—

''(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

''(2) assistance is sought in a foreign country in connection with a case under this title;

''(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or

''(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

''(c) This chapter does not apply to—

''(1) a proceeding concerning an entity identified by exclusion in subsection 109(b); or

''(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in under section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States.

''SUBCHAPTER I—GENERAL PROVISIONS

''§ 602. Definitions

''For the purposes of this chapter, the term—

''(1) 'debtor' means an entity that is the subject of a foreign proceeding;

''(2) 'establishment' means any place of operations where the debtor carries out a nontransitory economic activity;

''(3) 'foreign court' means a judicial or other authority competent to control or supervise a foreign proceeding;

''(4) 'foreign main proceeding' means a foreign proceeding taking place in the country where the debtor has the center of its main interests;

''(5) 'foreign nonmain proceeding' means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

''(6) 'trustee' includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapters 9 or 13 of this title; and

''(7) 'within the territorial jurisdiction of the United States' when used with reference to property of a debtor refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

''§ 603. International obligations of the United States

''To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with 1 or more other countries, the requirements of the treaty or agreement prevail.

''§ 604. Commencement of ancillary case

''A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 615.

''§ 605. Authorization to act in a foreign country

''A trustee or another entity (including an examiner) authorized by the court may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

''§ 606. Public policy exception

''Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

''§ 607. Additional assistance

''(a) Nothing in this chapter limits the power of the court, upon recognition of a foreign proceeding, to provide additional assistance to a foreign representative under this title or under other laws of the United States.

''(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

''(1) just treatment of all holders of claims against or interests in the debtor's property;

''(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

''(3) prevention of preferential or fraudulent dispositions of property of the debtor;

''(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

''(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

''§ 608. Interpretation

''In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

''§ 609. Right of direct access

''(a) A foreign representative is entitled to commence a case under section 604 by filing a petition for recognition under section 615, and upon recognition, to apply directly to other Federal and State courts for appropriate relief in those courts.

''(b) Upon recognition, and subject to section 610, a foreign representative has the capacity to sue and be sued, and shall be subject to the laws of the United States of general applicability.

''(c) Recognition under this chapter is prerequisite to the granting of comity or cooperation to a foreign proceeding in any State or Federal court in the United States. Any request for comity or cooperation in any court shall be accompanied by a sworn statement setting forth whether recognition under section 615 has been sought and the status of any such petition.

''(d) Upon denial of recognition under this chapter, the court may issue appropriate orders necessary to prevent an attempt to obtain comity or cooperation from courts in the United States without such recognition.

''§ 610. Limited jurisdiction

''The sole fact that a foreign representative files a petition under sections 615 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

''§ 611. Commencement of case under section 301 or 303

''(a) Upon filing a petition for recognition, a foreign representative may commence—

''(1) an involuntary case under section 303; or

''(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

''(b) The petition commencing a case under subsection (a) of this section must be accompanied by a statement describing the petition for recognition and its current status. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) of this section prior to such commencement.

''(c) A case under subsection (a) shall be dismissed unless recognition is granted.

''§ 612. Participation of a foreign representative in a case under this title

''Upon recognition of a foreign proceeding, the foreign representative in that proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

''§ 613. Access of foreign creditors to a case under this title

''(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

''(b)(1) Subsection (a) of this section does not change or codify present law as to the priority of claims under section 507 or 726 of this title, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

''(2)(A) Subsection (a) of this section and paragraph (1) of this subsection do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

''(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

''§ 614. Notification to foreign creditors concerning a case under this title

''(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

''(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other similar formality is required.

''(c) When a notification of commencement of a case is to be given to foreign creditors, the notification shall—

''(1) indicate the time period for filing proofs of claim and specify the place for their filing;

''(2) indicate whether secured creditors need to file their proofs of claim; and

''(3) contain any other information required to be included in such a notification to creditors pursuant to this title and the orders of the court.

''(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

''§ 615. Application for recognition of a foreign proceeding

''(a) A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

''(b) A petition for recognition shall be accompanied by—

''(1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

''(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

''(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

''(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

''(d) The documents referred to in paragraphs (1) and (2) of subsection (b) must be translated into English. The court may require a translation into English of additional documents.

''§ 616. Presumptions concerning recognition

''(a) If the decision or certificate referred to in section 615(b) indicates that the foreign proceeding is a foreign proceeding within the meaning of section 101(23) and that the person or body is a foreign representative within the meaning of section 101(24), the court is entitled to so presume.

''(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.

''(c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

''§ 617. Order recognizing a foreign proceeding

''(a) Subject to section 606, an order recognizing a foreign proceeding shall be entered if—

''(1) the foreign proceeding is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 602;

''(2) the foreign representative applying for recognition is a person or body within the meaning of section 101(24); and

''(3) the petition meets the requirements of section 615.

''(b) The foreign proceeding shall be recognized—

''(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or

''(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 602 in the foreign country where the proceeding is pending.

''(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding shall constitute recognition under this chapter.

''(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the granting of recognition. The case under this chapter may be closed in the manner prescribed for a case under section 350.

''§ 618. Subsequent information

''From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

''(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and

''(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

''§ 619. Relief that may be granted upon petition for recognition of a foreign proceeding

''(a) From the time of filing a petition for recognition until the petition is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

''(1) staying execution against the debtor's assets;

''(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

''(3) any relief referred to in paragraph (3), (4), or (7) of section 621(a).

''(b) Unless extended under section 621(a)(6), the relief granted under this section terminates when the petition for recognition is decided upon.

''(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

''§ 620. Effects of recognition of a foreign main proceeding

''(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

''(1) section 362 applies with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States; and

''(2) transfer, encumbrance, or any other disposition of an interest of the debtor in property within the territorial jurisdiction of the United States is restrained as and to the extent that is provided for property of an estate under sections 363, 549, and 552.

Unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the powers of a trustee under section 549, subject to sections 363 and 552.

''(b) The scope, and the modification or termination, of the stay and restraints referred to in subsection (a) of this section are subject to the exceptions and limitations provided in subsections (b), (c), and (d) of section 362, subsections (b) and (c) of section 363, and sections 552, 555 through 557, 559, and 560.

''(c) Subsection (a) of this section does not affect the right to commence individual actions or proceedings in a foreign country to the extent necessary to preserve a claim against the debtor.

''(d) Subsection (a) of this section does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

''§ 621. Relief that may be granted upon recognition of a foreign proceeding

''(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

''(1) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 620(a);

''(2) staying execution against the debtor's assets to the extent it has not been stayed under section 620(a);

''(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 620(a);

''(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

''(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

''(6) extending relief granted under section 619(a); and

''(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

''(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

''(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

''§ 622. Protection of creditors and other interested persons

''(a) In granting or denying relief under section 619 or 621, or in modifying or terminating relief under subsection (c) of this section, the court must find that the interests of the creditors and other interested persons or entities, including the debtor, are sufficiently protected.

''(b) The court may subject relief granted under section 619 or 621 to conditions it considers appropriate.

''(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 619 or 621, or at its own motion, modify or terminate such relief.

''§ 623. Actions to avoid acts detrimental to creditors

''(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a pending case under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, and 724(a).

''(b) When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) of this section relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

''§ 624. Intervention by a foreign representative

''Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

''§ 625. Cooperation and direct communication between the court and foreign courts or foreign representatives

''(a) In all matters included within section 601, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.

''(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.

''§ 626. Cooperation and direct communication between the trustee and foreign courts or foreign representatives

''(a) In all matters included in section 601, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

''(b) The trustee or other person, including an examiner, designated by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

''(c) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

''§ 627. Forms of cooperation

''Cooperation referred to in sections 625 and 626 may be implemented by any appropriate means, including—

''(1) appointment of a person or body, including an examiner, to act at the direction of the court;

''(2) communication of information by any means considered appropriate by the court;

''(3) coordination of the administration and supervision of the debtor's assets and affairs;

''(4) approval or implementation of agreements concerning the coordination of proceedings; and

''(5) coordination of concurrent proceedings regarding the same debtor.

''SUBCHAPTER V—CONCURRENT PROCEEDINGS

''§ 628. Commencement of a case under this title after recognition of a foreign main proceeding

''After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of that case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 625, 626, and 627, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

''§ 629. Coordination of a case under this title and a foreign proceeding

''Where a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 625, 626, and 627, and the following shall apply:

''(1) When the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—

''(A) any relief granted under sections 619 or 621 must be consistent with the case in the United States; and

''(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 620 does not apply.

''(2) When a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—

''(A) any relief in effect under sections 619 or 621 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

''(B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 620(a) shall be modified or terminated if inconsistent with the case in the United States.

''(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(4) In achieving cooperation and coordination under sections 628 and 629, the court may grant any of the relief authorized under section 305.

''§ 630. Coordination of more than 1 foreign proceeding

''In matters referred to in section 601, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 625, 626, and 627, and the following shall apply:

''(1) Any relief granted under section 619 or 621 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

''(2) If a foreign main proceeding is recognized after recognition, or after the filing of

a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 619 or 621 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

''(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

''§ 631. Presumption of insolvency based on recognition of a foreign main proceeding

''In the absence of evidence to the contrary, recognition of a foreign main proceeding is for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts.

''§ 632. Rule of payment in concurrent proceedings

''Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.''.

(b) CLERICAL AMENDMENT.—The table of chapters for title 11, United States Code, is amended by inserting after the item relating to chapter 5 the following:

''6. Ancillary and Other Cross-Border Cases ..... 601''.

SEC. 602. AMENDMENTS TO OTHER CHAPTERS IN TITLE 11, UNITED STATES CODE.

(a) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: ''and this chapter, sections 307, 555 through 557, 559, and 560 apply in a case under chapter 6''; and

(2) by adding at the end the following:

''(j) Chapter 6 applies only in a case under that chapter, except that section 605 applies to trustees and to any other entity authorized by the court, including an examiner, under chapters 7, 11, and 12, to debtors in possession under chapters 11 and 12, and to debtors or trustees under chapters 9 and 13 who are authorized to act under section 605.''.

(b) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraphs (23) and (24) and inserting the following:

''(23) 'foreign proceeding' means a collective judicial or administrative proceeding in a foreign state, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

''(24) 'foreign representative' means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;''.

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking ''and'' at the end;

(B) in subparagraph (O), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(P) recognition of foreign proceedings and other matters under chapter 6 of title 11.''.

(2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1334(c)(1) of title 28, United States Code, is amended by striking ''Nothing in'' and inserting ''Except with respect to a case under chapter 6 of title 11, nothing in''.

(3) DUTIES OF TRUSTEES.—Section 586(a)(3) of title 28, United States Code, is amended by inserting ''6,'' after ''chapter''.

TITLE VII—MISCELLANEOUS

SEC. 701. TECHNICAL AMENDMENTS.

Title 11 of the United States Code is amended—

(1) in section 109(b)(2) by striking ''subsection (c) or (d) of'';

(2) in section 541(b)(4) by adding ''or'' at the end; and

(3) in section 552(b)(1) by striking ''product'' each place it appears and inserting ''products''.

SEC. 702. APPLICATION OF AMENDMENTS.

The amendments made by this Act shall apply only with respect to cases commenced under title 11 of the United States Code after the date of the enactment of this Act.

The CHAIRMAN pro tempore. Pursuant to House Resolution 462, the gentleman from New York (Mr. NADLER) and a Member opposed each will control 30 minutes.

The Chair recognizes the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

(Mr. NADLER asked and was given permission to revise and extend his remarks.)

Mr. NADLER. Mr. Chairman, I rise in support of the Democratic substitute. Unlike the bill before us, H.R. 3150, this bill represents a balanced and reasoned response to the problems of bankruptcy abuse by debtors as well as by creditors.

What does this substitute do? First, the substitute strikes the bureaucratic inflexible means testing provisions of the bill and provides, instead, for a strengthened dismissal procedure based on the debtor's actual income and expenses.

Under the substitute, trustees as well as the courts and the United States trustees could seek dismissal of a bankruptcy case involving families with incomes over $60,000. This deals with the problems of bankruptcy abuse in a reasonable manner while taking in account such important items as child care payments, health care costs, the cost of taking care of ill parents and educational expenses.

□ 1700

I might add, Mr. Chairman, it changes in two fundamental ways the means testing provisions of the bill before us.

First, it has a human being in it. I believe in human beings. We believe in human beings on this side of the aisle. It has a judge. If someone thinks that this person can pay, has the ability to pay his debts and ought not to be allowed to have a discharge under Chapter 7, fine, convince the judge. This provides pretty strong procedures of what you have to prove to get into Chapter 7 to get your discharge, but there is a judge to judge it. It is not an automatic filing that goes into a computer, as it is in the bill.

Second, it makes the commonsense observation that if the question is, can this debtor afford to repay his debts, as opposed to getting a discharge, it has practical, specific questions: What is his income? What is his assets? What are his expenses? How much rent does he pay? How much child support obligation does he owe per month?

Not, as in the bill before us, what is the average rent that the Internal Revenue Service thinks someone ought to pay in the northeast or southwest United States; not what does the average person, according to the IRS, what they think the average person might be paying for child support. Who cares? The question is this person in front of us, how much can he afford to pay, what are his real expenses, how much is left over for debt service. This applies that kind of a traditional test, instead of a fictitious test dealing with a fictitious average person who does not exist.

Third, the substitute eliminates provisions making significant amounts of credit card debt nondischargeable in bankruptcy, pitting these aggressive and sophisticated creditors in direct competition with child support, alimony, spouse support, and victim support.

After first denying that a problem ever existed, the majority has come up with a series of toothless and meaningless fixes. The substitute responds to the real problem by protecting against giving increased money to credit card companies at the expense of alimony and child support.

The substitute also modifies the business provisions of the bill, which impose massive new legal and paperwork burdens on small business and real estate concerns and will cost our economy thousands of jobs.

In a letter opposing H.R. 3150 written today and which I referred to earlier today, the AFL-CIO has stated that H.R. 3150 ''threatens jobs by placing substantial procedural barriers in the way of small business access to the protections of Chapter 11.''

As I also read earlier, the Small Business Administration says the same thing, and the National Bankruptcy Conference says the same thing. This removes that. In addition, the substitute adds a new provision protecting charitable contributions in Chapter 11 and Chapter 12 cases.

The bill in front of us protects tithing only in Chapter 7 and Chapter 13 cases. There is no provision allowing individuals and corporations to utilize Chapter 11 or family farmers to utilize Chapter 12 to continue to make religious and other charitable deductions before and in and after bankruptcy. The substitute is the only proposal which fully protects these charitable contributions. I might add, the halfway drafting of the tithing provisions of the bill in front of us is a symptom of the hasty manner in which this bill was drafted, the sloppy manner in which it was drafted, without proper review.

We were told time and time again by all the organizations that deal with bankruptcy about how hasty this was, how hasty the process, how sloppily drafted. We kept telling the committee leadership, slow down the process, but they did not. The fact that they forgot to put in Chapter 11, the fact that they forgot to put in Chapter 12 in the tithing provisions is just one obvious example of the sloppy drafting of this bill and hasty drafting of this bill.

The substitute also adds a provision specifying that the new post-bankruptcy priorities for alimony and child support apply to benefit creditors who are drunk driving victims and victims of crime or willful or malicious injury, also. The bill in front of us only grants these new post-bankruptcy priorities to alimony and child support creditors, and completely ignores innocent victims of crime and drunk driving who, under the bill, are forced to compete with aggressive credit card companies in the post-discharge situation.

In addition, the substitute goes much further than H.R. 3150 in protecting family farmers, because it strikes language making it far easier for banks to foreclose on family farms. Again, the Democratic substitute is the only amendment which offers the Members a chance to stand squarely behind our farmers at a time when they face massive new challenges.

The substitute retains the vast majority of the other provisions in the majority bill. It offers significant new benefits to banks and other lenders while protecting women and children and protecting jobs.

In a conscientious, intelligent, realistic fashion, it applies a test that makes sense in separating out those people who cannot pay their debts and ought to have a Chapter 7 discharge from those who probably can, the small minority of those who probably can and should be in a Chapter 13 workout situation. But the test is realistic, it is based on facts and on the individual case, not on a theoretical construct of the Internal Revenue Service.

It boggles my mind that the authors of this bill and the supporters of this bill, who stood on this floor day after day after day telling us how insensitive the Internal Revenue Service is to real people, now think the Internal Revenue Service ought to be running the lives of Americans caught up in the bankruptcy courts.

So I urge my colleagues to vote yes for the substitute resolution as a much better substitute to accomplish the professed goal, the claimed goal, of the legislation, without accomplishing the real effect of the bill in front of us, which is simply to give a lot of undeserved money to the credit card companies, instead of to people who need child support, the victims of crimes, and to debtors in serious situations, and to other creditors.

Mr. Chairman, I urge a yes vote on this substitute.

Mr. Chairman, I ask unanimous consent that the gentleman from Massachusetts (Mr. MEEHAN) may control the balance of the time which I have been granted.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. NADLER. Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN pro tempore. Does any Member rise in opposition to the amendment?

Mr. GEKAS. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN pro tempore. The gentleman from Pennsylvania (Mr. GEKAS) is recognized for 30 minutes.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

As I mentioned before, Mr. Chairman, throughout the time that he has served on our subcommittee, the gentleman from Tennessee (Mr. BRYANT) has been a semi and maybe a complete expert on some of the matters that have come before us with respect to bankruptcy, and in particular, with bankruptcy trustees and their work.

That is why it pleases me to see him continue to be energetic in the development of this legislation.

Mr. Chairman, I yield such time as he may consume to the gentleman from Tennessee (Mr. BRYANT).

Mr. BRYANT. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I rise at this time to engage the gentleman from Pennsylvania (Mr. GEKAS) in a colloquy in regard to an issue that is very important to my State.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. BRYANT. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. I will be glad to do so, Mr. Chairman.

Mr. BRYANT. Mr. Chairman, as the gentleman from Pennsylvania knows, I have been contacted by several Tennessee financial institutions which are concerned about the amount of time allowed to record a lien on a vehicle refinance.

Current law allows creditors only 10 days from the loan origination to record a lien. This is difficult, since it requires paying off the lienholder, receiving the title back from the lienholder, and submitting the paperwork to the State for processing.

In Tennessee a lien filed in the proper time normally will result in a lien date corresponding to the loan date. If the State receives the lien application outside the time parameter, then the lien date corresponds to the application received date.

Trustees have become more aggressive in bankruptcy in pursuing assets that are in bankruptcy. If a lien is recorded out of that allowed period, the court will strip the refinancing institution of its lien, take possession of the vehicle, and use the proceeds to satisfy creditors in that bankruptcy. The refinancing institution then becomes an unsecured creditor, and is treated as such.

This is a serious problem, and impacts greatly on the willingness of financial institutions to create a competitive market in the vehicle refinance area. Several of Tennessee's financial institutions have recommended extending the 10-day period to 60 days. I know that the gentleman from Pennsylvania (Mr. GEKAS) has expressed some concern over the length of this proposed time, but has indicated to me that he would be willing to work with me on this issue, as the bill moves to conference with the Senate.

Mr. GEKAS. If the gentleman will continue to yield, Mr. Chairman, the gentleman is exactly correct. After the gentleman brought this matter to the attention of the committee, we decided that we were going to try to work strenuously between now and the time of conference to blend the gentleman's concerns into the consideration of this bill as it reaches that stage. We will do so.

Mr. BRYANT. I thank the distinguished chairman.

Mr. GEKAS. Mr. Chairman, I yield 4 minutes to the gentleman from Indiana (Mr. ROEMER).

(Mr. ROEMER asked and was given permission to revise and extend his remarks.)

Mr. ROEMER. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I rise in opposition to the substitute and in support of the bipartisan bill, the underlying bill, put together by the gentleman from Pennsylvania (Mr. GEKAS) and the gentleman from Virginia (Mr. BOUCHER).

Chairman Alan Greenspan testified before Congress today. He said many great things about the state of our economy. He said we have a record stock market, record unemployment, the lowest in 28 years. Things are going extraordinarily well in this country. That is the best of times and the best of news.

However, today we debate a very serious issue that is possibly the worst of times. We have had 1.4 million people in 1997 declare bankruptcy, 1.4 million people. That is more than the combined total populations of the States of North and South Dakota; more than the total combined populations of North and South Dakota, two States out of our 50, equal the number of bankruptcies filed in 1997. That is a serious problem.

So we have the best of times, according to Chairman Greenspan, and the worst of times with the number of bankruptcies. Why? There is no stigma attached to the filing of bankruptcy anymore.

Second, Chapter 7, it is convenient to file in Chapter 7. Chapter 7 should not be as convenient as going into a 7–11. It should be based on need. It should not be based on convenience.

And, Mr. Chairman, we need to strengthen the emphasis that we have

in this bill on child support and alimony. The Boucher amendment that we discussed an hour and a half ago, which was voice voted, that amendment made child support and alimony the very top priority. It leapfrogged over 6 or 7 other issues, over farmer's claims and fishermen's claims.

Now, under that provision and under this bill, then, if passed, child support and alimony becomes the top priority. It also expands the definition of household goods to assure that a parent who declares bankruptcy is not required to give up possessions needed for childrearing and raising their children, two very important provisions that show common sense and compassion in this bill.

We also strengthen consumer protections in current law by cracking down on bankruptcy mills which steer consumers into filing without information on the consequences of bankruptcy. We expand notice requirements on alternatives to bankruptcy, and we mandate participation in credit counseling services.

Mr. Chairman, this is a bill that shows its commitment to personal responsibility, that is fair to the taxpayer, that says that the bankruptcy system that exists today should not cost our small businesses like it does today, should not cost the consumer as it does today, that should not cost the law-abiding taxpaying citizen as it does today.

We are reforming that with common sense, we are reforming that with personal responsibility, and we are reforming that, putting our top priorities on child support and alimony. That is the basis for reform, and that is the basis I hope for a bipartisan support for this bill.

Mr. MEEHAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong support of the Nadler-Meehan-Berman Democratic substitute, and I do so as a strong supporter of bankruptcy reform and a strong supporter of means testing.

The choice before us today is clear: We can means test in a manner that takes debtors who can truly afford to repay their debts and places them into stable Chapter 13 repayment plans. Or we can means test in a way that affords aggressive creditors the opportunity to inflict protracted, contentious, and expensive litigation upon debtors of all income levels. Unfortunately, H.R. 3150 embodies the latter approach.

□ 1715

According to the nonpartisan Congressional Research Service, ''H.R. 3150 would inject numerous opportunities for adversarial hearings in the course of a consumer bankruptcy . . . it is reasonable to anticipate that in some instances, debtors who cannot afford creditor-initiated adversarial litigation will acquiesce in reaffirmation agreements, unreasonable repayment schedules, or just opt out of the bankruptcy system.''

To make matters worse, H.R. 3150 flat out exempts a large amount of credit card debt from discharge through bankruptcy, even though this credit card debt was not actually incurred by fraud. The net result of these policies is that a substantial amount of credit card debt currently discharged through bankruptcy would now survive bankruptcy.

This means that there would be a significant increase in the number of credit card lenders competing for portions of a debtor's limited postbankruptcy income and assets against women and children owed alimony and support, victims of intentional torts committed by the debtor, and a debtor's student loan creditors.

Mr. Chairman, I have not yet heard even a remotely compelling public policy rationale for making it more difficult than it is already for women and children to collect alimony and support. Instead, a Dear Colleague letter was circulated this week that tells us that the concerns about alimony and support collection are ''rubbish.'' How interesting.

First we hear there is no child support and alimony problem. That is what we were told in committee. Then we hear the Committee on the Judiciary fixed this once nonexistent problem and that the remaining complaints are ''rubbish.'' Now we are told that certain floor amendments fixed the initially nonexistent and supposedly solved problem.

It kind of makes one wonder who is really spewing the ''rubbish.''

The Nadler-Meehan-Berman substitute would address debtor abuses without dramatically reducing the scope of debts covered by bankruptcy. It would means-test without permitting aggressive creditors to file motions against debtors who simply cannot afford to stick up for their bankruptcy rights. And it strikes the new exceptions to discharge for credit card debt that have no legitimate public policy justification and threaten alimony and support collections.

The substitute is the type of reform that the Senate could accept and the President would sign. I urge my colleagues to support the substitute.

Mr. Chairman, I reserve the balance of my time.

Mr. GEKAS. Mr. Chairman, I would ask how much time is remaining.

The CHAIRMAN pro tempore (Mr. CALVERT). The gentleman from Pennsylvania (Mr. GEKAS) has 23½ minutes remaining, and the gentleman from Massachusetts (Mr. MEEHAN) has 18½ minutes remaining.

Mr. GEKAS. Mr. Chairman, I yield 3 minutes to the gentlewoman from New York (Mrs. KELLY).

Mrs. KELLY. Mr. Chairman, I thank the gentleman from Pennsylvania (Mr. GEKAS) for yielding me this time.

Mr. Chairman, I rise in opposition to the Nadler amendment. H.R. 3150, as written, boils down to two words: personal responsibility. If we assume a debt, we should do everything in our power to pay it off. A safety net should remain for those who legitimately cannot pay their debts. Creditors should be made whole if possible.

Some of my colleagues here today are trying to paint the word creditors to mean faceless financial institutions who are tricking consumers into assuming debt. They specifically speak of credit card debt, but they unfortunately fail to note that credit card debt in the United States amounts to only 3.7 percent of all consumer debt.

The people who are truly being hurt by our current bankruptcy system are the Americans who play by the rules and pay their debts. It costs the average American family an average of $400 a year. Why should they have to pay? Needs-based bankruptcy reform is well overdue, and that is what is in H.R. 3150.

Mr. Chairman, the abuses in our bankruptcy system that scream for reform must be stopped. For example, people currently have the ability to move to Florida, buy a house for $10 million dollars, declare bankruptcy, and have all of that house plus additional assets protected. We have the gentleman from Massachusetts to thank for this piece of the reform package for his well thought out amendment to this legislation that passed during committee consideration of this legislation.

It is these people who game the system that we are trying to stop. It is unfortunate that in the last two decades the stigma that used to surround bankruptcy and some people's integrity to honor their debts has eroded in the United States of America. But it largely for that reason that in a good economy, bankruptcy filings have jumped 20 percent in 1997 to an all-time high.

I ask all of my colleagues from both sides of the aisle to join me in opposition to the Nadler amendment and for H.R. 3150, reasonable reform to means-test bankruptcy eligibility.

Mr. MEEHAN. Mr. Chairman, I yield 5 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE) who has been a leader on the committee on this issue in fighting for women and children for child support and alimony.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentleman from Massachusetts (Mr. MEEHAN) for yielding me this time as well as for his leadership. We, both of us started out on this committee hoping that we could promote and pass on the floor of the House a bipartisan bankruptcy bill.

Mr. Chairman, I am delighted to be a cosponsor of the Democratic substitute which really answers the question: Do we have personal responsibility in this country? And is it just that people are filing bankruptcy recklessly with no regard for the responsibility that is needed?

Why do we not answer the question? Some few years ago those who had a

debt of maybe some 70 percent or less, 87 percent, in fact, of income were filing for bankruptcy. Today in 1997, the people who are filing bankruptcy have over 164 percent of debt. They are holding out every single day in order to make ends meet in order to be personally responsible. And the only time they go down to the bankruptcy court is when they are so desperate to keep their house in order, to keep their children fed, and to keep themselves above water.

Americans are not recklessly and foolishly filing for bankruptcy. Yes, there are a few high-profile filers, and we can solve that problem. The Democratic substitute takes away the means test, but it has strong provisions for bankruptcy judges to weed out the fraudulent persons, to determine whether there has been substantial abuse and tell them, ''Get away from the courthouse door because you do not need to file bankruptcy.''

Mr. Chairman, these are the people that are filing bankruptcy. Who else? Families who have more than four children, making $40,000 a year. Those children will be precluded, or the families will be precluded from filing for bankruptcy because the means test will kick them outside of the courthouse door. If Americans have a family of four making $40,000 a year and for some reason, catastrophic illnesses, something that has happened in the family, the loss of a job, they will be forbidden under H.R. 3150 from ever going to the courthouse.

Who else files bankruptcy? Mr. Chairman, 300,000 of those cases are comprised of men claiming bankruptcy who owe child support and/or alimony, and 50 percent are cases comprised of women forced into bankruptcy after being unable to collect alimony.

Are these deadbeats? These are people trying to make ends meet, and H.R. 3150 does not answer this question. It elevates child support up to a number one priority, but it still makes nondischargeable all of those debts, furniture debts and credit card debts, which call time after time, fighting debtors for their child support because the debtors do not have the wherewithal and the resources to compete with the big banks calling them on their job 12 times a day. Mr. Chairman, they are going to pay the car note and the credit card company, but the child that needs it and the alimony they needs to be paid, that will not be paid.

Mr. Chairman, I can say that the real reason behind H.R. 3150 is all the money that has been put into this whole piece of legislation. If we could simply focus on what America needs, it needs credit card counseling. It needs to stop the 2.4 or 2.5 billion contacts made every year with consumers.

What about this check? ''Charging up credit, Jane Q. Consumer, $2,500.'' We have seen them in the mail. ''Sign here. It does not matter. We will cash your check for you.''

I tell my colleagues that the real people in America who are filing for bankruptcy are people in need. I would like to share some of the letters and concerns that have been expressed to me.

One, someone who has a catastrophic illness and they are trying to pay the bills. They have a family, and they are trying to pay the bills, and that is why they need to go into bankruptcy. Mr. Chairman, 40 percent of senior citizens who file bankruptcy have catastrophic illness. Sixty percent of filers go into bankruptcy because they have been unemployed.

Means-testing is truly mean. What we need in real bankruptcy reform is consumer credit counseling. I have legislation that I will be offering that will instruct the banks and credit card companies to provide credit card counseling, personal counseling, and require them to include that.

What about an 800-number in the credit card bill or solicitation that says if consumers feel they are abusing credit, they should call this number? That is what we need for bankruptcy reform, not closing the door to hard-working Americans making $40,000 a year with four children; not closing the door on those individuals who are dependent upon alimony and child support; Not closing the door to those senior citizens suffering from catastrophic illness who as a last resort have to file for bankruptcy; not that single mother or single parent who is trying to make ends meet.

Mr. Chairman, I would have hoped that this bill could have been one that we all could have supported. Even the First Lady has looked at it and said she believes in personal responsibility, but not closing the door on parents and those who are trying to support their children.

I would simply suggest that we could do better here. I urge my colleagues to send this bill back and put out a good bill that will help working Americans.

Ms. JACKSON-LEE of Texas. Mr. Chairman. I rise today in support of the Democratic substitute to H.R. 3150, the Bankruptcy Reform Act of 1998. I seriously question whether this bill, as it is now written, will accomplish its goal of reforming our present bankruptcy system without causing significant harm to many innocent parties; so essentially, I find H.R. 3150 to be a bad bill. Particularly after the issuance of an extremely harsh recommended rule by the Rules Committee last night, and the exclusion of several key Democratic amendments from the list of those that were made in order, this Democratic substitute is our last hope.

From the beginning, this process has been more than merely a ''rush to judgment'', actually, it has been a prime example of ''drive-by'' legislation. And even as we entered into a bipartisan agreement to end the Full Committee mark-up of this bill last Thursday, there were still 40 Democratic amendments to the bill waiting at the Clerk's desk. So far, this process has just been moving too fast. Furthermore, our objections about the rapidity of this process have been echoed by the National Bankruptcy Conference, the American College of Bankruptcy, the National Conference of Bankruptcy Judges, the National Association of Chapter 13 trustees, and 57 of the Nation's leading professors of bankruptcy law, amongst others. But despite it all, the speeding train called H.R. 3150, continues to rush along. For decades, our bankruptcy laws have been shaped in the spirit of bi-partisan accord, at least, until now. So how can we have the opportunity to try to correct all of these points of difference about H.R. 3150, at this very late time in the process? To me, the answer is simple, support the Democratic Substitute.

The needs based bankruptcy approach utilized in this bill, which essentially comprises the use of an arbitrary financial standard to determine the filing status of bankruptcy participants, was not recommended to the Congress by the National Bankruptcy Review Commission. But for some unknown reason, the sponsors of this legislation thought better of the Commission's impeccable credentials, years of combined experience in the field, thousands of man-hours invested to compile and present their 1300 page report to this Congress, and decided to ignore their recommendation. As the Executive Office of the President said in a May 21st letter to Chairman GEKAS, ''However, the administration strongly opposes H.R. 3150 in its present form. One provision of the bill would establish a rigid and arbitrary means test to determine whether a debtor could file for bankruptcy under Chapter 7 or would be required to file under Chapter 13 rules—Bankruptcy courts should have greater discretion to consider the specific circumstances of a debtor in bankruptcy.''

Even the minority of Commissioners who thought the concept of needs-based bankruptcy should be further explored, also thought that the correction of certain parts of the Code, like 707(b), could also negate the apparent rise in bankruptcy fraud. To this regard, our Democratic Substitute gives discretion to our Bankruptcy Judges, by amending 707(b) of the Federal Bankruptcy Code, which contains the standards for reviewing any potential filing abuse by a bankrupt debtor. We all believe that by strengthening this section of the Code, alone, any so-called bankruptcy fraud could be effectively neutralized.

But the real source of the 400% rise in bankruptcy filings since 1980, with a grand total of nearly 1.4 million filings last year, is debt. The Republican argument, from the beginning, has been that with a record 1.4 million bankruptcy filings last year, and with over 2/3 of those filers entering into Chapter 7 rather than Chapter 13, that the interests of the credit industry are being unnecessarily harmed by the flexibility of our current bankruptcy laws. Furthermore, the credit industry has consistently argued throughout this process that each American household has had to endure a silent $400 tax, equal to their $10 billion dollars in losses to debt discharge every year, as a result of these laws. Thus, H.R. 3150 is a so-called return to personal responsibility in our bankruptcy laws, because the ''overwhelming'' number of filings must represent an unprecedented debtor abuse.

However, this argument is ultimately a farce. The facts clearly indicate that the cause of the recent surge of bankruptcy filings is not because these filings are fraudulent, but instead because Americans simply have too much debt. Commercial and Administrative Law Subcommittee Ranking Member NADLER has

been extremely eloquent in his presentation of the debt to income ratio among American consumers over the last 25 years, and how the only indisputable evidence in this debate is that Americans have significantly more debt today, than they have ever had before.

The average bankruptcy filer last year had a debt to income ratio of 1.64 to 1 (164 percent of their income) as opposed to just .87 to 1 (87 percent of their income) a few short years ago (that is nearly double!). The fact of the matter is that Americans have more debt than ever, and are waiting later than ever to enter bankruptcy, rather than rushing into it to reorganize their personal finances as the authors and supporters of H.R. 3150 have claimed. To reaffirm this contention, a recent GAO study shows that the number of bankruptcy filings per 100,000 people as compared to the average amount of consumer debt per household since 1964 has remained relatively unchanged. This means that the number of bankruptcy filings over the last three decades has consistently corresponded with the amount of public consumer debt.

Further, according to Bankruptcy Law Professor Elizabeth Warren of the Harvard Law School, the debtors that enter bankruptcy are usually experiencing very turbulent times. 60 percent of bankruptcy filers have been unemployed within a two year span prior to their filing. 20 percent of filers have had to cope within an uninsurable medical expense. Over 1 out of 3 filers, both male and female are recently divorced. All of these factors usually working in concert to affect the financial circumstances of a particular debtor, make bankruptcy an inevitably, because it becomes their last remaining opportunity for a fresh start. These are hard working Americans who have fallen upon difficult times that H.R. 3150 presumes to be pretextually fraudulent, generally disingenuous about their incomes and assets and capable of making a significantly greater financial contribution to their creditors. Ultimately, it seems that the true purpose of this bill is not to improve the federal bankruptcy code, but instead, to transfer more money from bankrupt debtors to banks and other credit lending institutions.

But the reality is that no statistic can tell the story of a lost job, a serious or terminal illness, a death in the family, a divorce or any of the other common reasons for filing for bankruptcy; there simply is much more to any bankrupt's story than a debtor's anticipated income and projections about their ability to repay a portion of their debt. Ultimately, this bill may end up causing a chilling effect on all bankruptcy filings: justified, fraudulent or otherwise (i.e., people may resolve that it is impossible for them to receive any satisfactory remedy in the post-H.R. 3150 system).

The final reason to support the Substitute is that this bill is completely inept in its regard for the care, safety and welfare of our children. As the First Lady wrote in a May 7th article in the Washington Times, ''I have no quarrel with responsible bankruptcy reform, but I do quarrel with the aspects of the bill (H.R. 3150) that would force single parents to compete for their child support payments with big banks trying to collect credit card debt.'' She continued, ''As members of Congress grapple with bankruptcy reform, they must deal with the problems that face both creditors and debtors. But one issue is clear. Any effort to reform the bankruptcy system must protect the obligations of parents to support their children.''

But H.R. 3150, does not ensure these protections, not at all. Even if the Boucher/Gekas ''superpriority'' amendment is passed by this House, the ''child and spousal support'' problems with this bill will still not be corrected. First of all, I am appalled that the sponsors of this legislation who have continually made the claim in the press, in public statements and in pro-H.R. 3150 propaganda, that the ''child and spousal support'' issue had been solved in Committee, would dare to offer another amendment on this issue themselves rather than seek to work with those parties who have concerned about this issue from the very beginning. Whatever the motives of these parties may have been, it at the very least, is disquieting to see conduct which borders upon the deceptive.

The bottom line is as simple as this, our children and families still have to compete with banks, credit lending institutions and retailers in order to receive their needed support payments. No amendment made in order under the current rule addresses the mandatory payment to unsecured creditors for Chapter 13 participants in Section 102 of the bill, no amendment made in order eliminates the many instances of nondischargeability status for (credit card or) unsecured debt mandated by the bill (Sections 141, 142, 145): the problem still remains. Furthermore, since the Jackson Lee/Slaughter Child and Spousal Support amendment was not made in order, the Democratic Substitute is the only last chance to solve this problem before the final consideration of this bill.

This substitute is friendly to women, children, religious and charitable organizations, family farmers, homeowner and condominium associations, victims of drunk driving related accidents, and many, many others, at this late date, this Substitute is the closest that we will ever get to bi-partisan bankruptcy reform. I urge all of my colleagues to support it.

Mr. GEKAS. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Mrs. TAUSCHER).

Mrs. TAUSCHER. Mr. Chairman, I rise in opposition to the Nadler substitute. The skyrocketing number of bankruptcies filed in this country make it necessary for us to make real and substantial reform and improvements to our bankruptcy law. This substitute would strip from H.R. 3150 those provisions that promote responsibility and ensure for bankruptcy filers repay some of what they owe.

The means test in this bill is a fair and reasonable process that separates those who truly need to have their debts wiped away from those who can afford to repay some of their obligations. It places no undue burdens on sincere bankruptcy filers and requires repayment of debts only if filers can adequately meet their household needs.

Mr. Chairman, we cannot be apologists for irresponsible behavior any longer. The stigma that once was attached to bankruptcy must be replaced by laws that hold people accountable for their action. I urge my colleagues to oppose the Nadler substitute and support H.R. 3150.

Mr. GEKAS. Mr. Chairman, I yield 3½ minutes to the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Mr. Chairman, I rise today in opposition to the Nadler substitute and in strong support of the Bankruptcy Reform Act, of which I am a cosponsor.

Over the past decade, despite economic growth, despite low unemployment, despite increasing personal income, our Nation has seen an alarming increase in the numbers of bankruptcy filings. And I would just share with my colleagues that filings jumped 20 percent this year. That is 1.3 million, one in every 70 households.

The numbers are even greater in my home State of California, where we have the greatest number of bankruptcy petitions filed last year, three times as many as the next highest State, which is New York.

I wonder if perhaps the Yellow Pages which reflect these bankruptcy mills, which I am holding in my hand, a stack of yellow pages that basically say, ''Do not pay your debts, just call this number,'' if perhaps this influences these growing numbers of bankruptcies.

Mr. Chairman, how is it that bankruptcies are increasing dramatically while the economy is improving? For sure, some people have genuinely bad breaks, and they need and should have protection from creditors.

□ 1730

No one here today is questioning that, but we need to realize that there are other people who are taking advantage of the current law to walk away from their responsibility, the personal responsibility that is so important to our Nation.

The costs to us from all this are great. Bankruptcy cost our Nation $40 billion last year, and that cost is not solely borne by the creditors and the merchants and the property owners. No, it is borne by the individual families in this country, Mr. Chairman. And that is a cost of $400 per household, higher costs for goods, higher costs for services and for credit. That is a $400 bill that you and I pay when irresponsible spenders who can afford to pay all or some of their debt declare bankruptcy. This is what the bill addresses.

I would also like to add, Mr. Chairman, that this bill helps ex-spouses. It helps women and children who rely on child support and alimony payments. Indeed, this legislation makes major improvements in the treatment of ex-spouses and children over present law.

First, it makes all domestic and child support and property settlement obligations nondischargeable debts.

Second, under this legislation, for the first time child support obligations must be paid before any other nondischargeable debt that survives bankruptcy. I will add that my colleague the gentleman from Virginia (Mr. BOUCHER) added an amendment, which I supported, which was adopted, that will provide additional assurance that child support and alimony payments are paid by giving them top priority. That is in the bill.

Our bankruptcy laws play an important and necessary role in protecting those who really need them. And that is the key, Mr. Chairman, need. This bill makes the existing bankruptcy system a needs-based one, addressing the flaw in the current system that encourages people to file for bankruptcy and walk away from debts, regardless of whether they are able to repay any portion of what they owe, while protecting those who truly need protection.

Mr. MEEHAN. Mr. Chairman, I yield 3 minutes and 30 seconds to my friend and colleague, the gentleman from Massachusetts (Mr. KENNEDY).

Mr. KENNEDY of Massachusetts. Mr. Chairman, first of all, I want to thank my good friend the gentleman from Massachusetts (Mr. MEEHAN) for the hard work that he and the gentleman from Massachusetts (Mr. DELAHUNT), and the gentleman from New York (Mr. NADLER) and others have done on this bill.

This is the kind of legislation where I had hoped to be able to come to the floor and support the overall bill that was being generated in order to deal with a real problem in this country, where all too often very, very wealthy and powerful individuals and corporations use the bankruptcy laws to essentially hide from their responsibilities of paying their debts.

I see it time and time again in my work on the Subcommittee on Housing and Community Development and seeing landlords that are completely unscrupulous declare bankruptcy, suck out section 8 subsidies time and time again, year in and year out, abuse the system and do so with a bunch of sophisticated lawyers and beat the taxpayer and beat their obligations to society.

I want to support a bankruptcy bill, but this bankruptcy bill is flawed. This bankruptcy bill is flawed because it does not look out after not the rich and powerful, but it does not look out after the working families and the poor.

I rise in support of the Democratic substitute. As we debate this bill, I am reminded of the casino scene in Casablanca with Inspector Renault. After a decade of credit card companies literally throwing trillions of unsolicited credit cards at consumers, luring them in with teaser rates and easy credit and then slamming consumers with 20 percent and higher interest rates and creative new fees, the credit card industry pretends to be shocked, shocked to find a rise in personal bankruptcies.

Before Congress enacts the credit card industry's wish list to go after the bankrupt poor and middle-income debtors, it is critical that we hold the credit card industry accountable for practices that they have spawned: a doubling of credit card debt over the course of the last 6 years, and a 50 percent increase in credit card delinquency rates.

The Democratic substitute addresses some of these concerns about credit card practices in dealing with dischargeable credit card debts. Before we enact bankruptcy reform, I also believe that we should reform the reckless credit card practices of easy credit, high interest rates and creative new fees, new fees such as teaser rates. We should require better disclosure of the permanent rate of teaser rate come-ons. Checks, we should mandate stricter control over unsolicited mailing of high interest rate credit card accounts masquerading as checking accounts. And rate increases, we should codify the right, existing in 20 States, to cancel a credit card and pay it off under existing terms and conditions when rates are arbitrarily raised.

But the most egregious credit card practices, which should be outlawed, are those which actually provide a financial incentive for credit card holders not to pay off their debt. The first is the so-called GE fee, a fee charged on card holders simply because they pay their charges on time in full each month.

The other is the action, first seen only last year, of canceling credit cards of only those card holders that paid their debt in full on time.

I offered an amendment to outlaw these two practices, but the Republicans refused to even allow it to be debated.

It is outrageous that an industry that wants relief from bankruptcy should discriminate against people who pay off their debt simply because credit card companies cannot make obscene profits off of them. The credit card and banking industries are currently making record profits. Do not bail out the credit card companies until they clean up their act.

Mr. GEKAS. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. BOUCHER).

Mr. BOUCHER. Mr. Chairman, I thank the gentleman from Pennsylvania for yielding me the time.

I rise in opposition to the Nadler substitute and would offer some remarks in further elaboration of the priority that we have now accorded to the child support and alimony recipient.

These remarks are offered in response to the suggestion, made by some who are arguing in support of this substitute, that child support and alimony does not receive proper priority and that what priority it has perhaps could be defeated in a practical way by nonsecured creditors who have claims that survive in the post-discharge environment. I disagree with those suggestions and would explain this disagreement in these terms.

As a legal matter, I think, as a consequence of amendments adopted in the committee and the Boucher-Gekas amendment adopted earlier on the floor today, we have now done everything that possibly can be done to make sure that the child support recipient, the alimony recipient does in fact have complete priority over nonsecured debt and in fact has first priority in the range of priorities in bankruptcy and in the post-bankruptcy environment.

The only argument that I am now hearing is that as a practical matter, the recipient of alimony, the recipient of child support may not have the practical ability to enforce that priority that is possessed perhaps by the credit card company or some other lender who has a claim that survives in bankruptcy.

I would respond to that by saying that Congress has created and required agencies that enabled the recipient of child support, the recipient of alimony to enforce their claims very effectively. All that has to be done is for a letter to be sent from one of these agencies at the State level to the employer of a person who owes child support or alimony and then that child support or alimony is automatically withheld from the salary of the person who has that obligation.

That money is then automatically turned over to the recipient of the child support or alimony. That is a very effective way for the person who has a claim for child support or alimony to have that claim pursued successfully. The State operates in support of that claimant.

The question then arises with regard to what about the person who owes child support or alimony and is self-employed. Obviously there is no instrumentality to withhold salary in that case, and the answer is that by encouraging the greater use of Chapter 13, which is the foundation of the bill and the core principle of the bill itself, we will encourage a greater respect for the priority of the child support or alimony recipient. Because in Chapter 13 proceedings, it is very easy, indeed, to enforce that first priority that the child support or alimony recipient will have.

So in every instance, we have done everything that can be done to protect that priority, and I would respectfully urge that this amendment not be agreed to.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Two interesting contentions that have been made throughout this debate from the very first moment we began the process in late 1997. One is the continuous lament from the other side of the aisle that it is not bipartisan in its offering, in its substance or in its support. Yet we took great pains to entertain as many Democrats as possible in a Republican atmosphere to provide a bipartisan vehicle for our consideration and that has reached us here today: bipartisan in sponsorship, bipartisan in sponsorship of underlying bills which were incorporated into our bill, and bipartisan in those who came forward to say to us, let me speak in favor of 3150 and let me speak in opposition to the Nadler substitute. So there is a bipartisanship that has played its role throughout this process.

When, during subcommittee, I remember very well, turning to the gentleman from New York (Mr. NADLER), he will recall this, and asking him if any Republicans joined him and the gentleman from Michigan (Mr. CONYERS) in their plan for bankruptcy reform, thus an attempt to make it a bipartisan vehicle, the gentleman from New York (Mr. NADLER), quite honestly, admitted there were no Republicans, nor did I discern any attempt on their part to draw Republican support for their vehicle.

Now, this is not a great big argument on my part, the fact that I believe it is bipartisan, while others on that side do not believe it is bipartisan. But when we opened the amendment process in the subcommittee and full committee and on the floor and we joined hands as cosponsors, both Democrats and Republicans, I venture to say that our efforts were more bipartisan than those which attack 3150. And that, I would ask each Member to take into consideration, if that is a criterion upon which they will base their final vote, bipartisanship.

I have always believed in bipartisanship, and I have strenuously accorded every conceivable courtesy I could to Members of the minority, both in subcommittee and full committee and on the floor, and my final proof of bipartisanship is the roll call of the vote that will occur very shortly.

In addition to that, the other thing that is spectacular in its repetition on the part of the minority is that the gateway approach that we provide as the core element of 3150, whereby the debtor who comes to bankruptcy will be tested and screened at the outset to determine whether or not a fresh start should be accorded them, we give full play to that, or whether or not that individual should be compelled to repay some of the debt, if we determine, by the screening process, that there will be an ability to repay some of the debt. That is a screening process, we say, which will shorten the process in bankruptcy in the future, once this is adopted, and be less costly.

What does the gentleman from New York, with the collusion of the gentleman from Massachusetts (Mr. MEEHAN), say, that they ought to adopt this substitute which calls for every single case to go before a judge. We are telling Members that there were 1,400,000 new filings in 1997. If we were to have this substitute in effect in 1997, each one of those cases would have to go before a bankruptcy judge so that that judge can exercise the discretion, the human quality that the gentleman from New York, substantiated by the gentleman from Massachusetts, would find necessary to adjudicate each case one by one on whether or not the means test should be applied fairly.

□ 1745

We say to you, that is a costly process, that is a never-ending process.

Our screening process at the outset would relegate dozens of people into title 7 and give them their fresh start with a cursory examination of their income tax return, their wage statements, to determine their inability to repay any of the debt, thus earning the right of a fresh start. Our gateway approach is one that expedites the process, becomes more efficient, less costly.

How can you continue to say that to take the 1,400,000, rip away our gateway approach and allow each one of those to be adjudicated separately by a judge? It is overwhelming. We would need to add 40 new bankruptcy judges a month for 10 years to handle the increase that we would see in filings. But if we adopt, as I hope we will, H.R. 3150, the screening process, which is only a starting point, will at the outset say, ''Fresh start, you got it.'' On the other hand, if there is any ability to repay, you go through a process that is determined by Chapter 13, and we will help you with a plan to be able to repay some of the debt that you have incurred over the years. I think it is a reasonable way, it is an efficient way and a less costly way.

That is why I am astounded by all these figures about how much more costly our bill would be than the substitute. The substitute takes each case and makes a Supreme Court case out of it, to use the vernacular, by saying that each one has to be adjudicated on its own merits. We begin by screening, in a proper, reasonable, human way, whether a person should be discharged immediately or should go through the process of repayment.

Ms. JACKSON-LEE of Texas. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, there is no doubt that the gentleman is sincere in his remarks. Might I just note for the record that the gentleman from New York (Mr. NADLER), whom he was addressing, is not on the floor at this time. The substitute is the Nadler, Meehan, Berman, Jackson-Lee substitute.

Let me just say, with respect to his proposition, that the National Bankruptcy Review Commission did not accept the means test, and in fact one of the problems with it is that the experts, the bankruptcy judges themselves, have said not only is it too costly, but it is too complicated. CBO has assessed the means-testing procedure at costing $214 million when in fact the Democratic substitute wants to stop fraudulent activity and will ask the experts to use the test of substantial abuse so that we can avoid that.

Mr. GEKAS. Mr. Chairman, reclaiming my time, I do not see how the gentlewoman can argue that to have 1,400,000 separate cases cannot increase or would not increase the cost of processing bankruptcy. That is a rhetorical question.

Mr. MEEHAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would just respond that the screening method that he described, according to CBO, would cost taxpayers $200 million.

Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. LAMPSON).

Mr. LAMPSON. Mr. Chairman, I rise today in strong support of the Nadler, Meehan, Berman, Jackson-Lee amendment to this bill.

I think this substitute strikes a fair balance and alleviates many of the concerns that I have with H.R. 3150. I applaud all the hard work of those Members who took part in striking this fair compromise.

Everyone is troubled with the record number of personal bankruptcy filings that we are seeing in the United States. Last year, 1.4 million Americans filed bankruptcy. Certainly I am committed to the principle of bankruptcy reform. Certainly I believe that we should rid the system of those who deliberately abuse the system. But I do not believe we should do this at the expense of hard-working families, women and children.

The substitute gives child support and alimony payments the highest priority under Federal bankruptcy law. We should not force women and children to compete with creditors' attorneys over limited funds in court.

I support this amendment because it offers a more flexible approach when evaluating a debtor's ability to repay. It will make it easier for a debtor's actual expenses that are reasonably necessary to be considered, such as child care payments, health care costs, and the costs of taking care of ill parents.

This amendment also alleviates the harsh small business provisions found in H.R. 3150 by providing a safety valve for small businesses hit with financial difficulty. Voting for this amendment will protect hard-working Americans from premature small business liquidations.

Mr. Chairman, I urge my colleagues to vote in favor of the Nadler, Meehan, Berman, Jackson-Lee amendment. It strikes a fair balance in attempting to rid the system of those who choose to abuse the bankruptcy system. At the same time, the amendment protects honest, hard-working Americans who are experiencing real financial difficulty.

Mr. MEEHAN. Mr. Chairman, I yield 2 minutes to the gentleman from North Carolina (Mr. WATT), a leader in the Committee on the Judiciary, a person who is always first to speak up for those who cannot speak for themselves.

Mr. WATT of North Carolina. Mr. Chairman, this is actually a very sad day for this House. There should not have to be a Democratic substitute on a bankruptcy bill, because bankruptcy is not a partisan issue.

Let us look at how we got here. There are some people abusing the bankruptcy system that exist now. We sat down and we started working together to try to come up with a bill that would address that issue. Instead, the Republicans came up with a bill

that means-tests bankruptcies so that one size is designed to fit all.

It astonishes me that the gentleman from Pennsylvania, the chairman of the subcommittee, comes to the floor and acknowledges that he does not want each one of these bankruptcy matters to be adjudicated on its own merits. That is exactly what he said. I thought that is what we were trying to do, have each one of these bankruptcy matters adjudicated on its own merits, because whether somebody is bankrupt and deserves the protection of bankruptcy court is an individual proposition. It is not a matter of means-testing.

Can you imagine that somebody who makes above the median income in this country and cannot be extended beyond their means, they should not be entitled to the benefits of the bankruptcy courts? If you look at every single individual and every single case on its own merits, that is what our system is designed to do, and that is the way it should be done, and that is why the Democratic substitute is a better substitute than the original bill. It is not perfect, either, but it is better than the original bill.

Mr. MEEHAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from New York (Mrs. MALONEY).

Mrs. MALONEY of New York. Mr. Chairman, I thank the gentleman for yielding me this time and for his leadership on this issue along with the gentleman from New York (Mr. NADLER).

Mr. Chairman, I rise to express my opposition to the rigid approach of means-testing and my strong support for the substitute amendment. If means-testing is made into law, a debtor's actual living expenses will be disregarded, while an inflexible IRS formula is imposed. Even if those predetermined numbers cause true hardship through a strict repayment plan, it is the consumer that would have to initiate litigation to appeal, an expensive and intimidating process.

If the main target of bankruptcy reform are wealthier abusers, let us give creditors the tools they need to get the job done. The Democratic substitute amendment does just that. It empowers credit companies to contest the Chapter 7 filing of debtors who are deliberately shielding their wealth. But it also ensures that the fate of debtors will be decided by a thinking person, a trained judge, who can evaluate what are often subjective factors on a case-by-case basis, not an unbending formula. Equally important, the substitute puts the burden of litigation where it belongs, on the creditor, which, after all, made the decision to take the risk of lending.

We need to help creditors get back more of what is owed to them, but we need to do it in a balanced way. The Democratic substitute does that.

Mr. Chairman, there has been much discussion back and forth on the child support enforcement provision. I would like to put into the RECORD practically every women's group that I have ever heard of who is opposed to this bill because of the impact it will have on child support.

Mr. Chairman, I include for the RECORD the names of at least 20 women's organizations opposed to this bill.

The material referred to is as follows:

The Justice Department
Small Business Administration (SBA)
Alliance for Justice
National Organization for Women (NOW)
Mothers Against Drunk Driving (MADD)
National Organization for Victim Assistance (NOVA)
National Victim Center
Association for Children of Enforcement Support (ACES)
Governing Counsel, Family Law Section, American Bar Association
AFL-CIO
UAW
UNITE
AFSCME
Consumer Federation of America
Consumers' Union
Public Citizen
California Women's Law Center (CWLC)
Group of 110 United States Bankruptcy Judges
Leadership Conference on Civil Rights
National Conference of Bankruptcy Judges
American College of Bankruptcy
National Bankruptcy Conference
National Association of Consumer Bankruptcy Attorneys
National Association of Bankruptcy Trustees
National Association of Chapter 13 Trustees
National Association of Consumer Bankruptcy Attorneys
National Association of Debtor Attorneys
Houston Association of Debtor Attorneys
American Association of University Women
Association for Children for Enforcement of Support, Inc.
Black Women's Agenda, Inc.
Business and Professional Women/USA
Center for Advancement of Public Policy
Children's Defense Fund
Church Women United
Coalition of Labor Union Women
Federally Employed Women, Inc.
Feminist Majority
MANA, A National Latina Organization
National Association of Commissions For Women
National Association for Female Executives
National Organization for Women
National Women's Conference
NAWE Advancing Women in Higher Education
NOW Legal Defense and Education Fund
Older Women's League
The Woman Activist Fund, Inc.
Women Work!
YWCA of the U.S.A.
National Council of Senior Citizens

NATIONAL COUNCIL OF SENIOR CITIZENS,
Silver Spring, MD, June 9, 1998.

Representative JERROLD NADLER,
United States Congress,
Washington, DC.

DEAR REPRESENTATIVE NADLER: I am writing to express NCSC's deep concern about pending floor action on H.R. 3150, the Bankruptcy Reform Act of 1998. We join with many bankruptcy judges, legal scholars, women's groups, unions, consumer groups and others in urging that this bill not be passed without further study and substantial changes.

I am especially concerned about the effect this bill might have on seniors. I might note that a series of amendments were offered in the Judiciary Committee that would have offered some protections to older people but all were defeated. As it stands, then, this bill would have a harsh impact on a group of people who are often subject to job loss or catastrophic health costs; instead of ameliorating these problems, this bill would only exacerbate them.

Since 1993, more than a million people over the age of 50 have filed for bankruptcy; in 1997, an estimated 280,000 older Americans filed. For them it is particularly hard. If they are forced into prolonged repayment schedules, they may not be able to maintain or accumulate savings for retirement. As you know, approximately two thirds of voluntary, Chapter 13 workout plans fail, and we believe that retirement savings must be protected for that purpose.

Instead of addressing the root causes of personal bankruptcy and addressing behavior of both abusive debtors and creditors, this bill will add unnecessary administrative and financial burdens to hardworking families who seek relief in bankruptcy court.

H.R. 3150 is simply moving too fast, and there has been too little scrutiny given to credit industry practices. The consequences for older people must be examined more closely and addressed in a fair way before any changes in bankruptcy law are made. We urge you to delay action on this bill and to work with bankruptcy experts and others toward targeted and effective changes in the Bankruptcy Code.

Sincerely,

DAN SCHULDER,
Director, Public Affairs and Legislation.

Mr. GEKAS. Mr. Chairman, I yield 3 minutes to the gentleman from Florida (Mr. FOLEY).

Mr. FOLEY. Mr. Chairman, I thank the gentleman from Pennsylvania for his hard work. Obviously I stand in opposition to the Nadler substitute. I hear a lot of discussion on the floor today. I just heard women's groups are against this. I have heard an impression made on the floor that somehow our bill does not allow for the enforcement of child support or set a priority on child support. In fact, it does. The bill prioritizes child support as one of the real priorities in the bill.

For anyone questioning the need for this bill we are discussing today, the statistics spell it out. Personal bankruptcies have hit a high record number for each of the past 3 years, and again in the first quarter of this year. Many will offer a variety of reasons for that alarming statistic, but the simple fact is that current law makes it too easy for individuals to walk away from their financial obligations, even if they have the means to meet those obligations. It happens too often in Florida.

I have heard in the last several days around this Capitol that somehow it is the credit card companies that are inducing commonsense, average Americans to run up phenomenal bills and so we must blame the credit card companies for their debt and discharge the debtor from their responsibilities.

I just heard an analogy of the risk of lending, and somehow, someway we are supposed to now stand in front of the borrower and protect them with a

shield. I think that is wrong, I think it is irresponsible, and that it should no longer be sanctioned by the Federal Government.

Some will argue that H.R. 3150 hurts low-income individuals facing financial disaster through no fault of their own. This is simply not true. H.R. 3150 merely codifies into law what is common sense to every American. Those who can afford their bills should not stick others with their tab.

This much needed reform bill imposes a means test to allow those who are facing financial disaster to wipe away most of their debts. However, those who have the ability to repay their debts will have to abide by a repayment schedule. If this sounds like a sensible proposition, it is because it is a sensible proposition.

Mr. Chairman, today we are debating something vitally important. We do want to care for families, we do want to care for average Americans, hard-working individuals. But there is a notion that when you incur debt, you should make every attempt to repay that debt.

Society today is transferring debt to others. Those who pay their bills, who keep an outstanding credit record, are in fact having to pay higher interest rates because a lot of people are shirking their responsibility. In Florida, we have had a number of cases that just are outrageous in the way the courts have been used in order for creditors to have no payment rendered to them.

Again, I urge my colleagues to reject the Nadler substitute. I urge them to support the work of the gentleman from Pennsylvania (Mr. GEKAS) in passing H.R. 3150 today so the House will ensure that the irresponsible and the well off in our society will no longer be able to pass the buck to those who struggle daily to meet their financial obligations.

Mr. MEEHAN. Mr. Chairman, I yield 2½ minutes to the gentleman from Massachusetts (Mr. DELAHUNT), a leader in the committee and in the subcommittee.

Mr. DELAHUNT. Mr. Chairman, what concerns me today about this debate and where we are headed is that we are truly crafting public policy without the benefit of any data. Very, very little hard information is available to us. I believe the American people should understand that while we may be well-intentioned, we really are legislating on hunches, on guesswork and hope.

□ 1800

As my colleagues know, I have heard the figure now from the previous speaker about 1.4 million. That is unacceptable. The only information that we were able to secure during the course of the hearing about what H.R. 3150 would do in terms of reducing that number was from the bankruptcy judges. They testified, those that I inquired of, that it would reduce the amount of filings 13,000 possibly, 1 percent.

That is the only information that we have, 1 percent, 13,000. We are passing a piece of legislation here today, if this underlying bill is enacted, that is based on nothing but anecdote.

Stigma. There is no data to indicate that people are any different today than they were 10, 20 or 30 years ago. People are not just walking away, they are being crushed by debt. In addition to that, their wages, for most Americans, have not gone up in any significant degree for 20 years. Twenty percent of us are doing very well, but the rest of America is not.

That is the only information that we have. It is unfair. We talk about 44 billion. What will Mr. GEKAS' bill do to reduce? How much money is going to be saved if the Gekas-Boucher-McCollum bill passes? I daresay not a single cent. It is not going to save a dime. It certainly will not benefit the consumer. We all know that. The moneys, if there are moneys that are saved, are going to go to the Wall Street investor, in the banks and the credit card industry. That is where it is going to go. It is going to introduce or enhance profitability.

Mr. Chairman, I know these gentleman are sincere, I know that we all share the same goal, but this is not the right approach. We should have slowed the process down and secured some information and answers to questions that we do not know the answers to now.

Mr. MEEHAN. Mr. Chairman, I yield the balance of my time to myself.

The CHAIRMAN pro tempore (Mr. CALVERT). The gentleman from Massachusetts is recognized for 1½ minutes.

Mr. MEEHAN. Mr. Chairman, on a final note, let me just say in response to the argument from the other side of the aisle, the child support and alimony problem does not begin and end with sections 141 and 142 of H.R. 3150. The means test and other parts of the bill contribute to the problem as well.

A letter from the National Partnership for Women and Families put it best. Several provisions increase the credit card's ability to pressure debtors into reaffirming credit card debt by threatening the debtor with repossession or litigation. Through reaffirmation, even more credit card debt becomes nondischargeable in bankruptcy.

In other words, aggressive creditors can use the leverage that they receive under this bill's means test to force debtors to agree to let their debts survive bankruptcy.

So we once again have debtors entering the post-bankruptcy world with large amounts of credit card debt hanging over their heads in addition to their support and alimony obligations.

There is simply no way to fix the child support and alimony problems with this bill other than to delete the new exceptions to the discharge of credit card debt and rewrite its means test along the lines of the Nadler-Meehan-Berman substitute. We should support this substitute and defeat this bill.

Mr. Chairman, I yield back the balance of my time.

Mr. GEKAS. Mr. Chairman, I yield myself the balance of my time.

The CHAIRMAN pro tempore. The gentleman from Pennsylvania is recognized for 2 minutes.

Mr. GEKAS. Mr. Chairman, I repeat my request to Members to reject the Nadler substitute and to later support the bill.

When the gentleman from Massachusetts (Mr. DELAHUNT) was speaking, he was decrying the fact that there was no data available on which we could base any concept now contained in 3150.

The question in reverse has to be asked: On what data is the Nadler substitute based? It has to be in the same data that we used for 3150, namely 1,400,000 bankruptcies. Nobody can fully explain that. And the Nadler substitute, the gentleman from Massachusetts (Mr. MEEHAN) and others acknowledge that there is abuse in the system. Well, where did they get that idea? Where did they get the idea that there is abuse in the system if it were not for the fact that 1,400,000 bankruptcies were filed in 1997? Everybody in America knows that means that the system was abused.

And if we want to continue to have a system which is so riddled with loopholes, making it easier for people to escape obligations, vote for the Nadler substitute. If we want to tighten up the system and make people more responsible and allow people to repay when they can repay the debts that they assumed, then reject the Nadler amendment and then when the time comes, vote for true reform, the underlying bill, H.R. 3150.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. All time has expired.

The question is on the amendment in the nature of a substitute offered by the gentleman from New York (Mr. NADLER).

The amendment in the nature of a substitute was rejected.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN pro tempore. Pursuant to House Resolution 462, proceedings will now resume on those amendments on which further proceedings were postponed, in the following order: amendment No. 2 offered by the gentleman from New York (Mr. NADLER), amendment No. 3 offered by the gentleman from Massachusetts (Mr. DELAHUNT), amendment No. 8 offered by the gentleman from Pennsylvania (Mr. GEKAS), and amendment No. 9 offered by the gentleman from Virginia (Mr. SCOTT).

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 2 OFFERED BY MR. NADLER

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on amendment No. 2 offered by the gentleman from New York

(Mr. NADLER) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 136, noes 290, not voting 7, as follows:

[Roll No. 219]

AYES—136

Abercrombie
Ackerman
Allen
Baldacci
Barcia
Becerra
Bonior
Borski
Brady (PA)
Brown (CA)
Brown (FL)
Brown (OH)
Campbell
Capps
Cardin
Carson
Clay
Clyburn
Conyers
Coyne
Cummings
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Dixon
Doggett
Doyle
Edwards
Engel
Eshoo
Evans
Fattah
Fazio
Filner
Furse
Gejdenson
Gephardt
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Hooley
Jackson (IL)
Jackson-Lee (TX)
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (MA)
Kennelly
Kildee
Kilpatrick
Klink
Kucinich
LaFalce
Lampson
Lantos
Lee
Levin
Lofgren
Lowey
Maloney (NY)
Manton
Martinez
Mascara
Matsui
McCarthy (NY)
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Millender-McDonald
Miller (CA)
Mink
Moakley
Mollohan
Nadler
Neal
Oberstar
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Poshard
Price (NC)
Rahall
Reyes
Rivers
Rodriguez
Roybal-Allard
Rush
Sanchez
Sanders
Sanford
Sawyer
Scott
Serrano
Shays
Skaggs
Slaughter
Souder
Stark
Stokes
Strickland
Stupak
Thompson
Thurman
Tierney
Torres
Towns
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Wexler
Wise
Woolsey
Wynn
Yates

NOES—290

Aderholt
Andrews
Archer
Armey
Bachus
Baesler
Baker
Ballenger
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Berry
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boucher
Boyd
Brady (TX)
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Christensen
Clement
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Costello
Cox
Cramer
Crane
Crapo
Cubin
Cunningham
Danner
Davis (VA)
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Etheridge
Everett
Ewing
Fawell
Foley
Forbes
Ford
Fossella
Fowler
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Greenwood
Gutknecht
Hall (TX)
Hamilton
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Holden
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, Sam
Jones
Kasich
Kelly
Kennedy (RI)
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lucas
Luther
Maloney (CT)
Manzullo
Markey
McCarthy (MO)
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McIntyre
McKeon
Menendez
Metcalf
Mica
Miller (FL)
Minge
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Obey
Oxley
Packard
Pappas
Parker
Paul
Paxon
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Rangel
Redmond
Regula
Riggs
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Ryun
Sabo
Salmon
Sandlin
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Sherman
Shimkus
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Solomon
Spence
Spratt
Stabenow
Stearns
Stenholm
Stump
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Traficant
Turner
Upton
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Weygand
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)

NOT VOTING—7

Berman
Clayton
Farr
Gonzalez
Harman
Lewis (GA)
Schumer

□ 1828

Messrs. GRAHAM, MICA, WELLER and BURR of North Carolina changed their vote from ''aye'' to ''no.''

Messrs. MATSUI, SHAYS, ACKERMAN and BECERRA and Ms. RIVERS changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

□ 1830

Mr. NADLER. Mr. Chairman, I ask unanimous consent that the present unfinished business be considered to include a request for a recorded vote on the Nadler substitute.

The CHAIRMAN pro tempore (Mr. CALVERT). Is there objection to the request of the gentleman from New York?

There was no objection.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore. Pursuant to House Resolution 462, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device will be taken on each amendment on which the Chair has postponed further proceedings.

AMENDMENT NO. 3 OFFERED BY MR. DELAHUNT

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on amendment No. 3 offered by the gentleman from Massachusetts (Mr. DELAHUNT) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 149, noes 278, not voting 6, as follows:

[Roll No. 220]

AYES—149

Abercrombie
Ackerman
Barcia
Barrett (WI)
Becerra
Blumenauer
Bonior
Borski
Brady (PA)
Brown (CA)
Brown (FL)
Brown (OH)
Campbell
Capps
Carson
Clay
Clayton
Clyburn
Coburn
Conyers
Costello
Coyne
Cummings
Danner
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dixon
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Fattah
Fazio
Filner
Ford
Furse
Gejdenson
Gephardt
Green
Gutierrez
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (WI)
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Klink
Kucinich
LaFalce
Lampson
Lantos
Lee
Levin
Lipinski
Lofgren
Lowey
Luther
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Mollohan
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Poshard
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Scott
Serrano
Skaggs
Skelton
Slaughter
Stark
Stokes
Strickland
Stupak
Taylor (MS)
Thompson
Thurman
Tierney
Torres
Towns
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Wexler
Weygand
Wise
Woolsey
Wynn
Yates

NOES—278

Aderholt
Allen
Andrews
Archer
Armey
Bachus
Baesler
Baker
Baldacci
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Berry
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boucher
Boyd
Brady (TX)
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cannon
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Clement
Coble
Collins
Combest
Condit
Cook
Cooksey
Cox
Cramer
Crane
Crapo
Cubin
Cunningham
Davis (FL)
Davis (VA)
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Dingell
Doggett
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Foley
Forbes
Fossella
Fowler
Fox
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Greenwood
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jenkins
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
Livingston
LoBiondo
Lucas
Maloney (CT)
Manzullo
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McIntyre
McKeon
Menendez
Metcalf
Mica
Miller (FL)
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pappas
Parker
Paul
Paxon
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Redmond
Regula
Riggs
Riley
Rivers
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Ryun
Salmon
Sanchez
Sandlin
Sanford
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Spratt
Stabenow
Stearns
Stenholm
Stump
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Traficant
Turner
Upton
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)

NOT VOTING—6

Berman
Farr
Frank (MA)
Gonzalez
Lewis (GA)
Schumer

□ 1837

Mr. SMITH of Michigan changed his vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 8 OFFERED BY MR. GEKAS

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on amendment No. 8 offered by the gentleman from Pennsylvania (Mr. GEKAS) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 222, noes 204, not voting 7, as follows:

[Roll No. 221]

AYES—222

Andrews
Archer
Armey
Baker
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bentsen
Bilbray
Bilirakis
Bishop
Bliley
Blunt
Boehner
Bonilla
Boswell
Boucher
Boyd
Brady (TX)
Brown (FL)
Bryant
Bunning
Burr
Burton
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Chambliss
Chenoweth
Christensen
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Cramer
Crane
Crapo
Cubin
Cunningham
Davis (FL)
Davis (VA)
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Doggett
Dreier
Duncan
Edwards
Ehrlich
English
Ensign
Ewing
Foley
Forbes
Fossella
Fowler
Frost
Gallegly
Ganske
Gekas
Gibbons
Gillmor
Gilman
Goode
Goodlatte
Goodling
Goss
Graham
Granger
Green
Greenwood
Gutknecht
Hall (TX)
Hansen
Hastert
Hastings (FL)
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hinojosa
Horn
Hostettler
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Jackson-Lee (TX)
Jenkins
John
Johnson, E. B.
Johnson, Sam
Jones
Kelly
Kim
King (NY)
Klug
Knollenberg
LaHood
Lampson
Latham
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
Livingston
Lucas
Manzullo
McCollum
McCrery
McDade
McHugh
McInnis
McIntyre
McKeon
Meek (FL)
Mica
Miller (FL)
Mollohan
Moran (KS)
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Ortiz
Oxley
Packard
Pappas
Parker
Paul
Paxon
Pease
Peterson (PA)
Pickering
Pickett
Pitts
Pombo
Porter
Portman
Quinn
Radanovich
Rahall
Ramstad
Redmond
Reyes
Rodriguez
Rogan
Rogers
Ros-Lehtinen
Ryun
Salmon
Sandlin
Sanford
Scarborough
Schaefer, Dan
Schaffer, Bob
Sessions
Shadegg
Shaw
Shimkus
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Linda
Snowbarger
Solomon
Spence
Stearns
Stenholm
Stump
Sununu
Talent
Tauscher
Tauzin
Taylor (NC)
Thomas
Thornberry
Thune
Thurman
Tiahrt
Traficant
Turner
Walsh
Wamp
Watkins
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
Wexler
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)

NOES—204

Abercrombie
Ackerman
Aderholt
Allen
Bachus
Baesler
Baldacci
Barrett (WI)
Becerra
Bereuter
Berry
Blagojevich
Blumenauer
Boehlert
Bonior
Bono
Borski
Brady (PA)
Brown (CA)
Brown (OH)
Buyer
Capps
Cardin
Carson
Castle
Chabot
Clay
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Cummings
Danner
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Dixon
Dooley
Doolittle
Doyle
Dunn
Ehlers
Emerson
Engel
Eshoo
Etheridge
Evans
Everett
Fattah
Fazio
Filner
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Furse
Gejdenson
Gephardt
Gilchrest
Gordon
Gutierrez
Hall (OH)
Hamilton
Harman
Hefner
Hilliard
Hinchey
Hobson
Hoekstra
Holden
Hooley
Houghton
Hoyer
Istook
Jackson (IL)
Jefferson
Johnson (CT)
Johnson (WI)
Kanjorski
Kaptur
Kasich
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kind (WI)
Kingston
Kleczka
Klink
Kolbe
Kucinich
LaFalce
Lantos
Largent
LaTourette
Lee
Levin
Lipinski
LoBiondo
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McHale
McIntosh
McKinney
McNulty
Meehan
Meeks (NY)
Menendez
Metcalf
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Moran (VA)
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Petri
Pomeroy
Poshard
Price (NC)
Pryce (OH)
Rangel
Regula
Riggs
Riley
Rivers
Roemer
Rohrabacher
Rothman
Roukema
Roybal-Allard
Royce
Rush
Sabo
Sanchez
Sanders
Sawyer
Saxton
Scott
Sensenbrenner
Serrano
Shays
Sherman
Skaggs
Skelton
Slaughter
Smith, Adam
Snyder
Souder
Spratt
Stabenow
Stark
Stokes
Strickland
Stupak
Tanner
Taylor (MS)
Thompson
Tierney
Torres
Towns
Upton
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Weygand
Wise
Woolsey
Wynn
Yates

NOT VOTING—7

Berman
Farr
Fawell
Ford
Gonzalez
Lewis (GA)
Schumer

□ 1846

Messrs. ROEMER, KASICH, KENNEDY of Rhode Island, ADERHOLT, LOBIONDO, and Ms. KILPATRICK changed their vote from ''aye'' to ''no.''

Mr. BARCIA changed his vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 9 OFFERED BY MR. SCOTT

The CHAIRMAN pro tempore (Mr. CALVERT). The pending business is the demand for a recorded vote on amendment No. 9 offered by the gentleman from Virginia (Mr. SCOTT) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This is a five-minute vote.

The vote was taken by electronic device, and there were—ayes 111, noes 316, not voting 6, as follows:

[Roll No. 222]

AYES—111

Abercrombie
Ackerman
Allen
Baldacci
Barrett (WI)
Becerra
Bentsen
Bishop
Bonior
Brady (PA)
Brown (CA)
Capps
Carson
Clay
Clayton
Conyers
Coyne
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dixon
Doggett
Dreier
Engel
Fattah
Filner
Ford
Furse
Gejdenson
Gephardt
Green
Gutierrez
Hamilton
Hefner
Hinchey
Hinojosa
Holden
Hooley
Jackson (IL)
Jackson-Lee (TX)
Kanjorski
Kaptur
Kilpatrick
Kind (WI)
Kleczka
Klink
LaFalce
Lampson
Lee
Luther
Maloney (CT)
Manton
Markey
Mascara
McCarthy (MO)
McCarthy (NY)
McGovern
McKinney
McNulty
Meeks (NY)
Menendez
Millender-McDonald
Miller (CA)
Mink
Moakley
Mollohan
Murtha
Neal
Olver
Ortiz
Owens
Pallone
Pascrell
Payne
Pelosi
Pickett
Pomeroy
Reyes
Rivers
Rogan
Rothman
Roybal-Allard
Rush
Sabo
Sanders
Sandlin
Scott
Sensenbrenner
Sisisky
Skaggs
Smith, Adam
Spratt
Stark
Stokes
Strickland
Stupak
Sununu
Tierney
Torres
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Wexler
Woolsey
Yates

NOES—316

Aderholt
Andrews
Archer
Armey
Bachus
Baesler
Baker
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Berry
Bilbray
Bilirakis
Blagojevich
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Borski
Boswell
Boucher
Boyd
Brady (TX)
Brown (FL)
Brown (OH)
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Clement
Clyburn
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Costello
Cox
Cramer
Crane
Crapo
Cubin
Cummings
Cunningham
Danner
Davis (VA)
Deal
DeLay
Diaz-Balart
Dickey
Dicks
Dingell
Dooley
Doolittle
Doyle
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Eshoo
Etheridge
Evans
Everett
Ewing
Fawell
Fazio
Foley
Forbes
Fossella
Fowler
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Greenwood
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hilliard
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Johnson, Sam
Jones
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
King (NY)
Kingston
Klug
Knollenberg
Kolbe
Kucinich
LaHood
Lantos
Largent
Latham
LaTourette
Lazio
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Lowey
Lucas
Maloney (NY)
Manzullo
Martinez
Matsui
McCollum
McCrery
McDade
McDermott
McHale
McHugh
McInnis
McIntosh
McIntyre
McKeon
Meehan
Meek (FL)
Metcalf
Mica
Miller (FL)
Minge
Moran (KS)
Moran (VA)
Morella
Myrick
Nadler
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Oxley
Packard
Pappas
Parker
Pastor
Paul
Paxon
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Pombo
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Rangel
Redmond
Regula
Riggs
Riley
Rodriguez
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryun
Salmon
Sanchez
Sanford
Sawyer
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Shuster
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Stabenow
Stearns
Stenholm
Stump
Talent
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thompson
Thornberry
Thune
Thurman
Tiahrt
Towns
Traficant
Turner
Upton
Walsh
Wamp
Watkins
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
Weygand
White
Whitfield
Wicker
Wise
Wolf
Wynn
Young (AK)
Young (FL)

NOT VOTING—6

Berman
Blumenauer
Farr
Gonzalez
Lewis (GA)
Schumer

□ 1853

Mrs. KENNELLY of Connecticut changed her vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT IN THE NATURE OF A SUBSTITUTE NO. 12 OFFERED BY MR. NADLER

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on amendment in the nature of a substitute No. 12 offered by the gentleman from New York (Mr. NADLER) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment in the nature of a substitute.

The Clerk redesignated the amendment in the nature of a substitute.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This is a five-minute vote.

The vote was taken by electronic device, and there were—ayes 140, noes 288, not voting 5, as follows:

[Roll No. 223]

AYES—140

Abercrombie
Ackerman
Allen
Baldacci
Becerra
Bishop
Blumenauer
Bonior
Borski
Brady (PA)
Brown (CA)
Brown (FL)
Brown (OH)
Capps
Carson
Clay
Clayton
Clyburn
Conyers
Coyne
Cummings
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Dixon
Doyle
Engel
Eshoo
Etheridge
Evans
Fattah
Fazio
Filner
Ford
Furse
Gejdenson
Gephardt
Gutierrez
Hall (OH)
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Holden
Hooley
Jackson (IL)
Jefferson
Johnson (WI)
Kanjorski
Kaptur
Kennedy (MA)
Kennelly
Kildee
Kilpatrick
Klink
Kucinich
LaFalce
Lantos
Lee
Levin
Lofgren
Lowey
Luther
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McHale
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Poshard
Price (NC)
Rahall
Rangel
Reyes
Rivers
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sawyer
Scott
Serrano
Skaggs
Slaughter
Stabenow
Stark
Stokes
Strickland
Stupak
Thompson
Tierney
Torres
Towns
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Wexler
Wise
Woolsey
Wynn
Yates

NOES—288

Aderholt
Andrews
Archer
Armey
Bachus
Baesler
Baker
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Berry
Bilbray
Bilirakis
Blagojevich
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boucher
Boyd
Brady (TX)
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Cardin
Castle
Chabot
Chambliss
Chenoweth

Christensen
Clement
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Costello
Cox
Cramer
Crane
Crapo
Cubin
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Doggett
Dooley
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Foley
Forbes
Fossella
Fowler
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green
Greenwood
Gutknecht
Hall (TX)
Hamilton
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee (TX)
Jenkins
John
Johnson (CT)
Johnson, E. B.
Johnson, Sam
Jones
Kasich
Kelly
Kennedy (RI)
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Lampson
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lucas
Maloney (CT)
Manzullo
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McIntyre
McKeon
Menendez
Metcalf
Mica
Miller (FL)
Mollohan
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pappas
Parker
Paul
Paxon
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Redmond
Regula
Riggs
Riley
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Ryun
Salmon
Sandlin
Sanford
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stump
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Thurman
Tiahrt
Traficant
Turner
Upton
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Weygand
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)

NOT VOTING—5

Berman
Farr
Gonzalez
Lewis (GA)
Schumer

□ 1901

Messrs. RODRIGUEZ, BARCIA, EDWARDS, Mrs. EDDIE BERNICE JOHNSON of Texas and Ms. JACKSON-LEE of Texas changed their vote from ''aye'' to ''no.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore (Mr. CALVERT). The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. HANSEN) having assumed the chair, Mr. CALVERT, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that the Committee, having had under consideration the bill (H.R. 3150) to amend title 11 of the United States Code, and for other purposes, pursuant to House Resolution 462, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

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

MOTION TO RECOMMIT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. CONYERS. Mr. Speaker, yes, I am.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. CONYERS of Michigan moves to recommit the bill (H.R. 3150) to the Committee on the Judiciary with instructions to report the bill back to the House forthwith, with the following amendments:

Page 6, line 11, insert the following before the 1st semicolon:

'', but excludes (1) maintenance for or support of a child of the debtor, received by the debtor, and (2) current alimony, maintenance, or support paid by the debtor for the benefit of a spouse, former spouse, or child of the debtor,''.

Page 48, after line 13, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 119B. PROTECTION AGAINST REAFFIRMATION AGREEMENTS ADVERSELY AFFECTING CHILD SUPPORT.

Section 524 of title 11, United States Code, is amended by adding at the end the following:

''(i) Notwithstanding any other provision of this title, an agreement of the kind described in subsection (c) shall be void unless the court determines that such agreement will not have an adverse impact on the ability of the debtor to support a dependent of the debtor.''.

Page 76, line 12, insert ''and any debt of a kind described in paragraph (6), (9), or (13) of section 523(a) of this title,'' before ''shall''.

Page 76, line 17, strike the close quotation marks and the period at the end.

Page 76, after line 17, insert the following:

''(b)(1) For purposes preserving the priority established in subsection (a), the holder of claim for a debt of a kind described in paragraph (2), (4), or (19) of section 523(a) of this title that is not discharged may not take any action to obtain payment or collection (including engaging in any communication with the debtor or with any person who holds property of the debtor) of such debt if such holder—

''(A) knew or should have known that taking such action, or obtaining payment of such debt, would impair the ability of the debtor to pay a debt that has priority under such subsection; or

''(B) failed to verify immediately before taking such action, by good faith means designed to identify all debts that have priority under such subsection, that the debtor does not then owe any debt that has priority under subsection (a).

''(2) If such holder violates paragraph (1), such holder shall be liable to any person injured by such violation for the sum of $3000, actual damages, and a reasonable attorney's fee.''.

Mr. CONYERS (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER pro tempore. The gentleman from Michigan (Mr. CONYERS) will be recognized for 5 minutes, and the gentleman from Pennsylvania (Mr. GEKAS) will be recognized for 5 minutes.

The Chair recognizes the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Speaker, this is a very simple and straightforward motion to recommit. It acknowledges the bankruptcy rights of creditors who are drunk driving victims and victims of crimes.

Mr. Speaker, the present bill does not make a single change to protect the rights of crime victims forced to compete against credit card companies in bankruptcy. This is why the Mothers Against Drunk Driving are opposed to the bill, and the National Organization for Victim Assistance are strongly opposed to the bill.

My amendment would ensure that crime victims receive the same rights to preempt credit card debts that alimony creditors receive in the bill.

Mr. NADLER. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from New York.

Mr. NADLER. Mr. Speaker, this motion makes four changes to the underlying bill to protect child support and alimony payments and victims of crime and drunk driving.

First, the motion clarifies that child support and alimony payments are to be excluded from the means test. The majority may try to claim that these payments are accounted for by IRS guidelines, but the bankruptcy experts disagree. In any event, there can be no harm in Congress clearly specifying

that child support should be deducted when calculating the means test. We should not leave our families at risk based on decisions made by IRS bureaucrats.

Second, the motion protects against reaffirmation agreements that adversely impact family support obligations. It is no secret that unscrupulous creditors can end-run the bankruptcy process by forcing debtors to reaffirm their debt. If this happens, none of the supposed child support protections provided under the bill would apply. We fix this problem by making sure that reaffirmation agreements do not make it more difficult for families to pay family support.

The motion also acknowledges the bankruptcy rights of creditors who are drunk driving victims and other victims of crimes, as the gentleman from Michigan (Mr. CONYERS) mentioned.

Finally, the motion provides for a real mechanism to enforce protections for child support and alimony payments. The changes made by the bill to protect child care payments create a right with no remedy. This amendment makes clear that credit card companies who illegally collect money that should be going to child care are subject to damage and statutory fines. This is the only way to truly protect child care payments outside of bankruptcy after the discharge.

Mr. Speaker, I urge the Members to vote for this motion to recommit which protects our families and victims of crime from aggressive credit collectors.

Ms. JACKSON-LEE of Texas. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Speaker, about a year ago I rose on the floor of the House when we were facing a major dilemma and asked the question that has been asked by Solomon: Who loves the baby the most? Whether it was the mother who was willing to cut the baby in half and share, or whether or not it was the mother who said, ''Here you take it.''

Mr. Speaker, I ask this question today as we look at a bill that hurts children. Which one of us will be able to respond to Willie Sorrells who said: I am writing you regarding the proposed new bankruptcy laws. I am currently being forced to file bankruptcy as a last resort because I have recently gone through a terrible divorce from a marriage of 16 years, and my wife left me with the responsibility of our children and the majority of our community debt, complicated by the fact that she earns more income than I.

This Willie Sorrells, a single parent, will be denied the opportunity to protect his alimony or child support because credit card companies and others will be able to grapple after the only income that this gentleman will be able to have.

Mr. Speaker, the motion to recommit reestablishes the importance of child support and alimony. It reestablishes the importance of recognizing that none of us can determine the horns of dilemma when people fall upon hard times, whether or not it is catastrophic illnesses; whether or not it has to do with being unemployed, as 60 percent of those who file for bankruptcy are unemployed. The 300,000 who face divorce and who need child support, the motion to recommit reestablishes the right of the support child, one, to be of high priority; but two, not having to fight for the minimal income that has to be paid for the other debts.

I would say, Mr. Speaker, that we are now on the horns of a dilemma. Who loves the baby most? The one who is willing to cut the baby in half, or the one who is willing to give the baby? I would say the one who is willing to nurture and protect the baby.

Mr. Speaker, let us vote for the motion to recommit. Support child support, support alimony, support working Americans, keep the door of opportunity open and save $214 million that H.R. 3150 requires us to pay.

Mr. CONYERS. Mr. Speaker, reclaiming my time, I urge Members to support the substitute and vote against this bill.

Mr. GEKAS. Mr. Speaker, the concerns that are contained in the motion to recommit have already been more than adequately addressed in the bill that is before us, matters of child support priority, victims' rights. In fact, H.R. 3150, the bill which we are about to pass, contains rights for every American, specially those citizens who become overwhelmed with debt who will need a fresh start.

We accord that responsibility and that right to those people who are overburdened with debt. But at the same time we say loudly and clearly that the time has come that we will no longer permit a system to be abused and to be used as an instrument by people who want to avoid debt and who want to avoid repayment of proper obligations.

So if Members want to change the system, reform it so that we can bring personal responsibility back to that system, they must reject the motion to recommit and eventually vote for the bill. Jobs and opportunities that we so much crave in our society to keep our economy on a stable course, as it now is, requires, in the words of the gentleman from Youngstown, Ohio (Mr. TRAFICANT), requires us to have a system which will protect the economy and protect jobs.

Mr. Speaker, that is what this bill does. It nurtures our economy. I ask Members to vote ''no'' on the motion to recommit and ''yes'' on final passage.

□ 1915

The SPEAKER pro tempore (Mr. HANSEN). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule XV, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the question of final passage.

The vote was taken by electronic device, and there were—ayes 153, noes 270, not voting 10, as follows:

[Roll No. 224]

AYES—153

Abercrombie
Ackerman
Allen
Baldacci
Barcia
Barrett (WI)
Becerra
Bentsen
Bishop
Blumenauer
Bonior
Borski
Brady (PA)
Brown (CA)
Brown (FL)
Brown (OH)
Capps
Cardin
Carson
Clay
Clayton
Clyburn
Conyers
Costello
Coyne
Cummings
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dingell
Dixon
Doggett
Doyle
Edwards
Engel
Ensign
Eshoo
Etheridge
Evans
Fattah
Filner
Ford
Frost
Furse
Gejdenson
Gephardt
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Holden
Hooley
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (WI)
Johnson, E.B.
Kanjorski
Kaptur
Kennedy (MA)
Kennelly
Kildee
Kilpatrick
Klink
Kucinich
LaFalce
Lampson
Lantos
Lee
Levin
Lofgren
Lowey
Luther
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McHale
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Moran (VA)
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Poshard
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roybal-Allard
Rush
Sabo
Sanders
Sandlin
Sawyer
Scott
Serrano
Skaggs
Slaughter
Spratt
Stabenow
Stark
Stokes
Strickland
Stupak
Thompson
Thurman
Tierney
Torres
Towns
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Wexler
Wise
Woolsey
Yates

NOES—270

Aderholt
Andrews
Archer
Armey
Bachus
Baesler
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Berry
Bilbray
Bilirakis
Blagojevich
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boucher
Boyd
Brady (TX)
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Christensen
Clement
Coble
Coburn
Collins
Combest
Condit

Cook
Cooksey
Cramer
Crane
Crapo
Cubin
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ewing
Fazio
Foley
Forbes
Fossella
Fowler
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Greenwood
Gutknecht
Hall (TX)
Hamilton
Hansen
Harman
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kennedy (RI)
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lucas
Maloney (CT)
Manzullo
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Menendez
Metcalf
Mica
Miller (FL)
Mollohan
Moran (KS)
Morella
Murtha
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pappas
Parker
Paul
Paxon
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Redmond
Regula
Riggs
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Ryun
Salmon
Sanchez
Sanford
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Traficant
Turner
Upton
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Weygand
White
Whitfield
Wicker
Wolf
Wynn
Young (AK)
Young (FL)

NOT VOTING—10

Berman
Cox
Dicks
Farr
Fawell
Gonzalez
Hastert
Largent
Lewis (GA)
Schumer

□ 1931

Mr. BERRY changed his vote from ''aye'' to ''no.''

Mr. MORAN of Virginia changed his vote from ''no'' to ''aye.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. HANSEN). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 306, noes 118, not voting 9, as follows:

[Roll No. 225]

AYES—306

Aderholt
Andrews
Archer
Armey
Bachus
Baesler
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Berry
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boucher
Boyd
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Clement
Clyburn
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Cramer
Crane
Crapo
Cubin
Cummings
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Dicks
Doggett
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Etheridge
Everett
Ewing
Fawell
Fazio
Foley
Forbes
Fossella
Fowler
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Greenwood
Gutknecht
Hall (TX)
Hamilton
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hoekstra
Holden
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, Sam
Jones
Kasich
Kelly
Kennedy (RI)
Kennelly
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lucas
Luther
Maloney (CT)
Manzullo
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McIntyre
McKeon
Menendez
Metcalf
Mica
Miller (FL)
Minge
Mollohan
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pappas
Parker
Pascrell
Pastor
Paul
Paxon
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Quinn
Radanovich
Ramstad
Regula
Riggs
Riley
Rivers
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Ryun
Salmon
Sandlin
Sanford
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Spratt
Stabenow
Stearns
Stenholm
Strickland
Stump
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Towns
Traficant
Turner
Upton
Velazquez
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Weygand
White
Whitfield
Wicker
Wise
Wolf
Wynn
Young (AK)
Young (FL)

NOES—118

Abercrombie
Ackerman
Allen
Barrett (WI)
Becerra
Bonior
Borski
Brady (PA)
Brown (CA)
Brown (FL)
Brown (OH)
Carson
Clay
Clayton
Conyers
Costello
Coyne
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dingell
Dixon
Doyle
Edwards
Engel
Eshoo
Evans
Fattah
Filner
Ford
Furse
Gejdenson
Gephardt
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Jackson (IL)
Jackson-Lee (TX)
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (MA)
Kildee
Kilpatrick
Klink
Kucinich
LaFalce
Lampson
Lantos
Lee
Levin
Lofgren
Lowey
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Millender-McDonald
Miller (CA)
Mink
Moakley
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Payne
Pelosi
Poshard
Rahall
Rangel
Reyes
Rodriguez
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sawyer
Scott
Serrano
Skaggs
Slaughter
Stark
Stokes
Stupak
Thompson
Thurman
Tierney
Torres
Vento
Visclosky
Waters
Watt (NC)
Waxman
Wexler
Woolsey
Yates

NOT VOTING—9

Berman
Brady (TX)
Farr
Gonzalez
Hobson
Largent
Lewis (GA)
Redmond
Schumer

□ 1938

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. REDMOND. Mr. Speaker, on rollcall No. 225, my pager did not respond and I inadvertently missed the vote. Had I been present, I would have voted ''yes.''

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 3150, BANKRUPTCY REFORM ACT OF 1998

Mr. GEKAS. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 3150, the Clerk be authorized to make technical corrections and conforming changes to the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

GENERAL LEAVE

Mr. GEKAS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill just passed, including thanks to my staff for helping me get through this.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

PROPOSING AMENDMENT TO CONSTITUTION TO LIMIT CAMPAIGN SPENDING

The SPEAKER pro tempore (Mr. HOBSON). Pursuant to House Resolution 442 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the joint resolution, House Joint Resolution 119.

□ 1940

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the joint resolution (H.J.Res. 119) proposing an amendment to the Constitution of the United States to limit campaign spending, with Mr. HANSEN in the chair.

The Clerk read the title of the joint resolution.

The CHAIRMAN. Pursuant to the rule, the joint resolution is considered as having been read the first time.

Under the rule, the gentleman from Texas (Mr. DELAY) and the gentleman from Massachusetts (Mr. MEEHAN) as the Member in favor of the joint resolution each will control 30 minutes.

The Chair recognizes the gentleman from Texas (Mr. DELAY).

Mr. DELAY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today after having asked that this constitutional amendment be offered, although I disagree profoundly with what it tries to accomplish.

Mr. Chairman, I know this is very unusual that I would ask to introduce, or have the constitutional amendment of the gentleman from Missouri (Mr. GEPHARDT) introduced, even though he may not want it introduced. But I think frankly that this is the time to have this debate. Earlier on in the year, I thought, because of my opposition to campaign reform, particularly the Shays-Meehan approach, that I frankly would try to block its coming to the floor. But now that we are going to have this open and fair debate, I think it is high time that we have this debate, because this is a debate about free speech, this is a debate about the Bill of Rights and the first amendment to the Constitution. This is a debate that frankly the so-called reformers have had all their way for a very, very long time. It is time for this House to let the American people know what is going on, particularly in this case with this amendment, because this amendment, and I do not want to question anybody's motives, but I think this amendment frankly was offered to cover up some of the campaign abuses by the Democrat National Committee and this administration that we are looking into.

So I bring this amendment to the floor, to do so, to help clarify for my colleagues the real focus of this debate. Tonight we will frame the debate on campaign reform. Any debate on campaign reform and regulation has to begin and end with a discussion of the first amendment to the Constitution of the United States. That is why we are here tonight.

There are two sides when it comes to campaign reform. One side wants to change the Bill of Rights in order to give government more control of the political process. The other side, my side, wants to preserve the Bill of Rights and open up the political process to more Americans.

Now, make no mistake about it. The Gephardt amendment that we are about to debate is the most honest effort by the so-called reformers, honest effort, because it confronts, head-on, the troubling notion that most of these other substitutes, like the Shays-Meehan bill, do not pass the constitutional smell test.

□ 1945

The Gephardt amendment says that we should change the first amendment to fit the political passions of the moment. The Gephardt amendment would change the Constitution, change the Constitution to permit Congress and the States to enact laws regulating Federal campaign expenditures and contributions, which is currently held to be unconstitutional, and it would give to Congress and the States unprecedented, sweeping, and undefined authority to restrict speech protected by the first amendment since 1791.

Now the ACLU, not exactly one of my best supporters, but in this case very much on target, has noted that the Gephardt constitutional amendment is vague and overbroad. It would give Congress a virtual blank check to enact any legislation that may abridge a vast array of free speech and free association rights that we now enjoy.

As the Washington Post said, and they are not exactly a supporter of mine, but they editorialized against the Gephardt proposal, and I quote:

> Campaign finance reform is hard in part because it so quickly bumps up against the first amendment. The Supreme Court has ruled, we think correctly, that the giving and spending of campaign reforms is a form of political speech, and the Constitution is pretty explicit about that sort of thing. Constitution: The Congress shall make no law abridging the freedom of speech is the majestic sentence.

Now the minority leader himself, the gentleman from Missouri (Mr. GEPHARDT) stated his position honestly when he said, and I quote:

> What we have here is 2 important values in direct conflict: freedom of speech and our desire for healthy campaigns in a healthy democracy. You cannot have both. Why disagree with that? In my view, free speech and democracy are not in conflict. In fact, you can't have democracy without free speech and limiting free speech eventually limits democracy.

Now the Supreme Court has correctly noted when it said in a free society ordained by our Constitution, it is not the government but the people individually as citizens and candidates and collectively as associations and political committees who must retain control over the quantity and range of debate on public issues in a public campaign. If this constitutional amendment were adopted, Congress and local governments, not the people, would control speech.

The ACLU has noted that passage of this amendment would give Congress and every State legislature the power heretofore denied by the first amendment to regulate the most protected function of the press, and that is editorializing. Print outlets such as newspapers and magazines, broadcasters, Internet, publishers, cable operators would all be vulnerable to the severe regulation of the editorial content by the government.

Now a candidate-centered editorial, as well as op-ed articles or commentaries printed at the publisher's expense, are most certainly expenditures in support of or in opposition to particular political candidates, and the Gephardt constitutional amendment, as its words make apparent, would authorize the Congress to set reasonable limits on the expenditures by the media during campaigns when not strictly reporting the news.

And the New York Times is editorializing in favor of Shays-Meehan? Other newspapers are editorializing in favor of shutting off freedom of speech and freedom of, and I will yield to the gentleman from Massachusetts in just a moment, but such a result would be intolerable in a society that cherishes free press.

Now it is interesting to note that while the minority leader and many Members of his party support this constitutional amendment as the only way to limit spending in a constitutional manner, they also plan to vote in favor of Shays-Meehan that limits the same spending. Now if a constitutional amendment is needed, as the gentleman from Missouri (Mr. GEPHARDT) rightfully claims, then other bills that contain those same spending limits are constitutional.

Now the proposal of the gentleman from Missouri (Mr. GEPHARDT) does from the front door what other proposals like the Shays-Meehan bill do from the back door. Campaign finance reform should honor the first amendment by expanding participation in our democracy and enhancing political disclosure. The Gephardt constitutional

amendment does not honor the first amendment, it shreds it.

So I just urge my colleagues to vote to protect the freedom of speech and vote against the Gephardt constitutional amendment and then vote against all the other substitutes that limit campaign spending and violate the Constitution.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I ask the gentleman, he has made a fundamental confusion here. The constitutional amendment and the Shays-Meehan bill do different things, and no one has been arguing, prior to the gentleman from Texas, and I do not underestimate the novelty of the arguments he brings to us from time to time, but no one has argued that nothing is constitutional.

The constitutional amendment would allow us to go further; but, for example, one of the major parts of the Shays-Meehan bill is the ban on soft money. Would the gentleman tell me if he thinks that is unconstitutional, and would he tell me which decision of the Supreme Court makes banning soft money?

Mr. DELAY. Reclaiming my time, Mr. Chairman, I do not have to claim that soft money is unconstitutional. The Supreme Court of the United States has already stated that, and, reclaiming my time, and the gentleman can get his own time, let me just answer his question, and I have got to yield to other Members.

Let me just say that the constitutional amendment opens up all kinds of mischief, and let me finish, if the gentleman will let me finish, including the things claimed by the Shays-Meehan bill. If the Shays-Meehan bill was not unconstitutional, then you would not need the Gephardt constitutional amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield for one more question.

Mr. FRANK of Massachusetts. That statement is, of course, nonsense. The argument that if the Shays-Meehan bill was constitutional we would not need the amendment, is simply not true. It is, of course, often the case that you will be for a bill that takes you to the limits of what is now constitutionally possible and later for an amendment, and I would give a specific example: soft money.

I would like the gentleman to tell me, because the Supreme Court did say in the Buckley case that we can ban contributions, soft money contributions, not expenditures, would the gentleman tell me out of his great store of constitutional knowledge, recently acquired, what Supreme Court decision says that soft money ban would be unconstitutional?

Mr. DELAY. It is very clear. Reclaiming my time, it is very clear in Buckley versus Valeo. They are very clear that if we collect moneys that is used in support of an idea or in the support of a particular issue, then we cannot limit the expenditures of the contributions of those moneys.

The gentleman makes a statement and then does not even have the courtesy to allow someone to answer the statement.

The point is that they were very clear in the fact that we can do anything in support of an issue, but we cannot specifically say that we are advocating the election or the unelection of a particular candidate.

So I say that the reason that the minority leader has bought a constitutional amendment to the floor is to show the fact that we have to manipulate and shred the first amendment of the Constitution in order to have the kinds of bills like Shays-Meehan, and the gentleman has his own time.

Mr. Chairman, I reserve the balance of my time.

Mr. MEEHAN. Mr. Chairman, I yield myself such time as I may consume.

(Mr. MEEHAN asked and was given permission to revise and extend his remarks.)

Mr. MEEHAN. Mr. Chairman, I would remind the gentleman from Texas that last week he voted to amend the first 16 words of the Bill of Rights.

Mr. Chairman, I yield such time as he may consume to the gentleman from Massachusetts (Mr. FRANK) a member of the Committee on the Judiciary and a recognized constitutional expert within this body.

Mr. FRANK of Massachusetts. Mr. Chairman, first of all, I want to express my appreciation for the appearance of the majority whip in a new guise, defender of the first amendment, and particularly as an advocate of free speech. He and I have served together for, I do not know, a dozen or 14 years. I guess I will ask for a nexus search. I cannot remember any previous occasion when the issue was freedom of expression that the gentleman from Texas was here.

We have had constitutional amendments, we had two amendments to restrict the first amendment or to cut back or to change what the Supreme Court says. He was for both of them; that is legitimate. We have had a whole series of assaults on free speech. Often it comes from speech that is obnoxious, but that is when free speech gets involved, and I am forced to conclude, not having previously heard the gentleman, he himself said he does not usually agree with the ACLU, he does not usually agree with the Washington Post. He quoted, by his own admission, authority after authority in defense of free speech to whom he is usually an opponent. He has a whole bunch of allies to whom he is usually a stranger. This is first time in my memory that the gentleman has been for free speech.

Why? Because we are talking about the free speech of people with large amounts of money trying to either win an office or buy some political influence. We are talking about free speech that is on behalf of millionaires, and it becomes very clear what the principle is. The gentleman is for free speech as long as it is expensive. I have never heard him support free free speech, but expensive free speech, the purpose of which is to buy one's way into the political process. He is all it.

He has also, it seems to me, neglected to mention one thing about the constitutional amendment, and I worked on the drafting of it. I agree that constitutional amendment, as it came before us, is not ready to be put in the Constitution. That is why it is so disappointing to see it used in this fashion.

I have never supported a constitutional amendment coming to this floor without a previous subcommittee markup and committee markup. This constitutional amendment has had no such markup in the subcommittee or committee.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I will yield to the gentleman from Texas.

Mr. DELAY. Is the gentleman from Massachusetts not a cosponsor of this amendment?

Mr. FRANK of Massachusetts. Yes, I am a cosponsor of this amendment which did not get a subcommittee markup and did not get a committee markup. I am sorry those terms appear to be foreign to the gentleman from Texas.

When we are dealing with the Constitution of the United States, it would be irresponsible to go directly from the drafting to the floor. That did not happen with the balanced budget amendment. That did not happen with the various religious amendments. We work in the Committee on the Judiciary on these amendments, and I cosponsored; I said I worked on it.

What I wanted, however, was to begin a serious discussion, and if the Republican leadership really wanted to advance that discussion, they would have had a subcommittee markup, they would have had a committee markup bringing a constitutional amendment directly to the floor.

Having refused for a year and a half to have any committee consideration, it is hardly serious legislating about the Constitution. In fact, if anybody had tried to get an amendment through seriously that way, he or she would legitimately be subjected to criticism.

Then the next thing the gentleman does is totally collapse this into the bill, and I am impressed by the reasoning here. Apparently he recognizes, and his allies, that the bill brought forward by the gentleman from Connecticut and the gentleman from Massachusetts is hard to attack on its merits, so he has abandoned that by claiming that it is clearly unconstitutional.

No one who was supporting the constitutional amendment introduced it as a substitute for this bill. Indeed, those

of us who think a constitutional amendment would be useful explicitly believe that legislation is possible and desirable but that an amendment could take us further, and his suggestion that Buckley outlaws a ban on soft money is clearly wrong. Buckley clearly says soft money has to do with the contributions. The gentleman is talking here in this bill about limiting contributions, and Buckley said we could limit contributions. It said we can limit them to a thousand dollars.

Now, there are separate issues with issue advocacy and independent expenditure. What the gentleman from Texas is doing is collapsing everything. The constitutional amendment and soft money and issue advocacy and independent expenditures, all complicated, substantive subjects, get collapsed into his rhetorical assault on the notion of reform because he is not for restricting expensive free speech.

The gentleman from Texas, as he said, did not want the bill to come to the floor. He told us that. So he decided instead to let it come to the floor in the most convoluted process. By the way, the Committee on Rules, which would not allow a single amendment onto the floor to reduce the defense budget by a penny, which has restricted important amendments on virtually every other bill we have today, has allowed to this bill, I believe, more amendments than were made in order for all the other bills this Congress has dealt with this year. That is, of course, not serious legislating.

I yield to the gentleman from Texas.

Mr. DELAY. I have not asked for the gentleman to yield.

Mr. FRANK of Massachusetts. Oh, I am sorry. I just did not realize the gentleman was taking the seventh inning stretch so early in the evening.

What we are talking about here is a recognition that this bill cannot be assailed on its merits, so we have, and here is what they have done: First of all, they bring forward a constitutional amendment that they have not allowed to have a subcommittee markup or a committee markup. It had a hearing over a year ago, but, no, went further on that, and we have not had that process of debate and discussion that refines procedures.

□ 2000

If, in fact, people try to bring this to the floor without subcommittee markup, people would be yelling at it.

Secondly, the inaccurate claim was made that because you are for a constitutional amendment in a certain area, you must think no legislating is possible. And the gentleman confuses the issue of soft money. Buckley clearly says you can limit contributions. The ban on soft money here is a ban on contributions. Maybe a later Supreme Court might say no to it.

I must say also I am further impressed by this. This Congress voted for the Communications Decency Act as part of the Telecommunications Act. It was defeated 9 to 0 in the Supreme Court. By the way, the people of constitutional knowledge who were surprised that the Supreme Court did that was quite slender. That did not stop Members from voting against it.

That is another new-found trait of the gentleman from Texas. He is now determined apparently never to vote for anything that would be unconstitutional. Maybe we could make that retroactive and he could go back into the record, because I am willing to point out to him areas where he has done just that.

So I do not think the gentleman as a defender of free speech comes with quite as much experience as he may bring to other issues.

Mr. DELAY. Mr. Chairman will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, the gentleman has talked about all my motives for bringing this to the floor and everything, except the substance of the amendment before us. Could the gentleman enlighten us, is he for or against the amendment that is before us?

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, first let me say this. I have not spoken about the gentleman's motives. I talked about the gentleman's new-found love of free speech that costs a lot of money. I talked about the procedural inappropriateness of the way of doing this. And my answer is, I am for a Constitution America amendment. I am not for this one as written, as I am rarely on a complicated and sensitive subject for the first draft of anything, precisely because I recognize that the Constitution is an important document.

What I would like to see is a subcommittee markup and a committee markup dealing with this set of subjects. I know of no one who is capable of excogitating that and then, without any discussion, without anybody else, bringing it forward. So I am in favor of a constitutional amendment.

I also share the overwhelmingly majority of opinion, contrary to the gentleman from Texas, that there is plenty of area left by the Supreme Court in which you can legislate. The gentleman suggested that all these bills were unconstitutional, and no one but him thinks that. He is entitled to the splendid solitude of his constitutional opinion, but I do not think it ought to influence the House.

Mr. CAMPBELL. Mr. Chairman will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, I thank the gentleman for yielding.

I would like to engage in a short colloquy with the gentleman. Is it not true that the Supreme Court has held that it is constitutional to limit the contributions that an individual gives to $1,000?

Mr. FRANK of Massachusetts. Yes. In the Buckley case, that is exactly what they held.

Mr. CAMPBELL. Is it not also true that the Supreme Court has held that it is constitutional to limit the contributions that a political action committee can give to $5,000?

Mr. FRANK of Massachusetts. Subject to correction by the constitutional authorities, I would say yes.

Mr. DELAY. If the gentleman would yield further, I just want to correct the gentleman. He is absolutely right, it is constitutional for a $1,000 contribution from individuals and $5,000 contributions limited to PACs to political candidates.

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, I must say I am a little puzzled when my friend from Texas says, ''I want to correct the gentleman, he is absolutely right.'' That is not what I would ordinarily list as a correction.

Mr. CAMPBELL. If the gentleman will yield further, I want to take two other examples, and on my own time I will have points to make. But I just I thought it would be useful to illustrate the gentleman's point that the Supreme Court has held in absolutely clear fashion that limits are contributions are constitutional in the context I have given.

The only other two I would mention, is it not true that the Supreme Court has for over 50 years upheld the constitutionality on bans of corporations' outright expenditures in campaigns, and the Supreme Court has recently as the Austin v. Michigan Chamber of Commerce case restricted the activity in the campaign field by chambers of commerce?

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, yes. As my friend from California, who teaches constitutional law, among other things, at the time when he still had a day job, knows, there is a complex set of opinions, and some things are allowed and some are not, and there is also a gray area, and some of us think that what has clearly been banned from regulating should be expanded.

But no one, except apparently the gentleman from Texas, thinks that the current constitutional doctrine makes all of this unconstitutional. Everyone recognizes that there is an area of regulation, and I believe that the gentleman from Connecticut and the gentleman from Massachusetts have together come up with a bill that has enough appeal within what is constitutionally possible, so the gentleman from Texas's first reaction, he said, was to block the bill from coming to the floor; the second reaction was to come up with the most bizarre rule which is designed, in fact, to prevent anything from ever coming forward; and the third to inaccurately claim it is unconstitutional.

I will repeat as I close and say I think we should do a constitutional amendment. It should be done in the

normal way of a subcommittee and committee markup. But none of that means that the Shays-Meehan bill, particularly in some of its core provisions, like limiting soft money, is remotely arguably unconstitutional.

Mr. DELAY. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois (Mr. HYDE), the distinguished chairman of the Committee on the Judiciary.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, I listened with great interest to my friend from Massachusetts being highly critical of the gentleman from Texas (Mr. DELAY) for bringing his own amendment forward, complaining that it was not slowed down by a markup in the Committee on the Judiciary, where it might not have squeaked out and still be residing in the desk drawers over there. That is unusual, that someone would object to expedited treatment of their legislation. That makes this an historic day.

But really why we are here is to address perhaps a philosophical question as to the astonishing statement of the distinguished minority leader, that you cannot have healthy campaigns in a healthy democracy and free speech. That is a startling statement. I think we are entitled to wonder and explore whether or not that truly expresses the sentiment of Members of this House, because it has always seemed to me, naive as I may be, and certainly unlettered in the nuances of the Constitution, that you cannot have healthy elections without free speech. It is a condition precedent to a healthy election.

Now, Thomas Jefferson, who was no stranger to free speech, said in 1808, ''The liberty of speaking and writing guards our other liberties.'' So we should be very careful. I think the phrase the court uses is ''strict scrutiny.'' We should impose strict scrutiny on any efforts to limit the first amendment, which has served us pretty well for 222-some years. Yet here we are in this Chamber, under the watchful eye of Lafayette on my left and George Washington on my right, debating essentially the downsizing, the rationing of free speech, this very precious freedom.

George Orwell, in a review of a book by Bertrand Russell, said, ''We come the task of the intellectual to speak of the obvious.'' I certainly do not make any claim to being an intellectual, but the dangers of the amendment of the gentleman from Missouri (Mr. GEPHARDT), cosponsored by the distinguished gentleman and learned constitutional scholar from Massachusetts, those dangers, it seems to me, are painfully obvious.

Is it not obvious that the ability of citizens, individually or in groups, to publicly criticize political candidates or public policy or public officials is the heart and the soul of our political system?

Now, we proclaim, most of us do, that we are for limited government. But this amendment, if it became law, is Big Brother run amuck. Have you thought about the enhanced power of the media as the rest of us try to cope with the Federal speech police? This amendment allows the State to regulate campaign expenditures, therefore to regulate free speech. That is the dream, the wish fulfillment of every tyrant since the dawn of recorded history.

This amendment, if it became in the Constitution, would be a massive consignment of power to the courts, who will then make the determinations as to what is reasonable, an invitation to endless litigation.

Our Declaration of Independence tells us that government derives its just powers from the consent of the governed. That means an informed electorate is indispensable to a functioning democracy, and free speech, political debate, ideas, proposals for governing, are the necessary conditions for informing the electorate.

How do you communicate your ideas, your proposals, your criticisms; how do you effectively campaign when free speech is rationed? Newspaper ads, television, radio commercials, signs, leaflets, buttons, telephone banks, U.S. postage, all of these things cost money, and to limit a candidate's ability to raise money is to limit his or her speech, and, therefore, and thereby, limiting the information available for informed decisionmaking.

History has got a way of repeating itself, and this amendment reminds me of the Alien and Sedition Acts of 1798, where the Federalists tried to suppress criticism of the government. They, too, had the idea that there was just too much political advocacy, and the government could be trusted to decide and enforce the correct amount.

This amendment is a frontal assault against our most cherished principles, principles that monuments and military graveyards from Arlington to Iwo Jima remind us were paid for with American blood. If this amendment were to pass, we would demean the towering accomplishments of our founders and our framers, and we were not sent here to demean or downsize the Bill of Rights, but to defend it.

One hundred thirty-four years ago in a little cemetery in Pennsylvania, one of my State of Illinois' most illustrious sons asked a haunting question, whether this Nation, conceived in liberty and dedicated to the proposition that all men are created equal, can long endure. Each generation has to answer that question for itself, and I wonder what our answer will be?

Mr. Chairman, I hope we can defeat this amendment and the inadvertently pernicious philosophy behind it, and, for this generation, keep faith with those who gave us these blessed freedoms.

Mr. MEEHAN. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. CAMPBELL), a cosponsor of bipartisan campaign finance reform, the Shays-Meehan bill, and a constitutional law professor from California.

Mr. CAMPBELL. Mr. Chairman, I thank the gentleman from Massachusetts for yielding me time.

Mr. Chairman, the distinction before us is between expenditure of money, which the Supreme Court, in my view, has correctly identified as a form of expression, and contribution, which is an act. In offering this amendment, my good friend and colleague, for whom I have the highest regard, is, I believe, confusing the two.

I believe that the amendment is offered in order to suggest that you need to amend the Constitution in order to have Shays-Meehan, or McCain-Feingold, as it is known in the other body.

In reality, you do not, because there is this vital distinction between expressing your own views or spending your own money to express your own views, which is quite protected, and the act of contributing to somebody else for their campaign, contributing to a political party, contributing to a PAC, the soft money, which is the subject of the regulation under Shays-Meehan or McCain-Feingold.

The Supreme Court has been careful to emphasize this difference. It did it in the Buckley v. Valeo case when, in 1976, it dealt with the first attempt in modern times in the post-Watergate era to regulate the activities of campaigns. But it was not the first time that the Supreme Court drew distinctions that affected speech under the first amendment. Indeed, the Supreme Court has made quite a practice of dealing with speech under the first amendment.

''Congress shall make no law abridging the freedom of speech'' is the wording of the first amendment, and yet the Supreme Court has said, except the Congress may restrict commercial speech; except the Congress may restrict speech that constitutes libel and slander; except Congress may restrict speech that constitutes obscenity. Congress may restrict speech that constitutes an incitement to imminent lawlessness. Congress may restrict speech that constitutes a group libel. Congress may restrict speech that constitutes fighting words.

□ 2015

So with this background where the Supreme Court has, over many years, made distinctions, we come to the question of campaign finance. Every time that the Supreme Court has said that it is permissible for the Congress to deal with speech, it has said, provided the fundamental goal of free speech is protected, then for very important other reasons there can be restrictions, but that fundamental goal is protected.

Here, the fundamental goal is my ability to spend my own money and my own time speaking in my own way. But to prevent corruption and to prevent

the appearance of corruption, it is permissible and, in my view, highly desirable to limit how much somebody can give to me or how much somebody will spend to influence a campaign under the aegis of the Republican Party in my case or the Democratic party on the other side.

In conclusion, I say do not confuse these issues. We do not need to amend the Constitution to do what needs to be done, and what needs to be done is the Shays-Meehan campaign finance reform bill.

Mr. DELAY. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT. Mr. Chairman, I rise to speak in opposition of H.J.Res. 19. Some of our colleagues would have us believe that the only way we can have campaign finance reform is to amend the Bill of Rights and overturn the Supreme Court's decision in Buckley v. Valeo.

The First Amendment in the Constitution guarantees that Congress shall make no laws abridging the freedom of speech or of the press. The Buckley v. Valeo decision provides that, although certain limitations on contributions are permissible, that limiting political expenditures is an unconstitutional denial of free speech in violation of the First Amendment.

The proposed amendment, however, will allow Congress and the State legislatures to prohibit certain speech and actions by candidates, their donors, political action committees, issue advocacy groups, and the press.

Mr. Chairman, I believe that we are better off trusting the American people to discern the value of information they receive than we are in having Congress or the States regulate the information they receive. There are several problems with this proposed amendment.

First, the contemplated amendment proposes an unprecedented exception to our free speech right and would represent the first time the Bill of Rights has been amended. At the very place in the Constitution where we have protected the free speech rights of Americans for over 200 years, we should not add a prohibition on political speech.

Second, Mr. Chairman, because the proposed amendment uses vague terminology to define what Congress can do to regulate a political speech and elections, it will be left to future Congresses to implement legislation to decide what is reasonable and what is effective advocacy.

As we have seen with other constitutional amendments on this floor, a transient majority will frequently vote against the Bill of Rights. A majority of this House, as a matter of fact, has already voted twice this Congress to amend the Bill of Rights. We should not allow a simple majority to define who gets to say what during a campaign.

The third point, Mr. Chairman, the proposed amendment would also make regulation of the press possible for the first time. Heretofore, the first amendment has denied legislatures the power to regulate the press in any way or prohibit media endorsements of candidates.

Since the expense of producing and communicating an editorial comment could be included as an expenditure of funds to influence the outcome of an election as described in the proposed amendment, it will subject the press to regulation as we have never done before. This outcome will be intolerable to the American people. Even if there were an exception for newspaper editorials, who would get to decide when a publication is a newspaper?

Finally, Mr. Chairman, the proposed amendment would grant Congress and the State legislatures the authority to define express and issue advocacy. The ability to make the distinction between these two forms of speech will leave only candidates, political action committees, and the media free to comment about candidate records during elections, and it would deny freedom of speech to individuals and groups who might want to comment on issues that may have political ramifications.

We have many reforms that can be considered without overturning the Supreme Court decisions or amending the Constitution. We can consider other reforms such as public financing of elections, improved disclosure requirements, providing discount vouchers for media coverage, reinstating tax credits for small contributions, and on and on. There is a lot that we can do without putting our right to free speech in jeopardy.

Mr. Chairman, I urge all of my colleagues on both sides of the aisle to vote against this attack on our Bill of Rights.

Mr. MEEHAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am struck as I look at the clock and it is 20 minutes past 8:00, no further votes expected, and here we are debating campaign finance reform. It is interesting.

Mr. Chairman, I yield 4 minutes to my friend, the gentleman from Maine (Mr. ALLEN), who has been a leader in the effort to pass bipartisan campaign finance reform, working with both Democrats and Republicans in the freshman class.

Mr. ALLEN. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I rise tonight in opposition to this amendment, but I do not for 1 minute want to suggest that this debate is about the amendment.

What is going on here? We have the majority whip on the Republican side bringing forth a proposed constitutional amendment by the Democratic leader, the gentleman from Missouri (Mr. GEPHARDT), and then saying he is going to vote against it. What is going on here?

I will tell my colleagues what is going on. The gentleman from Missouri (Mr. DELAY) said that he wanted to frame the debate. I will tell my colleagues what is going on. This is an attempt to drag a red herring across this whole discussion.

What is going on here is this: Since campaign reform was brought back to the floor, the free speech coalition, so-called, is in full gear, is in overdrive. It really should be called the free speech/big money coalition. Every time the antireformers say ''free speech,'' they really mean ''big money.'' The antireformers cannot defend big money on its merits. The American people would not buy it. So they cloak the rhetoric in the terms of free speech.

Members of the free speech/big money coalition claim that all campaign finance reform is unconstitutional. These folks claim that money and speech are one and the same. They argue, since money is equal to speech, reasonable limits on contributions are unconstitutional. They are wrong. Antireformer free speech arguments are simply cynical attempts to confuse the issue of campaign finance reform.

I want to deal with two issues, one a soft money ban. Until tonight, I had never heard Buckley used as a way to suggest that a ban on soft money would be unconstitutional.

Some antireformers claim that soft money is constitutionally protected under the Colorado Republican Party decision. Wrong. That decision dealt with hard money, not soft money. In fact, the Colorado court said it ''could understand how Congress, were it to conclude that the potential for evasion of the individual contribution limits was a serious matter, might decide to change the statute's limitations on contributions to political parties''; in other words, contributions of soft money. In other words, Congress can ban soft money.

Take the second issue. Antireformers contend that the Supreme Court has said disclosure of issue advocacy is unconstitutional. And they sometimes hold out the case of McIntyre v. Ohio Board of Elections.

McIntyre involved an individual handing out fliers advocating a position for a local election. The flier did not have a disclaimer, and, yet, the Ohio elections board argued that the State's disclosure law had been violated.

The court held that small-scale anonymous pamphleting is constitutionally protected, but they said this applies only to printed materials, not to television or radio. So the court did not find that this Congress could not require disclosure about radio and television issue advertisements.

There are two primary constitutional arguments used by the free speech/big money coalition. They are both baseless. Soft money can be banned, and information about issue ads can be disclosed.

Both of the major pieces of legislation before this body right now, the Shays-Meehan bill and the Hutchinson-

Allen bill, the freshman bill, both ban soft money, and both have restrictions requiring disclosure on issue advocacy.

Antireformer arguments about free speech are red herrings. They are designed to confuse, to cast out. When antireformers say ''free speech,'' they mean ''big money.'' They want to protect big money, and they use the rhetoric of free speech. That is what this debate is all about. Free speech in this democracy does not equal big money. The antireformers are wrong.

The CHAIRMAN. The gentleman from Texas (Mr. DELAY) has 8½ minutes remaining. The gentleman from Massachusetts (Mr. MEEHAN) has 12 minutes remaining.

Mr. DELAY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I wish the gentleman would have yielded to me, because the gentleman is claiming all kinds of things about big money, soft money; and the gentleman himself received about a million dollars from labor unions in support of his election. Now that he is in office, he would want to ban similar type of spending that might be used against him.

Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. DOOLITTLE).

(Mr. DOOLITTLE asked and was given permission to revise and extend his remarks.)

Mr. DOOLITTLE. Mr. Chairman, I am happy that we are considering this proposed amendment to the Constitution, because this amendment, without question, is where the debate ought to be on the government regulation of political speech which is under consideration.

I want to commend the gentleman from Missouri and my other liberal colleagues who have endorsed this approach. I do not endorse it, but I commend them, because it is honest. My liberal colleagues recognize that, in order to limit speech, it is necessary to amend the first amendment. They know that any attempt to abridge a citizen's first amendment rights by statute, such as most of the proposals before us do, in fact, is unconstitutional. So I commend them for their honest admission of this fact.

Mr. Chairman, this is a debate which will clarify that the so-called campaign finance issue is really about limiting our right to engage in political speech and participate in free elections.

In an effort to pave the way for big government regulations such as Shays-Meehan, this resolution would amend the Constitution to grant Congress and the States power to set spending and contribution limits and to define what a political expenditure is.

The words of the Gephardt resolution are relatively few, but the ramifications are stunning. The amendment would give Congress a free hand to regulate, restrict or, indeed, even prohibit any activity which is perceived by the government to constitute the campaign expenditure.

Candidate spending, independent expenditures, and even issue advocacy by private citizens and groups would be swept within the orbit of governmental regulation.

Thanks to the first amendment, America's premier political reform, Congress does not have the authority to stifle political speech. The Supreme Court has rightfully rejected efforts to suppress political speech time and time again.

If this amendment should pass, it would provide the government with a blank check to gag American citizens, candidates groups, and parties. Liberals call this reform.

The Founding Fathers had the wisdom and courage to construct the Constitution of the United States. The first amendment has served our Nation well for over 200 years. The first amendment speech protections are a legacy we are extremely fortunate to have.

Of all the types of speech that we are guaranteed by the first amendment, guess which was the most important in the minds of the framers? It was not the ability to go out and advertise automobiles or beer. It was political discourse, the very thing the British Government tried to abridge when it was in power. Our founders tried to prevent this from ever happening again by enacting the first amendment.

Mr. Chairman, the first amendment prevents the government from rationing the political speech of an American citizen through campaign spending regulations in the same way it prevents the government from telling the Washington Post or the Sacramento Bee how many numbers it may distribute or how many hours a day CNN may broadcast.

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Amending the first amendment for the first time in two centuries, the big government reformers want to make the unconstitutional be constitutional. They would rewrite the first amendment, a frontal assault on American freedom that even the ACLU has characterized as a recipe for repression.

While I relish the debate itself, I recoil at the prospect of gutting our first amendment freedoms. I prefer the crystal clear language of the first amendment, which says, ''Congress shall make no law abridging the freedom of speech.''

We as representatives would do well to abide by the Constitution and defeat this resolution.

Mr. MEEHAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from New York (Mrs. MALONEY), who has been a leader in the effort to fight for campaign finance reform, and a leader in our bipartisan effort to support the Shays-Meehan bill.

Mrs. MALONEY of New York. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, we have an historic opportunity to pass real campaign finance reform in this Congress. That opportunity is Shays-Meehan. Although some of my colleagues in this body support an amendment to overturn the Supreme Court's decision in Buckley vs. Valeo, such an amendment is not needed to pass Shays-Meehan. Shays-Meehan will pass constitutional review. The DeLay amendment will do just that, delay. I have been told that the amendment's sponsor does not even intend to vote for it.

Shays-Meehan will ban soft money once and for all, and will require greater disclosure from groups which conduct sham issue advocacy ads. For months we have held hearings in the Committee on Government Reform and Oversight on alleged campaign finance abuses. All of the alleged abuses involved soft money. Not one of these hearings would have been needed or would have been held if Shays-Meehan had been enacted, if Shays-Meehan had been law.

If we vote in favor of the DeLay amendment, those of us who may favor it, it will be years before it could take effect while the States debate ratification. In the meantime, we will have lost our best chance in years to pass real reform, Shays-Meehan. There is an old saying that a bird in hand is better than two in the bush, and the Shays-Meehan bill is within our grasp.

So I am urging all of my colleagues who are sincere reformers on both sides of the aisle to vote present on all substitutes, on all bills, except Shays-Meehan. Let us keep our eye on enacting within this Congress and passing it and ratifying true reform, Shays-Meehan. Vote present or no on the DeLay amendment and yes for Shays-Meehan.

Mr. MEEHAN. Mr. Chairman, I yield 2 minutes and 10 seconds to the gentlewoman from California (Mrs. LOIS CAPPS).

Mrs. CAPPS. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I rise first to say how grateful I am that this debate has finally begun. Many of us have different views of campaign finance reform, but the fact that the House has begun to consider these approaches tells me that we have finally listened to the will of the American people who desperately want us to fix our political system.

I hope that as we debate this issue over the next several weeks we will do so in a bipartisan, civil, and thoughtful manner, because in fact, I do believe that the nature of our deliberation itself is a part of the reform experience and enterprise.

I would support a constitutional amendment on campaign funding if I believed that it would be the only option available to us to change this system. But I oppose the amendment at this time for these reasons.

First, instead of taking the long, arduous, and radical step of amending the Constitution, we do have the ability now to make dramatic changes to

our political system by passing a bipartisan Shays-Meehan bill later in this debate.

Second, changing the Constitution is only necessary if we were to impose overall mandatory spending limits on campaigns. The Shays-Meehan bill contains numerous important reforms. In particular, it bans soft money and regulates issue ads, but it does not mandate overall spending limits.

Third, this amendment is being offered as a vehicle to criticize the Shays-Meehan and freshman reform bills as unconstitutional, and they are not. The Supreme Court has repeatedly upheld a variety of contribution limits, and has furthermore ruled that Congress is within its right to enact additional reforms.

The Shays-Meehan bill will not restrict free speech. Failure to pass this bill will suppress the voices of average Americans who are clamoring to be heard over the din of wealthy special interests dominating our political landscape, and this is the reason now that we must defeat this amendment and support the Shays-Meehan bill.

Mr. MEEHAN. Mr. Chairman, I yield 1 minute and 50 seconds to the gentlewoman from Michigan (Ms. RIVERS).

Ms. RIVERS. Mr. Chairman, I have not been convinced that we need an amendment to the Constitution in order to enact real campaign finance reform in this Congress. In fact, throughout the time that I have served in this particular body, I have avoided all attempts to change the Constitution, many of which came, of course, from that side of the aisle.

Mr. Chairman, I heard someone say earlier tonight that the reason they were here was to preserve the Bill of Rights. I know that just a week ago, 217 Members of this body voted to change the Bill of Rights and the first 16 words of the First Amendment.

I also know that many of the same people who are arguing about free speech interests tonight were also cosponsors and voters in support of the flag-burning amendment, which, indeed, restricted the ability of individuals to make their views known through burning the flag.

I also know that the majority whip and many Members who are participating in this debate tonight voted for the Internet Decency Act, and to restrict people's ability to express themselves on the Internet. So I have to assume that in fact this is not about the first amendment and people's rights to express themselves. It is about stopping campaign finance reform.

The argument that was put forward is that this particular amendment was brought to the floor by the minority leader, when in fact it was brought to the floor by the majority whip. There is a trend that I see happening in this body, a very disturbing trend. A week ago we saw the elements of the President's budget brought not at his request to the floor but by the chairman of the Committee on Rules. Why? Because it was important to construct a straw man that could be attacked and then voted down. That is what we have tonight, a straw man.

We also have an attempt to mislead. Shays-Meehan does not require a constitutional amendment to be put in place. How do I know? Because when it was introduced, I sent it to constitutional scholars throughout my district.

Mr. MEEHAN. Mr. Chairman, I yield 3 minutes to the gentleman from Tennessee (Mr. WAMP), who has been a leader in the bipartisan effort to get campaign finance reform, and a leader on Shays-Meehan.

(Mr. WAMP asked and was given permission to revise and extend his remarks.)

Mr. WAMP. Mr. Chairman, I certainly thank the gentleman for yielding time to me.

Mr. Chairman, while I think this is a cynical amendment, and certainly I do not want to question anyone's motives, I do think this is valuable in that an amendment like this will bring out the more extreme viewpoints in the House on this particular issue, because we have people from one extreme that say we need a constitutional amendment, which obviously most of us think is a bad idea, and then the other side that says we should just have unlimited expenses by whoever and whatever and whenever, no matter which direction our society is going in.

I want to bring the perspective of kind of the logical, commonsense approach from East Tennessee, kind of out of the heart of America. I do not accept PAC money. I always thought that was kind of a bad thing, so I just decided a long time ago not to take that money. I raise my money from individuals, the old-fashioned way. I can look them in the face.

In 1996, 95 percent of the money in my campaign was from the State of Tennessee, just kind of down home grass roots. I think we keep our hands more clean that way and say no to it all.

Where I am coming from here is I do not want big special interest groups with tons of money to dominate our elections to the United States House of Representatives. I think there is a commonsense approach that says we should have some limits on soft money from tobacco and alcohol and gambling interests, of all things, that is climbing so fast that it is going out of control.

Do we want big tobacco to have the ability to just dump millions of dollars, which they already have, directly to the political parties, without any restraints or any controls? Do we want to cause Members of the House of Representatives to lose control of our own elections because of outside influences, where they had independent groups come in and bombard them with their $1 million, and they raise money from individuals back home, and they cannot even stay in the game because of these outside influences? Come on. Common sense says there is some reasonable balance, and we can reform this system.

I want to thank the leadership for bringing campaign finance reform to the floor, but I want to encourage our leadership to do what they said they were going to do and bring reform to the floor. We have a bunch of good substitutes to choose from, and it is time we bring them to the floor. I do not mind staying up until 4 in the morning, but I want to see these votes scheduled.

I say to our leadership, I thank them for changing their strategy and bringing this issue back to the floor, where it deserves to be heard. But I also say, let us get on with it.

I am an appropriator. I know we have appropriations bills to bring to the floor, but we cannot just continue to delay this issue. I am not using the gentleman's name, I say to the gentleman from Texas (Mr. DELAY), the majority whip. I just meant to say, let us not delay, no pun intended, sir. I have the greatest respect for the gentleman.

But we do need to debate these substitutes. As soon as we can, we need to move beyond the cynicism, beyond the extreme, come to the middle ground.

Mr. HOSTETTLER. Mr. Chairman, will the gentleman yield?

Mr. WAMP. I yield to the gentleman from Indiana.

Mr. HOSTETTLER. Mr. Chairman, as someone who has never received special interest PAC money in the history of his elections, I think it is important that the gentleman makes it clear that the gentleman has in the past. Is that not the case?

Mr. WAMP. No. I have not, did not. I have never accepted PAC money. I will make that clear. That is right. I thank the gentleman for clarifying.

Mr. MEEHAN. Mr. Chairman, I yield myself such time as I may consume to say that I have never taken PAC money in the history of my election.

Mr. Chairman, I yield the remainder of my time to my colleague, the gentleman from Connecticut (Mr. SHAYS), who has played such a great leadership role working with both sides of the aisle to bring real, true, bipartisan campaign finance reform to a vote on the floor of this House.

The CHAIRMAN. The gentleman from Connecticut (Mr. SHAYS) is recognized for 3 minutes.

Mr. SHAYS. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, it is exciting to begin the process of debating campaign finance reform. It has been an absolute pleasure to work with the gentleman from Massachusetts (Mr. MARTY MEEHAN) and Members on both sides of the aisle who favor reform, and I also thank my freshman colleagues on both sides of the aisle for working so hard to bring campaign finance reform before this Chamber. Had the freshmen not made their effort, we would not be here today, and I thank them from the bottom of my heart.

The Sharp Meehan substitute does not circumvent the Constitution of the

United States. The amendment my majority whip has offered is not an issue I support, and I will be voting against his Constitutional amendment.

We support a ban on soft money, both on the Federal and State level, for Federal elections. We also believe we need to call the sham issue ads what they truly are, campaign ads. It means that people who attempt to influence elections will exercise their freedom of speech through the campaign process, and that we all play on a basically even field.

Right now if we say, ''Vote for, vote against, elect, reelect so and so,'' it is a campaign ad. Under our bill if one talks about a candidate 60 days to an election, it is a campaign ad and must come under the campaign rules.

Current law does not limit what we can spend, it limits what we can raise from each individual. A wealthy person can spend whatever they want under our campaign laws. We do not change that. They have to file and record what they spend. That is the law now. We are not changing it.

We codify Beck, which was the Supreme Court decision that said that a nonunion employee does not have to pay their agency fee to cover campaign expenditures. We improve the FEC disclosure and enforcement. We say that wealthy candidates who spend more than $50,000 cannot turn to their own parties for additional help.

We say that foreign money and money raised on government property is illegal. Believe it or not, it is not illegal now, because, surprisingly, soft money is not considered as a campaign contribution. It was intended years ago, to be used for party-building, but it has been totally misdirected.

I would urge this House to pay close attention to what happens in the next few weeks. It was my hope and expectation we would deal with campaign finance reform in February, as my leadership promised, or March, at the latest.

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That did not happen. And then we were told we would deal with it in May. Unfortunately, that has not happened. There is a point where the word of our leadership needs to be honored. I hope we can expedite debate and conclude our work to reform our campaign laws.

Mr. DELAY. Mr. Chairman, I yield myself the balance of the time.

Mr. Chairman, it is amazing to me no one wants to talk about this constitutional amendment. When the gentleman from Missouri (Mr. GEPHARDT), the Democratic leader said, and I quote, ''I intend to fight for and make the case for this amendment, because I believe the future of our democracy demands such a change,'' yet he refuses to come down and speak for an amendment that he and others, including the gentleman from Massachusetts, have beaten their chest about for months in order to cover up some of the campaign abuses by the Clinton administration and the Democrat National Committee.

The gentleman from Massachusetts has asked many questions trying to confuse us about the difference between contributions and expenditures for candidates and contributions and expenditures for organizations and parties. The Supreme Court was very real and very straightforward on the two. They said Congress could possibly limit contributions and expenditures to candidates because there is a potential for corruption.

Now, I do not know anybody in this House that is corrupted by the expenditures or contributions. On the other hand, they also said parties and groups cannot be corrupted, therefore we cannot limit their ability to speak out by raising money and spending it.

So I answer the gentleman from Massachusetts (Mr. FRANK) in his own words, a letter to our colleagues signed by the gentleman from Massachusetts and the gentleman from Missouri (Mr. GEPHARDT):

''Many of the changes to our campaign finance system that people rationally argue for are simply unconstitutional.'' We heard him say right here that that is not the case. ''Since the Supreme Court's 1976 opinion in Buckley versus Valeo, through its recent decision in Colorado Republican Federal Campaign Committee, it has been made repeatedly clear that the constitutional barriers erected by the court cannot be wished away. That is, the Supreme Court has consistently and ever more assuredly told us that any restrictions on expenditures by candidates or anyone else are unconstitutional.'' This is the gentleman from Massachusetts.

''While we may restrict contributions to candidates, those permissible restrictions are very narrow and cannot reach the kind of abuses that we are interested in curbing because they are easily circumvented. In short, neither Congress nor the States have any constitutional authority to limit expenditures, independent issue advocacy, or uncoordinated.''

And I quote from the gentleman from Missouri and the gentleman from Massachusetts: ''The current explosion in third-party spending is simply beyond our ability to legislate.''

They want this constitutional amendment so that they can change the first amendment to the Constitution and limit our ability of free speech. And the reason I brought the amendment here is to catch them, to catch them after they had beaten their chests about Shays-Meehan and others.

We will get into this and it will be a long, open and fair debate; what the reformers have asked us to do. And we will have that open and fair debate as long as it takes, because I believe that people in this body are too cavalier with American's freedoms. Too cavalier to say, as it was just said, we ought to stop these bad old special interests. Well, whose special interests? Americans that spend $100 or $200 to contribute to a group like National Right to Life or National Organization of Women? Are those big bad special interests?

Mr. Chairman, I will be asking those that vote ''present'' on this amendment why they cannot stand up for what they have believed in in the past.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the joint resolution is considered read for amendment under the 5-minute rule.

The text of House Joint Resolution 119 is as follows:

H.J. RES. 119

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

''ARTICLE —

''SECTION 1. To promote the fair and effective functioning of the democratic process, Congress, with respect to elections for Federal office, and States, for all other elections, including initiatives and referenda, may adopt reasonable regulations of funds expended, including contributions, to influence the outcome of elections, provided that such regulations do not impair the right of the public to a full and free discussion of all issues and do not prevent any candidate for elected office from amassing the resources necessary for effective advocacy.

''SECTION 2. Such governments may reasonably defined which expenditures are deemed to be for the purpose of influencing elections, so long as such definition does not interfere with the right of the people fully to debate issues.

''SECTION 3. No regulation adopted under this authority may regulate the content of any expression or communication.''.

The CHAIRMAN. The Chairman of the Committee of the Whole may postpone a request for recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

During consideration of the bill for amendment, the Chair may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

Are there any amendments to the joint resolution?

Mr. MEEHAN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, this has been a very interesting and lengthy debate about the first amendment implications of spending limits, and I thank the gentleman from Texas (Mr. DELAY) my colleague from Massachusetts (Mr. FRANK), the gentleman from California (Mr. CAMPBELL), the gentleman from Maine (Mr. ALLEN) and the gentleman from Virginia (Mr. SCOTT) for all of their input into the constitutional implications of spending limits.

But, Mr. Chairman, let me make one thing very, very clear. The Shays-Meehan bill does not include spending limits. I have a sneaking suspicion that reform opponents have contrived a debate here today that is nothing more than a red herring. Their message is that any campaign finance reform is impossible without amending the United States Constitution, and nothing could be further from the truth.

According to the eminent constitutional scholars such as John Miekeljohn and Thomas Emerson, the core principle underlying the first amendment is that voters should have the ability to tap into the vast marketplace of ideas so they can draw their own conclusions about political issues and candidates.

Nothing in the Shays-Meehan legislation precludes their ability to do that. In fact, I firmly believe that the bill would enhance political dialogue by increasing disclosure.

Now, Supreme Court decisions have affirmed that reformers stand on solid constitutional ground when we argue that campaign finance reform and first amendment rights are not mutually exclusive. The Court has repeatedly recognized that Congress possesses a broad ability to shield the political process from corruption and the appearance of corruption.

In the landmark case of Buckley v. Valeo, the Court ruled that Federal contribution limits ''do not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates, and political parties.''

More recently, in 1989, the United States Supreme Court reaffirmed that position in Austin v. Michigan State Chamber of Commerce, ruling that the current ban on corporate treasury contributions and expenditures serves to combat ''the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of corporate form * * *''

It is clear to me and the majority Members of this Congress that support the Shays-Meehan bill, that it is time to move forward with this debate. Legitimate constitutional concerns must be addressed, but the first amendment shell games should not be used any longer to postpone debate on reform any longer than they already have.

Let me also state that tomorrow marks an anniversary. It is the three-year anniversary that the Speaker of the House and the President of the United States met in New Hampshire and shook hands in agreement to get real comprehensive campaign finance reform to a vote in this Chamber. The three-year anniversary. Can my colleagues imagine? It has been three years and we still have not had a vote on a comprehensive, bipartisan, bicameral McCain-Feingold Shays-Meehan campaign finance reform legislation.

Tomorrow morning when we take the well, it will be an anniversary of sorts. I would encourage Members from both sides of the aisle to come to this well and mark that third-year anniversary with a renewed call for a vote on campaign finance reform. The public has had it. This vote is long overdue. Let us mark this anniversary with a vote on real campaign finance reform and pass the Shays-Meehan bill.

Mrs. CHENOWETH. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise tonight in opposition to the amendment. The Supreme Court has spoken very clearly. Limits on money spent in elections in certain cases are limits on free speech. We have heard the references to Buckley v. Valeo. The Supreme Court stated very clearly that spending money in the political process in most cases equals free speech, and the bottom line of what we are discussing here today is free speech.

Now those who would want to say that we are trying to combine free speech with big money, it just simply does not wash. I know in my own personal campaign, the average amount of my contribution was $30, yet I had millions dumped in against me and it was uncontrollable. Uncontrolled, and no one had to disclose.

What I am asking, and what we are asking for here ultimately, is let free speech reign but let the voters understand that they have the right to have every penny disclosed that is contributed or is accepted in a campaign.

I think it is very clear here what the bottom line is, the reason why this amendment was even drafted. Let us look at this again coming from the gentleman from Missouri (Mr. GEPHARDT) printed in Time Magazine, February 3, 1997. ''What we have here is two important values in direct conflict: Freedom of speech and our desire for healthy campaigns and a healthy democracy. You can't have both.''

Now, I think that lays it out pretty clearly. You cannot have both. So what do we peel off? We peel off free speech so we can have healthy campaigns in their definition. There are no healthy campaigns. There is no free press. There are not freedoms without free speech.

Mr. Chairman, how do supporters of this so-called constitutional amendment defend this? They say that they are only trying to balance conflicting values. Right. Give us a break.

Many tried to argue that we need to restrict free speech because they believe that money buys elections. Well, let me remind them that the results of the California primary last week proved that money does not buy elections and, in fact, the high profile candidates who dumped millions of dollars out of their own pocket into Statewide races were turned away empty handed.

What the lessons are that we can take from these results is that money does not decide elections, the informed voters in America decide elections. And that is what we need to focus on, making sure that American voters are fully informed.

Unfortunately, many people still do not trust the American people to make wise decisions. Despite the repudiation of the ideals of big government, my liberal friends continue to search for ways to place restrictions on the freedoms of the American people. Their answer to moral decay and the breakdown of the family is to step in and take prayer and the Ten Commandments out of our schools. Their answer to a struggling economy and unemployment is to take more money away from families and create more paperwork for bureaucrats. And their answer to illegal campaign contributions and possible foreign influences in elections is to change the Constitution to restrict the political participation of Americans and free speech.

Do they not get it? It is printed right here, a direct quote from the gentleman from Missouri. That is the bottom line of this debate.

The fact is that well-intentioned liberals in previous Congresses passed reform bills in 1974, and the result has been an increase in the strength of PACs and an increase in the amount of fund-raising that politicians are forced to do. The answer is not to close off more avenues of free speech.

The ACLU and the late Supreme Court Justice Thurgood Marshall, two voices normally aligned with those supporting this amendment, have made very clear statements on this issue. In the words of Justice Marshall he said, ''One of the points on which all members of the Court agree is that money is essential for effective communication in political campaigns.''

The ACLU, a bastion of liberalism, said that H.J. Res. 119 is vague, overbroad and it would give Congress a virtual blank check to enact any legislation that may abridge the vast array of free speech and free association rights that we now enjoy.

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I happen to agree with the ACLU on this issue. Unfortunately, the proponents of H.J. Res. 119 disagree.

The CHAIRMAN. The time of the gentlewoman from Idaho (Mrs. CHENOWETH) has expired.

(On request of Mr. DELAY, and by unanimous consent, Mrs. CHENOWETH was allowed to proceed for 2 additional minutes.)

Mrs. CHENOWETH. Mr. Chairman, let me remind Members again of their views on free speech and healthy campaigns and a healthy democracy. They said it right here. They say, we cannot have both. And what we are hearing today in this amendment is, we peel off free speech.

We just heard the distinguished gentleman from Illinois quote Abraham Lincoln, when Abraham Lincoln asked, at a very poignant time, a very important time in this Nation, how long can we endure, how long can we endure with the freedoms that we do have.

We must endure and we must protect those freedoms and then this Nation will remain free. The Constitution's authors trusted the people of this great Nation to make well-informed decisions about their lives and about their representatives, and I trust the people. Unfortunately, some Members still do not trust the American people to make the right decisions and they do not trust that they are well informed in this free society.

I ask that we defeat this amendment, H.J. Res. 119.

Mr. DOOLITTLE. Mr. Chairman, will the gentlewoman yield?

Mrs. CHENOWETH. I yield to the gentleman from California.

Mr. DOOLITTLE. Mr. Chairman, I would like to ask the gentlewoman, we have had about 25 years or so of extensive Federal regulation of our campaigns and yet things seem to have gone from bad to worse. Would the gentlewoman care to share her opinion as to why we seem to have have ever-increasing problems despite all the massive regulation that has been in the law?

Mrs. CHENOWETH. Mr. Chairman, it seems very clear to me, we have been trying to put the solution in the hands of the bureaucrats instead of letting the solutions rest with the well-informed electorate. When the electorate understands who is trying to give an inordinate amount of money to political candidates, they always respond. They respond negatively to anyone who gives the appearance even of allowing themselves to accept an inordinate amount of money.

Mr. TAYLOR of Mississippi. Mr. Chairman, I move to strike the last word.

Mr. Chairman, 200 years ago our Nation was founded with the principle that people would be chosen to represent based solely on the quality of their character. Those times have changed, but I think that ideal should remain the same. Obviously, it has not.

If you leave the Cannon House office building and take about 110 steps, you will find yourself at the door of an exquisite building with marble floors, beautiful red carpets that I visited on several occasions, and it is the Republican National Committee.

If you go a few hundred more steps, you will find a much uglier building that is not near as nice, but it is the Democratic National Committee. But they both exist for the same purpose. They raise money and they pedal influence.

I am not here to defend that system. I am here to change it.

I think it has gotten to the point where, and I think it can be proven, 95 percent of all congressional elections are won not by the best man but by the person who raises the most money.

Even now, as there is an open race in my home State of Mississippi, if people ask me who I think will win, I will tell them the name of the guy, a very nice guy by the name of Ronnie Shallison, and both Democrats and Republicans alike, the very next sentence out of their mouth is, but who is raising the most money. You see, that is what it has become in this town. Not the best person, not the person who wants to make our country, to keep it the greatest Nation on earth, but the guy who can make and raise the most money.

Some Members in this room will try to tell you that that is good. I am here to tell you that that stinks.

There is another system out there that we keep talking about, but maybe it has not been explained to the American people. It is called soft money. If you as an individual want to contribute to a candidate, you are limited by law to $1,000. If your spouse wants to give $1,000, that is okay. If your kids wants to give $1,000, that is okay. It is all reported.

If you belong to a political action committee like the NRA or the National Right to Life, that group can give a candidate $5000. But if a PAC or a wealthy individual or an Arab oil sheik or whoever wants to give $100,000 to a candidate, they can go around that law by giving it to either the Democratic or the Republican Party, and then that party writes a check for $100,000 to the candidate and it is perfectly legal. And some Members tell you in this room that is right. I am going to tell you, that is wrong.

There is another process out there called independent expenditures. Once again, you as an individual are limited, but if an organization or, once again, an incredibly wealthy individual who has got a personal axe to grind wants to spend $1 million against a candidate or $10 million against a candidate, he can go straight to the television station and he can go straight to the radio station, he can go straight to the newspaper, he can spend all he wants, he can say anything he wants, and some folks call that free speech.

Well, if all you do is cater to the rich folks, yes, it is free speech. But what happens to the average Joe who cannot raise $1 million and who cannot squander that kind of money. See, I visited both of the headquarters. The only average Joes I saw there and the only poor folks I saw there were working there. They do not have much of a voice in this town, and they do not have much of a voice in this town because money talks.

So if you think that is right, vote not to change a thing. But if you think that is wrong and that this corrupt system is threatening the very democracy that all of us swore to uphold and defend, then let us have a real debate and let us close some of these loopholes, and let us see that the people can run for Congress and have a fair chance of getting elected, not because they raised the most money but because they are the best person, they have the best character, and they want to do the best things for our Nation.

Mr. HUTCHINSON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in strong opposition to the Gephardt amendment. While the gentleman from Texas, the majority whip, and I have different views on some of the reform proposals before this House, I think we clearly agree that this constitutional amendment poses a dangerous threat to our liberties.

William Gladstone praised the United States Constitution as the most remarkable work known to man in modern times. Henry Clay, in a speech to the Senate in 1850, said the Constitution was made not merely for the generation that then existed but for posterity. And it is with that high regard for the Constitution that we begin this debate on campaign finance reform.

The gentleman from Texas knows that it is not necessary nor prudent to amend the Constitution in order to accomplish reform. For that reason, I and others have opposed this amendment. While we are in total agreement that the Constitution should not be amended in this fashion, there is a respectful disagreement on the compatibility of campaign finance reform and the Constitution.

I believe that you can summarize three different prevailing approaches to campaign finance reform today. The Supreme Court, luckily, 22 years ago has commented on each approach. Let us examine these.

One approach is for full disclosure. Let us remove all limits and let us just disclose everything. The Supreme Court understands why that might not be a good idea and said that Congress has a right and authority to require more.

A second approach is to impose spending limits, let us take money out of the system. And the Supreme Court has in fact ruled that unconstitutional and that an abridgment of political speech. I reject that.

Then there is a third approach, and that is the approach of the freshman bill, the Hutchinson–Allen bill to put reasonable limits on contributions which the Supreme Court says meets the test of free speech. The case that is most often cited, many times referred to tonight, is Buckley vs. Valeo.

In that case, the Supreme Court of the United States, after reviewing the improper influence of big money in the 1972 presidential campaign, said that it was constitutional and consistent with free speech to put limits on campaign contributions, not limits on campaign spending, and that is the distinction, but restrictions on large campaign contributions.

The Supreme Court described the appropriate limitations and approved the limitation of $1,000 per individual and, of course, corporate and labor union contributions had already been approved as appropriate to be banned. However, as has previously been described, there is the loophole of soft money, and everything worked fine until the loophole came through that those contributions that were illegal, if

given individually to a candidate, were permissible through the political parties and went to the benefit of the candidates.

That loophole did not exist when Buckley vs. Valeo was decided by the United States Supreme Court. Despite the Supreme Court's ruling, there are those who want to remove all campaign contribution limits and allow anyone, whether individual or special interest group, to pour as much money as they want into the political system. In other words, let the good times roll, as long as there is full disclosure.

Let me read to you what Buckley vs. Valeo, the Supreme Court, said about disclosure:

While disclosure requirements serve the many salutatory purposes intended, Congress is surely entitled to conclude that disclosure is only a partial measure and that contribution ceilings were a necessary legislative commitment to deal with the reality or appearance of corruption inherent in a system. And so more than disclosure is appropriate. And today we conclude that disclosure is not adequate, that we need more in our system.

The second view of reform today that we have talked about is that we ought to restrict spending limits, and that clearly is unconstitutional, as the Supreme Court has said. And I reject that view.

So the Supreme Court has given us some guidance in all of this, but I believe it comes down to the third approach that I have talked about, the freshman bill, the Hutchinson–Allen, because it respects the rulings of the United States Supreme Court.

This bill does not violate the first amendment because it does not try to regulate campaign spending. The freshman bill reduces the influence of big money contributions in American politics and strengthens the voice of the individual. That is what is important.

The freshman bill adopts that third approach to campaign spending, an approach that addresses the worst abuses in our system, and yet it is consistent with the first amendment.

In fact, the Supreme Court has said that the overall effect of contribution limits is merely to require candidates and political committees to raise funds, and this is important, this is a quote, to raise funds from a greater number of persons.

We do not want to restrict campaign spending. We want to make sure that we raise money from a broad spectrum of people that strengthens the role of the individual. In other words, by saying that the Loral Corporation or the tobacco companies cannot give their millions of dollars to political parties is consistent with the first amendment.

The CHAIRMAN pro tempore (Mr. WATTS of Oklahoma). The time of the gentleman from Arkansas (Mr. HUTCHINSON) has expired.

(On request of Mr. DELAY, and by unanimous consent, Mr. HUTCHINSON was allowed to proceed for 5 additional minutes.)

Mr. HUTCHINSON. Mr. Chairman, whether the Loral Corporation or other companies give their millions of dollars to political parties, it is consistent to ban those contributions, it is consistent with the first amendment.

It does not limit free speech and it has the beneficial effect of strengthening the role of individuals in our political process. That is why I urge my colleagues, along with the gentleman from Texas, to reject this constitutional amendment before us today and to support campaign finance reform that tells the homemaker, that tells the factory worker, that tells the voice of grass roots America, your voice counts in American politics. The freshman bill does that. If you support empowering individuals in the role of our government, then you will support the freshman bill.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. HUTCHINSON. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, I compliment the gentleman for his approach in trying to protect freedom of speech at the same time trying to regulate campaigns. The gentleman was chairman of the State party in Arkansas. He takes a much more evenhanded approach than the Shays-Meehan approach, and I applaud him for opposing the Gephardt constitutional amendment.

The difference between the gentleman and myself is the gentleman wants to use regulators and bureaucrats to regulate. I want the people to make the decision, my constituents to make the decision, not a Washington bureaucrat. But the gentleman from Mississippi would not yield to me. So I want the gentleman, since he was a State party, I was shocked to hear the gentleman from Mississippi say that the national parties, both Republican and Democrats, exercise undue influence on elected officials that represent their parties. That is shocking to me, that the gentleman would even think of such a thing.

□ 2115

In fact I think in the gentleman's bill, he does not restrict campaign contributions or moneys going to State parties.

Mr. HUTCHINSON. Mr. Chairman, reclaiming my time, let me respond to the gentleman. I was a State party chairman in Arkansas. I think it is important that we do not federalize all of the State elections and all of the State campaign processes. For that reason, the freshman bill does not regulate the States in every aspect.

The gentleman from Texas did point up that there are two different philosophies. One is a regulated fashion, and one is just simply disclosure. I talked about that. That is an important distinction. I have thought about that philosophically. One way is to just have full disclosure. I do not believe we can move in that environment, where political action committees can give a million dollars, where corporations can give a million dollars, where individuals can give a million dollars. I do not believe disclosure can overcome that enormous influence of big money. The court has said that appropriate contribution limits are reasonable and constitutional. He can call it a regulated environment if he wishes, but I think we need rules in our society that recognize the importance of free speech, recognize the importance of the first amendment to the Constitution, but at the same time tries to make sure that everyone has a voice in our democracy, a voice in our freedom, and a voice in the political process.

Mr. DELAY. Mr. Chairman, if the gentleman will yield further, I do not disagree with the gentleman's intent and his good intentions, but it does strike me as odd that the gentleman from Mississippi was making the point that money is the root of all evil and money elects people.

We just had a primary in California where one candidate spent $40 million of his own money, another candidate spent $20 million of her own money, and both candidates lost to the person who spent less than $10 million of other people's money. So this notion that money buys races has been disproved time and time again.

Mr. HUTCHINSON. I thank the gentleman. That is a very good point. I reject the idea that money always controls in politics. In fact in my campaign, I spent $100,000 less than my opponent and I won. We can cite many examples of that. I do not think necessarily that when we have contributions to political parties that there is always corruption. But let me ask the gentleman from Texas, and I think he would agree with me, that whenever $600,000 is given by the Loral Corporation in soft money to the Democratic National Committee which is followed by a waiver of the transfer of technology to China, that that is a legitimate concern by your constituents, that they are concerned about that and the influence of that money, which is soft money, does the gentleman agree that there are people in his district that are concerned about the propriety and the appearance of a quid pro quo of getting something in exchange for $600,000?

Mr. DELAY. I hate the appearance. If the gentleman would yield further, I would just say that through disclosure, then my constituents, not some bureaucrat in Washington, D.C. can express themselves through elections and other means as to their feelings, as to the connection of $600,000 by Loral connected to a waiver to sell the Chinese certain information. That is for our constituents to decide, not a regulated bureaucracy.

Mr. HUTCHINSON. That is the difference in philosophy, whether disclosure is enough. We all know that $600,000 is transferred, but the appearance of impropriety is still there. The

appearance. That is the concern of the American citizen. That is why I believe the freshman bill is appropriate. I ask for support for that and rejection of the constitutional amendment.

Mr. BLUNT. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I want to talk for just a few minutes tonight about the amendment itself. I came over here to encourage opposition to the amendment and as I listened to the debate, nobody is for it and so maybe I do not need to do that, but I would like to review why this amendment was introduced and what it would have done.

I think I heard that the sponsor, the gentleman from Missouri, was going to vote ''present'' on this amendment. I heard the cosponsor, the gentleman from Massachusetts, say that he was no longer for the amendment and it should have taken more time in the committee process and the amendment that they had drafted was not the amendment that he could support today. But I have a letter here that the whip has already referred to that was sent out February 7, 1997 that encourages support of this amendment.

It says, ''The current explosion in third-party spending is beyond our ability to legislate.'' It says, ''Legislating where we have constitutional authority to do so is necessary.'' Then it says, ''This amendment is necessary beyond that.''

It also says that this amendment would not only allow the Federal Government to regulate spending in Federal elections and set spending limits, it says this amendment would allow State governments to regulate spending in State elections.

So suddenly we move not only beyond what controls Federal elections but now we have decided we are going to see what we can do to control State elections as well as we would with this amendment. This amendment, as proposed, says to promote fair and effective functioning of the democratic process with respect to elections for Federal office and States.

This is not just an amendment that the gentleman from Texas made up and brought up here today. It is an amendment that was filed. It was an amendment that the authors at the time said was necessary to solve the problem of money in politics and that the way to solve that problem was this amendment that would allow the Congress to regulate contributions, would allow the Congress to regulate speech.

The gentlewoman from Idaho has mentioned that quote at the same time that the letter was circulated to our colleagues who were here in 1997. That quote was that we have two important values in direct conflict, freedom of speech and our desire for healthy campaigns and a healthy democracy. Then it says, ''You can't have both.''

You cannot have both free speech and healthy campaigns? I think that is out of Time magazine, February 1997. And so this amendment would be necessary to do the things that today we are saying can be done in legislation.

In February of 1997, two attorneys, two constitutional scholars, two leaders in the House, said this could not be done with legislation; that in fact it would take a constitutional amendment to limit third-party spending; that you could not legislate that under any authority we had at that time, that it would take this amendment to legislate that. And what did this amendment do? This amendment decided in the balance between free speech and what the sponsor calls healthy campaigning that free speech would be what would have to go.

This amendment is designed to create a hole in the Buckley v. Valeo case. This amendment is designed to do what that case says you cannot do. The Buckley v. Valeo case said you cannot limit spending, so we come up with a constitutional amendment that addresses that very decision and says, no, you can limit spending if we go ahead and resolve this conflict by limiting freedom of speech and saying to the Congress, you can limit spending.

Then again in that letter our colleagues received, it says that not only can we limit spending here, we will even allow the States to limit spending, allow the States to limit speech, allow the States to do what the Supreme Court has said they cannot do.

Amending the first amendment in this way would give Congress sweeping and unprecedented powers that it has never had before. If you can begin to limit speech, I think as the language of the amendment read, the language of the amendment said to limit speech in a way that the Congress did not feel would interfere with elections. What does that mean? How could you possibly do that?

The CHAIRMAN. The time of the gentleman from Missouri (Mr. BLUNT) has expired.

(By unanimous consent, Mr. BLUNT was allowed to proceed for 1 additional minute.)

Mr. BLUNT. Then if the Congress later decides that they want to limit the speech of the news media, why could you not do that? Why could you not limit the coverage that news organizations give in the last days of the campaign? Why could you not require that they list their advertisers, list their owners, list all the information that the Congress might decide needs to be listed as part of the speech of the media?

This is an amendment that the sponsor said was necessary to do many of the things that the legislation that we will be dealing with in the next few weeks would do. But now nobody is for the amendment. The sponsors are not for the amendment. They are going to vote ''present.'' They are going to vote ''no.'' Nobody is for the amendment that only months ago was seen as a necessary element to do the kinds of legislation that we are talking about doing today.

Ms. RIVERS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, allow me to reflect on inconsistency for just a moment. The majority whip just spoke with the gentleman from Arkansas, and he said, ''I appreciate your approach to this issue.'' But yet I have, ''And oppose the bipartisan gag order,'' the Dear Colleague from the gentleman from Texas that says, ''The Hutchinson freshman bill, H.R. 2183, violates the first amendment rights of citizens, citizens groups and political parties.''

The gentleman from Texas also said that he believed that constituents were very concerned with quid pro quo kinds of arrangements around fund-raising.

I turn to the Washington Post, Monday, November 27, 1995.

> ''See, you're in the book,'' DeLay said to his visitor, leafing through the list. At first the lobbyist was not sure where his group stood but DeLay helped clear up the confusion. By the time the lobbyist left the Congressman's office, he knew that to be a friend of the Republican leadership, his group would have to give the party a lot more money.

Inconsistency seems to be the order of the day. As I said in my earlier comments, it dogs the concerns that are being raised over and over about the attacks, supposed attacks on the first amendment. Why do I say this? Because those that are so strenuously arguing for a hands-off approach to the first amendment relative to campaign finance reform were in fact more than willing to reject the original language and intent of the Constitution when it came to the first amendment last week and religious freedom, to the first amendment previously regarding the flag burning amendment, to the first amendment previously regarding the Internet, and to the first amendment and individuals' rights to speech whenever we talk about any organization, domestic or foreign, that deals with the issue of abortion. Apparently our indignation around changes to the Constitution are situational.

I sometimes feel like Alice in Wonderland. We are considering a constitutional amendment brought to the floor by people who do not support it. That amendment is being discussed only by people who wish to defeat it. No one is promoting the constitutional amendment. Yet it is consuming the time of the other side. I said I feel like Alice in Wonderland. Like Alice in Wonderland, when the Cheshire cat fades in substance, his little smile is left. That is the hope around this debate, that when the words fade from the debate tonight, people will be left with this lingering concern that there is some sort of attack going on relative to the first amendment, and it is not true.

Why is it happening? I will tell you why. Because we are very, very close in this body to bringing change to the way we do business here, and that terrifies some people. That is what is driving this charade tonight. A consensus is building around Shays-Meehan. There is a bipartisan group that is

growing in this body. Good government groups across the Nation have endorsed it. Ethics organizations around the country have said that it is something that we have to do. We are poised to restore integrity to the campaign process in this country. Unfortunately that leads some people to frighten, to misinform, to mislead the public into believing that making our political system one we can trust requires us to amend the Constitution we love. It is not true. Shays-Meehan does not require a change in the Constitution. It is very clear.

When the bill was originally introduced, I had concerns about some provisions which no longer exist in the bill, and I sent the document out to legal scholars all over the State of Michigan. I asked for responses. Any of the concerns that I got back have been addressed in the current iteration. There is no one of any legal stature arguing that Shays-Meehan is unconstitutional. It may be that individuals have looked at this issue and they have a view on it, but it is not necessarily held by people who actually work with the Constitution and the legal system on a day-to-day basis.

I find this whole argument so far this evening to be extremely confusing. We have issues in front of us, plans in front of us that people want to talk about, people want to debate, people want to pass. But this side wants to spend all of their time talking about an amendment that no one is promoting. Why? Because they hope it will frighten people enough that they will reject all change. Do not give them what they want.

Mr. DELAY. Mr. Chairman, will the gentlewoman yield?

Ms. RIVERS. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, the gentlewoman spoke of inconsistencies and took a shot at the gentleman from Texas, and I just wanted to question her about the inconsistencies she called. First let me say I hope the gentlewoman will submit for the record all the legal scholars and the written opinions that she claims support her position.

The CHAIRMAN. The time of the gentlewoman from Michigan (Ms. RIVERS) has expired.

(On request of Mr. DELAY, and by unanimous consent, Ms. RIVERS was allowed to proceed for 5 additional minutes.)

Ms. RIVERS. Mr. Chairman, I would be willing to put forward any materials that I can put together if the gentleman would do the same and show me who he is relying upon for his conclusions.

Mr. DELAY. I did not make the claim.

Ms. RIVERS. Mr. Chairman, when I see his, I will give him mine.

□ 2130

Mr. PETERSON of Pennsylvania. Mr. Chairman, I move to strike the last word.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. PETERSON of Pennsylvania. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, I appreciate the gentleman yielding, and I noted the gentlewoman from Michigan takes a shot at the gentleman from Texas but does not want to stand her ground. She claimed that she submitted to all the legal scholars of the State of Michigan and not one legal scholar that she knows of claims our position to be the right position.

I just ask the question, has the gentlewoman from Michigan (Ms. RIVERS) talked to the ACLU, a group that the gentlewoman would probably like their kind of support? She made inconsistent statements, inconsistent statements that no one believes in our position.

Ms. RIVERS. Mr. Chairman, would the gentleman yield, because that is not what I said.

Mr. DELAY. Mr. Chairman, if the gentleman would continue to yield to me, I think it is ironic that the gentlewoman, who had over 5 minutes now, wants us to yield to her after taking shots at the gentleman.

So I just say there are no inconsistencies from this gentleman, particularly in light of the fact that the gentlewoman from Michigan raised the fact that the first amendment that I supported on religious liberty is an assault on the first amendment.

As my colleagues know, the gentlewoman and—well, I retract that. The party, the Democrat party, has for so long tread on the freedoms of Americans that they cannot even understand, understand that when we are trying to pass a constitutional amendment to enhance the first amendment and enhance freedom, and here we are trying to defeat an amendment brought by the gentlewoman's own minority leader that is trying to destroy the first amendment, there are two very clear, consistent approaches to amendments to the Constitution.

(On request of Mr. DELAY, and by unanimous consent, Mr. PETERSON of Pennsylvania was allowed to proceed for 3 additional minutes.)

Mr. MCINNIS. Mr. Chairman, would the gentleman yield?

Mr. PETERSON of Pennsylvania. I yield to the gentleman from Colorado.

Mr. MCINNIS. Mr. Chairman, I ask the gentleman from Texas, I was interested in the gentlewoman's comments from Michigan and wondered if he had an idea of the political contributions that this particular individual had?

Mr. DELAY. Mr. Chairman, will the gentleman yield to answer the gentleman?

Mr. PETERSON of Pennsylvania. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, I have no idea.

Mr. PETERSON of Pennsylvania. Mr. Chairman, I move to strike the last word and oppose the Gephardt-Frank-DeLauro constitutional amendment and any proposal that would limit free speech.

The Buckley decision recognized that campaign finance restrictions proposed severe constitutional concerns because they limit the ability of individuals to advocate candidates and causes in the public forum and require government monitoring and control of political speech activities. Overturning Buckley would cut to the heart of our democratic system by empowering Congress and the States to severely restrict the ability of individuals and groups to communicate their views about candidates and causes if such advocacy were in any way in support or in opposition to a candidate for Federal office.

Overturning Buckley through this constitutional amendment raises many more questions than it answers. The sponsors would grant to Congress the abilities the Supreme Court held the first amendment denied, legislative control over the regulation of campaign finances. Since the common purpose of the proposals is to carve out an exception to the first amendment principles announced by the Court, against what baseline would such legislation limiting contributions and expenditures be measured, or would Congress and the States have largely unfettered discretion to dictate the nature, scope and enforcement of campaign legislation?

What about the press? May news coverage or editorial endorsements be considered contributions or expenditures in support of or in opposition to favored and disfavored candidates? Now, there are times I would like to have those overruled or disallowed. Right now the Federal Elections Commission specifically exempts from the defining definition of expenditure any news story, commentary, or editorial distributed through the facilities of any broadcasting organization not owned by a party.

I think what we really need to be careful about is any proposal, this proposal or any proposal we consider limiting free speech. What about those who are concerned of child pornography and want to raise money and speak against it and support candidates who will do something about it? What about those who have a concern for drunk driving? Mothers Against Drunk Driving; should they be limited in their free speech? How about those who want drug-free schools and want to deal with drug addictions and drug abuse? Should they be limited to free speech when in the process of electing people? Those who are opposed to the expansion of gambling; many of us feel that gambling is a tax on the poor, but there are those who want more gambling. Should they be limited to free speech? I do not think so. Those who are concerned about teen smoking? I have read lots of ads today about teen smoking. I am not opposed to those. Partial-birth abortion. Should people be limited in speaking out against this horrible crime that is going on in this country, partial-birth abortions? For the right to bear arms,

should we be limited for those who believe in the right to bear arms?

These are the issues that inappropriate legislation will inadvertently control, and I think we must be very careful. Should we trust future Congresses and State legislatures to determine who and what issues can be discussed? And how much money can be spent?

I happen to come from a State that has no limits, Pennsylvania. Campaign finance reform is not an issue for the State of Pennsylvania because while most of the money comes from people, people give checks, people give money to campaigns, soft money is not a big issue there because people give the money, and people are disclosed, and if my colleagues accept money from somebody with bad character, they are considered someone who they are not going to support in the election process.

This amendment would give Congress, the States, the rights to regulate the press and could limit the right to commentary. Do we want to do that?

In conclusion, I would like to just share with my colleagues from the Washington Times: ''This is not so much an amendment to the Constitution as an assault on it. The Founders, in their concise wisdom, said that Congress shall make no law abridging the freedom of speech. There was no wiggle room, nothing ambiguous, and even so, the effort to find the exact practical boundaries of the first amendment had been one of the richest, most contested practical bound areas of the law.''

Imagine, if my colleagues will, what would happen if a pernicious and expansive ambiguity were introduced in the first amendment. Imagine the free-for-all we in Congress would have given the power to regulate political speech, bound only by the obligation to be reasonable about it.

The Gephardt amendment would trash the Constitution and the guarantees of free speech, and I think this House better be very careful with a lot of pieces of legislation that have been introduced that in my view, if not changed, will limit the right of people to fight against pornography, to fight against drunk driving, to fight against teen drug abuse, to fight against expansion of gambling, teen smoking, partial-birth abortions, the right to bear arms, and on and on. Those are freedoms that go to the heart of this country and should be talked about in the process of electing candidates at the State and national level, and we should not inhibit that, and we must be careful because in my opinion many of the bills, as written, do just that.

Mr. ALLEN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the longer this debate goes on tonight, the weirder it gets. If my colleagues listen to the last few speakers here, some might think that we are engaged in a great legislative debate to defeat a constitutional amendment that required all of the resources of this body to come in here and debate and defeat. We would not even be discussing this amendment if the majority whip had not brought it to the floor. Almost everyone who has spoken here tonight is opposed to this amendment.

This is not a debate about this particular amendment. The Committee on Rules in this case brought to the floor the freshman bill, the Hutchinson-Allen bill, H.R. 2183. The Committee on Rules of this House authorized 11 substitutes to that piece of legislation. This amendment was not one of them. The Committee on Rules authorized hundreds of amendments to this particular piece of legislation. We have plenty of opportunity to discuss campaign reform.

Instead, the majority whip, the gentleman from Texas, brings to the floor a proposal that is a constitutional amendment that no one, the author himself, did not offer; and we are here, in his words, trying to defeat an amendment that we would not have to defeat if it had not been brought to the floor.

Mr. DELAY. Mr. Chairman, would the gentleman yield?

Mr. ALLEN. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, I hope the gentleman did not misspeak. He said that the minority leader did not author the constitutional amendment. Did not the minority leader author this constitutional amendment?

Mr. ALLEN. He did not offer it to the Committee on Rules.

Mr. DELAY. The gentleman said offer it. I stand corrected.

Mr. ALLEN. It is not author; offer.

But what is going on here is real simple. The debate about this constitutional amendment is an attempt to drag a red herring across this whole debate, it is a chance to confuse big money and free speech and to defend big money in the name of free speech. And the analysis put forward by the gentleman from Missouri a few minutes ago had everything to do with expenditures, about expenditures and the constitutional problems of regulating expenditures.

Well, there is a problem. The Shays-Meehan bill does not regulate expenditures. It deals with contributions. The Hutchinson-Allen bill does not deal with expenditures, it deals with contributions. Both of these bills are constitutional. It is constitutional to enact a soft money ban, it is constitutional to regulate issue advocacy.

This debate is a fraud. It should stop now.

Mr. MCINNIS. Mr. Chairman, I move to strike the last word.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. McINNIS. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, I do not understand how the so-called reformers do not want to debate the issue. They make incredible statements on the floor of the House, then yield back and do not want to debate. They claim that this leadership of this House does not keep their word in offering open and fair debate. We are going to have the most open and fair debate on this issue that my colleagues can imagine. Yet they do not want to debate because they do not want to look at the issues of free speech versus regulated speech, free speech versus stopping Americans from exercising their constitutional right.

I was just going to ask the gentleman from Maine about the fact, and I have an USA Today article here dated Monday, September 30, 1996, and I do not blame the gentleman, I congratulate him; he got elected. But in this article it says the AFL–CIO has spent more than $500,000 on a series of television ads criticizing Longley, the gentleman's opponent in the last election, votes on Medicare, student loans and private pensions. The ads have helped make Portland the political advertising capital of the Nation. The gentleman from Maine (Mr. ALLEN) was the total beneficiary of this $500,000, yet he has the audacity to stand up on this floor and talk about the corruption created by big money expenditures especially when they have been made on his behalf.

Mr. ALLEN. Mr. Chairman, will the gentleman yield?

Mr. MCINNIS. Mr. Chairman, I control the time, and I will yield if I can get unanimous consent to continue for 5 minutes after the gentleman concludes.

(By unanimous consent, Mr. MCINNIS was allowed to proceed for 5 additional minutes.)

Mr. MCINNIS. Mr. Chairman, I yield to the gentleman from Maine.

Mr. ALLEN. Mr. Chairman, the brief answer is labor. Whatever ads the AFL–CIO ran in my district were legal, they were accurate, and they were part of this debate.

As we know, all of us who were involved in the 1996 elections, there was a great deal of outside money on all sides. In my particular district in the last month of the campaign there were no AFL-CIO ads. There were, however, a vast number of ads run by the Republican National Committee.

The truth is, I say to the gentleman from Texas (Mr. DELAY), that in the last 3½ weeks, I will be exactly specific, there were no AFL–CIO ads run against my opponent. There were, however, up to $50,000 a week of ads run by the Republican National Committee.

This is a democracy. These outside ads are constitutional. It is entirely proper that they be run. The important point is that neither Shays-Meehan nor the Hutchinson-Allen bill would prevent these ads from being run. It is perfectly appropriate to have that kind of discussion.

□ 2145

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. MCINNIS. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, I am glad the gentleman is now ready to debate through this gentleman's time, because he would not take his own time to yield to me, but I just ask the gentleman once again, the gentleman, before the September that he is talking about, received benefits of over $500,000 from AFL–CIO, spent on him or against his opponent all the way through to September 15. There was more money spent past then, some claim to be almost over $1 million, spent by the labor unions, attacking his opponent. Then the gentleman admits to a huge amount of money being spent in the last 3 weeks on his behalf, independent expenditures.

Yet I am just asking the gentleman, does the gentleman approve of that kind of expenditure, or does he not? Obviously he does not, because he now wants to support Shays-Meehan and Allen-Hutchinson, that would limit the ability of outside groups to spend that kind of money.

Mr. MCINNIS. Mr. Chairman, reclaiming my time, I want to stand here and tell the gentleman, I think the key to campaign reform is disclosure. I know the gentleman earlier talked about the Loral situation, which, in my opinion, is a corporation that ought to hold its head in shame for what occurred. But, you know, no campaign brought that out. None of these do-gooder bills, in my opinion, brought that out.

What brought it out was disclosure. The newspapers got hold of it. If you want better campaign in this country, require disclosure every Friday, and make us put it on the Internet. If somebody in my district gave me $100,000 and you found out about it on Friday, where do you think it would be in Sunday's newspaper? It would be the headline. It is disclosure.

I want to put everybody on this floor on warning, and want to be fair with everybody: Those of you on this floor who stand up, in my opinion, in somewhat of a hypocritical fashion and say, ''Let's ban soft money, let's stop the big money,'' and we heard big money from the previous gentleman, I am going to bring out, I have got your contribution reports here.

For example, the gentleman who just talked about big money, and I say this in due respect, he and I had a debate on C–SPAN, but I want full disclosure.

The gentleman from Maine (Mr. ALLEN), this is his report. In the last reporting period, $55,000 from PACs, $54,900. Page 1, PACs, 12 of them; page 2, PACs, 12 of them; page 3, PACs, 12 of them; page 4, at least 12 of them; page 5, at least 12 of them; page 6, at least 12 of them.

Let us talk about the gentlewoman from Michigan (Ms. RIVERS), who was the previous speaker. The American Trial Lawyers Association, $10,000; the United Steel Workers Union, $10,000; the Education Union, $10,000; Teamsters Union, $10,000; United Auto Workers, $10,000; Human Rights Campaign, $10,000; Machinists, $10,000; American Federation of State, County and Municipal Employees, $10,000.

I just want everybody to be on notice, when you stand up here and talk about the corruption of big money, you had better check your own contribution list. I do not think it is corrupting. I think disclosure saves that. I think disclosure lets the voters make their decision. And if you are going to stand up and act like ''holier than thou,'' I have this book.

You can disclose mine, I am not ashamed of any one of them. But I want to make sure the American public as they see this debate know exactly where you got your money. So if you allege this has corrupted it, you have some self-explaining to do.

Mr. ALLEN. Mr. Chairman, will the gentleman yield?

Mr. MCINNIS. Mr. Chairman, I do not have the time to yield. I will not yield. I control the floor.

The CHAIRMAN pro tempore (Mr. WATTS of Oklahoma). The gentleman from Colorado controls the time.

Mr. MCINNIS. Mr. Chairman, the idea here is not for us to attack each other. That is not my intent. My intent is to, first of all, make sure that those of us speak with a true heart, number one; number two, that we have disclosure.

This is a rich man's game, if you let Shays-Meehan go through. If you let this freshman bill go through, it is a rich man's game. The very wealthiest people in this country can play.

Well, I am not wealthy. My dad owned a little hardware store. I raised some contributions. I work hard on raising money, because I know in my district I face the odds of having somebody wealthy run against me. I have to have that money. I have to be armed.

Do not eliminate the poor man, the working person out there that wants to run for political office. If you are worried about what they are getting in contributions, make them disclose it every Friday. Then if the voters do not like who they receive contributions from, let the voters vote no. Let the voters vote.

Some people underestimate the intelligence of the voters out there. Take a look at what happened as a result of disclosure in California to Mr. Checchi. The disclosure showed how many millions and millions and millions of dollars was going into that campaign. What happened, the people rejected it. They did not say he could not use the money. Of course the Supreme Court will protect him using his own money. Even the money contributed, they did not prevent that. In fact, what happened earlier, everybody, before the California reform was, by the way, thrown out because it was unconstitutional, people were concerned, how can anybody ever match Mr. Checchi's money?

It is disclosure that brought accountability and disclosure that will work for us. I intend to practice disclosure. If you or I hear people saying about how corrupt it is, how corrupt the people in this House are, how corrupt you are because you have to go out and raise money because you cannot write your own check, we are going to talk about that. Every one of those contributions we are going to talk about.

Mr. Chairman, I yield to the gentleman from Kentucky (Mr. WHITFIELD).

POINT OF ORDER

Mr. SHAYS. Mr. Chairman, I rise to a point of order.

The CHAIRMAN pro tempore. The gentleman will state it.

Mr. SHAYS. Mr. Chairman, does the gentleman yield a particular amount of time under the 5 minute rule, or just yield blanket time? I just want to know for future reference as well. I apologize for interrupting. I want to know what the process will be. We are going to do this for weeks.

The CHAIRMAN pro tempore. While the gentleman from Colorado (Mr. MCINNIS) is standing on his feet, he may yield time.

Mr. SHAYS. Can the gentleman yield a particular amount of time, or just yield time?

The CHAIRMAN pro tempore. The gentleman just yields time.

Mr. WHITFIELD. Mr. Chairman, I thank the gentleman very much for clarifying that.

Mr. Chairman, all of us in 1996 have groups that came in and bought television ads for issue advocacy. In my race, the labor unions spent $850,000 on issue advocacy. I did not like that particularly, but I think they have the right to do that.

I find it quite disturbing that anyone would take the notion that you have a right to curtail the right of any group to buy television ads or radio ads or newspaper ads to talk about issues, even if it mentions a candidate by name, as long as they do not expressly ask for the defeat or the election of that candidate.

I would like to say more about this issue, but I appreciate the gentleman letting me get that comment in.

Mr. MCINNIS. Mr. Chairman, reclaiming my time, I see that my respected colleague from the State of Texas is next, and since she will be speaking after me, I would like to go through those political contributions.

The gentlewoman from Texas (Ms. JACKSON-LEE), 58 percent of her funds come from political action committees: $47,000, industrial unions; $41,000, unions; public sector unions, $34,000; transportation unions, $26,750. Let me get a little more specific. Communications Workers of America, $15,000; Teamsters Union, $13,000; Association of Trial Lawyers, $10,000; American Federation of County Municipal Employees Union, $10,000; United Steel Workers Union, $10,000; Laborer Union, $7,500; Food and Commercial Workers Union, $7,000; IBEW Union, $7,000; National Association of Retired Federal Employees, $7,000; United Auto Workers, $6,500.

I think this is very key. This is disclosure. Some people have no objection to that. Actually, I have no objection to it. I think disclosure does it. I just want to be up front where these contributions come from as we listen to the statements throughout this long evening.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I have never come on the floor of the House and denied the ability of anyone to present full disclosure. In fact, I support full disclosure, and I am glad my good friend from Colorado has offered to give the record of my contributions, because I am glad to stand with the men and women of America, and particularly the working men and women of America. I hope to stand with them in this debate that we will continue, and also stand with all America.

This amendment that we have on the floor of the House at this time obviously is not a serious amendment. And I appreciate my good friend from Texas as well. I know that in many instances the gentleman comes with a great deal of sincerity. But this constitutional amendment is what it is, it is an attempt to frivolously treat the very serious issue of campaign finance reform.

We have a number of very valid legislative initiatives, one by the freshmen, one by Shays-Meehan, that are real campaign finance reform. My good friends on the other side of the aisle know that they are taking up the people's time and making this discussion. Why? Because they are asking for a constitutional amendment. It takes two-thirds vote in the House and three-fourths of the States that would be required to pass this amendment.

The reason why I came to the floor, not only to have the gentleman from the Committee on Rules recount for this body the contributions that I received legally, by the way, and we are all looking to ensure that we have a system that responds more to the people's needs than to this excessive counting of money, but I do not have a problem with disclosure. What I have a problem with is frivolity.

Mr. Chairman, if I can turn to the Speaker on this whole idea of campaign finance reform, that is why I know my friends on the other side of the aisle are taking up our time to frivolously discuss this issue, the Speaker, the very person who leads them, said, ''One of the greatest myths of modern politics is that campaigns are too expensive. The political process in fact is underfunded, it is not overfunded.''

So even for all he has recounted that all of us have received, his own Speaker says we need more money, more money, more money. So this is not a serious constitutional amendment.

I came to the floor of the House because we have a serious issue that should be discussed. My good friend the gentleman from Pennsylvania (Mr. PETERSON) started mentioning gun reform, and the gentleman started mentioning partial-birth abortion.

I want to mention tonight James Byrd, in Jasper, Texas, who was killed by hate crimes and a violent group. We are not discussing anything serious when we talk about a constitutional amendment for campaign finance reform. We know it is not going to pass.

Why are we not talking about a man who was picked up by men, and where he was beaten, chained to a truck and then dragged for 2 miles? Why are we not talking about someone whose torso was found on the edge of a paved road, his head and arm in a ditch? Why are we not talking about hate crimes? Why are we not talking about the tragedy that happened in Texas, that happened in Virginia, that is happening around this world?

Why? Because we want to come to the floor of the House and make fun of people, and try to act like we are making some progress on campaign financial reform. Mr. Byrd's family needs the country, this United States of America, to address what happened in Texas, to address the Klan, to address hate crimes. But, no, we are here at almost 11 o'clock at night talking about a constitutional amendment that means nothing, because it is going nowhere, because the very Speaker, the head of the party that they represent, has said, ''We are underfunded in campaign finance reform.''

I am sad that I have come to the floor of the House asking for some relief for the family of Mr. Byrd, some recognition of the tragedy that has occurred in Texas, and they can count on those of us who care to respond to this devastating, vicious crime.

That is what we need to be on the floor of the House discussing, not a frivolous constitutional amendment that is going nowhere, because if we wanted to be serious about what we are doing, we would move forward on the legislative initiative that is there already.

I would hope my good friend from Texas would join me in offering our sympathy to the Byrd family, but, as well, that we would be counted on to try to address the viciousness that has happened to this man's family, his dismembered body, only because of the color of his skin and because of the hatred that has been promulgated and promoted. I hope we all stand up against it.

Mr. DELAY. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE. I yield to the gentleman from Texas.

The CHAIRMAN. The time of the gentlewoman from Texas (Ms. JACKSON-LEE) has expired.

(On request of Mr. DELAY, and by unanimous consent, Ms. JACKSON-LEE of Texas was allowed to proceed for 3 additional minutes.)

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Texas (Mr. DELAY).

Mr. DELAY. Mr. Chairman, I appreciate the gentlewoman yielding, and I, too, send my sympathy to the Byrd family in Jasper, Texas.

But the gentlewoman is calling frivolous her own minority leader's constitutional amendment, and she quotes the Speaker of the House on too much money. If the gentlewoman would hold it up again, I would like to read the quote again.

I guess the gentlewoman is not going to.

The gentlewoman says the Speaker says there is not enough money in politics. I would just ask the gentlewoman, what is enough money? Is the gentlewoman aware we spent in the Presidential and all elections last time, in 1996, $2.8 billion? That is less than the American people spend on potato chips. That is 1 percent of all the advertising in the country for products. And we are talking about the foundation of our democracy, our electorial politics. We spend 1 percent of all the advertising trying to convince the American people that you ought to be elected or I ought to be elected. What is too much?

□ 2200

It is your time, and I just ask the question: How much is too much?

Ms. JACKSON-LEE of Texas. Mr. Chairman, reclaiming the time then, and I thank the gentleman very much. It was very clear, and I would be happy to emphasize the point. It says, in fact, it is underfunded.

I think that we can take the actual facts from what the Speaker says. It is underfunded. Is not overfunded. So the Speaker seems to be saying, if I can read the clear English, the black-and-white English here that says he wants more money.

What I am simply saying is that this constitutional amendment is not an amendment that is serious about campaign finance reform, realizing that we have serious legislative initiatives that Democrats have been asking time and time again to come to the floor of the House. Yet, we have a constitutional amendment that takes two-thirds of this body, three-fourths of the States, when States have their own individual campaign finance reform structures.

We are asking for Federal legislation that deals with soft money, that deals with PACs, that deals with issue ads. This amendment does not do so.

Might I just close by simply saying I came to the floor of the House to offer my deepest sympathy to the Byrd family and to ask this Congress, this body, to address the question of hate crimes in America and the vicious and horrible and almost outrageous tragedy that has happened to the Byrd family in Texas, my home State.

I am asking and pleading, let us stop this debate and deal with the crisis that we have in hateful and violative vicious acts in America simply because of the color of your skin.

Mrs. NORTHUP. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I am glad to have an opportunity to speak in opposition to

this constitutional amendment. This debate reminds us of just what this country is. It is a country full of people that have their own opinion. That is what has made it so great is that we have debated all of our opinions in public, and we have had vigorous debates that reflect our democracy.

I think from the last speaker we can see there is somebody that thinks this debate is frivolous, that this amendment is frivolous. Yet, our minority leader, the gentleman from Missouri (Mr. GEPHARDT), and the gentleman from Massachusetts (Mr. FRANK) realized what other reformers have failed to see; you cannot pass the current proposals of campaign finance reform without infringing on the constitutional right to free speech.

At the heart of each of the proposals is a muzzle on first amendment rights. They stated this in their ''Dear Colleague'' letter last year. So while one person that is a Member of the minority party thinks it is a frivolous amendment and not worthy of our time, their same party's minority leader believes that it is the core and the necessity of campaign finance reform.

I do not believe that we should infringe on the right of free speech. I do not believe that we should amend the Constitution. I think it served our country well that every group and every individual has an opportunity to express their ideas and their perspective in campaigns and outside of campaigns.

It scares me a lot to think that we would begin to change those rules, that we would begin to eliminate the ability for people to freely debate the issues that confront us in elections and confront this country.

The fact is that we spend $9 trillion in this country. We are the most powerful country in the world. There are a lot of people that believe it is worth their time and energy and money to influence the debate. What we need to do is make sure that all of the money spent is clear to the voters that it is reportable and that any law we pass is enforceable.

The reality is that we are not even able to do that today. We had an election in 1996, and there are all sorts of abuses and suspicions that crimes were committed in the course of that election.

The presidential election is the most closely reflective of what proposals today are for the congressional elections. Yet, despite those laws, what we have is probably the most flawed election in our history.

We cannot investigate it. We cannot trace the money. We cannot find people to testify. In fact, what happens in a system like that is the person that is most willing to abide by the law, that is the most careful to do exactly what the letter of the law requires, ends up the person least likely to win, the person the most disadvantaged.

Because when you push the money off the table, when you have people who want to influence elections that cannot do it through the legal process so that the American voters can watch and judge, what you do is create a system that invites the person most willing to abuse the system to do that for their own political advantage.

I am proud to have lived very carefully, not only technically, but within the spirit of the law in the course of my campaigns. I accept that I am in a very tough district and that I will probably have a tough campaign every 2 years. I accept the fact that I may lose.

What I do not accept is that we might go to a system where a person could step forward to run that would be the most likely to collaborate with independent expenditures off the radar screen and have the best advantage. I think that compromises the voters in my district and the voters all across this country.

Secondly, as soon as you start deciding the rules, you start deciding who wins and who loses, what groups are able to affect elections, and what groups are not.

I surely do not think those people that would support campaign finance would begin to restrict what newspapers can print on their editorial page. I have not seen that proposed. Yet, that is an independent expenditure. No one appoints them. No one asks them to be objective. No one enforces that objectivity.

In fact, you only have to live in my district to see what one editor can do that is not objective to understand the disadvantage that presents. But we cannot regulate that, and we are not going to regulate that, and I do not support regulating that.

The fact is that I have raised money for my campaign. I am proud that very little of my money has come from PACs, about 22 percent last time I checked. Most of my money comes from individuals. Almost all of it comes from my district. I raise money by going from one individual to another and say I am going to commit myself.

The CHAIRMAN. The time of the gentlewoman from Kentucky (Mrs. NORTHUP) has expired.

(By unanimous consent, Mrs. NORTHUP was allowed to proceed for 2 additional minutes.)

Mrs. NORTHUP. Mr. Chairman, what I am proud to do is go from individual to individual, many people who have never given to campaigns before, and say this is what I believe; can you help me?

My husband and I have raised six kids. We could not possibly fund an election ourselves. That is the Democratic process. Any laws that limit individuals from participating in campaigns and in elections and in free speech and in the debate of what direction this country is going in is a terrible opportunity to take away their opportunity to participate in a democracy.

I am tired of people saying that the whole system is corrupt. I believe in the system. I believe in this country. I believe in my colleagues. Not everybody agrees with any of us. None of us wins in a unanimous election. But I believe most of us abide by the laws.

We participate because we believe in a democracy. We believe the debate is good. I am sorry for those people who have decided to gain political advantage by implying to the American people that the whole system is corrupt. I do not know who they talked to or who they work with, but they are not with the people that I work with every day.

Ms. WOOLSEY. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I think I am probably going to be one of the last people to speak tonight. I was over in my office preparing for the next issue we are going to be debating and listening to this charade that is supposed to be a debate on campaign finance reform, finding myself extremely embarrassed, embarrassed for the majority party, embarrassed for the people of this country, embarrassed that my colleagues would think people could listen to this and think they were serious; that they would bring before the House campaign finance not reform, but what they would call a constitutional amendment that they do not believe in, and then they would stand there and talk against the amendment that they brought forward.

I think my colleagues must think that the people of the United States of America are not very bright. They are wrong. The people will listen to this. They will know it is a ruse. They will know that what my colleagues cannot bear is to have us debate the Shays-Meehan bill, that they do not want to talk about doing away with soft money, that they do not care whether we have accountability with our issue ads.

At the same time, when somebody comes before us that speaks well, like my colleague, the gentlewoman from Michigan (Ms. RIVERS), and others, my colleagues bring forward those who have contributed to them and think that will embarrass us, think that because all they do is bring forward our labor contributors, to think that we are not proud to be supported by nurses and teachers and by truck drivers and electricians and the workers of this country, how dare they think that that would be an insult to us. We are proud of that. Those are the workers of the United States of America. Those are the people that also support campaign finance reform.

Let us get over with this this evening. Let us get started. Tomorrow is the anniversary of 3 years that the Speaker and the President shook hands on bringing campaign finance reform to the floor for a vote that will have real meaning on the people of this country so they can support and buy into our political system.

Mr. HILL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I have found this to be a very interesting and informative debate, and I find it kind of interesting to listen to my colleagues on the other side talk about this frivolous constitutional amendment that we are here debating tonight. I would have to say that ''frivolous'' is probably not the appropriate word to describe it. Probably ''threatening'' is the more accurate word.

What is interesting about tonight, our colleagues over there are saying that this is sidetracking the debate. But, Mr. Chairman, one of the things that is very interesting is last year the Senate also debated this constitutional amendment or one very similar to it, and 38 of the Members in the Senate of the other party voted for this constitutional amendment. This has been a serious proposal, a serious suggestion on the other side. I think it certainly is the wrong one.

I think the wrong idea in reforming our campaign finance laws is to limit free speech. That is why I am proud to be part of the freshman task force and a supporter of the freshman bill because it is the only one of the significant bills that deals with soft money that does not seek to restrict free speech. In fact, what it does is, it tries to create a balance so that everybody has an equal opportunity to speak out on the issues.

The soft money issue I think has people kind of confused because there are lots of different kinds of soft money. There is the soft money that our political parties raise. There is the soft money that people give to groups, right-to-life groups or environmental or conservation groups or organized labor dues. That is another form of soft money.

One of the things that the freshman bill tries to do is to create some distinction between those. It says that the parties cannot raise soft money and spend it anymore.

Why is that important? It is important because in 1992, the two parties raised about $35 million in soft money. By 1996, that number had grown to about $275 million. It is estimated that in 1998 it could be as much as $500 million. Some people estimate it could go to as much as a billion dollars in the year 2000.

The gentleman from Colorado spoke earlier and was criticizing Members who had received support from various groups, talking about the big money in politics. When people are giving hundreds of thousands of dollars, even millions of dollars a year in soft money to the political parties, that is really big money.

Do we want to know what, Mr. Chairman? The people who give that money do not even like being asked for that money. More and more of those groups that are being asked to fund the soft money of the political parties are saying we do not want to do it. These are not voluntary contributions in their views.

What we ought to be working for, Mr. Chairman, are competitive elections. One of the innovative things that the freshman bill does is that it allows parties to help its candidates with the hard money, the money that individuals give to make sure that, if an independent group attacks a person, that they have the ability to respond.

My friend from Colorado said that if the freshman bill passes, then politics is just going to be a rich man's game. The truth is just the opposite if the freshman bill passes, because the freshman bill will assure that every election can be a competitive election, because every candidate will have access to the resources in order to support their campaign.

There is a lot of difference between the Shays-Meehan bill and the freshman bill. The big difference is that the freshman bill does not seek to limit speech. It does not seek to limit the ability of independent groups to talk about candidates or talk about office holders. It does not seek to restrict the debate. It seeks to make sure that everybody can participate in the debate in an equal way.

□ 2215

That is the goal, fair and competitive elections. I would just urge my colleagues tonight to defeat this amendment for certain and also to support the freshman bill.

Mr. WHITFIELD. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to point out that a while ago there was some discussion about which groups were contributing to which candidates, and I do not think anyone on this side meant to diminish anyone for the contributions that they had received, or certainly not to diminish the groups that contributed. But I think that what we are speaking from on this side is that we want to guarantee the right of those individuals and those groups to be able to continue that free speech.

I think it is important that we remember that hard money is money regulated by the FEC. It is money that can be used to expressly advocate the defeat or the election of a political candidate. All other money is soft money.

It is interesting that most of these so-called campaign finance reform bills are designed not to cut back on or reduce the money spent by candidates for political office, but they are designed to prevent and reduce the money spent by so-called special interest groups.

What are special interest groups? Special interest groups are labor unions, teachers, right-to-lifers, pro-choice, proenvironment, anti-environment. And why should any of those groups be denied the right to spend whatever money they want to spend to bring to the attention of the American voter the voting records of individual candidates, as long as they do not expressly advocate the defeat or the election of that candidate?

I, for one, commend the majority whip for bringing the Gephardt constitutional amendment to the floor. I do not think it is going to pass, but I think it illustrates the fact that the Gephardt amendment to the Constitution is very open in what it attempts to do, and that is that it attempts to diminish speech. It allows the Government, through some bureaucrat at the FEC, to determine what is too much, what is not enough, what is inappropriate, what can be done and what cannot be done.

Even the gentleman from Missouri (Mr. GEPHARDT) himself said, ''What we have here is two important values in direct conflict: freedom of speech and our desire for healthy campaigns. You can't have both.''

I would ask the gentleman, if he were here, what is a healthy campaign? What is too much money? I think it has been pointed out very clearly here this evening that the amount of money spent on campaigns by all candidates for Federal office in 1996 was a very minute amount compared to the money spent to advertise alcohol, soapsuds, detergents, toothpaste and all sorts of products that are manufactured throughout America.

Is it inappropriate for the American people to be fully aware of all the issues that they are going to be voting upon? I think that if the American people realized that this constitutional amendment that we are going to be voting on maybe tomorrow, that the Shays-Meehan bill and others was going to effectively limit their right to participate in the American political system, that they would be rightfully upset.

Buckley v. Valeo has made it very clear that free speech is a part, and an integral part, of the political system in America, and that we cannot limit the amount of money spent on these political campaigns. We cannot limit the amount that one individual can spend of his own money or her own money in their campaign.

As I said earlier, I find it quite ironic that all of these bills want to limit everybody's money that they spend for issue advocacy, but they do not want to limit the amount of money that the politicians spend in their campaigns.

As a matter of fact, some of these bills go so far as to say that during the last 60 days before an election, no one will be speaking except the candidates themselves or the news media. I do not want, particularly, to have a system that controls our political system in America that is controlled by the news media exclusively or even political candidates, because I think a vital part of our freedom in America guarantees the rights of any group to spend any money they want to to talk about issue advocacy.

Mr. SHAYS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I am proud of many things. I am proud to be a Member of Congress. I am proud to be a citizen of

the United States. But I am not proud of our campaign laws. I have heard no one say our whole campaign system is corrupt. That is an absurdity.

I have heard some people say that parts of the system are corrupt. Parts of the system are corrupt, and I think we should change those parts that are corrupt. The system of campaign finance in the Nixon administration was corrupt, and I congratulate the Democrats and Republicans who reformed that system in 1974. It worked quite well for several years until people found a major loophole, and it was called soft money, the unlimited sums that individuals, corporations, and labor unions and other interest groups can give to the political parties for party building. These contributions, in a very pernicious way, got redirected to support candidates, not party building, totally subverting the campaign laws that worked quite nicely for 12 years.

Mr. Chairman, I am also proud of the fact that the last Congress passed the Congressional Accountability Act that got Congress under all of the laws that it had exempted itself from for more than 30 years. We did this on a bipartisan basis, I might add. I am proud of the fact that the last Congress banned gifts to Members of Congress on a bipartisan basis. I am proud of the fact that the last Congress on a bipartisan basis passed lobbying disclosure. We had not amended that law since 1946.

The gifts to Members of Congress had become corrupting. The lack of disclosure of lobbying had become corrupting. It had become corrupting that Congress thought it did not have to abide by the laws that it imposed on the rest of the Nation.

Sure, I am proud to be a Member of Congress. I am proud to be an American citizen. But when we see things wrong, we fix them. If we do not, we should not be very proud of our work in Congress.

I've come to the conclusion that soft money makes PAC contributions look saintly. The $262 million that the political parties raised in the last cycle will probably be doubled this year. It is a shakedown of business. I think most people know it. And if anyone wants access to either side of the aisle, they need to contribute or else they do not have access. That fits my definition of corruption.

We want to change the system. We simply want to ban soft money. We want to go back to the way it was after the law of 1974. Ban soft money. Ban the unlimited sums that individuals, corporations, labor unions and other interest groups can give to the political parties that is not being used the way it was supposed to be, for party building and registration. It went right back to candidates. Recently, $800,000 of soft money was spent in the special election in Staten Island. That wasn't party building.

Now, what we seek to do in the Meehan-Shays legislation, is ban soft money on the Federal level and on the State level for Federal elections. We also want to call the sham issue ads, that are clearly campaign ads, campaign ads. We do not limit people's voice. They speak through the campaign process.

We do not say 60 days to an election people do not have a voice. They have a voice. Candidates can raise PAC contributions and they can spend whatever they raise. Groups can run ads for candidates who are right-to-life, right-to-choice, anti-labor, pro-labor. But they cannot use union dues or corporate treasury money, because it is a campaign ad. We cannot do it under current law, and we want to strengthen the definition of campaign ads to make sure people do not use the union dues for campaign ads 60 days to an election, and do not use corporate money 60 days to an election. But union members can speak out through their PAC contributions spent on ads. Members who work in corporations and stockholders can influence the process through a PAC contribution spent on campaign ads.

We codify Beck. We improve the FEC disclosure and enforcement. We ban franking 6 months to an election. And we make it very clear that foreign money and fund-raising on government property is illegal. It is not illegal now. Hello. It is not illegal. It is soft money. Soft money is not campaign money. We had better fix it.

Now, some on my side of the aisle say, no, we are just going to hold President Clinton accountable for everything he has done, but we do not need campaign finance reform. Unfortunately, some on the other side of the aisle say we need campaign finance reform, but we are not going to hold our President and others accountable. We need to do both.

Democrats did it in 1974. They held President Nixon accountable for what he did. And they reformed the system as well. Believe it or not, the Vice President was right. There is no controlling authority. Soft money is not viewed as campaign money. We need to fix that.

Mr. DELAY. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I think we have had a pretty good start on a debate tonight. I wish some on the other side really wanted to debate this rather than just take cheap shots at people, because I think this is a very, very serious debate. We are talking about the most fundamental of freedoms that the American people have when we talk about limiting someone's right to speech and freedom of the press.

Let me try to put it in perspective. I think we are drawing to a close. But just let me try to put in perspective what I saw here tonight.

Where are we today? We found that in the campaigns of 1996, the Clinton administration, some unions, we are investigating the Teamsters right now, others may have violated the law in the ways that they collected campaign contributions, even from foreigners. To cover that up, the President's party and the leadership of his party in the House and the Senate decided that their biggest issue this Congress was going to be campaign reform and that they were serious about it.

In fact, the gentleman from Missouri (Mr. GEPHARDT) the minority leader, wrote a constitutional amendment splitting the first amendment, splitting away free speech so that he could control through government bureaucracies and Washington bureaucracies freedom of people's right to free speech through the campaign process.

I thought it was important and serious to bring the gentleman's constitutional amendment to the floor for serious scrutiny because the gentleman and the Democrat party of this House have been beating their chests for 2 years talking about campaign reform. They were serious, they said. They want an open and fair debate. They wanted to bring it down here and show the abuses and the corruptions of this House.

Mr. Chairman, I am here to tell my colleagues I know most of the Members of this House, Democrat and Republican, and I do not know of one of them that is corrupt. Not one. And I am going to warn the Members of this House, when anyone talks about corruption, I am going to ask the question throughout this debate for that person to name the Member of the House that is corrupt. If they claim corruption and campaigns are corrupt, then they should be able to stand here in this House and have the courage to name the person that they feel is corrupted by campaign contributions. That is serious.

I think it is very serious when some are so arrogant to come to this floor and propose legislation that says that they know better than my constituents about my fund-raising habits, my ability to raise campaigns.

Now, the gentleman who brought the amendment, the gentleman from Missouri (Mr. GEPHARDT), came to the floor of the House, raises more money than me. So anybody that starts attacking me about raising money, I hope that they will look at the gentleman from Missouri. In the last election he raised $3.2 million and spent $3 million.

□ 2230

I salute him. I think that is wonderful that he has been able to raise that kind of money. No telling how much expenditures, independent expenditures were spent on his behalf. Most people think that the unions spent in the 1996 election $35 million. That was what they assessed their members to spend extra.

We have estimated and we continue to estimate that the unions alone have spent over $350 million in independent expenditures across this Nation. So be it. They have every right to do so. They should be able to express themselves as to who should control this

body and who should be elected and who should be unelected.

Most of the Members that have stood up here and complained about this process are the beneficiaries of that money, and yet they have the audacity to come down to the floor of the House and claim that the monies spent in their behalf by independent expenditures are corrupting. I have more confidence in my character than obviously they do, because I do not feel corrupted by participating in the process. We do not spend enough money in the process.

We spend less than $5 a person that votes in this country to try to convince them to be part of this political process and participate in the process, less than $5 per person. That is amazing to me. Yet we call it corrupting to try to convince people to be part of the process and participate in the process.

The CHAIRMAN pro tempore (Mr. WATTS of Oklahoma). The time of the gentleman from Texas (Mr. DELAY) has expired.

(By unanimous consent, Mr. DELAY was allowed to proceed for 2 additional minutes.)

Mr. DELAY. Mr. Chairman, the gentleman from Connecticut was talking about how great it was in 1974 that we had all this campaign reform. The gentleman ought to look at his history: 1974 is after Watergate. We had a huge infusion of Democrats elected after the Watergate election.

The reason that most of the laws that were passed in 1974, I tell the gentleman, was to make sure that challengers could not raise as much money as the incumbents were spending on their franking privileges. My point is, my point is that what this debate is becoming is who wins and who loses. Who are we going to say gets to raise money and who does not?

Why are we doing that? Most Members on my side of the aisle are here because they want to limit government. They want to get government out of our lives. They hate regulation. They want to reform the regulatory process of this government. And yet they turn right around and, in a most fundamental freedom of this country, the freedom to speech, they want to use regulation of campaigns to limit the American people's right to participate in campaigns openly and honestly.

I think full disclosure does that. I do not think limiting people's freedom of speech by more bureaucracy, more laws, more opportunities to get one another, more opportunities to stop one group from being able to raise enough money for the other group, let the people decide. They are incredible when you allow the people the freedom to look at these elections, participate in them and openly and freely decide who they want to represent them.

Mr. SHAYS. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Connecticut.

The CHAIRMAN pro tempore. The time of the gentleman from Texas (Mr. DELAY) has again expired.

(By unanimous consent, Mr. DELAY was allowed to proceed for 2 additional minutes.)

Mr. SHAYS. Mr. Chairman, what I said to this Chamber was that the campaign finance laws in 1974 were designed to cut the unlimited sums that in particular the CREEP organization of the Nixon administration raised and to stop the shakedown of businesses that took place. And that shakedown stopped for a number of years until both parties designed a new system called soft money that just brought us back to the Nixon era.

Mr. DELAY. Mr. Chairman, I appreciate the gentleman's assessment of history, but I remember a different history.

I remember a history that they used that as a great argument, and many are using the same kinds of arguments for the gentleman's bill, have used that for a great argument. But the result, and we all know why they did it, the reason they wanted to ban PACs to begin with is to stop Republicans from raising money and limiting their ability to raise money through PACs. Then they did not like that, because we were pretty good at it. And so they figured, the majority, then the Democrats, figured out another way to keep challengers, Republican challengers from challenging the Democrat incumbents serving in the House, from raising more money than these incumbents could use in free postage called the franking privilege.

Mr. SHAYS. Mr. Chairman, if the gentleman will continue to yield, the bottom line is that the corporations that were being shaken down by the Nixon administration are telling me now that they are being shaken down by both political parties in soft money.

Mr. DELAY. Mr. Chairman, would the gentleman define ''shaking down'' for me?

The CHAIRMAN pro tempore. The time of the gentleman from Texas (Mr. DELAY) has again expired.

(By unanimous consent, Mr. DeLay was allowed to proceed for 2 additional minutes.)

Mr. SHAYS. Mr. Chairman, shakedown is when leaders from both parties will call up a corporation president, and say we would like $100,000 or $200,000 or $300,000 or a half a million, and make it very clear to those leaders that they can expect no action on their legislation unless they get it. That is a shakedown.

Mr. DELAY. Would the gentleman like to name Members that do that?

Mr. SHAYS. Mr. Chairman, I think during the course of debate, there are going to be a lot of issues that come out.

Mr. DELAY. Mr. Chairman, the gentleman has just made an accusation that leaders of both sides of the aisle shake down corporations. Would the gentleman like to name——

Mr. SHAYS. Mr. Chairman, do not even wonder for a minute about whether I will be able to document that information.

Mr. DELAY. Reclaiming my time, Mr. Chairman, I think it is just outrageous. It is incredible that the gentleman thinks that when you call someone up to raise money for a campaign, that is a shakedown.

Mr. SHAYS. $100,000, $200,000, half a million dollars.

Mr. DELAY. Mr. Chairman, I think it is just incredible.

Mr. SHAYS. But it is true.

Mr. DELAY. Mr. Chairman, I ask for regular order. The gentleman does not even pay me the courtesy. I have yielded to him. I am trying to close the debate. I do not yield to him again.

The CHAIRMAN pro tempore. The gentleman from Texas (Mr. DELAY) controls the time and should not be interrupted.

Mr. DELAY. I think it is just outrageous that the gentleman would accuse leaders of both sides of the aisle of being able to raise money to participate in the campaign and call that a shakedown. It is not a shakedown to get out and actively participate in the process and ask people to participate in the process, whether it to be ask them for $1 or $100,000.

It is an outrage that someone would come down to the floor and offer a constitutional amendment or write one or offer a piece of legislation that would stymie the freedom of the American people to decide to participate in the process and participate in free speech and free press. I think that is the outrage. That is the shakedown. That is the coverup. That is the thing that the American people ought to be outraged over. That is the thing we are going to stop because we are going to have this debate, and the American people are going to understand both sides.

Mr. MCINTOSH. Mr. Chairman, I stand in oppostion to the Gephardt amendment.

Last Thursday, a very interesting debate took place on this floor. I am speaking of the debate surrounding the Religious Freedom Amendment.

At one point, the gentleman from Texas, Mr. EDWARDS, submitted a motion to recommit the Amendment. He stated that we ''do not have the right to change the Bill of Rights every time we disagree with a court decision.''

Mr. EDWARDS' argument was while we claim to believe in the First Amendment, supporters of the Religious Freedom Amendment were voting against the Bill of Rights, because we want to get back to the original meaning of the First Amendment.

Well, I hope that Mr. EDWARDS will come to the floor today—perhaps with a motion to recommit—because if he thinks allowing prayer in school is dangerous, this Gephardt Amendment is a frontal assault on the First Amendment—and does much more to undermine Freedom of Speech.

What this Gephardt amendment demonstrates is something which has been clear to me for some time—that campaign finance reform is really all about free speech and the First Amendment.

You see, freedom of speech—the right to say what you want, how you want, when you want, about political opponents, is our most fundamental freedom. Without freedom of

speech, there is no integrity to the Bill of Rights, and all our freedoms are on shaky ground.

Mr. GEPHARDT's attempt to redefine the Bill of Rights amounts to an admission that attempts to limit campaign money like the Shays-Meehan bill are indeed efforts to limit free speech.

He even stats that we cannot have freedom of speech and healthy campaigns in a healthy democracy—that we must choose between one or the other.

Mr. Chairman, I disagree with that assertion.

When the Founders said that Congress shall make no law abridging the freedom of speech, they left no room for ambiguity.

If Congress grants itself the authority to abridge the freedom of speech, it will amount to a crushing of the Constitution's guarantee of free speech.

Consider the words of the Supreme Court's ruling in Buckley v. Valeo:

> In the free society ordained by our Constitution, it is not the government, but the people—individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign.

There is a key difference between the vote today and our vote on Thursday. The Religious Freedom Amendment would have strengthened the First Amendment by returning to the intentions of the Founding Fathers. The vote on Thursday was compatible with the Bill of Rights.

Our vote tomorrow is not. Instead, it is an effort to severely restrict our freedom, and to violate the spirit of the First Amendment.

I would ask all of you, not only today, but through the rest of our careers in public service, to judge all legislation by what it does to our freedom.

Mr. GEPHARDT. Mr. Chairman, I rise to speak in strong support of reforming our Nation's campaign finance laws. After months of obstruction and delay, after the steady stream of efforts by the Republican leadership to squelch this debate, the House is finally discussing campaign reform.

I support the constitutional amendment which has been brought to the floor today. In my opinion, it is the only comprehensive solution for fixing our campaign finance system. But now is not the right time for a vote on it. This amendment, like all campaign reform bills other than Meehan-Shays, must be put on hold.

There is a crisis of confidence in our system of campaign financing. It is imperative that we pass reform this year—and it is urgent that we take the first step now. But the best way to clean up the system is by voting for the bipartisan Meehan-Shays bill, not through any other campaign reform measure, including this one.

I do, however, believe that the Congress should vote some day—not today—on this amendment. When I introduced it last year, I did so because I believe it is the best way to shut down the sewer pipe of big money which is polluting our political process.

Over the last two decades, Congress and State and local governments have tried to enact limits on the role of money in politics. We have tried to pass legislation that would help put a bigger premium on the quality of a candidate's ideas, not the quantity of contributions to his or her campaign. But we are hamstrung by a Supreme Court which has equated spending money with political speech.

The Founding Fathers did not envision a political system where candidates for Congress routinely raise and spend millions of dollars. They could not have foreseen candidates spending tens of millions of dollars of their own funds to get elected. And they certainly could not have imagined the non-stop fundraising carousel that candidates must ride in order to run for office.

This Amendment would clarify that campaign spending is not an absolute; that we could enact modest restrictions on spending to reduce the dominance of fundraising and campaign dollars in our political process. Some day, I hope Congress will pass this constitutional amendment and fix our broken campaign finance system once and for all. But I will not vote for it today.

The opponents of campaign reform want to kill the process—the only thing that has changed is their tactics. First they tried delay and obstruction, now it's endless debate and amendment. The only way proponents of reform can prevail is through a single-minded focus on Meehan-Shays.

Meehan-Shays is our last, best chance for campaign reform this year. Friends of reform—the majority of House members, I believe—must band together behind the Meehan-Shays bill. It may not suit everyone's taste—campaign reform comes in 435 flavors, after all. But we cannot afford to dilute our strength by supporting every alternative.

The Republican leaders of this House are satisfied with the current system. They stand for the power of big money and against change. They don't want Meehan-Shays or any other effective reform bill to pass.

The Republican leadership brought up this bill and many others as a roadblock to reform. They aren't interested in a debate; they are interested in deadlock. They want to run down the shot clock so that Congress will be unable to deliver the slam-dunk of campaign reform for the American people.

The majority of Democrats, and I believe, the majority of Congress, rejects the status quo. We understand we have reached a critical point in the history of our democracy. We need to take the first serious step to clean up our politics. If we fail to take this first step, our democracy will drown in the fast-rising tide of campaign cash. Campaign reform is the art of the possible—and Meehan-Shays is the best possible bill.

We must keep our single-minded focus. We must reject any alternative to Meehan-Shays, no matter how much we agree with it. I urge the supporters of this Amendment to vote ''present,'' and to redouble our efforts to pass Meehan-Shays.

Mr. BAESLER. Mr. Chairman, I don't know why we are debating this Constitutional Amendment. It was not made in order by the Blue Dog discharge petition, which led to this debate in the first place.

I think what's really going on is the Leadership is not dealing in good faith.

If that continues, I would suggest the discharge petition may have to be resurrected.

Whatever the case, I believe a Constitutional Amendment is unnecessary to get good campaign reform, especially a soft money ban and campaign disclosure.

Congress has plenty of room under the case Colorado Republican Party versus FEC to ban soft money. In the case, the Supreme Court said:

> Reasonable contribution limits advance the government's interests in preventing corruption. Congress might decide to change the campaign laws limitations on contributions to political parties if it decided it needed to.

And in Buckley versus Valeo the Court said:

> Limiting corruption and the appearance of corruption is a constitutionally sufficient justification for campaign contribution limitations. Political quid pro quos or apparent quid pro quos undermine the integrity of our system of representative democracy.

But even if I do not think an Amendment is necessary, I don't question the original sponsors' motives. In fact, a number of Democrats and Republicans have cosponsored such amendments.

Now, the Kentucky anti-reformers condemn the Amendment. But it's worth pointing out that some of the Kentucky anti-reformers have been on the other side of the campaign spending Constitutional Amendment issue before.

I enter into the RECORD an Amendment offered in a previous Congress, championed by the anti-reform brain trust that today denounces such Amendments as being almost un-American.

The anti-reformers' inconsistency doesn't need to be beaten like a dead horse, but it should be noted that it was the anti-reformers themselves who offered more severe Constitutional Amendments limiting campaign speech in the past than one being discussed here today.

So in the future, when the Kentucky anti-reformers give their opinion on the First Amendment and campaign reform, and they say they're taking a rock solid position, I urge everyone to consider that they have changed their position in the past—and weigh the force of their arguments accordingly.

EXCERPTS FROM THE RECORD OF JUNE 19, 1987

S.J. RES. 166

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution, when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

''ARTICLE—

SECTION 1. The Congress may enact laws regulating the amounts of expenditures a candidate may make from his personal funds or the personal funds of his immediate family or may incur with personal loans, and Congress may enact laws regulating the amounts of independent expenditures by any person, other than by a political committee of a political party, which can be made to expressly advocate the election or defeat of a clearly identified candidate for Federal office.

SECTION 2. The several States may enact laws regulating the amounts of expenditures a candidate may make from his personal funds or the personal funds of his immediate family or may incur with personal loans, and such States may enact laws regulating the amounts of independent expenditures by any person, other than by a political committee of a political party, which can be made to expressly advocate the election or defeat of a clearly identified candidate for State and local offices.''

* * * * *

Mr. MCCONNELL. Mr. President, we have been on S. 2 for 2 weeks and 2 days.

Clearly, it is possible for the Senate to pass a meaningful campaign finance reform bill. The distinguished majority leader has indicated that his side is willing to talk, and I reiterate the observations of the Republican leader yesterday, that the leadership group on this side consisting of Senator STEVENS, Senator BOSCHWITZ, Senator PACKWOOD, and myself, has been saying for some 2 weeks and 2 days that we would like to sit down with those on the other side of the aisle and have a discussion on formulating a truly meaningful campaign finance reform bill.

There are a number of areas upon which we can agree. The Senator from Oklahoma and I yesterday discussed ''soft money.'' We discussed independent expenditures. We discussed the need for effective controls on PAC's. We have discussed over the weeks the problem of the millionaire's loophole. These are the real problems that our constituents have spoken against, in letters, in calls, and even in editorials supplied by Common Cause. As I mentioned yesterday, only a very small percentage of these editorials that pile up on our desks advocate public financing and spending limits to bring down overall spending. Most just want to control the PAC's.

But today, I'm going to talk about the millionaires' loophole and independent expenditures, under current law, under S. 2, and under McConnell-Packwood. I am proposing today a constitutional amendment to deal with these campaign finance abuses, and I might add that we usually think that constitutional amendments take a long time to pass.

The constitutional amendment that I will be introducing is simple, direct, and strongly supported in this body. It would grant to this body and to the various State legislatures the authority to regulate what an individual could put into his own campaign from personal funds, just as we have the constitutional authority to regulate what any of us can put into somebody else's campaign from personal funds. It would also grant to the Congress and to the various State legislatures the authority to regulate the independent expenditures.

In the course of the debate on campaign finance reform, Members on both sides of the aisle have decried the ease with which wealthy candidates can virtually purchase congressional seats, and the surge of independent expenditures in campaigns.

Both of these campaign abuses are the result of loopholes in the Federal election law, carved out by the Supreme Court decision in Buckley v. Valeo, 424 U.S. 1 (1976). In that decision, the Supreme Court held that restrictions on campaign expenditures from personal funds and on independent political expenditures are violations of the first amendment guarantee of freedom of speech. Thus, the ''millionaires' loophole'' and the independent expenditure loophole are constitutional problems, and will not be corrected by any clever statutory incentive or spending of public moneys.

That is why I introduce today a joint resolution to amend the Constitution, to allow Federal, State, and local governments to restrict the spending of personal funds in campaigns, and the amount of independent expenditures in election cycles. Unlike a broad amendment to limit all campaign spending, this amendment would quickly pass through the Senate and be ratified by the State legislatures. It is a measure for which I have heard nothing but unqualified support.

I do not dispute that my earlier campaign finance reform bill, S. 1308, offers only imperfect solutions to the millionaires' loophole and independent expenditure problems. It is true, for example, that wealthy candidates could spend up to $250,000 in personal funds before S. 1308 would provide relief to opponents. And although my earlier bill incorporates the same restrictions and reporting requirements that S. 2 applies to independent expenditures, it is unlikely that any of these administrative constraints will curb the negative practices of independent expenditures.

S. 2, the taxpayer campaign finance bill now before the Senate, tries to address these two problems by spending the taxpayers' money. Candidates, facing wealthy opponents or negative ads financed by independent expenditures, would be armed with additional public funds—funds that would be diverted from farm programs, Social Security, education, and our antidrug war. Yet, S. 2 would probably not discourage wealthy candidates from sinking their personal fortunes into campaigns, particularly since S. 2 doesn't give the opponent much to compete with. Under S. 2, a candidate from the State of Arkansas would get a maximum of $1,727,200 to do battle with a millionaire. An Oklahoman would get $1,989,500, and a Coloradan would get $1,998,000. This is a lot of money to our taxpayers, but not much at all to a millionaire, unless he's a rather poor millionaire.

Further S. 2 hopes to limit independent expenditures by compensating each attacked candidate for the full amount spent against him or her. This candidate compensation fund again comes from the American taxpayer. Last year, independent expenditures totaled nearly $5 million in Senate races; thus, we can safely tack another $5 million onto S. 2's $100 million price tag, and another $5 million onto the overall amount of campaign spending allowed under S.2.

Will those who now spend hundreds of thousands of dollars to express their political views independently be deterred simply by the spending of taxpayers' money against them? Mr. President, I think not. Will candidates be compelled to tap the public till every time they believe they are being unfairly treated in an independent ad? Mr. President, I hope not. It is apparent that S. 2's independent expenditure provision is just another loophole to funnel more of the taxpayer's money into our reelection campaigns.

Another $5 million every election year is obviously not very much to those who seek to dominate the political debate with independent expenditures—but it is a lot of money to the American taxpayer, and we shouldn't be throwing it away on a proposal that won't benefit anyone except broadcasters.

Neither administrative constraints nor government entitlements will prevent well-heeled individuals and groups from independently trying to influence elections. Nor will wealthy candidates be deterred from trying to purchase congressional seats merely by S. 2's costly but ineffective millionaires' loophole provision.

There are constitutional problems, demanding constitutional answers. This Congress should not hesitate, nor do I believe that it would hesitate, nor do I believe that it would hesitate, to directly address these imbalances in our campaign finance laws. I offer this constitutional amendment in the sincere hope that the Senate will begin to turn its attention to the real abuses in campaign finance—the millionaires' loophole, independent expenditures, political action committee contributions, and ''soft money''—and develop simple, straightforward solutions, rather than strangle the election process with overall spending limits and a larger political bureaucracy.

* * * * *

Mr, MCCONNELL. Mr. President, these two areas have repeatedly been agreed by both sides to be at the crux of the problem. What distorts the process, of course, is the ability of an individual of unlimited wealth to put literally everything he has into his own campaign; whereas, if he were contributing to anyone else's campaign, he would be limited to $1,000 in the primary and $1,000 in the general election. That is clearly unfair, and we ought to cure it. We can cure it, however, only with a constitutional amendment.

Another unfairness that we all agree on is the independent expenditure, again a constitutionally protected area of expression, according to the Supreme Court decision in Buckley versus Valeo.

This constitutional amendment that I propose would grant to the Congress and to the various State legislatures the right to deal with that problem.

Mr. President, if we dealt with three areas of great concern: The closing of the millionaires' loophole, the ability to regulate independent expenditures, and the cost of broadcast time, which we can address simply by statute, we would have passed in this body the most meaningful campaign finance reform since Watergate.

The third area I just referred to, Mr. President, is the cost of television. What has driven up the cost of campaigns in the last several years has been the cost of television advertising. Candidates have to use television because it is the most effective day to reach our people and communicate ideas. That is particularly true in the large States. My colleagues from New York, California, Texas, and Florida could shake hands all day, every day, for the rest of their lives, and never make a dent in the huge populations in their States, let alone discuss the issues that concern the citizens of those States. Clearly, both incumbents and challengers should be able to use television to reach our people.

What has happened, Mr. President, is that the broadcast stations in America have raised the rates they charge during key times in political campaigns, and have made handsome profits on the candidates, in terms of the cost of advertising.

We could in this body pass legislation that would, for example, require television stations to grant to candidates television time at the lowest unit rate of the previous year, for the class of time purchased. This would dramatically lower the cost of campaigns, and give us all an ability to afford the broadcast time which is absolutely essential to modern political communication.

What happened in Kentucky last May, just last month, is typical of what goes on all over America. The lowest unit rate skyrocketed just prior to the election, such that the ''discount'' given to candidates amounted to nothing—it was like offering a 25-percent-off sale after a 100-percent price increase. That problem, Mr. President, could be solved by legislation.

These are the kinds of agreements that we can reach together. I hope we can work together on direct, simple solutions to the real problems that plague our campaign finance system.

The ACTING PRESIDENT pro tempore. The time of the Senator from Kentucky has expired.

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

Mr. BYRD. Mr. President, I yield to the distinguished Senator from Kentucky 1 minute from our side.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia has yielded 1 minute to the Senator from Kentucky.

Mr. MCCONNELL. I thank the distinguished majority leader.

The Senate could solve these key problems by the passage of the kind of constitutional

amendment I outlined earlier. I believe that this resolution, unlike most constitutional amendments, would zip through this body and zip through the State legislatures; I believe that, by passing a statute that did something meaningful about the cost of television, we would bring down the cost of campaigns without deterring public participation through contributions.

Those accomplishments would be real reform, Mr. President, and we stand ready on this side to sit down with the leaders on the other side at any time, to work out the kind of bipartisan reform package that we all know will have to be reached, in order to pass any meaningful campaign reform legislation in 1987.

Ms. KILPATRICK. Mr. Chairman, I rise today in strong and stringent opposition to the amendment offered by Congressman TOM DELAY of Texas. This amendment would modify our beloved Constitution to make it allow for the future enactment of mandatory spending limits in campaigns. The Supreme Court has found such limits unconstitutional. It would also give Congress and the state authority to define those expenditures deemed to influence elections, and to prohibit any regulation of the content of elections.

As a member of the House Oversight Committee, I have heard the testimony of over 40 of our colleagues on the issue of campaign finance reform. The issue of a Constitutional Amendment regarding spending limits was not considered during these hearings. As a new Member of Congress, it is no wonder why the taxpayers of our country view us with such cynicism and spite when my colleagues offer amendments that they cannot or will not support themselves. This amendment is exhibit number one of such an example.

It is time for Congress to stop wasting the people's money. It is time for us to get campaign finance reform under control. As I said in remarks that I made on the floor just last week, real campaign finance reform does three things: it bans soft money; it requires full disclosure of contributors, and it cleans up expenditures from special interest groups. We need to restore the faith of the American people in our system of government. We need to ensure the accountability of those who participate in and contribute to candidates. The Shays/Meehan bill does just that.

In closing, I implore my colleagues to stop wasting time and the people's money. It is time for us to bring to a clean, up-or-down vote, the Shays/Meehan bill.

The CHAIRMAN pro tempore. Are there any amendments to the joint resolution?

If not, under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. BARRETT of Nebraska) having assumed the chair, Mr. WATTS of Oklahoma, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the joint resolution (H. J. Res. 119) proposing an amendment to the Constitution of the United States to limit campaign spending, pursuant to House Resolution 442, he reported the joint resolution back to the House.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the joint resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HASTINGS of Washington. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, further proceedings on the question of the passage of the joint resolution are postponed until tomorrow.

The point of no quorum is considered withdrawn.

REPORT ON RESOLUTION PROVIDING FOR THE CONSIDERATION OF H.R. 3494, CHILD PROTECTION AND SEXUAL PREDATOR PUNISHMENT ACT

Mr. HASTINGS of Washington, from the Committee on Rules, submitted a privileged report (Rept. No. 105–576) on the resolution (H. Res. 465) providing for consideration of the bill (H.R. 3494) to amend title 18, United States Code, with respect to violent sex crimes against children, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PROVIDING FOR CONSIDERATION OF H.R. 2888, SALES INCENTIVE COMPENSATION ACT

Mr. HASTINGS of Washington. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 461 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 461

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 2888) to amend the Fair Labor Standards Act of 1938 to exempt from the minimum wage recordkeeping and overtime compensation requirements certain specialized employees. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Education and the Workforce. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on Education and the Workforce now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. The Chairman of the Committee of the Whole may: (1) postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment; and (2) reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Washington (Mr. HASTINGS) is recognized for 1 hour.

Mr. HASTINGS of Washington. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. MOAKLEY), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

(Mr. HASTINGS of Washington asked and was given permission to revise and extend his remarks.)

Mr. HASTINGS of Washington. Mr. Speaker, House Resolution 411 is an open rule providing one hour of general debate to be equally divided between the chairman and ranking minority member of the Committee on Education and the Workforce.

The rule makes in order the Committee on Education and the Workforce amendment in the nature of a substitute as an original bill for the purpose of amendment which shall be considered as read. The rule allows the Chairman of the Committee of the Whole to postpone votes during consideration of the bill and to reduce voting time to 5 minutes on a postponed question, if the vote follows a 15-minute vote.

Mr. Speaker, the rule authorizes the Chair to accord priority in recognition to Members who have preprinted their amendments in the CONGRESSIONAL RECORD.

Finally, the rule provides one motion to recommit with or without instructions.

□ 2245

Mr. Speaker, H.R. 2888 would amend the overtime and minimum wage provisions of the Fair Labor Standards Act as they apply to certain private sector employees.

Presently so-called inside sales employees, that is, those who sell from inside an employer's premises using telephones, faxes and computers, are subject to the overtime requirements of the Fair Labor Standards Act while outside sales employees are exempt. As nonexempt, inside sales employees often suffer from reduced earning opportunities because they are limited to a 40-hour workweek. Outside employees, on the other hand, can choose for themselves whether to work additional hours and thus receive incentive pay for additional sales made. This distinction, written into law in 1938, no longer makes sense in 1998. While inside sales employees are often as skilled and productive as outside sales employees, they are discriminated against under this act.

Mr. Speaker, in order to minimize the potential for abuse, the exemption authorized under H.R. 2888 is narrowly drawn to cover only inside sales employees who meet a number of specific criteria. For example, such individuals must receive specialized training and develop technical knowledge. They must sell predominantly to regular customers and must receive incentive compensation based on their own selling efforts.

Finally, Mr. Speaker, I am pleased that CBO reports the bill would have no significant impact on the budget and contains no unfunded mandates on local governments or private employers. I commend the gentleman from Illinois (Mr. FAWELL) and the gentleman from New Jersey (Mr. ANDREWS) for their efforts to correct this clear inequity in the law and urge my colleagues to support H.R. 2888.

Recognizing that certain Members have expressed reservations about this legislation, the Committee on Rules has reported an open rule in order to provide Members wishing to perfect this bill the freedom to offer their amendments on the floor. Accordingly, I urge my colleagues to support not only the rule but H.R. 2888, the Sales Incentive Compensation Act.

Mr. Speaker, I reserve the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I thank the gentleman from Washington (Mr. HASTINGS) for yielding me the customary half-hour, and I yield myself such time as I may consume.

Mr. Speaker, I am not opposed to this open rule, but I am very concerned about the bill that it makes in order. This bill says that employers can require people to work overtime but they no longer have to pay them time and a half. In other words, sales employees who are forced to work long hours could end up with no additional pay at all.

Mr. Speaker, this means that enormous numbers of already low-paid workers would be denied the protections of the Fair Labor Standards Act. My Republican colleagues may argue that the low salary guarantees in this bill takes care of the workers, but, Mr. Speaker, it does not.

According to the Bureau of Labor Statistics, this bill will deny 1.5 million sales employees overtime pay. I for one think that 1.5 million American workers should be paid for the time that they spend at work.

Like many other bills my Republican colleagues have drafted, this bill helps employers at the expense of workers. It is a win-win situation, Mr. Speaker, for the employers and it is a gamble for the workers. If the worker makes big sales, the employer does well. If the worker does not make big sales, the employer still does well because he does not have to pay his worker overtime. Employees who must work long hours but do not make significant sales will be working virtually for nothing.

Anyone with any complaints, anyone who is confused about exactly who is covered under this very complicated, multi-test exemption, please do not look to this bill for clarification.

These confusing standards will create a lot of misunderstandings, a lot of fights, a lot of litigation. Just what we need, Mr. Speaker, more litigation.

My Republican colleagues may argue that the people are begging for overtime in order to make bigger commissions. Mr. Speaker, if that is the case, if so many workers want to work overtime for commission instead of time and a half, then they should be allowed to do so. But as I understand it, the amendment to make this provision voluntary was rejected. So whether you want to work overtime for little pay or you want to go home and see your family, you are really stuck working at the whim of an employer who has little to lose by chaining you in the office. This bill will force people to work longer hours, it will cut employees' incomes, it will promote lawsuits, and it will mean workers are hurt, not helped, by advances in technology.

What we really need, Mr. Speaker, if you really want to help the American worker, is to raise the minimum wage. Let us allow American workers to earn a living wage. Let us enable hard-working full-time employees the chance to take care of their families. I have no opposition to the rule, but I do oppose the bill.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. HASTINGS of Washington. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

LIMITATION ON FURTHER AMENDMENTS AND DEBATE ON H.R. 2888, SALES INCENTIVE COMPENSATION ACT

Mr. GOODLING. Mr. Speaker, I ask unanimous consent that during further consideration of H.R. 2888 in the Committee of the Whole pursuant to House Resolution 461 after the legislative day of today, no further debate or amendments to the committee amendment in the nature of a substitute shall be in order.

The SPEAKER pro tempore (Mr. BARRETT of Nebraska). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

SALES INCENTIVE COMPENSATION ACT

The SPEAKER pro tempore. Pursuant to House Resolution 461 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2888.

□ 2251

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2888) to amend the Fair Labor Standards Act of 1938 to exempt from the minimum wage recordkeeping and overtime compensation requirements certain specialized employees, with Mr. Watts of Oklahoma in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Pennsylvania (Mr. GOODLING) and the gentleman from New York (Mr. OWENS) each will control 30 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. GOODLING).

Mr. GOODLING. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to express my strong support for H.R. 2888 and urge my colleagues to support the legislation. I also want to urge my colleagues to reject any amendments that may be offered to weaken or to undercut the bill.

It is not often that we can come to the floor with a bipartisan labor bill. We did it a couple of weeks ago. We are back again with another. I know that the gentleman from Illinois (Mr. FAWELL) has worked very long and hard with the gentleman from New Jersey (Mr. ANDREWS) and others on the Democrat side to put this bill together. That is why particularly I hope that the House will reject any amendments that would undercut the bill that has been so painstakingly negotiated and crafted on a bipartisan basis in our committee.

Mr. Chairman, the reason for this bill was better stated by former Secretary of Labor Robert Reich a few weeks ago than I could when he was describing the changed nature of, quote, sales persons in modern business. Certainly no one can deny the fact that Robert Reich is a strong, strong supporter of the employee. Let me quote just a couple of lines from Mr. Reich's speech to

the American Compensation Association:

A lot of people who are called sales reps are no longer really sales reps. In the best companies they are helping customers define what the customers need, and it's true of business customers as well as individuals. They are not just selling a mass production product or service. They are not just persuading someone to take something. They are actually advising somebody about a package of goods and services that meets the needs of that individual and those sales people are therefore more like management consultants.

I continue quoting from Robert Reich:

Those sales people are the key glue, the human capital, that advises the company about new and evolving needs among customers, and also advises the people who are developing the goods, and developing the services, and developing the technologies about what the market needs. Those sales people are at the center of this new competitive strategy which relies on customization and value.

The problem that we are addressing with H.R. 2888 is the problem of fitting these 21st century sales persons into a 60-year-old law. The Fair Labor Standards Act already addresses the situations of sales employees who travel from customer to customer, the outside sales person. And it already addresses the situation of sales persons who work in retail stores. But it does not address the situation of these modern inside sales persons who often sell very sophisticated and complex products and services and who do so by using the tools of modern commerce, telephone, fax, computer, and the Internet.

As a result, a law meant to protect workers ends up denying these professional sales employees the flexibility and opportunity to maximize their sales and income. As Mr. Anthony Williams, one of the employees who testified in support of H.R. 2888 before our committee said,

I consider myself a professional salesman and would like to be treated as such. The inside sales force is certainly every bit as professional, knowledgeable and well trained as the outside sales force. We deserve to be seen as such by the wage and hour laws.

Another employee who testified in support of H.R. 2888, Ms. Leronda Lucky, put it this way:

I am in this business because I am a sales person. My motivation to sell is the earning potential that I have. I would like to be able to earn as much money as possible. My clients do not necessarily have 9-to-5 work hours. Many start their day early in the morning and work until late in the evening. I need the flexibility to determine when I need to meet with the customers on their hours. Being an exempt employee would provide for that flexibility.

Mr. Chairman, H.R. 2888 is a very carefully negotiated and crafted bill. It does not exempt all sales persons from the Fair Labor Standards Act. It reaches only those who by reason of their specialized and technical knowledge, and their relationship with their customers, meet the conditions laid out in the bill. Those employees must receive a substantial share of income based on commissions from sales. So H.R. 2888 is a narrow bill, and reflects the specific needs and responsibilities of many sales employees in 1998.

It is time to update the 60-year-old law, when the tools that today's sales people use, like faxes and computers, were not even imagined 60 years ago.

Again I urge my colleagues to support this bipartisan legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. OWENS. Mr. Chairman, I yield myself such time as I may consume. I am strongly opposed to H.R. 2888.

Mr. Chairman, why are we here at 11 o'clock tonight? Why is this bill on the floor as an open rule tonight or any other time? This is a very trivial piece of legislation in one sense. By itself it does not have much meaning. But if you look at it in the context of a whole series of small, seemingly trivial bills which harass American working families, then this is a very important bill. It is probably not important to many people because it has an open rule. Nothing comes to this floor with an open rule that is really important. When bills related to budgets and taxes and really important things come to the floor, they do not have an open rule. So it is really being treated in a very trivial way and by itself it would be, but it is part of a bigger guerilla campaign, a guerilla warfare campaign of the Republican majority against the American working families.

At a time like this in America when the stock market is booming, unprecedented prosperity, why are we chipping away at the wages and income of the people at the very bottom? We are talking about sales people and calling them managing consultants. What managing consultant do you know that makes $22,000 a year? That is what we are talking about. When you take the wages plus the commissions, the cutoff point for this is $22,000 a year. At that point, the Fair Labor Standards Act ceases to apply and these people are left out there on their own. If they can sell and make commissions, then good. But since they are inside salesmen and since they are helping customers with the product, giving advice, they are doing a number of things which do not bring a commission. You only get a commission when you sell. If you do not sell, you do not get a commission. But they are doing lots of other work.

□ 2300

So why are we here chipping away at the income of people at that level? As my colleagues know, this is a part of a campaign that I find baffling, the majority party continues. Today we had a series of bills on OSHA where they were chipping away at the safety and health standards for American workers. Now we are going to the heart of the matter, and we are going after their cash. We are taking away the cash.

Now this bill is like a landmine on the way to a bigger objective. As my colleagues know, the bigger objective is to take away overtime cash payment for overtime completely. I think many of us still remember that the 105th Congress opened up with a bill which was a comp time bill, a bill which said that an employer could give comp time instead of cash to employees. I think my colleagues may remember that that bill passed the House of Representatives. It is still out there. The Senate has not acted upon it yet, we have not had a conference, but there is still a danger in this year, and I call this to the attention of all the working families out there. As my colleagues know, I hope they are still awake, I hope they are here. We can take advantage of this maneuver that they are pulling to alert people that the comp time bill is out there still. It passed the House of Representatives, it is waiting, they are waiting to take away overtime, they are going to take away cash for their overtime.

This is part of the whole plot, and if our colleagues pass this, we are one step further along the road to taking cash payment for overtime.

Now at that time when we had that bill on the floor, I proposed a compromise. I proposed that, all right, there is a lot of talk about middle-class families, people who are making $100,000 or more. They want comp time, and they do not want to be bound by having to take their overtime only in cash payments. They want to be able to take time off. So I had a simple proposal, a simple amendment, put it on the floor. I said that all those people who are making minimum wage, and if they are making minimum wage, it meant their salary, their total earnings for the year, assuming they worked every hour of a 40-hour week for the whole year, was less than $12,000 a year. Anybody earning minimum wage, less than $12,000 a year, let them remain under the Fair Labor Standards Act and receive cash payment. They need cash to put food on the table. They need cash for clothing, for shelter. They do not need comp time. That is what they need.

That bill was voted down here. It did get 170-some votes, but it was voted down. As my colleagues know, how can we keep saying with an honest and with a straight face that this prosperous economy cannot afford to have people receive overtime payment when they are making less than $12,000 a year? And here we have another situation, another standard of $22,000 a year.

Now unless somebody complains that I am not germane, let me proceed to say that this piece of legislation, the effect of this legislation is to permit employers to either require workers to work longer hours, how to pay workers less for each hour's work. Far from enhancing the earning opportunity of workers, the primary effect of this legislation is to increase the income of the employers at the expense of the

workers. H.R. 2888 exempts an undetermined number of nonretail inside sales personnel from the requirement that employers pay time and a half for hours worked in excess 40 hours a week. Based on data from the Bureau of Labor Statistics, as many as 1.5 million workers may lose overtime protection if this legislation is enacted.

Unlike outside sales people, an inside sales person is directly employed in making and processing sales for their entire time at work, and I want to emphasize again Secretary Reich was right. They are engaged in a large number of activities that do not necessarily end up in sales. They do provide advice, they do explain things. There are a number of ways in which inside sales persons are working all the time and there is no commission attached to their labor.

I agree with the chairman of the committee. As my colleagues know, managing consultants is what we could describe them as in terms of the duties that they perform. They do not get a managing consultant's pay, and that is what we should focus on. We are not talking about people who get paid at the level of managing consultants or any other kind of consultant.

Since the employer is receiving a direct benefit from the employee's labors, from the employee's entire work period, employers should be required to pay overtime when the employee is required to work more than 40 hours in a week as the law currently provides. There is no justification for denying overtime pay to these workers.

There is some confusion. I do not know why there is such confusion. It is a simple matter. They are forcing people to work, and they are not paying them in accordance with the overtime regulations of the Fair Labor Standards Act if they exempt them, force them into an exempt status.

Under this legislation, employees are exempted if they earn wages or salary of $16,000 a year and if they earn an additional $6,500 a year in commissions. In other words, the $16,000 an employee must earn in wages or salary is regardless of the number of hours that he works, that is worked by this employee. An employee, by being required to work more than 40 hours a week may be paid well below the time and a half standards, well below 1.5 times the minimum wage, and still qualify for the exemption so long as the annual wage exceeds $16,068.40. A minimum wage worker who is required to work 60 hours a week without a sufficient base salary, to be exempted from overtime by this legislation.

This legislation further provides that an employer need not pay anything in wages or salary to covered workers for hours worked beyond 40 hours a week. In other words, an employee who earns $7.73 an hour and earns the equivalent of another $3.09 an hour in commissions may be required to work overtime without earning a penny more in wages and salaries.

This bill does not simply repeal the requirement that employees be paid 1.5 times their regular rate of pay for overtime work, it repeals a requirement that an employer provide any wage or salary for hours worked in excess of 40 hours a week. Employers may still require employees to work overtime. If during the overtime period the employee earns no commissions, then the employee would be paid nothing, nothing at all, for the additional hours worked.

Exempting workers who make no more than $22,600 a year from overtime protection is a horrific policy, and that is what it all boils down to. If at this hour of the night I am certain that anybody listening is confused, and there are a lot of folks who seem permanently confused, it all boils down to taking a person who is in combination salary plus commissions at the level of $22,600 a year and saying to them, ''You are no longer going to get paid cash for your overtime, you are not going to get anything for your overtime, and your employer can work you as many hours as he wants to because there's no reason why they couldn't schedule you to work. It doesn't cost them anything. It costs you your hours, time away from your family, but at 22,600 you're in another zone.''

$22,600 happens to be 12 percent below the average annual income earned for all workers. Let me repeat. $22,600 is 12 percent below the average annual income for all workers. The median income for nonretail sales representatives is $40,000. Under the current law, employees in the computer programing industry must make $57,000 a year before they are exempted from overtime. And I want to repeat that again. The computer programing industry has a unique exemption, and I was a part of the legislation which gave that exemption. Some of us are accused sometimes of not being willing to compromise, of not being willing to change anything that has been in the law for 30 years or being dogmatic, et cetera.

No. We have a clear situation with the computer programing industry. It was clear that they needed some relief from the Fair Labor Standards Act, and we gave it to them, but it was reasonable. The threshold number was $57,000 a year. Employees in the computer programing industry must make $57,000 a year before they are exempted from overtime.

Now considering all the other reasons why they needed to be exempted, and they gave good reasons, if it had not been at a level of $57,000 a year, I would have never agreed to it.

□ 2310

Many others would not have agreed to it. That is the crux of the matter tonight. What is your breaking level, where do you start shutting off cash payments on overtime for the people that the law is designed to protect?

Notwithstanding the unprecedented prosperity the economy has enjoyed over the past 5 years, income disparity between the very wealthy and everyone else is increasing. The drop in overall unemployment rates has not significantly diminished the fact that more and more Americans must work longer hours just to make ends meet. Rather than addressing these matters, H.R. 2888 exacerbates them. The majority party continues to exacerbate the problems faced by working families in America.

Working families in America should know that we are not here to discuss tonight the important issues like a raise in the minimum wage. If we just raise the minimum wage in a very conservative way, 50 cents a year for the next 2 years, by the year 2000 we would have a minimum wage of $6.15 an hour. We would still be behind in terms of not being able to keep up with inflation, but that is not even being entertained. We cannot even talk about that. It is not put on the floor for discussion.

We have something called the American Competitiveness Act, which goes after people who are computer programming specialists and information technology workers. Instead of training more workers and discussing how we can train more workers and have the workers in this country, people who are now being laid off and downsized from other jobs, trained to take these jobs, we just passed something in the other body which is called the American Competitiveness Act, a real outrageous name for such an act.

The American Competitiveness Act will soon be on the floor of this House, and it was not even sent to our committee. It is handled by another committee. But it deals with taking jobs away from workers.

It is going to raise the quota for the admission of professionals into this country and allow more people with computer programming knowledge to come in. Thirty thousand more will be allowed in per year for the first year, and 20,000 a year for the next 3 or 4 years.

That needs to be discussed. We are taking jobs and total income, total salary, away from large numbers of American workers. They are striking, I understand, now in Flint, Michigan, because workers are concerned about their jobs being taken overseas. We are not discussing that in the Committee of Education and Workforce. We do not protect the work force in this committee. The majority makes certain that the work force is harassed and that we are constantly finding ways to downsize the income and downsize the health and safety standards for working people.

This is a serious flawed piece of legislation, and although it looks small, it is a land mine on the way to another catastrophe. The big catastrophe is waiting. We already passed it out of the House, it is waiting out there, and it is called comp time. They are going to take away the protections of the

Fair Labor Standards Act from everybody and have comp time replace cash time for overtime, cash payment for overtime.

This is an important bill. Keep your eyes on the guerrilla war being raged by the Republican majority. This is a seriously flawed piece of legislation. I urge its defeat.

Mr. Chairman, I reserve the balance of my time.

Mr. GOODLING. Mr. Chairman, I yield 6 minutes to the gentleman from Illinois (Mr. FAWELL), the subcommittee chairman, the engine that is trying to drive labor and management into the 21st Century before it is too late.

Mr. FAWELL. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, it all depends on how we look at legislation like this, whether we see opportunities, as I see, or whether we see a lot of limitations, as I gather the gentleman from New York (Mr. OWENS) does see.

But this legislation, I do not think, is difficult to understand. It amends Section 13.1 of the Fair Labor Standards Act to simply allow a defined group of people called inside sales people to be exempt from the overtime provisions of the Fair Labor Standards Act.

The reason for that is so that a lot of these people, especially young people in the sales business, they are pretty well prepared professionals, they would like to be able to work on a commission basis. They really prefer that. They really prefer the opportunity that would be afforded to them. Right now they do not have that opportunity, because employers are not wild about going into overtime and all that is involved with that.

These rights, by the way, of working on a commission basis have long been enjoyed by sales people who work outside the office under the title of outside salesmen exemption. That has been granted by the Fair Labor Standards Act ever since it was created.

Nobody has, I think, felt there is a white flag we had to fly for the outside salesmen of America, who have done a pretty good job. These are people who customarily and regularly work away from the employer's place of business for the purpose of selling tangible and intangible items of property.

Now, what we did here, though, was something special. We sat down, and we had the gentleman from New Jersey (Mr. ANDREWS) and I and others on both sides of the aisle thinking, well, how can we do this and settle the fears of those in dealing with labor law about maybe that somehow would be taking advantage of workers? What we tried to do, in a bipartisan effort, and I think we accomplished that, was to specially define those who are in inside sales work who could take advantage of this.

We set forth what is called a duties test, and made clear that only those who have specialized and technical knowledge of the product and detailed knowledge of the customer's needs could take advantage of this, and they are people who are in sales and predominantly serving regular customers, positions that require a detailed understanding of the needs of those to whom the employee is selling.

Then we went a bit further and said that we are going to guarantee, in effect, that, come heck or high water, no matter what happens, if they fail in their commissions earnings, these young people that talked before said nothing about opportunities. They said they really wanted to have these opportunities. But we would require that the employers would guarantee in effect around $22,500. Maybe that is not a good living wage; nobody is necessarily saying that. It is not a cap, it is a floor.

We are simply saying if some catastrophe were to occur here and you did not make as much, these young people are thinking of making $50,000, $60,000, $70,000, if they just had the opportunity to go at it and do it their way with commissions and not be on an hourly wage.

They explain that, look, you know, we have clients to serve, and we can better serve them on the weekends, we can better serve them on Saturday evening, early in the morning when these customers are going to work. We would like to have the opportunities, the very same opportunities that outside salesmen have had for years.

The times have changed. This is now 1998. It was 1938 when that law was drafted. In those days the traveling salesman would kiss the good wife good-bye and go out into the country in a car and rumble around for a couple of weeks before he came back in order to be able to communicate. They did not even have the telephone in very good shape in those days.

Today we have the fax, we have computers, the Internet, and types and kinds of ways of being able to communicate. You do not have to go into the old car and rumble out into Iowa and the Midwest and so forth to do that.

Then we said also before you can qualify here, you have to be on the commission basis, which is pretty vital.

Now, that does not seem to me to be any furtive effort by those of us, both Republicans and Democrats alike here, of trying to do harm and do something bad for the working people of America. Again, I say these were young people who are asking for these advantages.

□ 2320

I simply want to say this is a bipartisan bill. I want to laud the gentleman from New Jersey (Mr. ANDREWS) who has diligently sat down and tried to painstakingly set up these standards so that we would not have people fearing the ways in which I think the very fine gentleman from New York has expressed his fears about this bill.

I think it is an excellent piece of legislation, and I hope people will receive it in the manner in which it should be received.

Mr. OWENS. Mr. Chairman, I yield such time as she may consume to the gentlewoman from California (Ms. WOOLSEY), an expert management personnel consultant, a real consultant.

(Ms. WOOLSEY asked and was given permission to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Chairman, before coming to Congress, I spent over 20 years as a human resources professional; 10 years as an H.R. manager of a high-tech manufacturing company, and 11 years as a human resources consultant. Did I earn more than $22,000 a year? Yes, I did. That is because I know something about the Fair Labor Standards Act.

The Fair Labor Standards Act allows employers to exempt employees from overtime if the employee has specialized skills, a high level of education, advanced training, and/or a minimum level, a professional level of compensation.

This bill would allow an employer to exempt certain jobs from overtime regardless of the credentials of the person filling that job. The job title in H.R. 2888 becomes more important than the person.

Some time ago, as my colleague, the gentleman from New York (Mr. OWENS) mentioned, Congress passed legislation to exempt certain computer industry jobs. They exempted them from overtime. That was if that job paid $57,000 or more a year.

I voted for this. I voted for it because a salary in the $50,000 range does not need overtime nearly as much as the jobs we are talking about tonight. This bill exempts employees who make less than half that amount.

The Bureau of Labor Statistics shows that the median income for nonretail positions is $40,000 a year. At the very least, the income limitation on this bill should be $40,000 to ensure that overtime taken from workers would be a much less significant loss, to ensure that these positions are truly considered professional.

This bill would be acceptable, perhaps, if the decision to work overtime was left to the employee, if it were totally voluntary, but this is not how H.R. 2888 works.

This bill takes away overtime, gives the employer the right to insist on overtime work and insist that the employee work at their straight rate of pay, really, within that week's salary. If they are paid for a 40-hour week, they get paid for 40 hours. Whether or not they work 42, 44, 46, 48, they get paid for 40.

No wonder, Mr. Chairman, we have heard from employers all over the country telling us how employees benefit from this bill, while, I want my colleagues to know, I have not heard yet from one worker that this is what they would prefer.

I ask my colleagues, unless we make overtime voluntary, unless we raise the salary floor to at least $40,000, which is the average for nonretail sales jobs, that we vote against 2888.

Mr. GOODLING. Mr. Chairman, I yield 6 minutes to the gentleman from New Jersey (Mr. ANDREWS), the coauthor of the bill.

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. Mr. Chairman, I thank the gentleman from Pennsylvania for yielding, and I thank the ranking member for his cooperation in this matter.

Mr. Chairman, I rise in support of the bill, and I would like to thank my coauthor, the gentleman from Illinois (Mr. FAWELL) for his diligence in preparing this piece of legislation.

I share with my ranking member opposition to a plan that would replace cash with comp time. I share his sympathies for an increase in the minimum wage. I would oppose a bill that would divest 1.5 million American workers from the right to receive overtime. That is not the bill before us tonight.

The bill before us tonight is not a bill that divests people of overtime. I believe it is a bill that appropriately invests a carefully selected number of people with an opportunity to better themselves.

It is not a partisan bill. Five Democratic members of this committee, including myself, are sponsors of this bill. We believe that this is a bill that opens up opportunity for people.

It is important, first, to talk about what the bill is not and whom it does not cover. If you drive a truck and deliver goods along a route, this bill does not cover you because you are not an inside sales person. If you are a phone solicitor, someone that makes cold calls to people you have never spoken to before and tries to sell them a credit card or a magazine subscription or some other good, this does not apply to you because you are not dealing with an established customer base.

If you stand on your feet in an appliance store or a department store or furniture store and wait for the customers to come in, this does not apply to you because you are not dealing with a sophisticated product and existing customer base; and the law, simply by its terms, does not apply. This bill applies to a carefully selected group of people who are engaged in the process of doing better by working more.

Tomorrow morning, one of the beneficiaries of this bill is going to go to work, and she is going to go to work at a food distribution company. Her assigned clientele will be a group of restaurants or food stores. Her job will be to work with that existing customer base to try to make the best deals and the best connections she can with that existing customer base.

She has the opportunity, provided that she is primarily engaged in sales, provided that she needs specialized consultive knowledge, provided that she can exercise discretion in the relationship with the client or customer, and provided that she is dealing with primarily an existing customer base, she has the opportunity to move ahead and make more and increase her income.

This is not a situation where people who are involved in a cold call selling situation can be compelled to work more hours. This is a situation where people who are engaged in what former Secretary of Labor Reich has described as the new sales force in the economy will be given an opportunity to advance the cause in the income of that particular individual.

It is very important to understand that this is a carefully tailored piece of legislation, designed not to cover people who could be easily exploited by an unscrupulous employer, but rather to open the doors of opportunity for an employee who wishes to improve her situation or his situation by working at hours and times where the customer base and the clientele is more likely to respond.

To understand why this law is needed, my colleagues need to understand how it would be different if my hypothetical individual who is a food sales person were working as an outside sales person. If this same sales person got in her car or her van and drove from customer to customer instead of sitting at her desk and communicating with those customers on the telephone or via the fax machine or via the computer or the Internet, under the present law, if she sits behind the wheel of a car or a van and drives from place to place, she is not subject to the provisions of the 40-hour workweek. But if she sits behind a desk under what I would assume would be more productive and beneficial circumstances and works her customer relations with a phone and a fax machine and a computer, she is covered by the law.

This proposal, with bipartisan support, carefully drawn after due consideration of objections, and made in good faith by both sides of the aisle, this plan is resolved to address that anomaly and treat that person the same if she is sitting in the office making the sales as she would be if she is driving out on the road and making the sales.

In support of H.R. 2888, the "Sales Incentive Compensation Act," I believe the following points should be made.

The bill sets out important criteria for those employees to be exempted. First, employees must be highly skilled. The exemption is directed at professional employees functioning in a similar capacity as "outside sales" employees. In this regard, these employees must have highly specialized and technical knowledge about both the products or services they offer as well as the clients with whom they deal. These "highly specialized" professionals typically receive extensive training to prepare them to sell a variety of products and/or services and they receive frequent follow-up training or related educational instruction.

Second, employees must exercise independent judgment and discretion. It is fundamental that these employees are required, by the nature of their work, to exercise independent judgment and discretion in making these sales. These are not telemarketers or semi-skilled sales staff. Rather, the bill is designed to identify salespeople who act in a professional capacity utilizing substantial discretion in their work.

Third, employees must have continuing and regular contact with customers. These employees can only gain the extensive knowledge of their clients needs envisioned by the law through regular and repeated contact with these customers. One-time calls, whether made by the sales person or the customer, cannot serve as the basis for the type of specialized knowledge of the customers' needs which would permit the employee to act in the consultative or advisory capacity necessitated by the bill. This means in practical terms that the employee must have a continuing relationship with a vast majority of customers to whom he or she makes sales.

In addition to the duties criteria, there are several requirements related to compensation. First, the employee must receive a guaranteed salary. The bill requires receipt of compensation which is not affected by the actual number of hours the employee may work in a given period. As a result, the employee cannot earn an hourly wage, but must be given a predetermined and guaranteed salary regardless of the number of hours actually worked. This is reflective of the professional status the employee must possess.

The second major component is that the compensation earned as incentive pay must serve as an inducement and reward for individual effort. In this regard, the incentive pay should be in the form of individual commissions based on each sale generated by the employee. Such a requirement does not prohibit incentives based on reaching individual or group sales quotas, etc., but these methods must be constructed in such a way as to make individual sale commissions readily identifiable.

Third, employees must be rewarded with at least as high a level of incentive compensation (formula or rate) in hours above forty per week as they received in hours below forty per week. As a result, if quotas or other incentive plans are used which do not explicitly reward employees for each sale generated, the manner and rate of incentive pays must make it perfectly clear that the employee is earning at least as much for sales generated in overtime hours as he or she would earn for same sales in non-overtime hours.

□ 2330

This is carefully drawn. It is narrowly tailored. I very much appreciate the support of my four Democrat colleagues on the committee for this bill, and I appreciate the diligence and persistence of my coauthor, the gentleman from Illinois (Mr. FAWELL).

Mr. Chairman, I too would urge the adoption of the bill and the defeat of amendments that have been proposed.

Mr. OWENS. Mr. Chairman, I yield 5 minutes to the gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Chairman, I want to say with all due respect to the gentleman from New Jersey (Mr. ANDREWS) my good friend, and the gentleman from Illinois (Mr. FAWELL), that I have to take exception with the import of this bill, no matter how well-

crafted it may seem or well-intentioned it may be.

Mr. Chairman, for 60 years the Fair Labor Standards Act has operated to protect workers from excessive hours on the job by requiring employers to pay time-and-a-half for overtime. Most Americans except this and expect it. Work overtime, expect to be paid for it.

This measure before us, the Sales Incentive Compensation Act, would undermine the Fair Labor Standards Act and open up an enormous loophole. It would allow employers to avoid paying overtime to certain categories of employees.

This bill would enable companies to declare that certain workers are in sales positions and then deny them a salary or an hourly wage for the time they work over 40 hours per week. For these specialized employees, companies would only have the obligation to pay them commissions as a substitute for the time-and-a-half pay.

About 1.5 million workers would be affected by this loophole. This bill would provide a powerful incentive for employers to push their employees to work as many hours as possible. It would lead to endless litigation as the courts battle over who does and does not qualify under the vague and broad provisions in this bill. In addition, the Department of Labor has concluded that this bill would impose new paperwork and recordkeeping requirements on businesses. So there are unintended consequences.

Mr. Chairman, I would agree with my colleague that many of the same arguments put forth here parallel the discussion we had on comp time. The reason people work overtime is to get paid for overtime. They do not work overtime to give the money to their employer. They work overtime to give the money to their family. I believe that the argument that people who work overtime ought to get time off in the case of comp time, or a commission or not at the election of their employers, is a misplaced argument.

Now, there are some proponents of this bill who would say that they just want people to make more money, not less, and to do that they are going to cut out time-and-a-half for overtime and replace it with a sales commission. I think that assertion challenges common sense notions of why people work overtime. The harder people work, the more they should get paid from their employer.

This legislation affects employees. So if employees work more than their full-time allotment, they should be paid for it. And if their diligence, their labor produces a higher benefit, then let the employer take the benefit. But let the employee be able to get at least time-and-a-half. In a sense, we are asking the employees to take the risk when it is the employer who gets the benefit.

I say let the employee get the benefit and the employer take the risk. Let the employee get paid time-and-a-half for overtime.

This bill benefits employers at the expense of employees. It is going to result in workers being required to work more hours. The simple fact is, and every American worker knows this, it is the employer who controls the hours that people work, not the employee. The employer controls how long the employee is going to work.

This bill unfortunately discourages employees and it encourages employers to require workers to work overtime. It exempts employers from the requirement that they pay an employee any wage at all for overtime hours. How many people out there would want to work overtime and not get paid anything? Who would take that deal in this country?

Years ago there was an American humorist who said, ''Never give a sucker an even break.'' Working people in this country deserve to be paid time-and-a-half for overtime and employers ought to be challenged to do that.

Mr. GOODLING. Mr. Chairman, I yield 2½ minutes to the gentleman from Nebraska (Mr. BARRETT), an important member of our committee.

Mr. BARRETT of Nebraska. Mr. Chairman, I thank the gentleman from Pennsylvania (Chairman GOODLING) for yielding me this time.

Mr. Chairman, if we mentioned comp time or flex time or telecommuting or inside sales personnel to people back 20 or 30 years ago, we probably would have gotten a very, very strange look. But these terms today, they are a reality. This is today's workplace. And they have gone largely unrecognized in today's antiquated labor laws.

Today we take a small step forward to recognize what is already occurring in the labor force, but the Federal Government has been very, very slow to respond.

H.R. 2888 allows professional sales people working regularly with established clients to be exempt from minimum wage and overtime requirements. The bill permits some inside sales workers to earn a salary and be treated like a professional along with their outside sales counterparts.

In this era of family-friendly workplaces, Congress should embrace a bill giving the people the flexibility to use technological advances and changes in our economy to work near their home in jobs that they enjoy or need and be closer to their families.

This bill enjoys bipartisan support. It lets a fresh breeze into the stale and outdated Federal laws that have restricted the economic liberty of an entire class of professional working people. When the House does pass H.R. 2888, we should be proud of our actions to allow people to again capture the American dream of being rewarded for their hard work.

I also want to take a moment to thank the gentleman from Illinois (Mr. FAWELL) my friend and colleague, for authoring this legislation and for all of his years of hard work to improve the working conditions and benefits of millions and millions of Americans. I am sure that he will take to his retirement the same zeal and determination that has marked has career as a very distinguished public servant and lawyer.

With that, Mr. Chairman, I encourage my colleagues to support H.R. 2888.

Mr. OWENS. Mr. Chairman, may I inquire as to how much time is remaining on both sides?

The CHAIRMAN. The gentleman from New York (Mr. OWENS) has 6 minutes remaining, and the gentleman from Pennsylvania (Mr. GOODLING) has 10½ minutes remaining.

□ 2340

Mr. GOODLING. Mr. Chairman, I yield 2½ minutes to the gentleman from Michigan (Mr. HOEKSTRA), another member of our committee.

Mr. HOEKSTRA. Mr. Chairman, I thank the gentleman for yielding time to me.

I also congratulate my colleagues for putting this bill together. I hope that in the coming months and the coming years we can build on this bipartisanship and seriously take a look at America's labor laws, labor laws that were developed in the 1930s and the 1940s.

And now, as we take a look at entering a new millennium, we recognize that the workplace has changed. We have moved into a global economy. The types of products and services that we are excelling in and producing in this country have evolved and changed.

In the last 8, 9 months, we have gone around the country, we have had roundtables. We have had hearings. We are learning that for us to be globally competitive, we need to restructure and reevaluate the legal framework within which we compete. And as we change this framework and as we evolve it, it is going to create more opportunities for American workers. It is going to enable American workers to be more competitive, to be more productive.

And when they are more productive, they can earn a higher standard of living. We want to eliminate bureaucracy. We want to eliminate rules and regulations, rules and regulations that do not fit the 1990s.

One of the facilities that we had the opportunity to visit was an IBM facility in Atlanta. What we saw in Atlanta was a telemarketing center, actually a sales consultant center where people over the phone were selling multimillion dollar computer systems. Ten years ago these would have had to have been sold face to face. Now they can be sold over the telephone.

The nature of the product has changed; the nature of the customer has changed. And the nature of the way that you service these clients has changed.

This bill recognizes the changes that are taking place. It says that we can service these customers in a new and in a better way and in a more productive way.

Again, I applaud my colleagues on this effort and urge my colleagues to support this bill tomorrow.

Mr. OWENS. Mr. Chairman, I yield myself such time as I may consume.

We could have total bipartisan cooperation if we really recognized what is at the heart of this controversy at this point. It is money. It is only money; $22,600 a year is not a proper cutoff point.

I recognize that the Fair Labor Standards Act is 60 years old. We have made some adjustments in situations where adjustments made sense, but here we are proposing to make an adjustment on the backs of the working families. We are proposing an adjustment which has no logical rationale. Common sense has been thrown out the window. We have a cutoff point of $22,600 a year.

We did this same thing for the computer programming industry. They had certain circumstances which made it evident that large amounts of hours were required, and they could not keep paying more and more overtime, but they had a staff of specialized people. They could not go out and get more people because they did not have the skills. We took that into consideration and we amended the 60-year-old Fair Labor Standards Act. And certainly we could work out an amendment now, a bipartisan amendment, if we would just admit the fact that $22,600 a year is not a proper cutoff point.

My colleague from California, an expert in human resources, said that the average is $40,000 a year for retail salespeople, it is $40,000 a year, not $57,000 like the computer programming people.

Well, this particular industry has a set of facts which we should all look at, and maybe she is right, $40,000 is the figure, not $57,000. We cannot just be arbitrary and say $57,000, that is a pretty good living even now. We did that a few years ago. But even now $57,000 looks pretty good compared to $22,600.

So if we are not interested in robbing the working families to make the rich richer, which is what most of the amendments that are brought to the committee by the Republican majority do, if we are not interested in exploiting working families, if we really care about working people, if we are a committee that is concerned with work force protections and not work force harassment, then we could work out a compromise.

We should withdraw this bill now, work out a compromise, and let us arrive at a figure between $40,000 and $57,000, and we can accept a lot of other rather vague things that are here that may make for difficulties in the future.

The whole definition of what a specialist is and who is selling a specialized product. I know people who are in the grocery business, and they insist that they are specialists, they are professionals. Not everybody can come in and sell groceries.

It used to be there was a sitcom at one time where the guy was a hardware store owner and used to get all riled up about what it took to sell hardware. And he would always end his statements by saying, this is not just some little common thing in the street; hardware is something special.

So everybody can make the argument that they are a specialist. Certainly employers who want to make people work more hours without overtime could always say, you are really a specialist. You are selling eggs and milk, but you are a specialist and you do not get any overtime.

There are a lot of pitfalls here. We can settle it all and reach agreement, if we would just talk about a reasonable, common sense figure that does not exploit working families. Do not put people in a bind where they cannot get any more cash for overtime at the level of $22,600 a year. Let us go on and take a hard look at all the factors and come back and offer the working families something which comes off the table.

The table is full now of goodies. It is a very prosperous time. Wall Street is making more money than they ever made before. The Dow Jones average hovers between 8000 and 9000 on a daily basis. It is just amazing that the energy of the Republican majority is all concentrated at taking things away from working families at a time like this.

We have a window of opportunity. Let us share the prosperity. If we have to set some figures for exemption in the Fair Labor Standards Act, let us raise them high enough to be meaningful for working families.

Mr. Chairman, I yield back the balance of my time.

Mr. GOODLING. Mr. Chairman, I yield 2½ minutes to the gentleman from Pennsylvania (Mr. PETERSON).

Mr. PETERSON of Pennsylvania. Mr. Chairman, I rise to support H.R. 2888.

It is obvious to me that those that oppose this bill do not understand the dynamics of sales in this country.

I would ask everybody here tonight, would you like to go back to the rotary telephone, get rid of the systems in your offices that have the rotary phone that you dial by hand that are not connected to each other? No, you would not. It would not make any sense to you. Would you like to go back to the mechanical typewriter and do away with the computer systems that are all networked and go back?

The law that is in place is holding us back in this country from allowing salespeople to do what they do best.

Salespeople are undervalued in your view. The salespeople are the oil and gas of the American economic engine. They are what drives it. As salespeople are successful and they earn a commission, they make more money. And they put their friends and neighbors to work because they sell more goods that make a company go.

Technology today allows companies to do more sales inside instead of wasting travel time. And this bill is narrowly drafted, probably a little more narrowly drafted than I would have agreed to, it is narrowly drafted. You do not have to worry about a $20,000 person. You give them a sales commission, and they are going to make 30, 40, the sky is the limit.

Flexibility of time in the sales force is a benefit to the customer and a benefit to the employee. He or she may want to go home and fix dinner and then make some calls after dinner. They may want to pick up their children at day care and go home and then make some sales calls. It is not a one-way street.

Commission is a huge incentive and do not ever undervalue it. If you are selling by the hour and you are selling by commission and you both have equal sales ability, the commission person will always sell more goods and put more people to work in the overall company.

It is time to unleash the salespersons and stop limiting their ability to incentive sale. They will earn more and you will increase employment in manufacturing, and you will increase employment in the service industry. You will increase employment in wholesale. I want to tell my colleagues, it will increase the economic drive in this country.

Mr. OWENS. Mr. Chairman, will the gentleman yield?

Mr. PETERSON of Pennsylvania. I yield to the gentleman from New York.

Mr. OWENS. Mr. Chairman, does the gentleman realize this is about inside sales, which means people cannot go home and make phone calls from home. They have to be on the job. That is the whole thing. They are bound to the job. They are bound at the spot.

□ 2350

They are bound at the spot. They are inside.

Mr. PETERSON of Pennsylvania. It should not be that narrow. Because sales can be made on the telephone at home just as easily as they can be made in the office.

Mr. GOODLING. Mr. Chairman, I yield such time as he may consume to the gentleman from New Jersey (Mr. ANDREWS).

Mr. ANDREWS. Mr. Chairman, I thank the gentleman for yielding me this time. I want to engage my colleague in a colloquy.

The Sales Incentive Compensation Act does not change the law of impasse in any way. The bill does not create a new right or authority for an employer to implement unilaterally the exemption provided by the legislation in a circumstance where an employer is engaged in collective bargaining negotiations with a labor organization and the negotiating parties have reached an impasse.

As a coauthor of H.R. 2888, I want to make it clear that the bill may not be used as an instrument, if an impasse occurs, to secure an outcome that would never result from the normal ebb and flow of the free collective bargaining process.

Am I correct that it is the understanding of my coauthor of the bill

that it does not create a new right to impose unilaterally a settlement during an impasse?

Mr. FAWELL. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS. I yield to the gentleman from Illinois.

Mr. FAWELL. It is my understanding that the legislation does not change the laws regarding an employer's rights to unilaterally impose conditions in the face of an impasse in collective bargaining.

Mr. ANDREWS. Under current law, when collective bargaining reaches an impasse, employers have a perverse incentive to bargain to impasse and then compel a union to acquiesce in conditions mandated by the employer.

From a related point of view, it is not the intent of the Sales Incentive Compensation Act to create a new defense for an unfair labor practice perpetrated by an employer or to create an exemption excusing what would otherwise be an unfair labor practice.

The Sales Incentive Compensation Act does not create a right or authority for an employer to implement unilaterally the exemption provided by the legislation in a circumstance where an employer is engaged in collective bargaining negotiations with a labor organization and the negotiating parties have reached an impasse.

As an author of H.R. 2888, I want to make clear that the bill should not be used as an instrument, if an impasse occurs, to secure an outcome that would never result from the normal ebb and flow of the free collective bargaining process. Under current law, when collective bargaining reaches an impasse, employers have a perverse incentive to bargain to impasse and then compel a union to acquiesce in conditions mandated by the employer.

From a related standpoint, it is not the intent of the Sales Incentive Compensation Act to create a new defense for an unfair labor practice perpetrated by an employer.

Mr. GOODLING. Mr. Chairman, I yield the balance of my time to the gentleman from Illinois (Mr. FAWELL).

Mr. FAWELL. Mr. Chairman, it seems to me that in the comments, the gentleman from New Jersey (Mr. ANDREWS) made the statement that this bill does not divest people from overtime, rather it gives opportunities. I think that is the key distinction perhaps between the two sides here.

We on this side and a number of my colleagues on the other side of the aisle see that there are all kinds of opportunities, especially young people who are only making $20,000 or less than that. When Leronda Lucky testified before the subcommittee of the gentleman from North Carolina (Mr. BALLENGER), she made this statement:

> There is also a very important customer service component to my job. My clients do not necessarily have to have 9-to-5 work hours. Many start their days early in the morning and work until late in the evening. I need the flexibility to determine when I need to meet with customers on their hours. Being an exempt employee would provide that flexibility.

The gentleman from Pennsylvania (Mr. GOODLING) previously referred to Robert Reich's statement, and I quote:

> A lot of people who are called sales reps are no longer really sales reps. They are actually advising somebody about a package of goods and services that meets the needs of that individual, and those sales people are therefore more like management consultants.

So it is different. Times have changed. We have to recognize that that is so. That is what I think this legislation does. I believe it is going to be very beneficial for a lot of people who see a great deal of opportunity.

Mrs. MCCARTHY of New York. Mr. Chairman, I rise in strong support of H.R. 2888, the Sales Incentive Compensation Act. I want to commend my colleagues, Mr. ANDREWS and Mr. FAWELL, for their hard work in developing this bipartisan bill.

I am cosponsor of H.R. 2888 because I believe that it will open up opportunities for inside salespeople to earn more and succeed in the workforce. This bill recognizes that the workforce has changed in the sixty years since the Fair Labor Standards Act was passed. Today, salespeople can be more productive than every by using computers, faxes and E-mail to reach their clients, instead of travelling door-to-door.

But while outside salespeople are exempt from the FLSA, inside salespeople are not. Many inside salespeople are told to go home after 40 hours because their employers do not want to pay them overtime. This limits their chance to earn big commissions.

H.R. 2888 is sensible, balanced legislation. It will give professional, expert salespeople the chance to maximize their sales, while protecting millions of workers who depend upon the FLSA to guarantee their hard-earned benefits.

During Committee mark-up, I offered an amendment to H.R. 2888 to clarify even further that route sales drivers, a class of workers that deserves FLSA protection, would not be affected by this bill. My amendment was accepted.

I am pleased to support this bill not only on its merits, but because of the process that has led to its consideration. This bill is the product of good-faith discussions between members on both sides of the aisle.

It has been developed in an atmosphere of trust and mutual respect, and I would hope that this bill can be a model for other legislation that this body debates. It shows that when we put partisanship aside, everyone wins.

I urge my colleagues to support this bill.

Mr. CLAY. Mr. Chairman, I oppose this bill because it shortchanges some 1.5 million sales employees by denying them overtime pay. Although the bill guarantees that workers will receive the low salary of $22,000 annually, this hardly compensates for the loss of the overtime pay.

The overtime laws, like the minimum wage, were designed to protect working families from exploitation. Employers should not be permitted to make employees work excessive hours away from their families without fair and decent compensation.

It is shameful that we should act to diminish the prosperity of working families at the same time that corporate profits and stock market prices are off the charts.

This assault on working families also makes a mockery of those hollow assertions Republicans made on this floor months ago in support of flex time. Make no mistake, this bill means working families who work in the sales occupation will be required to work more hours for less pay. This bill does not permit employees to refuse overtime work.

This Congress should not support any legislation that benefits special interests at the expense of working families.

I urge all Members to preserve the historic protections of the Fair Labor Standards Act, and reject this mean-spirited attack on workers.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill is considered as an original bill for the purpose of amendment under the 5-minute rule and is considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 2888

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Sales Incentive Compensation Act''.

SEC. 2. EXEMPTION.

Section 13(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)) is amended by striking the period at the end of paragraph (17) and inserting a semicolon and by adding at the end the following:

''(18) any employee employed in a sales position if—

''(A) the employee has specialized or technical knowledge related to products or services being sold;

''(B) the employee's—

''(i) sales are predominantly to persons who are entities to whom the employee's position has made previous sales; or

''(ii) position does not involve making sales contacts;

''(C) the employee's position requires a detailed understanding of the needs of those to whom the employee is selling;

''(D) the employee's position requires the employee to exercise discretion in offering a variety of products and services;

''(E) the employee receives—

''(i) base compensation, determined without regard to the number of hours worked by the employee, of not less than an amount equal to one and one-half times the minimum wage in effect under section 6(a)(1) multiplied by 2,080; and

''(ii) in addition to the employee's base compensation, compensation based upon each sale attributable to the employee;

''(F) the employee's aggregate compensation based upon sales attributable to the employee is not less than 40 percent of one and one-half times the minimum wage multiplied by 2,080;

''(G) the employee receives a rate of compensation based upon each sale attributable to the employee which is beyond sales required to reach the compensation required by subparagraph (F) which rate is not less than the rate on which the compensation required by subparagraph (F) is determined; and

''(H) the rate of annual compensation or base compensation for any employee who did not work for an employer for an entire calendar year is prorated to reflect annual compensation which would have been earned if the employee had been compensated at the same rate for the entire calendar year.''.

SEC. 3. CONSTRUCTION.

The amendment made by section 2 may not be construed to apply to individuals who are employed as route sales drivers.

The CHAIRMAN. During consideration of the bill for amendment, the

Chair may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

Are there any amendments to the bill?

AMENDMENT NO. 1 OFFERED BY MR. FAWELL

Mr. FAWELL. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. FAWELL:

Page 4, strike lines 8 through 13 and insert the following:

''(B) the employee's—

''(i) sales are predominantly to persons or entities to whom the employee's position has made previous sales; or

''(ii) the position does not involve initiating sales contacts;

Mr. FAWELL. Mr. Chairman, this amendment is noncontroversial. It would make two technical changes in the bill for the purpose of correcting a provision adopted during the committee markup which inadvertently substituted the words ''who are'' for the word ''are''; and the word ''making'' for the word ''initiating.''

It is my understanding that the amendment will not be opposed by the gentleman from New York (Mr. OWENS). I would urge my colleagues to support this technical change.

Mr. OWENS. Mr. Chairman, we accept the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. FAWELL).

The amendment was agreed to.

AMENDMENT NO. 2 OFFERED BY MR. OWENS

Mr. OWENS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. OWENS:

Page 6, line 9, strike the period, quotation marks, and the period following and insert a semicolon and insert after line 9 the following:

except that an employer may not require an employee who is exempt from overtime payment under this paragraph to work any hours in excess of 40 in any workweek or 8 in any day unless the employee gives the employee's consent, voluntarily and not as a condition of employment, to perform such work.''.

Mr. OWENS. Mr. Chairman, this amendment provides that employees who lose their overtime protection as a result of this legislation will have a right to choose whether or not they will work overtime. They will have the right and not the employer. Employers would be prohibited from requiring those sales people to work in excess of 40 hours a week, or 8 hours a day.

The proponents of H.R. 2888 as we have heard tonight contend that workers want to work overtime without overtime pay. For 60 years Americans have had this protection in place for inside sales people and sales have gone very well. The economy has boomed. Why fix it if it is not broken already? We have a working situation here. But they say that workers want to work overtime without overtime pay. They have overtime pay now. Workers are dying to give it up. They have stated repeatedly that this legislation is intended to help workers. I have said that is not the case. I submit that claims that this legislation will help workers are wholly false. This legislation will help employers, but it will harm workers.

Under current law, the only legal restriction on the number of hours an employee may be required to work is a requirement that employers pay time and a half for hours worked in excess of 40 hours a week. This puts a brake on exploitation. This puts a brake on employers who want to drive their workers in order to make greater profits without also compensating the workers.

Under H.R. 2888, an employer would no longer be required to pay a worker anything for overtime work except for such commissions as the employee may earn during that period. Indeed if an employee earns no commission during the overtime period, the employer is not required to pay the employee anything at all for that work. This legislation shifts business risks from the employer to the employee.

H.R. 2888 also creates a powerful incentive for employers to require employees to work overtime by permitting employers to pay a worker less for overtime work than for regular work. In my view, this consequence is obvious and intentional. However, if this legislation is truly intended to benefit employees, then clearly the worker and not the employer should exercise control over how much overtime will be worked. That is all that my amendment would accomplish. Employers may continue to require employees to work 8 hours a day and 40 hours a week. Employers may continue to specify when those hours will be worked. However, if the employee is going to undertake the risk of working additional hours beyond 40 hours, with no guarantee of being paid for those hours, it would be at the employee's own choosing and not the employer.

Even if my amendment is adopted, many workers will not have a true choice. $22,600 is not a living wage for most families. Many workers would be financially compelled to work overtime. However, my amendment ensures that all employees who would otherwise lose overtime protection would at least have some voice as to how much overtime they will work and when they will work it.

□ 2400

If those who support H.R. 2888 are serious about their desire to help workers, they will support my amendment.

Mr. Chairman, I urge the adoption of this amendment.

Mr. FAWELL. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from New York (Mr. OWENS).

Mr. Chairman, we still have the same dichotomy here in operation. The gentleman from New York again has his eye upon what he sees as a tremendous loss; that is, of the overtime provisions.

The employees who came into our committee and asked for the right to be able to assume commissions as a base of being able to work more and make more look at the opportunities coming from the fact that they now are going to have a commission's basis of earning. Not only are they going to have that commission basis of earning, but they are going to have a foundation of a guarantee of $22,500 a year that the employer is going to have to pay.

Now there are various classifications of employees who are exempt from the Fair Labor Standards Act provisions. We have made reference to some of them: professional, executive, administrative, outdoor salesman, for instance. I do not think that of all of the many examples of exemptions that are in the statute right now, and this is the 18th one that we have put here, that there ever has been a provision that would give to the employee the right to issue some kind of a consent. What is always set forth is not always because with the outside salesmen they did not even get any kind of a guarantee of any kind of a salary. It is zilcho, nothing. They are just out there and working on commissions, but take administrative positions where an exemption from overtime is granted.

The only other, the only other thing that is granted to an administrative employee is, believe it or not, a guarantee of $250 a week. That is all. There is nothing in any those instances where exemptions are granted, and exemptions from overtime have always been a part of the Fair Labor Standards Act.

And there is good reason for that, very good reason for that. Once we start doing that, then, well, what should it be? Oral consent or written consent? When must they set forth this consent? How often can it be? Must it be renewed? We can go on and on with a lot of other provisions, and if the employer should suggest that one ought to be able to go on commissions and give consent here.

Mr. ANDREWS. Mr. Chairman, would the gentleman yield?

Mr. FAWELL. I yield to the gentleman from New Jersey.

Mr. ANDREWS. Mr. Chairman, I want to join the gentleman in respectful opposition to this amendment. I

think the point he is making is very important, that the amendment opens an awful lot of questions about how the consent would be expressed, to whom, whether it could be altered, whether someone could be exempt for a week and then go back to nonexempt the next week, whether or not the requests would have to be oral or in writing. And I believe what it would do would be to unduly complicate matters, and for that reason I would join the gentleman in his opposition to the amendment.

Mr. FAWELL. This is precisely why in all of those instances where exemptions are granted, nothing like this has ever been put into the Fair Labor Standards Act.

I want to add also that the gentleman from New York (Mr. OWENS) actually is extending the overtime provisions to now include the 8-hour day as well as the 40-hour work week. The Fair Labor Standards Act has always applied only to a 40-hour work week, not to an 8-hour day, too. So he is bringing in something completely new to the Federal law, the Fair Labor Standards Act.

Mr. OWENS. Mr. Chairman, will the gentleman yield?

Mr. FAWELL. I yield to the gentleman from New York.

Mr. OWENS. In the list of extensions, are there other situations which involve part of the income being derived from commissions?

Part of this 22,000 is commissions. It is only 16,000 that is really salary, and part is commission. Is there any other situation where an exemption is given to some position which makes up commissions, is made up partially with commissions?

Mr. FAWELL. There is, insofar as retail service positions are concerned.

Mr. OWENS. Mr. Chairman, I thank the gentleman..

Mr. FAWELL. Mr. Chairman, that is all that I have to say.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. OWENS).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. OWENS. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Pursuant to House Resolution 461, further proceedings on the amendment offered by the gentleman from New York (Mr. OWENS) will be postponed.

The point of no quorum is considered withdrawn.

AMENDMENT OFFERED BY MR. ANDREWS

Mr. ANDREWS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ANDREWS:

Page 5, line 1, strike ''the employee's position requires'' and insert ''the employee has''.

Page 5, beginning in line 4, strike ''the employee's position requires the employee to exercise'' and insert ''the employee exercises''.

Mr. ANDREWS (during the reading). Mr. Chairman, I ask unanimous consent the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. ANDREWS. Mr. Chairman, I offer this amendment to conform the bill to a provision that was proposed by the gentleman from New York (Mr. OWENS) in committee so that the rest of the bill can conform to that so that the reference would be to the employee's position and the employee. This makes it very clear that the position and the employer are both covered. This conforms the bill that we adopted in committee to the suggestion of Mr. OWENS that was adopted in committee. I would urge its adoption.

Mr. FAWELL. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS. I yield to the gentleman from Illinois, my coauthor.

Mr. FAWELL. Mr. Chairman, we have no objection to this amendment.

Mr. OWENS. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS. I yield to the gentleman from New York.

Mr. OWENS. Mr. Chairman, no objection to the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey (Mr. ANDREWS).

The amendment was agreed to.

The CHAIRMAN. Are there further amendments?

Mr. GOODLING. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. PETERSON of Pennsylvania) having assumed the Chair, Mr. WATTS of Oklahoma, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2888) to amend the Fair Labor Standards Act of 1938 to exempt from the minimum wage recordkeeping and overtime compensation requirements certain specialized employees, had come to no resolution thereon.

UNFAIRNESS IN TAX CODE: MARRIAGE TAX PENALTY

(Mr. WELLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WELLER. Mr. Speaker, last week was a big week because this House of Representatives made a commitment to address the marriage tax penalty. Let me explain why this is so important.

Do Americans feel that it is fair that our Tax Code imposes a higher tax penalty on marriage? Do Americans feel that it is fair that 21 million married working couples pay on the average $1,400 more in higher taxes just because they are married?

$1,400 in the south side of Chicago in the south suburbs is real money for real people. $1,400 is one year's tuition at Joliet Junior College and 3 months' day care at a local child care center.

This past week the House of Representatives went on record making a commitment to work towards elimination of the marriage tax penalty with the passage of the Kasich budget, a budget that spends less and taxes less. Let us make elimination of the marriage tax penalty our number one priority this year. Let us eliminate the marriage tax penalty. Let us eliminate it now.

Mr. Speaker, I rise today to highlight what is arguably the most unfair provision in the U.S. Tax code: the marriage tax penalty. I want to thank you for your long term interest in bringing parity to the tax burden imposed on working married couples compared to a couple living together outside of marriage.

In January, President Clinton gave his State of the Union Address outlining many of the things he wants to do with the budget surplus.

A surplus provided by the bipartisan budget agreement which: cut waste, put America's fiscal house in order, and held Washington's feet to the fire to balance the budget.

While President Clinton paraded a long list of new spending totaling at least $46–$48 billion in new programs—we believe that a top priority should be returning the budget surplus to America's families as additional middle-class tax relief.

This Congress has given more tax relief to the middle class and working poor than any Congress of the last half century.

I think the issue of the marriage penalty can best be framed by asking these questions: Do Americans feel its fair that our tax code imposes a higher tax penalty on marriage? Do Americans feel its fair that the average married working couple pays almost $1,400 more in taxes than a couple with almost identical income living together outside of marriage? Is it right that our tax code provides an incentive to get divorced?

In fact, today the only form one can file to avoid the marriage tax penalty is paperwork for divorce. And that is just wrong!

Since 1969, our tax laws have punished married couples when both spouses work. For no other reason than the decision to be joined in holy matrimony, more than 21 million couples a year are penalized. They pay more in taxes than they would if they were single. Not only is the marriage penalty unfair, it's wrong that our tax code punishes society's most basic institution. The marriage tax penalty exacts a disproportionate toll on working women and lower income couples with children. In many cases it is a working women's issue.

Let me give you an example of how the marriage tax penalty unfairly affects middle class married working couples.

For example, a machinist, at a Caterpillar manufacturing plant in my home district of Joliet, makes $30,500 a year in salary. His wife is a tenured elementary school teacher, also bringing home $30,500 a year in salary. If they would both file their taxes as singles, as individuals, they would pay 15%.

MARRIAGE PENALTY EXAMPLE IN THE SOUTH SUBURBS

	Machinist	School teacher	Couple	Weller/McIntosh II
Adjusted Gross Income	$30,500	$30,500	$61,000	$61,000
Less Personal Exemption and Standard Deduction	6,550	6,550	11,800	13,100 (Singles X2)
Taxable Income	23,950 (x .15)	23,950 (x .15)	49,200 (Partial x .28)	47,900 (x .15)
Tax Liability	3,592.5	3,592.5	8,563	7,185

Marriage Penalty: $1,378; Relief: $1,378.

Weller-McIntosh II Eliminates the Marriage Tax Penalty.

But if they chose to live their lives in holy matrimony, and now file jointly, their combined income of $61,000 pushes them into a higher tax bracket of 28 percent, producing a tax penalty of $1,400 in higher taxes.

On average, America's married working couples pay $1,400 more a year in taxes than individuals with the same incomes. That's serious money. Millions of married couples are still stinging from April 15th's tax bite and more married couples are realizing that they are suffering the marriage tax penalty.

Particularly if you think of it in terms of: a down payment on a house or a car, one year tuition at a local community college, or several months worth of quality child care at a local day care center.

To that end, Congressman DAVID MCINTOSH and I have authored the Marriage Tax Penalty Elimination Act.

The Marriage Tax Penalty Elimination Act will increase the tax brackets (currently at 15% for the first $24,650 for singles, whereas married couples filing jointly pay 15% on the first $41,200 of their taxable income) to twice that enjoyed by singles; the Weller-McIntosh proposal would extend a married couple's 15% tax bracket to $49,300. Thus, married couples would enjoy an additional $8,100 in taxable income subject to the low 15% tax rate as opposed to the current 28% tax rate and would result in up to $1,053 in tax relief.

Additionally the bill will increase the standard deduction for married couples (currently $6,900) to twice that of singles (currently at $4,150). Under the Weller-McIntosh legislation the standard deduction for married couples filing jointly would be increased to $8,300.

Our new legislation builds on the momentum of their popular H.R. 2456 which enjoyed the support of 238 cosponsors and numerous family, women and tax advocacy organizations. Current law punishes many married couples who file jointly by pushing them into higher tax brackets. It taxes the income of the families' second wage earner—often the woman's salary—at a much higher rate than if that salary was taxed only as an individual. Our bill already has broad bipartisan cosponsorship by Members of the House and a similar bill in the Senate also enjoys widespread support.

It isn't enough for President Clinton to suggest tax breaks for child care. The President's child care proposal would help a working couple afford, on average, three weeks of day care. Elimination of the marriage tax penalty would give the same couple the choice of paying for three months of child care—or addressing other family priorities. After all, parents know better than Washington what their family needs.

We fondly remember the 1996 State of the Union address when the President declared emphatically that, quote ''the era of big government is over.''

We must stick to our guns, and stay the course.

There never was an American appetite for big government.

But there certainly is for reforming the existing way government does business.

And what better way to show the American people that our government will continue along the path to reform and prosperity than by eliminating the marriage tax penalty.

Ladies and Gentlemen, we are on the verge of running a surplus. It's basic math.

It means Americans are already paying more than is needed for government to do the job we expect of it.

What better way to give back than to begin with mom and dad and the American family—the backbone of our society.

We ask that President Clinton join with Congress and make elimination of the marriage tax penalty . . . a bipartisan priority.

Of all the challenges married couples face in providing home and hearth to America's children, the U.S. tax code should not be one of them.

Let's eliminate the Marriage Tax Penalty and do it now!

WHICH IS BETTER?

Note: The President's Proposal to expand the child care tax credit will pay for only 2 to 3 weeks of child care. The Weller-McIntosh Marriage Tax Elimination Act H.R. 2456, will allow married couples to pay for 3 months of child care.

WHICH IS BETTER, 3 WEEKS OR 3 MONTHS?

CHILD CARE OPTIONS UNDER THE MARRIAGE TAX ELIMINATION ACT

	Average tax relief	Average weekly day care cost	Weeks day care
Marriage Tax Elimination Act	$1,400	127	11
President's Child Care Tax Credit	358	127	2.8

Do Americans feel that it's right to tax a working couple more just because they live in holy matrimony?

Is it fair that the American tax code punishes marriage, our society's most basic institution?

WELLER-MCINTOSH II MARRIAGE TAX COMPROMISE

Weller-McIntosh II, H.R. 3734, the Marriage Tax Penalty Elimination Act presents a new, innovative marriage penalty elimination package which pulls together all the principle sponsors of various legislative proposals with legislation. Weller-McIntosh II will provide equal and significant relief to both single and dual earning married couples and can be implemented immediately.

The Marriage Tax Penalty Elimination Act will increase the tax brackets (currently at 15% for the first $24,650 for singles, whereas married couples filing jointly pay 15% on the first $41,200 of their taxable income) to twice that enjoyed by singles; the Weller-McIntosh proposal would extend a married couple's 15% tax bracket to $49,300. Thus, married couples would enjoy an additional $8,100 in taxable income subject to the low 15% tax rate as opposed to the current 28% tax rate and would result in up to $1,215 in tax relief.

Additionally the bill will increase the standard deduction for married couples (currently $6,900) to twice that of singles (currently at $4,150). Under the Weller-McIntosh legislation the standard deduction for married couples filing jointly would be increased to $8,300.

Weller and McIntosh's new legislation builds on the momentum of their popular H.R. 2456 which enjoyed the support of 238 cosponsors and numerous family, women and tax advocacy organizations. Current law punishes many married couples who file jointly by pushing them into higher tax brackets. It taxes the income of the families' second wage earner—often the women's salary—at a much higher rate than if that salary was taxed only as an individual.

MARRIAGE PENALTY EXAMPLE IN THE SOUTH SUBURBS

	Machinist	School Teacher	Couple	Weller/McIntosh II
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Tax Liability	3,592.5	3,592.5	8,563	7,185

Marriage Penalty: $1,378; Relief: $1,378.

Weller-McIntosh II Eliminates the Marriage Tax Penalty.

The repeal of the Marriage tax was part of the Republican's 1994 'Contract with America,' but the legislation was vetoed by President Clinton.

RECOGNIZING THE 100TH ANNIVERSARY OF THE U.S. NAVY HOSPITAL CORPS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona (Mr. STUMP) is recognized for 5 minutes.

Mr. STUMP. Mr. Speaker, I rise today to bring to the attention of my colleagues the 100th anniversary this week of the United States Navy Hospital Corps, and to thank all of those who have served in the Corps.

As a fellow Naval Hospital Corpsman from World War II, I had the distinct pleasure this morning to join our own House Attending Physician, Admiral John Eisold, to participate in a ceremony marking the 100th anniversary of the Navy Hospital Corps. It was not only a moving ceremony, but served as a worthwhile reminder of the care,

the compassion and the dedication of a group of men and women who serve and have served in a unique but often overlooked role in our military.

Force Master Chief Mark T. Hacala has written an eloquent history of the Navy Hospital Corps, which I commend to you as not only an important part of naval history, but also a well-earned public recognition for all of those who have been proud to call themselves a U.S. Naval Corpsman.

Tradition. Valor. Sacrifice. For 100 years, these ideals have marked the history of the U.S. Navy Hospital Corps. Since 1898, hospital corpsmen have cared for wounded and sick of the Navy and Marine Corps. Their continuous dedication to saving the lives of their patients, frequently at the risk of their own, has earned them accolades at sea and on land.

Prior to the establishment of the Hospital Corps, there was a role for enlisted personnel to care for the sick. Junior and senior medical department Sailors changed rating names through the 18th and 19th centuries, using colorful titles at each phase. The nickname ''loblolly boy,'' one who carried loblolly or porridge to the sick, was used until the Civil War when it was replaced by ''nurse.'' In the 1870s nurse was retitled ''bayman,'' the Sailor who worked in sick bay. Senior personnel were known as surgeon's stewards and later as apothecaries.

By the late 1800s, the Surgeon General of the Navy advocated a new system of employing medical department Sailors. Rather than assigning one of the crew out of necessity and teaching him on the job, a trained group of volunteers was advocated. Based on the model of the Army's Hospital Corps, the Navy would seek recruits, pay them better, and train them uniformly. This plan was adopted in the midst of the Spanish American War when President William McKinley signed the law which established the Navy Hospital Corps on 17 June 1898.

Early history of the corps set a pace of conspicuous service that would continue to the present. During the Boxer Rebellion in Peking in 1900, Hospital Apprentice Robert Stanley volunteered for the dangerous mission of running message dispatches under fire. For his bravery, Stanley became the first in a long line of hospital corpsmen to receive the Medal of Honor. Five years later, when the U.S.S. *Bennington's* boiler exploded in San Diego harbor on July 21, 1905, Hospital Steward William Shacklette burned along with almost half the crew. Although seriously hurt, he rescued and treated many of his shipmates. He, too, was given the Medal of Honor.

Within a few short years, the Hospital Corps would face the rigors of combat with the Marines in World War I. Through machine gun fire and mustard gas, hospital corpsmen treated over 13,000 casualties in France. This group of 300 Sailors would earn 2 Medals of Honor, 55 Navy Crosses, 31 Army Distinguished Service Crosses, and 237 Silver Stars. Their 684 personal awards would make them the most decorated American unit in World War I. A Marine regimental commander noted of their performance at Belleau Wood, ''there were many heroes who wore the insignia of the Navy Hospital Corps.''

Hospital corpsmen set an exceptional record of valor in World War II. From Pearl Harbor to Okinawa, they worked in hospitals and hospital ships, set up beach aid stations in Italy and Normandy, bandaged kamikaze survivors at sea, and dodged bullets and shells during the bloody island campaigns in the Pacific. Their initiative and skill was noteworthy. Pharmacist's Mates First Class Wheeler Lipes, Harry Roby, and Thomas Moore each performed a successful appendectomy, without the aid of a physician, while submerged in submarines in enemy waters.

Pharmacist's Mate Second Class John H. Bradley's heroism with the 28th Marines on Iwo Jima is typical of acts repeated by hospital corpsmen throughout the war. Bradley rushed through a mortar barrage and heavy machine gun fire to aid a wounded Marine. Although other men from his unit were willing to help, Bradley motioned them to stay back. Shielding the Marine from fire with his own body, the hospital corpsman administered a unit of plasma and bandaged his wounds. He then pulled the casualty through the gunfire 30 yards to safety.

PhM2c Bradley was awarded the Navy Cross for his valor, but he is not usually remembered for this act. Days later, he and five Marines were captured in Joe Rosenthal's photograph of the second flag raising on Iwo Jima's Mt. Suribachi. The image was reproduced more than perhaps any photo in history. It was the theme for the Marine Corps War Memorial in Arlington, VA and made Bradley the first U.S. Navy Sailor to appear on a postage stamp. But Bradley's heroism was not an isolated act. In World War II, the Hospital Corps would earn 7 Medals of Honor, 66 Navy Crosses, 465 Silver Star Medals, and 982 Bronze Star Medals, as well as countless other commendations and debts of gratitude.

Although the U.S. commitment to the Korean War was limited, a staggering number of Marines and Sailors, 30,064, were killed or wounded. Here, as in its previous conflicts, hospital corpsmen distinguished themselves. All five enlisted Navy Medals of Honor for Korea were awarded to members of the Hospital Corps. One of those awardees, retired Master Chief Hospital Corpsman (SS) William Charette, reflected years later on his pride in being a hospital corpsman in Korea. ''It's amazing that somewhere there are some people walking around that wouldn't be here unless we had been there.''

In Vietnam, hospital corpsmen played a critical role in aiding the 70,000 Navy and Marine Corps casualties. At station hospitals in Saigon and Da Nang, aboard hospital ships offshore, with medical battalions, and in the field with Marines, they ensured the best possible care for the wounded, often at the risk of their own lives. When an enemy grenade landed near HM3 Donald Ballard and several casualties, he covered the grenade with his body to save his Marines' lives, earning him the Medal of Honor. ''My job was needed,'' Ballard said recently. ''I felt good about it.'' Bravery earned hospital corpsmen 450 combat decorations in Vietnam, but the war cost them 638 lives.

Hospital corpsmen continued to serve in peace, in war, and in situations which straddled that line during the 1980s. They treated gunshot and shrapnel wounds once again in Beirut in 1983, as a peacekeeping presence escalated into a shooting war. Of the 18 hospital corpsmen in the Marine Battalion Landing Team Headquarters building on 23 October, only 3 survived the truck bombing which killed a total of 241 Americans. Days later, other hospital corpsmen would participate in the invasion of Grenada. In the Persian Gulf, independent duty hospital corpsmen would care for casualties aboard the U.S.S. *Stark* in 1987 and the U.S.S. *Samuel B. Roberts* 1988, and in Panama in 1989.

Iraq's 1990–91 invasion of Kuwait once again provided challenges for the Hospital Corps. Hospital corpsmen around the globe reacted, as their ships, stations, and Marines deployed or prepared to receive casualties. Their numbers were augmented by Naval Reserve hospital corpsmen, 6,739 of whom were recalled to active duty. The first Purple Heart awarded to a Sailor in the Persian Gulf War was given to a hospital corpsman.

While technology and equipment have changed through the years, hospital corpsmen's dedication to duty and devotion to their patients have remained their greatest asset.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. SENSENBRENNER (at the request of Mr. ARMEY) for today until 2 p.m. on account of attending his son's graduation.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. GOODLING) to revise and extend their remarks and include extraneous material:)

Mr. HUTCHINSON, for 5 minutes, today.

Mr. PAPPAS, for 5 minutes, today.

Mr. KINGSTON, for 5 minutes, today.

Mr. LARGENT, for 5 minutes, today.

Mr. STUMP, for 5 minutes, today.

Mr. THUNE, for 5 minutes, today.

Mr. MCHUGH, for 5 minutes each day, on June 16 and 17.

Mr. SOLOMON, for 5 minutes each day, on June 16 and 17.

Mr. BOEHLERT, for 5 minutes each day, on June 16 and 17.

Mr. WALSH, for 5 minutes each day, on June 16 and 17.

(The following Members (at the request of Mr. OWENS) to revise and extend their remarks and include extraneous material:)

Mr. CONYERS, for 5 minutes, today.

Mr. KLINK, for 5 minutes, today.

Mr. SANDERS, for 5 minutes, today.

Mr. PALLONE, for 5 minutes, today.

Ms. JACKSON-LEE of Texas, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. OWENS) and to include extraneous matter:)

Mr. PAYNE.

Mr. PASCRELL.

Mr. KIND.

Mr. HAMILTON.

Mr. CARDIN.

Mr. GUTIERREZ.

Mr. TRAFICANT.

Mr. KUCINICH.

Mr. WEXLER.

Mr. MENENDEZ.

Mr. GEJDENSON.

Mr. SCHUMER.

Mr. BRADY of Pennsylvania.

Mr. LANTOS.

Mr. VISCLOSKY.

Mr. WYNN.

Mr. TIERNEY.

Mr. BAESLER.

Mr. ACKERMAN.

Ms. JACKSON-LEE of Texas.
Ms. KILPATRICK.
Mr. CONYERS.
Mr. BROWN of California.

(The following Members (at the request of Mr. GOODLING) and to include extraneous matter:)

Mr. CHRISTENSEN.
Mr. DUNCAN.
Mr. STEARNS.
Mr. ROGAN.
Mr. SHAW.
Mr. CALVERT.
Mr. WOLF.
Ms. ROS-LEHTINEN.
Mr. GINGRICH.
Mr. CUNNINGHAM.
Mrs. NORTHUP.
Mr. BEREUTER.
Mr. BASS.
Mr. RILEY.
Mr. FOX of Pennsylvania.
Mr. PAPPAS.
Mr. PACKARD.
Mr. BALLENGER.
Mr. LATOURETTE.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 1531. An act to deauthorize certain portions of the project for navigation, Bass Harbor, Maine; to the Committee on Transportation and Infrastructure.

ENROLLED BILLS SIGNED

Mr. THOMAS, from the Committee on House Oversight, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 2709. An act to improve certain sanctions on foreign persons who transfer items contributing to Iran's efforts to acquire, develop, or produce ballistic missiles, and to implement the obligations of the United States under the Chemical Weapons Convention.

H.R. 3811. An act to establish felony violations for the failure to pay legal child support obligations, and for other purposes.

□ 0010

ADJOURNMENT

Mr. GOODLING. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 12 minutes a.m.), the House adjourned until today, Thursday, June 11, 1998, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

9563. A letter from the Congressional Review Coordinator, Animal and Health Inspection Service, transmitting the Service's final rule—Witchweed; Regulated Areas [Docket No. 98–040–1] received June 8, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9564. A letter from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, transmitting the Service's final rule—Karnal Bunt Status of the Mexicali Valley of Mexico [Docket No. 97–060–2] (RIN: 0579–AA88) received June 8, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9565. A letter from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, transmitting the Service's final rule—Karnal Bunt; Compensation for the 1996–1997 Crop Season [Docket No. 96–016–29] (RIN: 0579–AA83) received June 8, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9566. A letter from the Administrator, Grain Inspection, Packers and Stockyards Administration, Department of Agriculture, transmitting the Department's final rule—Fees for Official Inspection and Official Weighing Services (RIN: 0580–AA59) received June 8, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9567. A letter from the Secretary of the Navy, Department of Defense, transmitting a copy of the Department's determination that it is in the public interest to use other than competitive procedures for the procurement of the supplies described therein, pursuant to 10 U.S.C. 2304(c)(7); to the Committee on National Security.

9568. A letter from the Secretary of Education, transmitting the semiannual report to Congress on Audit Follow-Up for the period October 1, 1997 through March 31, 1998, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform and Oversight.

9569. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 12–355, ''National Capital Revitalization Corporation Act of 1998'' received June 8, 1998, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform and Oversight.

9570. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 12–356, ''Access to Emergency Medical Services Act of 1998'' received June 8, 1998, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform and Oversight.

9571. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 12–354, ''Tax Increment Financing Authorization Act of 1998'' received June 9, 1998, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform and Oversight.

9572. A letter from the Acting Comptroller General, Comptroller General of the United States, transmitting a list of all reports issued or released in April 1998, pursuant to 31 U.S.C. 719(h); to the Committee on Government Reform and Oversight.

9573. A letter from the Acting Chairman, National Railroad Passenger Corporation, transmitting the semiannual report of the National Railroad Passenger Corporation for the period October 1, 1997 through March 31, 1998, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform and Oversight.

9574. A letter from the Chief Operating Officer/President, Resolution Funding Corporation, transmitting a copy of the Resolution Funding Corporation's Statement on Internal Controls and the 1997 Audited Financial Statements, pursuant to Public Law 101—73, section 511(a) (103 Stat. 404); to the Committee on Government Reform and Oversight.

9575. A letter from the Deputy Associate Director for Royalty Management, Department of the Interior, transmitting notification of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Resources.

9576. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule—Determination of Interest Rate [Revenue Ruling 98–32] received June 8, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. YOUNG of Alaska: Committee on Resources. H.R. 2742. A bill to provide for the transfer of public lands to certain California Indian Tribes; with an amendment (Rept. 105–575). Referred to the Committee of the Whole House on the State of the Union.

Ms. PRYCE of Ohio: Committee on Rules. House Resolution 465. Resolution providing for consideration of the bill (H.R. 3949) to amend title 18, United States Code, with respect to violent sex crimes against children, and for other purposes (Rept. 105–576). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of Rule X and clause 4 of Rule XXII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. CHRISTENSEN:

H.R. 4025. A bill to amend the Internal Revenue Code of 1986 to allow employers a credit against income tax for information technology training expenses paid or incurred by the employer, and for other purposes; to the Committee on Ways and Means.

By Mr. BASS:

H.R. 4026. A bill to provide grants to states to offset costs associated with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act; to the Committee on the Judiciary.

By Mr. CRAMER:

H.R. 4027. A bill to amend title 38, United States Code, to lengthen the accrual period prior to the death of an individual who is owed certain veterans' benefits, for the purpose of determining the amount of payment upon such death; to the Committee on Veterans' Affairs.

By Mr. GREEN:

H.R. 4028. A bill to promote research to identify and evaluate the health effects of silicone breast implants, and to ensure that women and their doctors receive accurate information about such implants; to the Committee on Commerce.

By Mr. JOHN:

H.R. 4029. A bill to clarify the applicability of authority to release restrictions and encumbrances on certain property located in Calcasieu Parish, Louisiana; to the Committee on Transportation and Infrastructure.

By Mrs. KENNELLY of Connecticut (for herself, Mrs. TAUSCHER, Mr. FAZIO of California, Mr. GEPHARDT, Ms. DELAURO, Mr. LEVIN, Mr. WEYGAND, Ms. LOFGREN, Mr. DOGGETT, Mrs. CLAYTON, Mr. MCDERMOTT, Mr. ABERCROMBIE, Ms. SLAUGHTER, Ms. WOOLSEY, Mr. HOYER, Mrs. MALONEY of New York, Mrs. LOWEY, Mr. ALLEN, Ms. CARSON, Ms. STABENOW, Mr. MANTON, Mr. MORAN of Virginia, Ms. JACKSON-LEE, Mr. ACKERMAN, Mr. ANDREWS, Mr.

BALDACCI, Mr. BARRETT of Wisconsin, Mr. BECERRA, Mr. BENTSEN, Mr. BLUMENAUER, Mr. BONIOR, Mr. BORSKI, Mr. BOSWELL, Mr. BOUCHER, Mr. BRADY of Pennsylvania, Ms. BROWN of Florida, Mr. BROWN of California, Mr. BROWN of Ohio, Mrs. CAPPS, Ms. CHRISTIAN-GREEN, Mr. CLAY, Mr. CLEMENT, Mr. CONYERS, Mr. COSTELLO, Mr. CUMMINGS, Mr. DAVIS of Illinois, Ms. DEGETTE, Mr. DELAHUNT, Mr. DICKS, Mr. DINGELL, Mr. ENGEL, Mr. EVANS, Mr. FALEOMAVAEGA, Mr. FARR of California, Mr. FATTAH, Mr. FILNER, Mr. FORD, Mr. FROST, Ms. FURSE, Mr. GEJDENSON, Mr. GORDON, Ms. HARMAN, Mr. HASTINGS of Florida, Mr. HEFNER, Mr. HINCHEY, Mr. HINOJOSA, Mr. HOLDEN, Ms. HOOLEY of Oregon, Mr. JEFFERSON, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KANJORSKI, Ms. KAPTUR, Mr. KENNEDY of Massachusetts, Mr. KENNEDY of Rhode Island, Ms. KILPATRICK, Mr. LAMPSON, Mr. LANTOS, Ms. LEE, Mr. LEWIS of Georgia, Mr. MARTINEZ, Mr. MATSUI, Mrs. MCCARTHY of New York, Ms. MCCARTHY of Missouri, Mr. MCGOVERN, Mr. MCNULTY, Mrs. MEEK of Florida, Mr. MEEKS of New York, Ms. MILLENDER-MCDONALD, Mr. MILLER of California, Mrs. MINK of Hawaii, Mr. MOAKLEY, Mr. NADLER, Mr. NEAL of Massachusetts, Ms. NORTON, Mr. OBERSTAR, Mr. OLVER, Mr. PALLONE, Mr. PAYNE, Ms. PELOSI, Mr. POSHARD, Mr. PRICE of North Carolina, Mr. RAHALL, Mr. RODRIGUEZ, Mr. ROMERO-BARCELO, Mr. SABO, Ms. SANCHEZ, Mr. SANDLIN, Mr. SAWYER, Mr. SCHUMER, Mr. SCOTT, Mr. SERRANO, Mr. SHERMAN, Mr. SNYDER, Mr. STARK, Mr. STOKES, Mrs. THURMAN, Mr. TORRES, Mr. UNDERWOOD, Ms. VELAZQUEZ, Mr. VENTO, Ms. WATERS, Mr. WAXMAN, Mr. WEXLER, Mr. WYNN, and Mr. YATES):

H.R. 4030. A bill to make child care more affordable for working families and for stay-at-home parents with children under the age of 4, to double the number of children receiving child care assistance, to provide for after-school care, and to improve child care safety and quality and enhance early childhood development; to the Committee on Ways and Means, and in addition to the Committees on Education and the Workforce, Banking and Financial Services, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. RANGEL:

H.R. 4031. A bill to amend the Internal Revenue Code of 1986 to restore and make permanent the exclusion from gross income for amounts received under qualified group legal services plans; to the Committee on Ways and Means.

By Mr. SENSENBRENNER:

H.R. 4032. A bill to repeal the authority of the Federal Communications Commission to require contributions from telephone carriers for the connection of schools, health care providers, and libraries to the Internet; to the Committee on Commerce.

By Mr. SMITH of Michigan (for himself, Mr. MINGE, Mr. NEUMANN, and Mr. PAUL):

H.R. 4033. A bill to amend title II of the Social Security Act to require investment of the Social Security trust funds in marketable securities, and for other purposes; to the Committee on Ways and Means.

By Mr. TRAFICANT:

H.R. 4034. A bill to amend the Act of June 1, 1948, to provide for reform of the Federal Protective Service; to the Committee on Transportation and Infrastructure.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 59: Mr. SKEEN.
H.R. 339: Mr. TALENT.
H.R. 588: Mr. MCHALE.
H.R. 1126: Ms. MCCARTHY of Missouri, Mr. HEFNER, and Mr. TANNER.
H.R. 1215: Mrs. THURMAN.
H.R. 1285: Mr. COLLINS.
H.R. 1375: Mr. ROTHMAN.
H.R. 1401: Mr. DIAZ-BALART and Mr. BONILLA.
H.R. 1453: Mr. WAXMAN.
H.R. 1531: Mr. MCINTOSH.
H.R. 1549: Mrs. THURMAN.
H.R. 1773: Ms. MCKINNEY.
H.R. 1865: Ms. DEGETTE.
H.R. 1985: Mr. PICKERING.
H.R. 2023: Mr. PAYNE.
H.R. 2094: Mr. WAXMAN.
H.R. 2130: Mr. FOLEY.
H.R. 2257: Mr. PICKERING.
H.R. 2409: Ms. CARSON and Mr. PASTOR.
H.R. 2504: Mr. CALVERT.
H.R. 2509: Mr. CANADY of Florida.
H.R. 2609: Mr. EVERETT.
H.R. 2661: Mr. MILLER of Florida, Mr. TIAHRT, Mr. MCINTOSH, Mr. HAYWORTH, Mr. HEFLEY, Mr. HOEKSTRA, Mr. GOODLING, Mr. DELAY, Mrs. CHENOWETH, Mr. DOOLITTLE, Mrs. CUBIN, Mr. SESSIONS, and Mr. JONES.
H.R. 2721: Mr. PEASE.
H.R. 2733: Mr. THUNE, Mr. CRAPO, Mr. RAHALL, Mr. WELDON of Pennsylvania, Mr. BLUNT, and Mr. JOHNSON of Connecticut.
H.R. 2800: Mr. JENKINS, Mr. CUNNINGHAM, Mr. PETRI, Mr. SKEEN, Mr. FOSSELLA, Ms. GRANGER, and Mr. MCNULTY.
H.R. 2850: Mrs. MYRICK and Mr. KING of New York.
H.R. 2908: Mr. RILEY, Mrs. EMERSON, Mr. SERRANO, Mr. GRAHAM, Mr. CONDIT, and Mr. GEKAS.
H.R. 2923: Mr. FRELINGHUYSEN and Mr. YATES.
H.R. 2942: Mr. GOODLATTE, Mr. BLAGOJEVICH, and Mr. PAUL.
H.R. 2990: Mr. HUTCHINSON, Mr. PALLONE, Mr. ROTHMAN, and Mr. HAMILTON.
H.R. 3008: Mr. ROTHMAN and Mr. FOX of Pennsylvania.
H.R. 3050: Ms. DELAURO.
H.R. 3067: Mr. MARTINEZ.
H.R. 3126: Ms. WOOLSEY, Mr. TOWNS, Mr. KENNEDY of Massachusetts, and Mr. FILNER.
H.R. 3181: Mr. SANDLIN.
H.R. 3243: Mr. BERRY.
H.R. 3259: Mr. MASCARA, Mr. SHAYS, Mr. KENNEDY of Massachusetts, and Mr. LANTOS.
H.R. 3290: Mr. SHAYS.
H.R. 3376: Mr. LEWIS of Georgia and Mr. BARTON of Texas.
H.R. 3382: Mr. TALENT.
H.R. 3396: Mr. HILL, Mr. ADAM SMITH of Washington, Mr. GILCHREST, and Mr. HOSTETTLER.
H.R. 3435: Mr. DEFAZIO, Mr. SANDLIN, Mr. BUNNING of Kentucky, and Ms. HOOLEY of Oregon.
H.R. 3445: Mr. CUNNINGHAM.
H.R. 3514: Mr. GILMAN and Mr. ADAM SMITH of Washington.
H.R. 3523: Mr. HERGER, Mr. DUNCAN, Mr. BONIOR, Mrs. MYRICK, Mr. WALSH, Mr. GIBBONS, Mr. SISISKY, Mr. LEWIS of California, Mrs. LINDA SMITH of Washington, Mr. GOODLATTE, and Mr. SMITH of Oregon.
H.R. 3535: Mr. LATHAM.
H.R. 3547: Mr. SANDERS.
H.R. 3551: Mr. ALLEN and Ms. HOOLEY of Oregon.
H.R. 3559: Mr. PORTER.
H.R. 3566: Mr. GILCHREST.
H.R. 3567: Mr. ENGLISH of Pennsylvania, Mrs. CAPPS, Mr. UPTON, Mr. HULSHOF, and Mr. KENNEDY of Massachusetts.
H.R. 3601: Mr. BLUNT.
H.R. 3605: Mr. DIXON, Mrs. MINK of Hawaii, Mr. REYES, Mr. CRAMER, Mr. HOLDEN, Ms. WATERS, Mr. GUTIERREZ, Mr. HINOJOSA, and Mr. JOHN.
H.R. 3610: Mr. HULSHOF, Mr. GIBBONS, Mr. UPTON, Mr. ALLEN, and Mr. PAYNE.
H.R. 3615: Mr. MCGOVERN and Mr. BONIOR.
H.R. 3636: Mr. YATES and Mr. SCHUMER.
H.R. 3637: Mr. TORRES, Mr. BENTSEN, Ms. CARSON, and Ms. LEE.
H.R. 3654: Mr. CANADY of Florida and Mr. COSTELLO.
H.R. 3682: Mr. REDMOND, Mr. WOLF, Mr. ROGAN, Mr. HILLEARY, Mr. CRAPO, Mr. BOB SCHAFFER, and Mr. BRADY of Texas.
H.R. 3698: Ms. LOFGREN.
H.R. 3774: Mr. YOUNG of Alaska and Mr. PASTOR.
H.R. 3799: Mr. HILLIARD.
H.R. 3835: Mr. FOLEY, Mr. POMEROY, Mr. NEY, Mr. PALLONE, Mr. WEYGAND, Mr. TOWNS, Mr. BAESLER, Mr. HASTINGS of Florida, Mr. WEXLER, and Mr. MINGE.
H.R. 3844: Mr. ENGEL, Mr. BROWN of Ohio, and Mr. BARRETT of Wisconsin.
H.R. 3858: Mr. CALVERT.
H.R. 3862: Mr. NEAL of Massachusetts.
H.R. 3875: Ms. CHRISTIAN-GREEN, Mr. MCDERMOTT, Mr. FAZIO of California, and Mr. WAXMAN.
H.R. 3877: Mr. BOEHLERT.
H.R. 3879: Mr. SENSENBRENNER, Mr. NEUMANN, Mr. WAMP, and Mr. CHRISTENSEN.
H.R. 3888: Ms. CARSON, Mr. MCINNIS, Mr. LIVINGSTON, Mr. COOKSEY, Mr. FRANK of Massachusetts, and Mr. SHIMKUS.
H.R. 3893: Mr. CALVERT.
H.R. 3898: Mr. BUYER and Mr. COMBEST.
H.R. 3915: Mr. WEYGAND.
H.R. 3919: Mr. PAPPAS, Mrs. KELLY, Mr. WATTS of Oklahoma, and Mr. ENGLISH of Pennsylvania.
H.R. 3937: Mr. FROST and Mr. FILNER.
H.R. 3946: Mr. BROWN of Ohio, Mr. SANDERS, Ms. LEE, and Mr. HORN.
H.R. 3976: Mr. MURTHA and Mr. TOWNS.
H.R. 4007: Mr. YATES, Mr. ACKERMAN, Mr. SCHUMER, Mr. TRAFICANT, Mr. TOWNS, Mr. BENTSEN, Ms. NORTON, Mr. MCGOVERN, Mr. WEXLER, Mr. MCDERMOTT, Mr. FOSSELLA, Mr. FROST, Mr. BEREUTER, and Ms. ROS-LEHTINEN.
H. Con. Res. 27: Mr. ROMERO-BARCELO, Ms. MCCARTHY of Missouri, and Mr. PETERSON of Minnesota.
H. Con. Res. 47: Mr. DAVIS of Illinois and Mr. VENTO.
H. Con. Res. 125: Mr. HINCHEY.
H. Con. Res. 188: Mr. BLUMENAUER.
H. Con. Res. 210: Mr. FAWELL.
H. Con. Res. 281: Mr. LIPINSKI.
H. Con. Res. 286: Ms. CARSON, Mr. ROTHMAN, and Ms. PELOSI.

AMENDMENTS

H.R. 2183

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 2183

OFFERED BY: MRS. FOWLER

AMENDMENT NO. 70: Insert after title III the following new title (and redesignate the succeeding provisions accordingly):

TITLE IV—REDUCTION IN CONTRIBUTION LIMITS FOR CERTAIN PACS

SECTION 401. REDUCTION IN AMOUNT THAT A NONPARTY MULTICANDIDATE POLITICAL COMMITTEE MAY CONTRIBUTE TO A CANDIDATE IN A CONGRESSIONAL ELECTION.

Section 315(a)(2)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(2)(A))

is amended by inserting after ''$5,000'' the following: '', except that, with respect to an election for the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, the limitation applicable to a nonparty multicandidate political committee under this subparagraph shall be $1,000''.

H.R. 2183

OFFERED BY: MRS. FOWLER

(To the Amendment Offered By Mr. Hutchinson or Mr. Allen)

AMENDMENT NO. 74: Insert after title III the following new title (and redesignate the succeeding provisions accordingly):

TITLE IV—CONTRIBUTIONS FROM OUT-OF-STATE SOURCES

SECTION 401. CONGRESSIONAL ELECTION LIMITATION ON CONTRIBUTIONS FROM PERSONS OTHER THAN IN-STATE INDIVIDUAL RESIDENTS.

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended by adding at the end the following new subsection:

''(i)(1) A candidate for the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress may not, with respect to a reporting period for an election, accept contributions from persons other than in-State individual residents that, in total, are equal to or greater than the total of contributions accepted from in-State individual residents.

''(2) The exceptions relating to the name and address of a person making a contribution of $50 or less and the date of such contribution, as contained in subsection (b)(1), subsection (b)(2)(A), and subsection (c)(2) of section 302, shall not apply to contributions with respect to elections for the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.

''(3) As used in this subsection, the term 'in-State individual resident' means an individual who resides in the State in which the election involved is held.''.

SEC. 402. REPORTING REQUIREMENT FOR OUT-OF-STATE CONTRIBUTIONS IN HOUSE OF REPRESENTATIVES ELECTIONS.

Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) is amended by adding at the end the following new subsection:

''(d) Any report of contributions with respect to an election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, shall segregate and itemize all out-of-State contributions.''.

H.R. 2183

OFFERED BY: MRS. FOWLER

(To the Amendment Offered By Mr. Hutchinson or Mr. Allen)

AMENDMENT NO. 75: Insert after title III the following new title (and redesignate the succeeding provisions accordingly):

TITLE IV—PROHIBITING CONTRIBUTIONS BETWEEN PACS

SECTION 401. PROHIBITING CONTRIBUTIONS BETWEEN MULTICANDIDATE POLITICAL COMMITTEES.

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended by adding at the end the following new subsection:

''(i) Notwithstanding any other provision of this Act, a multicandidate political committee may not make a contribution to another multicandidate political committee.''.

H.R. 2183

OFFERED BY: MRS. GILCHREST

AMENDMENT NO. 76: Insert after title III the following new title (and redesignate the succeeding provisions accordingly):

TITLE IV—PROHIBITING CONTRIBUTIONS BY PACS AND NONRESIDENTS

SEC. 401. PROHIBITION OF CONTRIBUTIONS BY NONPARTY MULTICANDIDATE POLITICAL COMMITTEES IN ELECTIONS FOR FEDERAL OFFICE.

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended by adding at the end the following new subsection:

''(i)(1) Notwithstanding any other provision of this Act, no nonparty multicandidate political committee may make any contribution to a candidate for Federal office.

''(2) As used in this subsection, the term 'multicandidate political committee' has the meaning given that term in subsection (a)(4).''.

SEC. 402. HOUSE OF REPRESENTATIVES ELECTION PROHIBITION OF CONTRIBUTIONS FROM INDIVIDUAL NONRESIDENTS OF THE CONGRESSIONAL DISTRICT.

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a), as amended by section 401, is further amended by adding at the end the following new subsection:

''(j) A candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress may not accept contributions from an individual who is not a resident of the congressional district involved.''.

H.R. 2183

OFFERED BY: MR. GILCHREST

(To the Amendment Offered By: Mr. Hutchinson or Mr. Allen)

AMENDMENT NO. 77: Insert after title III the following new title (and redesignate the succeeding provisions accordingly):

TITLE IV—PROHIBITING CONTRIBUTIONS BY PACS AND NONRESIDENTS

SEC. 401. PROHIBITION OF CONTRIBUTIONS BY NONPARTY MULTICANDIDATE POLITICAL COMMITTEES IN ELECTIONS FOR FEDERAL OFFICE.

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended by adding at the end the following new subsection:

''(i)(1) Notwithstanding any other provision of this Act, no nonparty multicandidate political committee may make any contribution to a candidate for Federal office.

''(2) As used in this subsection, the term 'multicandidate political committee' has the meaning given that term in subsection (a)(4).''.

SEC. 402. HOUSE OF REPRESENTATIVES ELECTION PROHIBITION OF CONTRIBUTIONS FROM INDIVIDUAL NONRESIDENTS OF THE CONGRESSIONAL DISTRICT.

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a), as amended by section 401, is further amended by adding at the end the following new subsection:

''(j) A candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress may not accept contributions from an individual who is not a resident of the congressional district involved.''.

H.R. 2183

OFFERED BY: MRS. FOWLER

AMENDMENT NO. 71: Insert after title III the following new title (and redesignate the succeeding provisions accordingly):

TITLE IV—CONTRIBUTIONS FROM OUT-OF-STATE SOURCES

SEC. 401. CONGRESSIONAL ELECTION LIMITATION ON CONTRIBUTIONS FROM PERSONS OTHER THAN IN-STATE INDIVIDUAL RESIDENTS.

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended by adding at the end the following new subsection:

''(i)(1) A candidate for the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress may not, with respect to a reporting period for an election, accept contributions from persons other than in-State individual residents that, in total, are equal to or greater than the total of contributions accepted from in-State individual residents.

''(2) The exceptions relating to the name and address of a person making a contribution of $50 or less and the date of such contribution, as contained in subsection (b)(1), subsection (b)(2)(A), and subsection (c)(2) of section 302, shall not apply to contributions with respect to elections for the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.

''(3) As used in this subsection, the term 'in-State individual resident' means an individual who resides in the State in which the election involved is held.''.

SEC. 402. REPORTING REQUIREMENT FOR OUT-OF-STATE CONTRIBUTIONS IN HOUSE OF REPRESENTATIVES ELECTIONS.

Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) is amended by adding at the end the following new subsection:

''(d) Any report of contributions with respect to an election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, shall segregate and itemize all out-of-State contributions.''.

H.R. 2183

OFFERED BY: MRS. FOWLER

AMENDMENT NO. 72: Insert after title III the following new title (and redesignate the succeeding provisions accordingly):

TITLE IV—PROHIBITING CONTRIBUTIONS BETWEEN PACS

SEC. 401. PROHIBITING CONTRIBUTIONS BETWEEN MULTICANDIDATE POLITICAL COMMITTEES.

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended by adding at the end the following new subsection:

''(i) Notwithstanding any other provision of this Act, a multicandidate political committee may not make a contribution to another multicandidate political committee.''.

H.R. 2183

OFFERED BY: MRS. FOWLER

(To the Amendment Offered By Mr. Hutchinson or Mr. Allen)

AMENDMENT NO. 73: Insert after title III the following new title (and redesignate the succeeding provisions accordingly):

TITLE IV—REDUCTION IN CONTRIBUTION LIMITS FOR CERTAIN PACS

SECTION 401. REDUCTION IN AMOUNT THAT A NONPARTY MULTICANDIDATE POLITICAL COMMITTEE MAY CONTRIBUTE TO A CANDIDATE IN A CONGRESSIONAL ELECTION.

Section 315(a)(2)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(2)(A)) is amended by inserting after ''$5,000'' the following: '', except that, with respect to an election for the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, the limitation applicable to a nonparty multicandidate political committee under this subparagraph shall be $1,000''.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 105th CONGRESS, SECOND SESSION

Vol. 144 WASHINGTON, WEDNESDAY, JUNE 10, 1998 No. 74

Senate

The Senate met at 11 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Almighty God, You have told us that You are for us and not against us. Help us to receive Your correctives as well as Your guidance as signs of Your faithful love. In the same way, free us to befriend the struggling, sometimes anxious and insecure person inside of each of us. Encourage us to say with Lincoln, ''When I lay down the reins of this administration, I want to have one friend left and may that friend be inside myself.''

Make us so secure in Your unqualified grace that we reach out to others with good will and encouragement. Free us from thinking of people in the other party, Republican or Democrat, as opponents.

Father, You know that these are pressured times in the Senate. Grant the Senators a renewed commitment to agree whenever possible, to debate fairly when agreement is not easily reached, and when votes are taken neither gloat over victory nor be discouraged by defeat.

Our times are in Your hands. Shape our destiny as planned. Through our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, the distinguished Senator from Georgia, is recognized.

SCHEDULE

Mr. COVERDELL. Mr. President, this morning the Senate will immediately proceed to a second attempt to invoke cloture on the pending tobacco bill. Assuming cloture is not invoked, it will be the leader's intention to try to reach an agreement similar to the agreement reached yesterday with respect to the drug issue. If an agreement can be reached, Members should expect two votes on the marriage penalty issue at 1 or 2 p.m. That would be this afternoon. Following those votes, it is hoped that Members will come to the floor to offer and debate remaining amendments to the tobacco bill. Therefore, votes will occur throughout Wednesday's session of the Senate, with the first vote being on the second attempt to invoke cloture on the tobacco bill.

I thank my colleagues for their attention.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1415, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Gregg/Leahy amendment No. 2433 (to amendment No. 2420), to modify the provisions relating to civil liability for tobacco manufacturers.

Gregg/Leahy amendment No. 2434 (to amendment No. 2433), in the nature of a substitute.

Gramm motion to recommit the bill to the Committee on Finance with instructions to report back forthwith, with amendment No. 2436, to modify the provisions relating to civil liability for tobacco manufacturers, and to eliminate the marriage penalty reflected in the standard deduction and to ensure the earned income credit takes into account the elimination of such penalty.

Daschle (for Durbin) amendment No. 2437 (to amendment No. 2436), relating to reductions in underage tobacco usage.

CLOTURE MOTION

The PRESIDING OFFICER. The clerk will report the cloture motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the modified committee substitute for S. 1415, the tobacco legislation.

John Kerry, Bob Kerrey, Kent Conrad, Harry Reid, Paul Wellstone, Dick Durbin, Patty Murray, Richard Bryan, Tom Harkin, Carl Levin, Joe Biden, J. Lieberman, John Glenn, Jeff Bingaman, Ron Wyden, and Max Baucus.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call under rule XXII is waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the committee substitute for S. 1415 shall be brought to a close?

The yeas and nays are required.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. GREGG) is necessarily absent.

I also announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

The yeas and nays resulted—yeas 43, nays 55, as follows:

[Rollcall Vote No. 153 Leg.]

YEAS—43

Akaka	Conrad	Hollings
Baucus	Daschle	Inouye
Biden	Dodd	Johnson
Bingaman	Dorgan	Kennedy
Boxer	Durbin	Kerrey
Breaux	Feingold	Kerry
Bryan	Feinstein	Kohl
Bumpers	Glenn	Landrieu
Byrd	Graham	Lautenberg
Cleland	Harkin	Leahy

● This ''bullet'' symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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Levin	Murray	Torricelli
Lieberman	Reed	Wellstone
Mikulski	Reid	Wyden
Moseley-Braun	Rockefeller	
Moynihan	Sarbanes	

NAYS—55

Abraham	Ford	McConnell
Allard	Frist	Murkowski
Ashcroft	Gorton	Nickles
Bennett	Gramm	Robb
Bond	Grams	Roberts
Brownback	Grassley	Roth
Burns	Hagel	Santorum
Campbell	Hatch	Sessions
Chafee	Helms	Shelby
Coats	Hutchinson	Smith (NH)
Cochran	Hutchison	Smith (OR)
Collins	Inhofe	Snowe
Coverdell	Jeffords	Stevens
Craig	Kempthorne	Thomas
D'Amato	Kyl	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Warner
Enzi	Mack	
Faircloth	McCain	

NOT VOTING—2

Gregg	Specter

The PRESIDING OFFICER (Mr. HUTCHINSON). On this vote the yeas are 43; the nays are 55. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The Senator from Arizona.

Mr. McCAIN. Mr. President, on behalf of the leader, I ask unanimous consent that the bill remain in status quo until 12 noon, for the purpose of debate only.

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

Mr. MCCAIN. Mr. President, let me just say that may even go until 12:30. The problem is the amendment we had agreed to take up next—that would have been Senator GRAMM, Senator DOMENICI, and Senator ROTH—they have not completed the language so the other side is able to examine this language, which is a courtesy, obviously, that is expected around here. But we do expect to move forward with the Gramm amendment and debate on it either within a half-hour or an hour.

Mr. President, let me just say again, it is my understanding that Senator HATCH had a substitute he wanted considered, that Senator GRAMM and Senator DOMENICI had a substitute, and there is also the very important issue of the farmer aspect of this bill to which the Senator from Kentucky, Senator FORD, is obviously very involved in and committed. There is also the issue of attorneys' fees that would be the subject of an amendment.

I also am aware that there are several hundred, maybe, other amendments that have been—quote—filed. Those are amendments which I know in the view of the sponsors are important amendments, but I have to say I do not believe that they are vital to the progress of this bill. Many of them we could accept. Many of them I think could be dispensed with in a short period of time.

After the disposition of the Gramm amendment, which I understand there will be a time agreement on, I hope then that would be an appropriate time to determine not only where we go for the rest of the day, but for the rest of this bill. We are in the middle of the third week of consideration of this legislation. I thought the passage of the drug amendment yesterday was important. A tax cut, as we may enact today—although there certainly are some concerns I have about the size of it—if it passes, then I think it is important for us to determine on both sides of the aisle as to where we want to go after that.

Mr. FORD. Mr. President, will the Senator yield for a question?

Mr. McCAIN. I will be glad to yield at any time to the Senator from Kentucky.

Mr. FORD. I thank my friend. When you go to the marriage penalty amendment, or at least the minority has an opportunity to visit with it, and then you indicate that you want to go maybe to the substitute—you have at least one, possibly two—would it take a unanimous consent agreement to set aside the pending amendments, then, in order to go to the substitutes?

Mr. McCAIN. It is my understanding, if I could respond to the Senator from Kentucky, that we have been conducting this whole procedure on a sort of agreement basis. I would like to say in response to the Senator from Kentucky, I understand what he is getting at here. The Senator from Kentucky wants the issue of the farmers in his State, and throughout America——

Mr. FORD. And I prefer it not to be under cloture, when my time is limited.

Mr. MCCAIN. I understand. I think it is important the Senator's concerns be satisfied. I think the Senator from Massachusetts and I, along with the leaders, should sit down with him and try to address this very important concern that he has.

Mr. FORD. I will be more than happy to do that. As the majority leader set out the sequence of getting this bill out of here, that we would have to pull a bill from the calendar in order to have a tax bill to put this one on to get it back to the House, there are a lot of slips between the lip and the cup before this bill will leave the Chamber as it relates to the farmer question.

I thank the Chair.

Mr. MCCAIN. As I mentioned yesterday, after we passed the drug bill and had an agreement to move forward with tax cuts, I felt a lot more like Bob Hope felt——

Mr. FORD. He is alive.

Mr. MCCAIN. In that the bill is alive, than I did some sense of exhilaration.

So I also am very aware of how difficult this agriculture—tobacco farmer issue is to the Senator from Kentucky. He and I have worked together for many, many years on many, many issues. I know the Senator from Kentucky and I have such a relationship that he will not be mistreated, given the consideration which he deserves on this issue.

Mr. FORD. I thank my friend. I will not mistreat him until I tell him I am going to.

Mr. MCCAIN. Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. If I could just add to the list the Senator from Arizona just ran through, in addition to the amendments that he mentioned is also an amendment by the Senator from Rhode Island, Senator REED, on advertising, and there is an amendment of mine, joined with a number of different colleagues on both sides of the aisle, on the issue of children. So those are two other issues. Time agreements on both of them, however, will be easily arrived at, and they should not delay us as I think most of the issues the Senator listed will be subject to time agreement. Obviously the issue of the Senator from Kentucky is more contentious, and one we need to work on over the course of the next days. And we will.

With that said, we are waiting for the language from Senator ROTH to add to the language from Senator GRAMM. Then, hopefully, we will be able to proceed. I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak for up to 10 minutes as in morning business.

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

Mr. DURBIN. I thank the Chair.

(The remarks of Mr. DURBIN pertaining to the introduction of S. 2152 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, as we speak, there is work going on on redrafting the Gramm-Roth amendment to add what I think is a vitally important provision to provide tax relief through full deductibility of health insurance for the self-employed. To me that is another very, very significant step that we should take for the purpose of fairness, the purpose of assuring that all people in this country have health care, to ensure that those who may suffer illnesses or disability as a result of the use of tobacco have adequate care when they become ill.

The revised amendment has not yet been offered, but I rise in strong support of the Gramm-Roth amendment, because it will return a portion of the revenues raised from the tobacco tax to taxpayers who are bearing the burden of this tax increase. I am pleased to be a cosponsor.

The objective is to discourage use of tobacco by raising the price, and certainly tax increases will do that, but the purpose of the bill should not be to raise the taxes and produce massive

new Government spending. I think it is appropriate that we use this bill to provide tax relief to the people who are going to be paying increased taxes on tobacco.

The amendment's phaseout of the marriage penalty for couples with incomes of less than $50,000 is a solid first step to eliminating the marriage penalty completely. We should be encouraging people to marry and raise their children in a marriage.

Under current law, many two-income wage earners, particularly if they are both earning good wages, are penalized by paying higher taxes as a result of being married than they would be paying if they were single. In addition, I think it is fitting that part of the tobacco tax revenues will be used to ease the burdens of the tax increase which will be borne by Americans in the lowest tax brackets.

I am also extremely pleased that part of these revenues will be used to eliminate another inequity in the Tax Code—the deductibility of health insurance for the self-employed. This amendment will finally—finally—make full deductibility a reality beginning next year.

Again, it is fitting to use tobacco revenues for this purpose since two-thirds of families headed by a self-employed individual with no health insurance earn less than $50,000 a year. That is from a March 1997 Current Population Survey. I don't have in hand the statistics on the number of those people who may be tobacco users, but I suspect that it is a significant number who would be taxed by the increased cost of cigarettes who would find it difficult to make commitments, like buying health insurance, if they don't have this relief.

Today, while the self-employed, as a result of our actions in the last couple of years, which I led and strongly supported, can deduct 45 percent of their health insurance costs, they are still not on a level playing field with large businesses which can deduct 100 percent.

While the self-employed are slated to have full deductibility in 2007, and I am very grateful to the Members of this body who supported our efforts to get that goal, what self-employed person or family members can wait 9 more years to get sick? It just isn't going to happen. Nobody is willing to wait 9 years to get their health insurance, and we should not wait 9 years to give them fair tax treatment for buying health insurance for themselves and their families.

An immediate increase in the deduction to 100 percent would make health insurance more affordable and accessible to 5.4 million Americans in families headed by self-employed individuals who currently have no health insurance. Full deductibility will also help bring insurance to 1.5 million children who live in households headed by self-employed individuals where there is no health insurance.

Coverage of these self-employed individuals and their children through the self-employed health insurance deduction will enable the private sector to address the health care needs of these individuals rather than having an expensive, intrusive, and burdensome Federal bureaucracy to do it.

It has long been my goal that the self-employed have immediate 100 percent deductibility of health insurance costs. I have sought every opportunity to achieve that goal.

In 1995, my amendment to the Balanced Budget Act, which President Clinton vetoed, would have increased the health insurance deduction for the self-employed to 50 percent.

In 1996, I worked with Senator Kassebaum and Senator KENNEDY to include in the Health Insurance Portability and Accountability Act an increase in the self-employed health insurance deduction incrementally over 10 years to 80 percent.

In 1997, provisions of my Home-Based Business Fairness Act were included in the Taxpayer Relief Act of 1997, finally increasing the deduction to 100 percent in 2007 and accelerating the phase-in over existing law.

This year, I and others who have been strong supporters, on a bipartisan basis, of this measure worked with Chairman DOMENICI to include language in the budget resolution calling for funds to be available to accelerate the 100-percent deductibility of health insurance by the self-employed.

If this tobacco bill is signed into law without full deductibility, I intend to be back—and I will be back as many times as it takes—to finish the job. Right now, full deductibility is available in 2007. I intend to be here to see it move up to an immediate deductibility to end the glaring unfairness of the discrimination against people who have to buy their own health insurance who are not provided health insurance by their employer.

The goal of providing full deductibility of health insurance costs for the self-employed has long enjoyed broad bipartisan support. My colleague who was just on the floor has long championed it. We do have support on both sides of the aisle. We have support from small business, we have support from agriculture, because it is right, it is necessary.

We are talking about health care. We are talking about eliminating a penalty, a tax penalty that discourages people from being able to acquire their own health insurance for themselves and their families.

Let us continue the spirit of bipartisanship by adopting this amendment and not miss an opportunity to help the self-employed get the insurance coverage they need and deserve. I look forward to working with my colleagues on this amendment when it comes to the floor. I intend to be a cosponsor. And I trust that we will have a strong bipartisan majority for the amendment when it is offered.

Mr. President, I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

PRIVILEGE OF THE FLOOR

Mr. WELLSTONE. Mr. President, I ask unanimous consent that Robin Buhrke, who is a fellow in my office, be allowed to be on the floor while I speak.

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

Mr. WELLSTONE. I thank the Chair.

I ask unanimous consent that I be allowed to speak as in morning business.

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

NOMINATION OF JAMES C. HORMEL

Mr. WELLSTONE. Mr. President, I rise today to speak again—and I shall be relatively brief—about the nomination of James C. Hormel to be United States Ambassador to Luxembourg.

I point out to colleagues that it has now been more than 8 months that his nomination has languished, awaiting an opportunity for us to consider this on the Senate floor. I have spoken on the floor before about Mr. Hormel.

Let me just make one point. We in fact have voted before on Mr. Hormel when we made the decision as to whether or not he would be a representative to the U.S. delegation to the 51st U.N. General Assembly. As I look at his qualifications, he has had a tremendous amount of success as a businessman, a tremendous amount of success as a lawyer, a tremendous amount of success in philanthropy, a tremendous amount of success from the point of view of very, very moving, very personal testimony by his former wife, his children, his family members, people who really know him well—and, I say to the Chair, people who know him not from the point of view of formal credentials, not from the point of view of any political fight, but from the point of view of kind of measuring the character of a person.

My feeling is, colleagues can have different views about this nomination, but I believe it is extremely important that this nomination be brought to the floor. I've said it before. I have spoken any number of different times on the floor about Mr. Hormel. What I have said is that if there is a debate about his qualifications, that is quite one thing. If so, then let us have that debate.

But I do not want the Senate to deny a nomination to anyone because of their sexual orientation. I think that would be discrimination. It's not just that I think that would be discrimination; it would be discrimination. And I think it is terribly important that the Senate take a long, hard look at itself and, at the very minimum, we have the debate. I think to be silent about this

is a betrayal of what the Senate stands for, which is a fundamental respect for the dignity and worth of each and every person.

The reason I come to the floor is just to say, colleagues, we have the tobacco bill before us. And we have had a number of amendments. We have still got a long ways to go. I do not know that I will bring an amendment to the floor on this bill or not, in any case. But certainly if not the tobacco bill, on the next bill—or the next appropriate vehicle, as soon as possible; the sooner the better—I will have an amendment which in some way puts a focus on this whole question of judging a person by the content of his or her character, judging them by their qualifications, judging them by their leadership, and in no way, shape, or form making any kind of judgment based upon any form of discrimination.

Understand me, because I am talking—and a friend of mine is presiding, a good friend, someone whom I disagree with, but whom I really like a lot. And I hope it is mutual. I am not arguing that different people can't have different views, and I am not arguing that there are some who in very good faith may oppose this nomination. Absolutely not. But I just think that there are some big questions to be resolved here.

It is terribly important we not just block this. It is terribly important we have an honest discussion and an honest debate and we have an up-or-down vote. I think my role as a Senator is to bring some amendments to the floor on pieces of legislation to put this into very sharp focus.

PRIVATIZATION OF SOCIAL SECURITY

Mr. WELLSTONE. Mr. President, I also, if I could, want to take just a few minutes to speak about Social Security, about its future, and about a campaign under way to trade it in for a privatized system like the one we have in Chile.

President Clinton has called for a nationwide debate on Social Security for the balance of this year, to be followed by a White House conference in December and legislative action early next year. I think it is time—perhaps well past time—for the defenders of Social Security to speak up and be heard.

As far as I am concerned, Social Security is one of America's proudest accomplishments of the 20th century. It has given retirement security to Americans of all ages and has rescued millions of seniors from the scourge of poverty. Everyone says they want to protect and preserve this remarkably efficient and effective program which is so beloved by the American people. But you would never know it, judging from the direction the debate is taking.

The premise of the debate is that Social Security is on the verge of bankruptcy and must be transformed in order to survive. I strongly disagree. Social Security is not in crisis. It is not broke. It is not facing bankruptcy. It may need some modest adjustments, but the greatest dangers facing Social Security today are the many misguided proposals to ''fix'' it.

You can hardly open a newspaper these days without reading about the impending collapse of Social Security. This is nonsense. Social Security is now taking in $101 billion more each year than it pays out in benefits.

In April, the Social Security trustees reported that the trust funds will be able to cover benefits for the next 34 years, until the year 2032. After that, without any changes to the system, it will still be able to pay out 70 to 75 percent of the promised benefits, virtually indefinitely without any change whatever in the system. There is no reason why Social Security should come to an abrupt end in 2032 or any time thereafter.

Some would seize upon this projected funding imbalance decades from now as an excuse to undermine the program. They want to replace Social Security with a privatized system in which retirement security depends solely on success in playing the financial markets. But why would we want to get rid of a program that has worked so well? Why should we want to ''end Social Security as we know it?'' In fact, that's what I think some of these proposals should be called—''ending Social Security as we know it.''

If we really want to protect and preserve Social Security, we should be guided by two principles. First, we should focus all of our energies on the real problem, which is a possible imbalance in the trust funds after the year 2032. Second, under no circumstances should we allow funding for Social Security to be squandered on the fees, commissions, and overhead of Wall Street middlemen.

There are a number of ways to go about this. Several prominent economists have come forward with detailed reform packages that would guarantee long-term balance of the trust funds. Other proposals will be coming out soon. These are relatively minor adjustments to the current system. They are not radical surgery.

Privatization, on the other hand, is radical surgery. And it doesn't even solve the problem. In fact, it actually takes away money from the trust funds.

How could that be? The answer is so-called ''transition costs.'' They are really going to be a huge problem. Right now, over 80 percent of payroll taxes are used to pay benefits for current retirees. Under a privatized system, those payroll taxes would be diverted into individual retirement accounts. But younger workers would still have to pay payroll taxes to fund benefits for current retirees. In effect, they would be paying twice. There is no way of doing that without increasing taxes, cutting benefits, or depleting the trust funds.

Here is an idea: Instead of paying unnecessary transition costs, what if we used that money to restore the trust funds? The same goes for the more modest steps toward privatization now being discussed in Congress. Some members have proposed diverting 1, 2 or 3 percent of the 12.4-percent payroll tax into new individual accounts. Others would use a budget surplus to do the same thing. Instead of setting up private accounts, we could just as easily use that money to shore up the trust funds. That is the problem we are supposed to be fixing, isn't it? It's hard to explain how you are saving the trust funds when you're taking money out instead of putting money in.

The important thing, Mr. President, is to stay focused. As our guiding principle, we should insist that any legislation purporting to save Social Security actually live up to its billing. It should reserve for the trust funds any new savings or revenues. We shouldn't let some speculative shortfall, 34 years from now, be used as an excuse to force through a very different—and, I would add, a very radical—agenda.

Why are we getting sidetracked with individual accounts and privatization schemes that don't actually solve the problem? The reason is simple—money. Wall Street money, and lots of it. Mutual fund companies, stock brokerages, life insurance companies and banks are all salivating at the prospect of 130 million potential new customers coming their way. Privatization of Social Security could bring them untold billions of dollars in extra fees and commissions. That is why they have invested millions of dollars in a massive public relations campaign promoting privatization, and they are doing a heck of a good job of it. That is one reason why they have contributed so heavily to congressional and Presidential campaigns. The heavy hitters, the big givers, they are heavily involved in this campaign.

Let me read from a story in the Washington Post on September 30, 1996. The headline says, ''Wall Street's Quiet Message: Privatize Social Security.''

It reads:

> Wall Street is putting its weight behind the movement in Washington to privatize Social Security . . .
>
> Lobbyists for Wall Street are trying to stay behind the scenes as they argue for privatization because they and their firms so obviously stand to profit by the changes they are promoting, according to financial industry executives. Representatives of mutual funds, brokerages, life insurance companies, and banks are involved in a lobbying effort to have the government let Wall Street manage a slice of Social Security's money . . .
>
> Representatives of investment firms have begun lobbying Capitol Hill and the White House to advance their agenda, according to financial service industry executives . . .
>
> Wall Street officials want to avoid or at least deflect accusations that they are seeking to transform Social Security to line their own purses.

And, I might add, their own purposes.

There has been some very good reporting in the Post, in the Wall Street

Journal, and elsewhere on exactly who is paying how much money to whom.

It is absolutely unbelievable the way in which these Wall Street interests have hijacked this debate. It is time for those of us who want to protect this system to stand up and begin to speak out and fight back against these very radical efforts to privatize a social insurance program that has been such a huge success, not just for senior citizens, but for our parents and our grandparents.

I think it would be a tragedy if we stood by and let the trust funds be squandered by Wall Street—and squandered on Wall Street. In Chile, where they privatized Social Security in 1981, an estimated 19 percent of worker contributions gets skimmed off the top by pension companies. That's 19 percent skimmed off the top by the middlemen.

Social Security in our country, by contrast, has administrative costs of less than 1 percent with no fees, no commissions. One percent administrative costs, no fees, no commissions, not going to the big Wall Street interests. And now we have these efforts to privatize the system and turn over a large part of the surplus to Wall Street? Unbelievable.

Champions of privatization like to brag about higher returns on the stock market as compared to Social Security. I think those claims are exaggerated. But even if they were true, you don't need individual accounts managed by Wall Street campaign contributors to capture the higher yields. You would get the same average returns if Social Security did the investing itself. And that way, seniors would still be guaranteed a monthly benefit indexed for inflation.

I'm not saying we should do that, necessarily. Stock markets go down as well as up. With all the financial turmoil in Asia and Russia right now, we might want to think twice about betting the future of the trust funds on go-go emerging markets. But whatever we do, we should insist that the trust fund money not be siphoned off to Wall Street middlemen.

I want to say that again to my colleagues. We might want to think twice about betting the future of the trust funds on go-go emerging markets. But whatever we do, we should insist that this trust fund money not be siphoned off to the Wall Street middlemen, which is actually what the privatization proposals do.

Our immediate focus should be on fixing the problem at hand—a projected shortfall in the trust funds 34 years in the future. We should not be diverting resources to half-baked schemes that would only make the problem worse.

We should not let Wall Street campaign contributors push through a ''reform plan'' that would only give them a slice of the trust funds. Privatization is a phony solution to a phony crisis.

Social Security has been phenomenally successful for over a half a century—60 years. It ensures millions of Americans against disability, death of a spouse, and destitution in their old age. Compared to private retirement plans, it is a very good deal. And it is the most successful antipoverty program America has ever devised.

It is simple. You reach the age of 62 or 65, you get older, you are no longer working, your earnings decline. There was a time when probably half of the poverty population in our country were the elderly. That was a national disgrace. That is no longer the case. This is a very successful program.

While all of us should be saving more, the fact is that there will always be millions and millions of Americans who depend solely on Social Security for their retirement security. In fact, as fewer and fewer Americans have employer-provided pensions and as businesses are rapidly shifting from defined benefit plans to defined contribution, we need Social Security now more than ever. This is no time to end ''Social Security as we know it.''

We now have proposals, privatization schemes, to ''end Social Security as we know it.'' That is what this is all about. I am amazed that we have not had more discussion about how to modify and support Social Security as opposed to the privatization schemes that dismantle Social Security.

I will give some of my colleagues credit. They have been able to take, 34 years in the future, a potential shortfall and reduce it to an agenda that dismantles the Social Security system as we know it.

We need to have a major discussion and debate over this. In the coming weeks and months, I plan to be talking at great length about how we can correct the projected shortfall 34 years from now without ending Social Security as we know it. Right now, friends of Social Security are generating a number of proposals that do not amount to radical surgery. Those ideas deserve to be heard. Advocates for the privatization plan favored by Wall Street should not have a monopoly over this debate. If we have a fully informed discussion and all options are really on the table, I am very confident that the American people will support a progressive solution that does not end Social Security as we know it.

I yield the floor.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Texas is recognized.

Mr. GRAMM. Mr. President, I ask unanimous consent that the bill remain in the status quo until 1 p.m. today.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

SAVING THE E-RATE

Mr. DASCHLE. Mr. President, I have been concerned over the last few days to hear growing attacks against the so-called e-rate—the program Congress created just 2 years ago to help schools, libraries and hospitals connect to the information superhighway.

I am concerned because of the timing of these attacks. Only last month, the Senate approved a bill increasing immigration quotas for highly skilled workers from other countries. Why? Because there are not enough American workers with the technological skills to meet the needs of our economy. If that is not an acknowledgment that we need to do a better job of teaching technological skills in this country, frankly, I don't know what is. I supported raising the quotas for skilled workers, but that was a one-shot emergency response to a crisis.

By the year 2000, 60 percent of all jobs in our country will require technological skills that only a fraction of Americans now have. In the longrun, the only way we can keep America's economy growing is by giving our own workers the skills to compete and win in a high-skills economy. That is why the sudden course of criticism of the e-rate is so alarming.

Today, only 27 percent of the classrooms in America are connected to the Internet. In poor communities, rural and urban, only 14 percent of classrooms are linked to the Internet. If we don't take the opportunity now to address this problem, we simply will not have enough skilled workers to retain America's position as the world's strongest economy. We will also consign our children to two very different futures, separate and unequal.

It seems like every week we hear more and more talk about the year 2000 problem. What about the ''year 2010 problem''?

That is when—if we do nothing—children who are in kindergarten now will be graduating from high school without the technological skills they need to get a decent job or get a good college education. We simply can't allow that to happen. We can't do that to our economy, and we can't do that to our kids.

Congress understood that two years ago. That's why we created, on a strong bipartisan basis, the e-rate program as part of the Telecommunications Act of 1996.

The e-rate program gives crucial discounts to schools and libraries to establish or upgrade Internet connections. The steepest discounts going to

the neediest communities. All commercially available telecommunications services are eligible for discounts.

Across the country, 30,000 schools and libraries have already applied for help from the e-rate program to establish or upgrade Internet connections.

In my own state of South Dakota, 280 schools have already applied.

Educational technology is critical in rural states like ours, Mr. President. Through teleconferencing and other kinds of long-distance learning, students in South Dakota can take all kinds of classes they never would have had the chance to take.

If we pull the plug on the e-rate, we will slam the doors to countless educational opportunities—not just in South Dakota, but all across America.

The United States is the most prosperous nation on earth. We are currently enjoying incredible economic growth. It is a travesty to say we can't afford to give our children access to the tools they need to share in this economic miracle.

Yet, if we kill the e-rate program—as some would clearly like—that is exactly what we will be saying to children in poor rural and urban communities.

How have we reached this sad state?

In a nutshell, some telecommunications companies are not playing straight with the American public. They are trying to use schoolchildren as an excuse for costs they themselves choose to pass on to consumers.

Mr. President, the big long-distance companies have reaped a $3 billion windfall in the last 18 months.

That is $3 billion!

That's how much long-distance carriers saved in reduced access charges they paid to local telephone companies in the past year and a half. Because of the direct actions of the FCC, these companies have received more than enough money to pay for the entire e-rate program.

Over that same period, they have been asked to collect only $625 million for the e-rate.

But the long-distance carriers want to retain the $3 billion in savings and insist consumers should pay for connections for schools and libraries.

They would have us believe that the e-rate is driving up the cost of long-distance phone service.

They say they intend to add a new line-item to their customers' bills telling them just that.

The strategy is clear: Opponents know they can't attack the e-rate on its merits—because Americans care deeply about their children's education.

So they call the e-rate a new tax—and hope people get so mad about another tax that they demand an end to it.

The problem with their rhetoric is: it's not true.

The FCC is not requiring long-distance phone carriers to line-item the costs of the e-rate program on to their customers. The carriers made that decision themselves.

In addition, only a small part of the amount the carriers want to include in that line item actually goes to schools and libraries.

Most of it is used to provide phone service to rural America and other hard-to-reach customers. This is not a new responsibility. Phone companies have had that legal obligation for 60 years. It's called ''universal service.''

In 1996, Congress expanded universal service to include schools and libraries. We should keep our word—and keep the e-rate program.

That's why I have asked the Chairman of the FCC, Bill Kennard, to require strong truth-in-billing standards for long-distance companies. Those that choose to place line-item charges on their phone bills should also tell their customers about savings they have reaped from reduced access charges. We should not allow these companies to mislead their customers by charging for certain costs without disclosing savings they gain from other governmental actions.

This issue has sparked an important debate in Congress and the FCC about the future of universal service. The FCC's top priority must now be to secure the long-term viability of the high-cost fund as well as the e-rate.

Learning how to use the basic tools of modern communications is not a luxury for our children. It's not a frill. It is a necessity.

The e-rate was created with strong bipartisan support. It deserves our continued bipartisan support. And I hope it will receive it.

Mr. President, I yield the floor.

Mr. KENNEDY. Mr. President, I wonder if the Senator will yield for a brief question.

Does the Senator remember the debate on the telecommunications legislation where at least there was an understanding that the major carriers were going to be favorably disposed, as a result of the competitiveness, to give those assurances to schools, to libraries, and to rural public health settings around the country?

Telemedicine is extremely important, I know, in many regions of the country. It provides extraordinary upgrading of quality health in terms of diagnosis and treatment and care for many of those who live in remote areas, whether it is in urban areas that might benefit from the museums and libraries or educational centers, or those kinds of facilities that exist in rural America, or the public health facilities, small clinics, that provide in many instances life support services for people who live in those communities. It seems to me that many of us were under the understanding that there was an agreement to provide for those kinds of services.

I am just wondering whether the leader shared my impression that this was something they had every reason to expect to go into effect, that they had planned on it and made provisions for it, and in many instances are very dependent upon these kinds of services.

Mr. DASCHLE. Mr. President, I think the senior Senator from Massachusetts makes a very important point in his question. I believe that not only people all over the country made that assumption but many of us in the Senate did as well, as we contemplated our vote on that bill. That was not an easy vote, as I know the Senator from Massachusetts remembers. That was a very, very difficult vote. I ultimately decided that, on balance, this bill merited my support. I give great credit to many Senators who put a lot more time in bringing that product to the Senate than I did. But I voted for it in part because of the assumptions that we made about the opportunities and services it would provide to people across this country, especially in improving education and information in schools, libraries and rural health care centers.

So the Senator is right. We made some promises. We made some commitments. We also made a deal that said as a result of all of this, the long distance carriers would ensure proper collections for the schools and libraries program. They knew they were going to see some reduced costs. Indeed, according to figures I have been provided, $3 billion in reduced access charges has already been achieved. Now all we have done so far with regard to the e-rate is collect about $625 million, a fraction of that $3 billion. Some of these companies have now indicated that they are fighting a small increase, the amount that, as the Senator says, has been assumed would be available for the schools and libraries across this country to improve the technological skills of every child in our schools.

I hope they will come forth with an explanation. If they are going to put in this new line item indicating the e-rate cost to people across this country, why aren't they going to show equally the $3 billion in reduced costs they have already reaped? There has to be some fairness here. There has to be truth in billing.

I think the Senator from Massachusetts has made a very important point. We made a commitment when we passed that bill, and I hope it can be realized.

Mr. KENNEDY. If the Senator will yield further, it seems to me that we have been talking about whether it has been in the area of education, the area of health care, about partnerships. We have understood that we don't have all the resources given the budgetary considerations, but we are talking about the partnership that exists between the public and the private sector.

We also listened, I thought with very strong approval, to the excellent presentation that the President made up in my own State of Massachusetts at the Massachusetts Institute of Technology.

I see the chairman of the Foreign Relations Committee. If I could yield for

whatever interventions he would like to make, I see an outstanding guest who honors us and who made a wonderful speech that many of us had the chance to listen to a short time ago. It is a great pleasure to yield at this time.

The PRESIDING OFFICER. The distinguished Senator from North Carolina is recognized.

VISIT BY HIS EXCELLENCY KIM DAE-JUNG, PRESIDENT OF THE REPUBLIC OF SOUTH KOREA

Mr. HELMS. Mr. President, the distinguished Senator from Massachusetts has made my speech for me. The distinguished and honored guest from the Republic of Korea is with us, and I ask unanimous consent that the Senate stand in recess for a couple minutes so that Senators and others may greet him.

RECESS

There being no objection, the Senate, at 12:30 p.m., recessed until 12:33 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. ROBERTS)

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. No amendments are in order until 1 o'clock.

The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I would like to ask unanimous consent to be able to proceed maybe for 20 minutes, 10 minutes for myself and the other 10 minutes for our friend, the Senator from Minnesota.

Mr. GRAMS. I would like to request 15 minutes.

Mr. KENNEDY. I will.

The PRESIDING OFFICER. Is there objection? Hearing no objection, it is so ordered.

The Senator is recognized.

Mr. KENNEDY. I thank the Chair.

Mr. President, the Senate has been considering the comprehensive tobacco legislation offered by Senator MCCAIN for three weeks.

In fact, since the Senate began to debate the tobacco bill on May 18, 69,000 children have begun to smoke, and 23,000 will die prematurely from a smoking-caused disease.

In the past day, however, we have made significant progress in moving forward in a bipartisan manner to resolve our differences and bring this bill to final passage.

The Senate should once and for all reject the dilatory tactics of the opponents of this legislation, who care more about protecting the profits of Big Tobacco than they do about protecting the health of the nation's children. They have used every strategy in the book to delay and obstruct this important legislation while thousands of children begin a lifetime of nicotine addiction and smoking-caused illness. But the pressure is starting to build in every corner of this nation, and the American voters are demanding that the Senate take quick and decisive action to bring this bill to a vote.

The stakes have rarely, if ever, been higher on any public health issue. Tobacco use is the leading preventable cause of death and disability in the nation. Of the 48 million smokers in the United States today, it is estimated that 20 million adults and 5 million children will die prematurely from a tobacco-induced disease.

In fact, tobacco products are responsible for a third of all cancers, and 90% of all lung cancers. 170,000 new cases of lung cancer are expected in 1998. 90,000 men and 65,000 women are expected to die of the disease in this year alone.

Tobacco use is also linked to a wide variety of other illnesses. Smoking by children and adolescents is associated with higher cholesterol levels which can significantly increase the risk of early development of cardiovascular diseases.

New research also indicates that tobacco use is a risk factor in alcoholism, depression, hearing loss, and vision loss among the elderly.

The use of smokeless tobacco products is associated with cancers of the mouth, gum disease, and tooth loss.

The dangers of secondhand smoke are also becoming increasingly clear. It is linked to low birthweight, respiratory distress syndrome, and sudden infant death syndrome. A recent report by the Agency for Health Care Policy and Research says that secondhand smoke is responsible for as many as 60% of cases of asthma, bronchitis, and wheezing among young children.

It is also clear that smoking-related illnesses impose an enormous burden on the United States economy. According to the Department of Treasury, smoking will cost society $130 billion this year, of which $45 million is attributable to medical costs due to smoking-caused diseases.

Smoking during pregnancy, which results in increased costs from complicated deliveries, medical care of low-weight babies, and developmental disabilities, adds up to a $4 billion loss for the U.S. economy.

The damage resulting from smoking-caused fires is $500 million a year, which does not even account for the 2,000 lives lost in these tragic accidents.

$500 million is attributable to lost productivity, since smokers miss 50% more work days than nonsmokers. In addition, smokers tend to die younger and retire sooner, which costs society an astounding $80 billion in lost output and wages.

Much higher priority is obviously needed for smoking cessation programs and tobacco prevention initiatives, which are among the most cost-effective means available to reduce health care costs while, at the same time, improve the lives of millions of Americans.

The pending amendment by the Senator from Texas seeks to divert approximately $47 billion over the next ten years away from smoking prevention, away from smoking cessation, away from medical research, and away from reimbursing states.

When we add the combined impact of the pending Gramm amendment and the Coverdell amendment which was approved yesterday, no funds would be left for programs which are essential to reducing youth smoking and to helping current smokers quit. In fact, the Gramm amendment alone would result in roughly 4 million fewer Americans served by smoking cessation programs, 20 million fewer people discouraged from smoking by counteradvertising campaigns, and 48 million fewer children participating in school-based smoking prevention activities.

These numbers speak for themselves. Reasonable marriage penalty relief makes sense. But the Gramm amendment goes too far. It would destroy the underlying smoking prevention legislation.

All of the money raised by the cigarette price increase contained in the legislation is currently earmarked for smoking related purposes: 22 percent is directed to smoking prevention and cessation, 22 percent is to be used for medical research, 16 percent is for transitional assistance for tobacco farmers, and 40 percent is to compensate states for the cost of medical treatment of smoking related illnesses.

Which of these smoking related initiatives would the Senator from Texas eliminate? Does he propose to eliminate all compensation to the states for their tobacco related health costs? After all, it was the state lawsuits which provided the genesis for this legislation and which exposed the most dramatic evidence of industry wrongdoing. That would not be fair. Even if every dollar intended for the states was taken to fund the Gramm amendment, it would not be enough to cover the cost.

Does he propose to eliminate all transition assistance for tobacco farmers and communities? It would not even cover one-third of the cost of the Gramm amendment.

All of the remaining dollars are directed to smoking prevention, to smoking cessation, and to medical research. These initiatives are the heart of the legislation, yet both the pending Gramm amendment and the Coverdell amendment approved yesterday will deny needed resources to prevent teenagers from beginning to smoke. If we are serious about stopping children from smoking and saving lives from tobacco-induced diseases, we have to make these investments.

These programs work. Let me give you a few examples:

Every dollar invested in a smoking cessation program for a pregnant

woman saves $6 in costs for neonatal intensive care and long-term care for low birth weight babies. In addition, smoking cessation programs have an added benefit of reducing tobacco use among children. According to Michael Fiore, Director of Tobacco Research at the University of Wisconsin Medical School, children who smoke have twice the risk of becoming smokers than children of nonsmokers have. By helping parents to quit, the risk of children becoming smokers is reduced as well. The effect of the Gramm amendment would be to reduce funds for these programs, and that makes no sense.

The Gramm amendment would deny funds needed to help states and communities conduct educational programs on the health dangers of smoking. The tobacco industry spends $5 billion a year—$5 billion—on advertising to encourage young people to smoke. Shouldn't we spend at least one tenth of that amount to counteract the industry's lethal message?

Counteradvertising is a key element of an effective tobacco control strategy. We know that children are easily swayed by the tobacco industry's marketing campaigns, which promise popularity, excitement, and success for those who take up smoking. We can use counteradvertising to reverse the damage by deglamorizing the use of tobacco among children.

Both Massachusetts and California have demonstrated that paid counteradvertising can cut smoking rates. It helped reduce cigarette use in Massachusetts by 17 percent between 1992 and 1996, or three times the national average. Smoking by junior high students dropped 8 percent, while the rest of the nation has seen an increase. In California, a counteradvertising campaign also reduced smoking rates by 15 percent over the last three years.

The Gramm amendment also would take money from law enforcement efforts to prevent the sale of tobacco products to minors, even though young people currently spend $1 billion a year to buy tobacco products illegally. According to Professor Joseph DiFranza of the University of Massachusetts Medical Center, ''if $1 billion in illegal sales were spread out evenly over an estimated 1 million tobacco retailers nationwide, it would indicate that the average retailer breaks the law about 500 times a year.''

The Gramm amendment will diminish funding for medical research on tobacco-related diseases, which kill 400,000 Americans each year and incapacitate millions more. Given the damage that smoking inflicts on the nation's public health, it makes little sense to deny funds that should be directed to finding a cure for cancer and other tobacco-induced illnesses.

In essence, the Gramm amendment would destroy much of the public health benefit this legislation is designed to achieve. The goal of eliminating the marriage penalty for low and moderate income families is a worthy one. It is shared on both sides of the aisle. However, it must be accomplished in a way that does not imperil our primary goal—preventing youth smoking and helping smokers overcome their addiction.

The Daschle amendment, which offers relief from the marriage penalty without imperiling our smoking prevention efforts, will cost far less than the Gramm amendment, and it does a much better job of targeting tax relief to those most in need.

The Daschle amendment will cost only $27 billion over the first ten years. That is the most which can be accommodated without damaging our ability to achieve the legislation's core anti-smoking purposes. The cost of the Gramm proposal mushrooms after the fifth year. Thus, over ten years, the cost of the Daschle amendment is approximately $20 billion less than the Gramm amendment. This is the difference between preserving a viable youth smoking reduction effort and destroying it. That is the difference between helping millions of smokers quit and leaving them at the mercy of their addiction. That is the difference between advancing medical research that can cure tobacco induced diseases and indefinitely delaying it.

Because it is carefully targeted, the Daschle amendment actually provides more tax relief to those two income families earning $50,000 a year or less who currently pay the marriage penalty. By contrast, more than half the tax relief provided by the Gramm amendment would go to families that are not subject to the marriage penalty. Senator DASCHLE's proposal will do more to achieve tax fairness at a much lower cost.

Once this issue is decided, there is little excuse for further delay. The remaining amendments can be considered in a few days if we move conscientiously forward. There is no valid reason why the Senate cannot vote on final passage soon. If we do not, the American people will know why. A small group of willful defenders of Big Tobacco will have succeeded in obstructing the work of the Senate on this vital issue of public health. On an issue of this importance, our constituents will not tolerate such obstruction. Now is the time for the Senate to act.

I yield the floor.

The PRESIDING OFFICER. The distinguished Senator from Minnesota.

Mr. GRAMS. Mr. President, I ask unanimous consent to speak in morning business for up to 15 minutes.

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

HOLDING CONGRESS TO ITS TAX CUT PROMISE

Mr. GRAMS. Mr. President, I rise today to make a few brief remarks about tax cuts and the budget, and the promises that have so tightly entwined the two.

The House passed its budget resolution last Friday by a vote of 216 to 204. The House budget plan would cut $101 billion in government spending over the next 5 years. It would also repeal the marriage penalty tax, which has unjustly punished 21 million couples just for getting married.

However, the House-passed budget plan failed to provide reconciliation instructions for achieving this tax relief, and failed to provide clear guidance on how to use any budget surpluses.

While the efforts by our colleagues in the House represent a move in the right direction, Congress must do better by the taxpayers. It now falls to the conference committee to ensure we keep our promise to offer meaningful tax relief to working Americans.

That promise must provide the framework for the budget resolution produced by this Congress.

Thanks to the exceptionally healthy economy, our short-term fiscal condition has greatly improved in the past few years, not because of what Congress did—in spite of what Congress did. But it is the economy.

In fact, we will soon see a unified budget surplus for the first time since 1969.

On May 26, President Clinton announced that this year's budget surplus would be $39 billion.

His figure is significantly less than the $43-to-$63 billion surplus forecast by the CBO and contradicts the President's own Treasury report, which revealed that through April, revenues were surging into the Treasury even faster than CBO thought.

Treasury officials forecast that the surplus could be as large as $100 billion if the revenue flow follows last year's pattern. According to some estimates, the budget surplus could reach $1.34 trillion over the next 5 years.

The question is, what do we do with the surplus? Basically, what Washington has done is overcharged our American workers and industry.

I would just like to show in the Washington Post, yesterday's edition, June 9, it says: Virginia Power Agrees To Rebates.

Why is this similar? I would like to read this. It says:

> Virginia's largest power company agreed today to $920 million in refunds and rate cuts for 2 million residential and business customers who have been overcharged for electricity, the biggest rate adjustment in State history [and that is under a] deal with utility regulators.

If a company overcharges its consumers, the Government steps in and says: You have to pay it back. You took a surplus. You have to pay it back to the customers. Also, you have to drop the rates so we do not have surpluses in the future.

But what does Washington do when it has a surplus? It starts to make plans on how to spend it. There is nobody that tells Washington you have to give it back, and they should.

Comparing these numbers with the $100 billion tax cut, when we talk about

a projected budget surplus, there could be as much as $1.3 trillion or more; or if we even look at just this surplus, it would be less than 10 percent of that projected surplus. I can assure you, there are plans already being made around this Congress of what to do and how to spend the other 90 percent.

Americans, I believe, should be outraged, and a growing number are. They do not want Washington to grow even bigger—they want their money back.

Mr. President, regardless of all these different surplus estimates, one thing is clear: it is not any action by the Federal Government that is producing this budget surplus. We must credit that turnaround to the working men and women who are fueling the robust American economy. These unexpected dollars have come directly from working Americans through taxes paid by corporations, individuals, and investors. This money belongs to the people. Washington should not stand first in line to take this money. It is only moral and fair to return it to them. Washington again, has no right to spend it on their behalf.

With total taxation at an all-time high, it is critical that Congress cut taxes for working Americans. Taxes consumed about 19 percent of GDP when President Clinton took office. It now stands at 21.5 percent, the highest rate since World War II. This means every American, not just the rich, are paying more in taxes today than they did just 5 years ago.

As proof of just how heavy the tax burden has become, taxpayers did not mark the arrival of Tax Freedom Day this year until May 10.

That is the day on which working folks stop punching the clock just to pay Uncle Sam and begin working for themselves, and that is a full week later than when President Clinton took office. We all gave the Government another week of our time and money in the last 5 years to pay those higher taxes. This year, the taxpayers had to work 129 days before they could count a single penny of their salary as their own. In fact, it marks the latest-ever arrival of Tax Freedom Day.

And that is not the whole picture, because if the cost of complying with the tax system itself were included in the calculations, Tax Freedom Day would be pushed forward another 13 days.

As proof of just how far we have traveled—in the wrong direction—Tax Freedom Day in 1925 arrived on February 6. This year it was May 10.

After 16 major tax increases over the past 30 years, the need for tax relief has never been more pressing.

Do I need to remind my colleagues that Republicans gained control of Congress in 1994 and retained control in 1996 because we were the champions of the taxpayers, the champions of the American workers?

Did not the taxpayers elect us with the expectation that the new Congress would seize every opportunity to lessen the tax burden on America's families and shrink the size of Government?

They did not elect a new majority expecting that Congress would be a collaborator in the President's tax-and-spend policies, that Congress would build a bigger, more expensive Government at the first chance it got and completely give up on its promise of significant tax relief.

Unfortunately, that is exactly what Congress did. And if we do not slow it down now by providing some larger tax cuts, the Federal Government is going to explode in both size and cost. Again, that is not what I believe working Americans are asking for.

Last year, after spending by the way, the $225 billion unexpected revenue windfall and busting the 1993 spending caps, Congress cut a deal with President Clinton and delivered tax cuts only one-third as large as what we had promised and worked for in 1994.

The tax relief amounted to less than one cent of every dollar the Federal Government took from the taxpayers.

With its measly $30 billion in tax cuts over five years, this year's Senate-passed budget resolution is no better.

It spends more taxpayer dollars while continuing the path of the flawed budget deal struck between the Congressional leadership and President Clinton last year.

Tax relief I believe is the right solution because it takes power out of the hands of Washington's big spenders and puts it back where it can do the most good and that is with America's families and job providers.

When the much-bragged about Clinton tax increase of 1993 was passed by the Democrats, again, no Republican votes, but with this much-bragged about tax increase no one was out there asking working Americans how they were going to survive with less money in their paychecks. They were evidently going to have to try to do more with less, or go without. Congress did not go out and ask working Americans, if we raise your taxes, how are you going to do with less money? Americans were expected to do more with less or go without.

But now, when we talk of even taking one penny for every $10, Congress says ''We cannot go without.'' To borrow a phrase from Ohio Congressman TRAFICANT, ''Beam me up, Scotty!''

I am proud that during this year's budget debate, five Senators, myself included, reached agreement with the Senate leadership to include more tax relief in the budget for hardworking Americans.

We agreed to take the higher tax relief number in either the House or Senate-passed resolution. We also agreed there should be reconciliation legislation to achieve those tax cuts.

Carrying out these principles will improve the FY 1999 budget resolution, and it will help to forge a compromise between those who want massive tax relief and those who want massive spending.

This will eventually help us not only to balance our budget and keep it balanced, but to reduce the size of the government and also let the American taxpayers keep a little more of their own money. With our improved fiscal condition and a large budget surplus, it should not be hard to achieve these goals.

Then why is tax relief such a battle?

Mr. President, there is a special interest group to represent every disgruntled, oppressed, and persecuted group of Americans to plead their case in the media and in the Halls of Congress.

But where is the special interest group that represents the taxpayers? Where is the chorus of voices speaking up for the discontented multitude? Who will come to the Senate floor and plead the case of the taxpayers?

I submit, Mr. President, that the American taxpayers are poorly represented by their Congress. Not only are the taxpayers heavily burdened, but their burden has been imposed by their own Government.

Congress takes the taxpayers' precious dollars and spends them lavishly, at times recklessly. Congress demands more and more with little consideration for the sacrifices of those it taxes. Congress never seems to be satisfied.

So is it any wonder that when the opportunity arises to give something back to the taxpayers, Congress balks? The taxpayers fuel the fire of government spending, and Congress demands that the furnace remain fully stoked.

These are real people we are talking about, not faceless Social Security numbers. Yet Congress chooses not to see the faces of the families it taxes.

By a single vote, this Congress can tell working Americans that it is going to take even more, and you can either work more—both spouses, overtime, two jobs—or go without, without money for your children's education, without health care insurance or child care, without a family vacation, without a night out.

''But wait,'' you can just hear Congress say, ''maybe we can create a new government program to help you. By the way, we will have to raise your taxes a little to pay for it.''

Mr. President, my colleagues and I who demanded that tax relief be an integral part of the Senate budget must not and will not back off from our commitments.

We made those commitments in good faith, not only to each other, but most importantly, to America's taxpayers. Senators ASHCROFT, BROWNBACK, INHOFE, SMITH, and myself are prepared to vote against any budget that fails to provide the full $101 or more billion in tax relief called for in the House budget resolution.

We have made our intentions known to the Senate leadership. It is time that this Congress delivers on its promises to the taxpayers. We must not forget the lessons we learned in the past.

In the 1950s, the Republican Party leadership deviated from the basic

principles that distinguish us from the Democrats by adopting a fiscal policy of ''Republican austerity.''

This slowed the economy and therefore, the voters tossed out the Republican Congress and declined to elect a Republican president. The American people instead chose John F. Kennedy, a Democrat who promised tax cuts—and kept that promise.

President Ronald Reagan also promised tax relief, and he delivered by proposing tax cuts totaling $747 billion. That equals $1.6 trillion in today's dollars. These massive tax cuts propelled the economy forward. President Reagan stood with Republican principles, and today we are still benefiting from his sound economic policy. This was done while the Congress faced deficits, not surpluses that we are enjoying today.

In 1990, President Bush, unfortunately, reached a budget compromise with the Democrats to spend more and tax more. As a result, the American voters tossed him out for abandoning his promise not to raise taxes.

Finally, history is a mirror. If we cannot keep our promise to the American people, we will lose a Republican Congress, and more importantly, a unique opportunity to create a sustainable economy, increase real income, and improve the living standard for working Americans.

Mr. President, I am deeply disappointed and frustrated by the reluctance of the Congress and the congressional leadership to provide substantial tax relief, despite projections of huge surpluses. Nothing I believe, can justify this.

This Senator intends to stand firm on his promise to work for lower taxes that allow the working men and women of Minnesota and the 49 other states to keep more of their own money. I urge our leadership to follow.

Thank you very much, Mr. President. I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Arizona is recognized.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. MCCAIN. Mr. President, I ask unanimous consent that we remain in status quo until the hour of 2 o'clock, and then I will have additional remarks after the Senator from Texas speaks.

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

Mrs. HUTCHISON. Mr. President, excuse me——

Mr. MCCAIN. Just status quo until 2 o'clock.

Mrs. HUTCHISON. We will have time to talk?

Mr. MCCAIN. Yes.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, at 2 o'clock, we should have distributed our amendment to both sides of the aisle. We will have given everybody an opportunity to look at it. We are in the final stages of getting the amendment done by legislative counsel. We went over it this morning with Senator MCCAIN's staff.

I think probably the best part of valor is to get it over here in a few minutes, distribute it widely, get everybody to look at it, and then be ready to begin at 2 o'clock. At that time, it will be my objective to offer the amendment. There is an open spot on the tree. I will offer the amendment. Hopefully, we will have support from both sides, it will be adopted, and we will take a major step toward repealing the marriage penalty and giving tax equity to the self-employed on health insurance.

This is a good amendment. I think it will serve a good purpose, and I hope my colleagues on both sides of the aisle will vote for the amendment. I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I assume from our previous conversations, too, that the Senator from Texas is agreeable to a time agreement?

Mr. GRAMM. I am agreeable to a time agreement on this amendment, yes.

Mr. MCCAIN. Mr. President, I thank the Senator from Texas. I think it is an important amendment as well. I hope we can negotiate time and move forward on this amendment and others throughout the remainder of the day. I yield the floor.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, thank you. I want to talk about the tobacco bill in the context of where we started and where we are now.

I was on the Commerce Committee, and although I thought the bill had flaws in the Commerce Committee, nevertheless there was a balance to the bill. Our purpose in the tobacco bill is to try to keep teenagers from experimenting and getting hooked on cigarettes before they have the full judgment to understand that nicotine is addictive.

That has been everyone's stated purpose. The President said that. Every Member who makes a speech on the floor says that. Everyone agrees. What we came out of the Commerce Committee with was a bill that I felt had a good chance of reaching the goal of severely limiting the amount of teen smoking in this country.

Here is what the bill did, in a broad generalization. It had an agreement from the tobacco companies that they would not advertise. That is a key component to curbing youth smoking, not making it seem attractive to smoke. If you are not advertising with the Marlboro Man, it may not be nearly as appealing to smoke. So the tobacco companies voluntarily agree that they are not going to advertise provided a huge part of the balance of this bill.

The second part, and what the tobacco companies needed, I suppose, or asked for in order to give up a major right that we could not take away from them—their constitutional right under the first amendment to advertise. Congress could not pass a law saying they could not advertise. We had to have something to which they would agree. What they wanted was some limitation on the liability in any 1 year.

So in the bill that came out of committee, there was a limitation of about $8 billion. And if someone sued, and it was above that limit, their claim would not be thrown out but it would roll over until next year. I thought that was a fair balance because it would allow us to go for the target of stopping teenagers from starting to smoke because of advertising, which we now know has been targeted toward them, in return for having what I think is a huge liability limit. Nobody at this point has even come close in this country to $3 or $5 billion in any year from a lawsuit on liability. So I thought we had a balance.

What has happened on the floor is, I think—a combination of people who had different purposes in addition to stopping teen smoking, removed all the liability limits, therefore, you lose the tobacco companies agreeing to give up their constitutional right to advertise. I think we lost track of the major target.

In the meantime it was also decided that we would tax the people who legally smoke, at least $1.10 a pack, so that the price of a pack of cigarettes would go toward $5 a pack. So now you have what I think is a terrible principle; and that is, that you are taxing one sector of the population to have new programs that may or may not be effective in curbing teen smoking.

So now we have an amendment that is going to be offered in the next hour that would say, ''Well, we've got this huge tax increase and I don't like where the spending is going, so let us give it back in tax cuts to somebody else.'' I do not like that principle. I do not want to tax a working person who is making $20,000 a year in order to give money back to a working family making under $50,000. I do want to give money back to the working family that is making under $50,000, but I want to do it in the context of our budget, like we do every other tax cut or every other tax increase, for that matter.

This bill violates both principles that we would tax or give tax cuts within a budget and that we would tax one person to give it to someone else.

I am the sponsor of the bill that would eliminate the marriage tax penalty. It is my bill. Senator FAIRCLOTH and I are cosponsoring this bill together because we believe the highest priority for tax cuts in this country should be eliminating the marriage tax penalty.

So given the choice that I am going to have before me of not wanting to tax one person in order to give it to someone else, but my choice being we are going to have the tax increase, what do we do with it? Go spend money on new Government programs or give it back to people who make under $50,000, I am going to choose the latter. I am going to choose to try to start eliminating the marriage tax penalty by giving a higher level of exemption before you have to start paying taxes.

So I am going to make the tough choice in favor of giving money back to the people who work for it. But I do not like this bill. And I hope and I urge my colleagues not to continue to try to put this bill in shape but instead to go back and start all over. I think we can pass a responsible bill in this Congress that would severely limit the number of teenagers who start smoking. That is a worthy goal.

I also think in this Congress that we should pass the elimination of the marriage tax penalty because it hits people who make $30,000, $40,000, $50,000, couples who get married, who want to make that downpayment on their first home; and when they do, they are hit with a $1,000 or $2,000 tax increase just because they got married.

So I want to do both of these things. I do not like the choices that we are looking at in the bill before us. And I do not like the choices being given to us by the amendment. But as the lesser of two evils, I am certainly going to support a tax cut when we already have a tax increase on the floor. But what I would suggest is that we scrap the whole thing and try to do this right.

Doing it right means two things: It means, first of all, eliminating the marriage tax penalty in the budget; and, secondly, coming back with a balanced bill that will have the purpose of stopping or severely curtailing teen smoking, but not on the back of a person who is working for a living, not making much money, and is smoking, unfortunately, but nevertheless by his or her own choice. That is a choice that a person makes. I do not think that we should be taxing someone at this level—it is a regressive tax—when we are not sure that the purpose is going to be achieved.

So I hope my colleagues will look at this issue, step back—first of all, pass Senator GRAMM's amendment because at least we can take the first step towards eliminating the marriage tax penalty—then I hope we will bring this bill down and start from scratch and try to put forward a bill that will stop teen smoking or at least put a big dent in it. I think we can do that with the balance that we had in the original bill before it got worked over by the U.S. Senate.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. THOMAS). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak as in morning business for 6 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The Senator from Iowa is recognized to speak as in morning business for 6 minutes.

UNITED STATES-MEXICAN COOPERATION ON DRUG CONTROL

Mr. GRASSLEY. Mr. President, I am puzzled. In the last week or so, we have seen U.S. Customs' agents wrap up one of the most successful undercover operations in history. This effort, Operation Casablanca, has nailed a bunch of international bankers, mostly in Mexico, who have been laundering drug money. These white collar drug thugs have violated United States law, Mexican law, and international law. They have violated their trust. They have abetted one of the nastiest businesses on the planet. And they have conspired to do all of this to make an illegal dollar. Drug traffickers are bad enough. But their financial advisers and bankers are truly despicable. Thus, the Customs' undercover operation that exposed some of these low lifes is to be celebrated. My hat is off to the agents and informants that risked their lives to help defend our institutions and bring these pinstripe bandits to justice.

But I am still puzzled. What has me scratching my head is the reaction of the Mexican Government to this event. Instead of joining hands in congratulating efforts to protect the integrity of our international banking institutions and our shared concern to stop drug trafficking, what have they done. The Foreign Minister of Mexico has called the law enforcement people the criminals. She has raised the banner of so-called national sovereignty to provide cover to criminal activities of Mexican nationals. Mexico has called for the extradition of the law enforcement people in this operation, claiming they have violated Mexican law. What is wrong with this picture? Let me count the ways.

First, money laundering is the illegal act we are talking about. It is, by its nature, an activity without borders. It is also illegal in every legitimate country on the planet.

Second, the bankers in Mexico who engaged in laundering drug money, did so with knowledge of the illegality of their acts. They did so in a manner aimed at avoiding detection. They did so in defiance of bank regulations and Mexican law.

Third, these bankers engaged knowingly in using their expertise to violate United States law. And they provided the facilities of their banks to move money around the globe in violation of international law.

Fourth, we know they did this because it's on tape. We know they did it knowingly because the indictments spell it out.

Fifth, they used their expertise to try to improve the ease with which the money was laundered. They provided advice on how to avoid Mexican law.

They acted with criminal intent and used the interconnectivity of the modern banking system to hide their acts. They committed these acts in this country, in Mexico, and elsewhere, either in person or by using computers.

Now, the Foreign Secretary in Mexico would have it that in exposing these activities and in tracking the process, United States agents violated Mexican sovereignty and law. It would seem, in her view, that this means the undercover operatives committed criminal acts by engaging in money laundering. But in this country and most others, a criminal act involves intent. There is no criminal intent involved here by U.S. law enforcement. Just the reverse. Thus, law is not offended.

As to sovereignty, well, if we insist on this point, whose sovereignty is violated? Sovereignty is not meant to be a shield for criminality. It would be a fine world if that were the principle. It is not. I can think of few more useful tools for drug traffickers, money launderers, and thugs of every description than to find a safe haven in some country willing to use its sovereignty to harbor international criminality. What has happened here, is that bankers have violated the laws of this country by using the international banking system to freely commit crimes. They have done this in person in this country and they have done it electronically across borders. These are the criminals, not the law enforcement people who have corralled this gang of crooks.

But according to the Foreign Secretary of Mexico, it is the law enforcement folks who are to be labeled villains. In some of the most intemperate rhetoric I have seen from a senior government official, the Foreign Secretary not only castigates the good guys, but is calling for their extradition. I find this situation outrageous. I am equally concerned about the response from our own State Department. I have a letter here that our Secretary of State has sent to the Secretary of the Treasury. I will submit this for the RECORD. Instead of congratulating the law enforcement effort and joining hands with Secretary Rubin, Secretary Albright complains about inadequate consultation with Mexico. What is wrong with this picture?

Given the important steps Mexico and the United States have taken to

improve bilateral cooperation and to go after the real thugs in the story, I hope we can get past this case quickly. I hope the Foreign Secretary of Mexico and Secretary of State of the United States wake up and smell the coffee.

Mr. President, I ask unanimous consent that the letter from Secretary Albright to Secretary Rubin be printed in the RECORD.

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

THE SECRETARY OF STATE,
Washington, DC, May 22, 1998.

Hon. ROBERT RUBIN,
Secretary of the Treasury.

DEAR MR. BOB: I know that both you and Attorney General Reno are aware of the negative reaction in Mexico to the announcement of Operation Casablanca and have had contact with Mexican officials about this. I spoke May 21 with Foreign Secretary Rosario Green who expressed her government's deep resentment for not having been informed of the operation prior to the public announcement. Other Mexican officials have voiced concern that the activities undertaken by U.S. agents in Mexico may have been illegal under Mexican law or contrary to understandings between the United States and Mexico.

Mexico's reaction is a product of many factors, not least of which is great sensitivity within the Zedillo government to preexisting charges from the opposition that it is attempting to bail out a corrupt banking system. However, I am concerned about the negative tone this development introduces into the relationship and that Mexican cooperation on several fronts, particularly counternarcotics, may be affected.

We might have achieved more favorable results if we had brought Attorney General Madrazo and a few others into our confidence a few days before the public announcement. In this regard, I believe State should have been consulted. We would have been able to offer some advice that could have ameliorated the negative reaction.

I would appreciate being kept personally informed of developing investigations in Mexico and other foreign countries that could have a significant foreign policy fallout. I do not wish to interfere with your law enforcement work, but I do believe we need to do a better job of coordination.

It is essential that in the coming days you find ways in your public statements and private contacts with Mexican officials to indicate that we are actively working to avoid similar difficulties in the future. I hope to discuss this with you soon.

Sincerely,

MADELEINE K. ALBRIGHT.

Mr. GRASSLEY. I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Texas.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 2686 TO AMENDMENT NO. 2437

(Purpose: To eliminate the marriage penalty reflected in the standard deduction, to ensure the earned income credit takes into account the elimination of such penalty, and to provide a full deduction for health insurance costs of self-employed individuals)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM], for himself, Mr. DOMENICI, Mr. ROTH, Mr. FAIRCLOTH and Mr. BOND, proposes an amendment numbered 2686 to amendment No. 2437.

Mr. GRAMM. 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:

At the end of the amendment, insert:

SEC. ___. ELIMINATION OF MARRIAGE PENALTY.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 222 as section 223 and by inserting after section 221 the following new section:

"SEC. 222. DEDUCTION FOR MARRIED COUPLES TO ELIMINATE THE MARRIAGE PENALTY.

''(a) IN GENERAL.—In the case of a joint return under section 6013 for the taxable year, there shall be allowed as a deduction an amount equal to the applicable percentage of the excess (if any) of—

''(1) the sum of the amounts determined under subparagraphs (B) and (C) of section 63(c)(2) for such taxable year (relating to the basic standard deduction for a head of a household and a single individual, respectively), over

''(2) the amount determined under section 63(c)(2)(A) for such taxable year (relating to the basic standard deduction for a joint return).

''(b) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(1) IN GENERAL.—No deduction shall be allowed under subsection (a) if the modified adjusted gross income of the taxpayer for the taxable year exceeds $50,000.

''(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term 'modified adjusted gross income' means adjusted gross income determined—

''(A) after application of sections 86, 219, and 469, and

''(B) without regard to sections 135, 137, and 911 or the deduction allowable under this section.

''(3) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2007, the $50,000 amount under paragraph (1) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that subparagraph (B) thereof shall be applied by substituting 'calendar year 2008' for 'calendar year 1992'. If any amount as adjusted under this paragraph is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, the applicable percentage shall be—

''(1) 25 percent in the case of taxable years beginning in 1999,

''(2) 30 percent in the case of taxable years beginning in 2000, 2001, and 2002,

''(3) 40 percent in the case of taxable years beginning in 2003, 2004, and 2005,

''(4) 50 percent in the case of taxable years beginning in 2006,

''(5) 60 percent in the case of taxable years beginning in 2007, and

''(6) 100 percent in the case of taxable years beginning in 2008 and thereafter.''

(b) DEDUCTION TO BE ABOVE-THE-LINE.—Section 62(a) of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by adding after paragraph (17) the following new paragraph:

''(18) DEDUCTION FOR MARRIED COUPLES.—The deduction allowed by section 222.''

(c) EARNED INCOME CREDIT PHASEOUT TO REFLECT DEDUCTION.—Section 32(c)(2) of the Internal Revenue Code of 1986 (defining earned income) is amended by adding at the end the following new subparagraph:

''(C) MARRIAGE PENALTY REDUCTION.—Solely for purposes of applying subsection (a)(2)(B), earned income for any taxable year shall be reduced by an amount equal to the amount of the deduction allowed to the taxpayer for such taxable year under section 222.''

(d) FULL DEDUCTION FOR HEALTH INSURANCE FOR SELF-EMPLOYEDS.—The table contained in section 162(l)(1)(B) is amended—

(1) by striking ''and 1999'',

(2) by striking the items relating to years 1998 through 2006, and

(3) by striking ''2007 and thereafter'' and inserting ''1999 and thereafter''.

(e) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 222 and inserting the following new items:

''Sec. 222. Deduction for married couples to eliminate the marriage penalty.

''Sec. 223. Cross reference.''

(f) REDUCTION IN TRANSFERS TO NATIONAL TOBACCO TRUST FUND.—

(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of this Act, the amount credited to the National Tobacco Trust Fund under section 401(b) of this Act for any fiscal year shall be reduced by the amount of the decrease in Federal revenues for such fiscal year which the Secretary of the Treasury estimates will result from the amendments made by this title. The Secretary shall increase or decrease the amount of any reduction under this section to reflect any incorrect estimate for any preceding fiscal year.

(2) LIMITATION ON REDUCTION AFTER FISCAL YEAR 2007.—

(A) IN GENERAL.—Except as provided in subparagraph (B), with respect to any fiscal year after fiscal year 2007, the reduction determined under paragraph (1) shall not exceed 33 percent of the total amount credited to the National Tobacco Trust Fund for such fiscal year.

(B) SPECIAL RULE.—If in any fiscal year the youth smoking reduction goals under section 203 are attained, subparagraph (A) shall be applied by substituting ''50 percent'' for ''33 percent''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

Mr. GRAMM. Mr. President, I apologize to my colleagues that it took so long to get this amendment together. We were trying to do several things, to bring together several provisions of different Members into one amendment. We also were trying to deal with a concern that the authors of the bill have

about their trust fund and how much money we will take out of the trust fund in each ensuing year as a result of the amendment. We are still looking at some of those provisions.

The net result is that we have the amendment together. What I would like to do in offering it is to outline the problem with the existing bill in terms of the impoverishment of blue-collar workers who dominate the ranks of smokers in the country.

I would like to talk about the need to rebate some of the tax money we are getting, in an effort to raise the price of cigarettes, to the very people who are going to be impoverished by this confiscatory tax. I would like to talk about why the marriage penalty is a good choice for that tax rebate. I would like to then talk about how this marriage penalty repeal works and how the numbers work out in terms of the budget. And that will constitute the relevant information in offering the amendment.

First of all, the problem. We have heard now for weeks and weeks a running debate about tobacco companies and their conspiracy to induce people to smoke. With just cause, those tobacco companies have been denounced on the floor of the Senate over and over again. However, people have become so fixed on these tobacco companies, they have totally lost sight of the fact that a giant bait and switch has occurred. In reality tobacco companies are not paying taxes under this bill, consumers are paying taxes under this bill. In fact, the provisions of this bill make it illegal for a tobacco company to refuse to pass the price through to the consumer. So they are held harmless in terms of the tax, but blue-collar Americans who smoke are devastated economically by this tax.

So the problem with the bill is that, in the name of raising the price of cigarettes to discourage smoking, we are, if this bill goes unamended, imposing one of the most regressive taxes in American history. And ''regressive tax'' means that poor people pay an increasing share of the tax burden.

Why do I say that? Well, I say it basically because in America smoking is primarily a blue-collar phenomenon. Obviously, people at all income levels smoke, but if you look at who will pay this tax, it really brings home the fact that in our country most of the people who smoke are moderate-income, blue-collar workers.

Of all of the tax collection that will occur under this bill, in an effort to drive up the price of cigarettes, 34 percent of those taxes will be paid by Americans who make less than $15,000; 47.1 percent of these taxes will be paid not by tobacco companies but by Americans who make $22,000 a year or less; 59.1 percent of these taxes will be paid for by Americans in families with incomes of $30,000 a year or less.

So whether it is the intent of the underlying tobacco bill or not, the net result is that this bill imposes no taxes on tobacco companies whatsoever. It shields tobacco companies by requiring that they pass the tax through to their consumers, and it squarely hits moderate-income, blue-collar workers right in the wallet and in the pocketbook.

Those who favor this bill have said over and over again that their objective in this bill is, not to raise money so they can spend it, but their objective in the bill is to drive up the price of cigarettes to discourage smoking. So recognizing the problem, that while the proponents of the bill vilify the tobacco companies, in reality they are taxing blue-collar workers. While they say they are not imposing the tax to get money to spend, in truth they are spending all the money. I have offered this amendment with Senator DOMENICI, Senator ROTH, and others, to achieve what the bill proponents claim they want to do. My amendment gives a part of the money that is collected in this tax back to the very people who are going to bear the burden of this tax.

Let me give some examples. In my State of Texas, we have 3.1 million Texans who smoke. If this bill drives the price of a pack of cigarettes up by $2.78, which is the general estimate that is given, a Texan who smokes one pack of cigarettes a day would pay $1,015 in new Federal taxes and would see their Federal tax burden grow by over 50 percent as a result of this tobacco tax.

Under this bill if a moderate-income family made up of two blue-collar workers, one might be a local delivery person and one might be a waitress, each smoke a pack of cigarettes a day and are earning less than $30,000 a year, they are going to pay $2,000 in additional Federal taxes.

So Senator DOMENICI, Senator ROTH, other Senators and I, have offered an amendment that says: Let us target people who make $50,000 or less because they are going to pay some 75 to 80 percent of these taxes, and let us take a portion of the taxes, roughly a third, and give that money back to the people who will be paying the taxes in the form of repealing the so-called marriage penalty.

Mr. KERRY. Would the Senator yield for a question?

Mr. GRAMM. I would be happy to yield.

Mr. KERRY. I agree with the Senator that some people who pay the marriage penalty will also buy cigarettes, but I am sure the Senator has to acknowledge, and would acknowledge, would he not, that some people who will buy cigarettes, who are called sort of the ''victims'' here, will not get a benefit by this necessarily and some people who do not smoke will get a benefit by this? Is that a fair statement?

Mr. GRAMM. Let me reclaim my time to say it is true that moderate-income Americans who do not smoke will benefit from this tax cut, if they are married. It is true that high-income people who smoke will bear a burden from the bill, and they will not get a benefit from this tax cut. But it is also true that Americans who pay 80 percent of the tax that will be imposed in the name of discouraging smoking, they are in families who earn less than $50,000 a year, and they will get a benefit from this bill. There is no way we can target it just to smokers, nor does anybody want to.

The point that we are making is, if we are trying to raise the price of cigarettes to discourage consumption, that is one thing. But many of the critics of the bill have viewed this as a tax and spend bill, and with great justification, in my opinion. Therefore if we are raising the price of cigarettes to fund tens of billions of dollars of new Government spending, then why not give part of it back? There is no perfect tool in giving it back. The best we have found is to repeal the marriage penalty and to make health insurance tax deductible for the self-employed.

Let me explain how the marriage penalty works and how our amendment will work.

Many Americans are surprised when they learn that we have roughly 31 million families in this country who pay higher taxes because they are married than they would have paid had they remained single. In fact, the average tax burden that is incurred by these couples is about $1,400 a year higher. They pay the Federal Government $1,400 a year for the privilege of being married rather than continuing to file as single individuals. In fact, during a Finance Committee hearing, we actually had the startling testimony from a young woman who said she was living with her boyfriend and would like to get married but, because of the burden of the marriage penalty, they had delayed that decision.

I think we all understand that the family is the most powerful institution for progress and happiness in history. Strong families, I think we would all agree on a bipartisan basis, represent the solution to everything from drugs and gangs and violence, and for the perpetuation of the basic values that we all treasure as Americans. And so I think anyone would want to get rid of a provision of tax law that discourages people from getting married.

Our amendment does not try to get into a position of discriminating for or against couples based on the decisions they make about whether both parents or just one of them work outside the home. Some people have criticized our amendment, and perhaps will do it today, by saying that this marriage penalty provision will benefit families where only one of the couple works outside the home. But our objective is to have a provision that corrects the marriage penalty but doesn't do so in such a way as to discriminate against stay-home parents. A vast majority of the time, that is stay-home moms. We don't believe the Tax Code should treat people differently based on whether they decide to stay home and raise

their children or whether they decide to work in the marketplace.

My mama worked my whole life because she had to. My wife has chosen to work the whole life of our children because she wanted to. But we believe, those of us who are authors of this amendment, that it is not the business of the Government to try to dictate through the Tax Code that very important personal family decision. We want to be sure that for those who do choose to give up the income by having one parent stay at home and raise the children, that we don't see them discriminated against in the Tax Code.

So here is how our provision works: What our provision will do is give every couple who makes less than $50,000 a year relief from the marriage penalty. We chose $50,000 a year because we really are rebating part of the revenue from the cigarette tax back to those people who pay 80 percent of the taxes. It is my goal, in the tax cut that I believe will flow from the budget, to repeal the marriage penalty for every American, no matter what their income. But we have targeted $50,000 and below here because that is where the smokers in America are, in the middle- and moderate-income range. We are using this to rebate part of the money collected in this bill due to the increase in the price of cigarettes to them.

What we will do for every married couple is, compared to the tax return they filed last year, they will get a $3,300 deduction above the line, before they calculate what their income is for taxation purposes. This will repeal the marriage penalty. In addition, it will save the average family about $1,400 a year in taxes. For low-income people who are still working to try to get ahead and trying to become self-sufficient, we will let them deduct this $3,300 from their income before they calculate their eligibility for the earned-income tax credit. As Senator DOMENICI knows, some of the heaviest tax penalty burden falls on moderate-income people who are getting an earned-income tax credit if they stay single, but if they get married, which is part of the solution to their problem in terms of helping to put together a strong family, they end up losing their earned-income tax credit. So under our amendment we will give a substantial tax cut to the very Americans who are bearing the burden of this increased price of cigarettes.

Finally, we deal with a problem related to the self-employed by immediately making health insurance deductible for the self-employed. If I work for General Motors and they buy my health insurance, it is fully tax deductible. But if I quit working for General Motors and go into business for myself, not only do I have to pay both sides of my payroll tax, but my insurance is not tax deductible and I have to pay it with after tax money. We have started the process of phasing this out over an extended period of time. What this bill will do is it will immediately give full tax equity to those Americans who are self-employed.

So the net result of our amendment will be to give back $16 billion in the first 4 years, to give back $30 billion over the ensuing 5 years, to the very people who pay 80 percent of the cigarette tax under this bill. We will give about a $1,400 tax break to working couples in that income category by repealing the marriage penalty, and we will make health insurance fully tax deductible for the self-employed.

We have crafted the bill carefully so that we take about a third of the revenues that flow from the tax that is collected on cigarettes. Quite frankly, in the final bill I believe this number should be bigger. This is a number we picked when we introduced the amendment. We have tried to structure it to stay with that through the end of the budget cycle, which will terminate in 2007, and we tried to stay faithful to that agreement in the drafting of the amendment.

I think this is an important amendment. I believe that it does provide some degree of tax relief for the people who are going to pay this confiscatory tobacco tax. I hope my colleagues on both sides of the aisle will support this amendment. I do believe that we have gone to great lengths to try to make the amendment fair. We have listened to the concerns that have been raised by our colleagues who are in support of this bill. I think this is a good amendment. I commend it to my colleagues.

It does not correct the many wrongs in the bill that is before the Senate. It does not eliminate the marriage penalty for all Americans. It is a major step in that direction. This is not the end of the marriage penalty debate. This is the beginning of it.

By the end of this year we will have repealed the marriage penalty for every American family. This will allow us to do it immediately in this bill for those in moderate-income areas who pay the bulk of the cigarette tax. We will do it for the rest of Americans in the budget, in my opinion. I commend this amendment to my colleagues.

I want to thank Senator DOMENICI for his leadership in this area.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I don't intend this afternoon to repeat much of the explanation which was made by the distinguished senior Senator from Texas but I just will emphasize it as I see it.

First of all, it is very important to me that when we articulate an American policy and say we are for this or we are for that, that sooner, rather than later, we look at what our laws are and see if we can make them match the policy that we would like for our country.

No. 1, everybody on the Senate floor, it seems to me, from time to time has been concerned about families in America. Obviously, the marriage tax penalty works against families, because if a married couple with two or three children are penalized to the extent of $1,400 a year in taxes that they pay—just because they are married, which they would not pay if they had their exact same earnings and filed separately or were not married—that is clearly an American policy out of step with a profamily position of the United States and certainly of this Senator and most Senators I associate with in the U.S. Senate.

Secondly, maybe it isn't articulated as precisely as the previous one tenet of philosophy, but I say we, as a nation, ought to espouse marriage and we ought to look with favor upon the relationship that is called marriage historically and traditionally.

As my friend from Texas says, of all the institutions around, it seems to be that marriage is the one that has endured. It also seems to be one that when marriage does not endure or work properly it causes a lot of other problems within a family and throughout society. So to put an extra tax on that institution is wrong.

In the United States of America, 24 million married couples have endured and paid through the nose because of this marriage penalty.

I don't think they really thought when they said, ''I do,'' that they were also saying, ''and we shall pay.'' I don't believe that is what they thought they were doing when they took their marriage vows.

The average penalty is about $1,400. I think everybody knows what an average means. Plenty of couples are paying much more. Obviously, there are plenty paying somewhat less.

In my State of New Mexico, 203,00 New Mexican families will be helped by this change. We are a State with just a little bit over 1,600,000 people. That is a pretty significant benefit we are passing on to people who are married and raising families, and both spouses are working.

By way of an aside, the second portion of our bill has to do with businesses that are self-employed people. Let me just give you that number. In New Mexico, 222,000 businesses are going to find that health insurance is going to be available to them now and be more affordable because under this provision they are going to be able to deduct the entire health cost, as do corporations and as do many others that are not self-employed.

So if anybody is interested in how we got into this mess with the marriage penalty, I will put in some facts about it later.

Obviously, this has come about with each major change we have made in the Tax Code, either to phase something out or to phase something in. There are about 63 provisions in the code, where couples are penalized for being married. The standard deduction and the progressive tax brackets are two of the major contributors to the marriage

penalty. So many of these provisions in the code vary, as I indicated, with marital status. The provision that primarily is responsible for the marriage penalty, the standard deduction for married filing jointly, is not two times the standard deduction for filing if you are single. That is the major reason that we have a problem.

Having said that, I want to relate this proposal to the bill that is before us. Every time we discuss a budget of the United States, or the economy of the United States, somebody talks about—and quite properly—what the level of taxation on the American people is. It is relevant to America's future, in my opinion and in the opinion of most economists looking at our country, that our tax on the American people, the total tax, be at the lowest possible level. Now, this bill before us, whatever its other interests are, is a very large tax imposition on the American people. Although it is not paid by everybody, you add it to the myriad of other taxes, and then you find out America is paying a higher total tax level than it was before this bill was passed.

So, to me, it is very simple. If this is a tax bill—and clearly there are many people who want to spend every penny of it on some kind of program. In spite of a budget that said we would not spend any more, there are scores of programs on which people would like to spend money. It seems to me that the forgotten people would be the taxpayers who would get no benefit unless we reduce taxes and charge the reduction to the tax income coming under this bill.

I think it is very logical and very reasonable—$16 billion in the first 5 years, $30 billion in the second 5 years, coming from the taxes raised in this bill from cigarettes. It will ultimately come from consumers. People think the tobacco companies are paying, but actually it will be added to the price of cigarettes and consumers will pay it.

We are saying give $16 billion back to the taxpayers and $30 billion back in the form of these two tax reductions over ten years. That is a third of the tax take in the first 5 years and about 37 or 38 percent in the second 5 years. Under the bill, about 40 percent of the program goes to the States. I am not sure I favor that much going to the States, but we are not amending that provision here. That is to be considered at another time if the Senate wants to consider it. But so long as the states are expected to get 40 percent of the overall trust fund, Senator GRAMM and I have agreed we won't offer any more tax cuts. But if indeed that 40 percent is reduced and we attempt to take some of that money back to the Federal Government and spend it, then obviously we reserve the right to offer some additional tax rebates or reductions or reforms at that time.

I am hopeful that the Senate will adopt this amendment. There may be other tax measures, but I think essentially we are going to be separating Senators into two groups—Group One: Those Senators who want to spend all the money and group two who are Senators who want to give some of it back to the people. That is the issue. Do you want to give some of this back to the people, or do you want to spend it all for one program or regime or another that costs money, or a series of programs by which we give money back to the States for them to spend it?

I think the American people are going to judge us very, very precisely on this and I don't think the judgment is going to be a difficult one. They are pretty astute. When we have just crowed about a balanced budget with caps on expenditures and we come and say now we found a new source of revenue, all those ideas about keeping Government under control can go out the window. We will spend all of this on new programs. I think they will understand very easily. They will focus quickly that those who vote no on this amendment will be saying they want to spend all the money; those who vote yes on this amendment are saying we ought to give some of it back to the American taxpayer—in this case, to that huge number of Americans who are married, with both couples working, wherein they are being penalized by the adverse effect of our tax laws, and that they must pay a penalty for being married and for earning a living and filing jointly.

I am rather confident this is the right approach. Why do we stop at $50,000 worth of wage earnings? I will agree that is just an arbitrary number. But we can't fix everything in one bill. If there is a tax bill this year—and there probably will be one—I would think high on the list would be to repair the marital tax problem so the higher brackets of earners are entitled to receive that benefit also. I thank Senator GRAMM for his untiring efforts on behalf of this. It is a privilege to work with him. I believe we will have a victory today.

I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, let me begin with some comments about where we find ourselves, and then I will come back a little bit later and go into greater detail about it.

At the outset of the presentation of the amendment as originally filed by the Senator from Texas to repeal the marriage penalty, I and Senator MCCAIN and others said at that time that we were prepared, because we are supportive in principle of the notion of reducing the marriage penalty—we said we are prepared to embrace in this bill a component of marriage penalty reduction, provided that it doesn't strip away so much money that we are unable to accomplish the other purposes of the bill. And we have gone through a long week now—maybe a little bit more than a week—and the Senate has essentially been in a stalemate position as we have negotiated around the concept of how much is appropriate and how do you arrive at how much is appropriate.

During the course of that week, the Gramm amendment as originally filed has undergone several changes. We are very pleased with that. I think there has been a bona fide effort here to try to arrive at some kind of sensible approach to the marriage penalty issue. The original Gramm amendment presented us with an estimated cost of $113 billion over 10 years. That would have represented over that 10-year period 80 percent of the costs of all of the tobacco revenues. In other words, all of the tobacco revenues that would have come in, 80 percent of them under Gramm I, as we should call it, would have gone out to the marriage penalty rebate as he had designed it at that time.

Last week, at the end of the week, Senator GRAMM revised his proposal to what we would call Gramm II. Gramm II made mostly some sort of cosmetic changes that took the full measure of the cost, the $113 billion I have just described, the 80 percent of the revenues, and rather than have them all show up within the first 10 years, it took those revenues and pushed a significant portion of them outside of the 10-year budget window. In other words, we look at the budget of the country in these 5-year periods, and we are looking at a 10-year budget window within which we have an ability to measure what we are doing. Beyond that, it becomes relatively more speculative.

Under Gramm II, the Senator from Texas would have still spent nearly 80 percent of the tobacco revenues in years 11 through 25 of the bill. So there would have been a reduction for the years 1 through 10 within the budget process, and outside of that, knowing that we are looking at a 25-year revenue stream as we measure the tobacco bill, that would have then taken the better part of the 80 percent. So you would have taken funds that were intended for public health, research, farmers, and the States, and that would have been significantly reduced. That clearly was also unacceptable. So we stayed locked in sort of a status of essentially negotiating with not a lot happening.

We then responded. We responded with an alternative that would have reduced the marriage penalty for most families. But it would have been done at a fraction of the cost of both Gramm I and Gramm II, which brings us now to Gramm III. Gramm III is what we were presented with just a few moments ago as we began this debate when the Senator filed this particular amendment. Under Gramm III, there is now an expenditure of approximately one-third of the funds under the tobacco funding. So it has been significantly reduced in the road that we have traveled as to tobacco funding.

In other words, from the revenues raised, if and when this bill passes, no

more than a third of that can be taken for the purposes of reducing the marriage penalty. But that is only half the story, because what the Senator from Texas does is maintain a level of benefits. In other words, he has geared his marriage penalty reduction in a way that there are still significant resources necessary in order to fund the benefits that he wishes to give, and he chooses not to take them all as part of our negotiating process from the tobacco bill.

But the question then has to be asked, Where does the Senator from Texas take them from? I respectfully submit that as a result of the fact that he has left in the breadth of generosity of benefits that he seeks to return in the form of the marriage penalty, while not taking it from the tobacco bill, he nevertheless seeks to fund it and take it from the other available funds of the Federal Government. That means that he will have to tap a new source of revenue; i.e, the general budget surplus of the country.

That means that the Senator from Texas will now look to Social Security, which is where we had originally designated that those funds would go. We have said as a matter of budget policy that we are going to preserve the budget surplus to take care of Social Security. But since the Senator is agreeing that only one-third of this revenue will come from the tobacco bill, the rest of it can only come from the surplus, unless, of course, the Senator has a bunch of offsets he is willing to offer up to suggest where that funding is going to come from.

A vote for the Gramm amendment in its current form, Mr. President, is a vote to take $90 billion to $125 billion of surpluses away from Social Security. This is $90 billion to $125 billion that will not be available for the long-term reform of Social Security, because once this tax cut of the Senator becomes law, assuming it does, it is law outside of the budget process. The Tax Code is not part of the budget process. That is then a right that has been created, an expectation as to what people will pay. And it has to be funded. The only place you can turn to fund it is to the general revenues and, therefore, to the surplus.

That is one side of what is being offered here. But I want to speak about another side.

I would like to ask my colleagues whether or not it is possible to take away the label ''Democrat and Republican,'' take away the contentiousness of this bill, and just look at these two alternatives as a matter of good public policy and of common sense in terms of the budgeting of the country. The alternative that Senator DASCHLE and others of us on our side are offering, and we would hope with good common sense apply to the analysis that a number of colleagues on the Republican side of the aisle would say is really better policy—and I will say why I believe it is better policy—the fact is that the alternative we will offer provides a greater marriage penalty relief than the Senator from Texas, but it does so with less cost to the Federal Treasury and to the tobacco bill. I want to repeat that. The alternative that we offer will give more marriage penalty relief than the Senator from Texas, but it will do so with less damage to the capacity of the tobacco legislation to be able to provide for public health for research for the States, and so forth.

The question is obviously, How do you do that? How do you avoid—is that some kind of a shell game and flimflam artistry, or is it real? I will tell you why it is real. The Senator from Texas, by his own admission, has agreed that he will reward those people who do not smoke. Or let's talk about the targeting. He says it is impossible to target this to accomplish a goal where you would actually wind up targeting nonsmokers versus smokers. I would agree with that. He is absolutely correct. That is pretty hard to do. But you can easily target this marriage penalty reward so that it is actually dealing with the marriage penalty. If the purpose of this is to fix the marriage penalty, then it is possible to target this benefit in a way that it goes to the people who pay a penalty, not paid to the people who get a bonus.

The Congressional Budget Office will tell you that 51 percent of American married taxpayers get a bonus. And there is absolutely nothing in the approach of the Senator from Texas that limits them from getting rewarded above the bonus. There is no practical policy here given the difficulties we face of taking from the Social Security surplus, or taking from the tobacco bill, which we have now agreed we don't want to take more than a third from—there is no rationale for coming in and rewarding those people who already get a bonus. So what we have done is guarantee that we are going to give the tax relief to the people who are actually penalized. Senator GRAMM's amendment costs 50 percent more than the Democrat alternative, and it gives less marriage penalty relief.

The reason is that we have focused on giving about 90 percent of our tax cut to those families that are actually penalized, whereas Senator GRAMM is only 40 percent—90 percent versus 40 percent. Sixty percent of the people who are going to get a reward under Senator GRAMM's approach don't even pay a marriage penalty. It is not even fixing the marriage penalty. It seems to me as a matter of public policy what we ought to do is guarantee that we reach the maximum number of people who pay the penalty with the maximum amount of dollars back to those people.

Our alternative would provide a 20-percent deduction against the income of the lesser-earning spouse. The way the marriage penalty works, as I think most people know by now, is that either on a standard deduction or on the earned-income tax credit or on the marginal rate you pay more or less according to what the income of both members of the household, both married partners pay. But it depends. The vagaries of the Tax Code are such that you could be a married couple with one person working, earning a big salary, one person not working at all, and you won't be affected the same way; you would actually have a bonus versus the two married partners who are both working, both earning sort of a similar amount of money. So if you have two income earners each earning about $25,000, they wind up paying a penalty versus the high-income earner, single earner within the family and the other partner who is not, and there are other aberrations like that as you go through the various levels of income earning.

It makes no sense to jeopardize this legislation and to place pressure on the surplus, which we have now decided we ought to reserve to save Social Security in order to reward people who are already rewarded. There is simply no matter of public policy of common sense in doing that, and that is why there is a very significant difference between the two approaches here.

Let me give as an example a couple making $35,000. Let us split the $35,000, $20,000 to the husband or vice versa, $15,000 between the two spouses—you have 20 to one and 15 to the other, making $35,000. Under the GRAMM approach, that couple would receive an average additional deduction of about $1—$1. By comparison, under the 20-percent, second-earner deduction alternative that we propose, the couple would receive an additional deduction of $3,000—$3,000 deduction versus $1 under Senator GRAMM, 20 percent of the $15,000. That represents about twice as large a tax deduction, and it would provide twice as much actual tax relief without any of the negative downside that is carried with the proposal of the Senator from Texas.

Let me give you another example. For a couple making $50,000, let's split it evenly between both spouses—$25,000 husband, $25,000 wife. And that is a very realistic, very realistic division in the kind of two-person income of the families that we are trying to reach. Again, under GRAMM, the couple would receive an average additional deduction of $1.

By contrast, under the 20-percent, second-earner deduction alternative that we propose, the couple would receive an extra $5,000 deduction representing more than three times as much tax relief.

So that is the choice here, Mr. President. You can have a reward to people who are already getting a benefit by getting married, which is not a marriage penalty fix at all; you can structure it so that you wind up having to take the money from the general revenues, from the surplus; or you can come in with much greater tax relief that goes to the people who really need it, and you can do so without the negative impact on Social Security and

without the negative impact on the tobacco bill itself.

I think the choice is very clear. The difficulties presented to the overall budget situation by Senator GRAMM's current approach are very significant. It was the understanding, we thought, that we were not going to take more than one-third of the revenues in total, in whatever form they were going to come, that the Senator was going to structure his benefits so that no more than a third was represented in them.

What is happening here is the Senator is giving the guarantee that no more than a third comes out of the tobacco bill, but he goes elsewhere to look for the rest of the larger sum of money that he is going to give back by not structuring the benefits downwards. So, in other words, it is essentially outside of the notion that you have an agreement that is going to restrict the total benefits of the marriage penalty to one-third of the level of the tax bill.

Now, he can come back and argue: Wait a minute; we are just taking one-third of the tax bill.

Well, that is true, except that in total for the marriage penalty they are looking to one-third, significantly more than one-third from these other sources, which is a very different consideration from that with which I think most of us thought we were going to be presented.

The bottom line is that the amendment proposed by the Senator from Texas costs 50 percent more in the first 10 years than the Democrat alternative—that is $46 billion total in the first 10 years—versus about $31 billion. But it delivers far less in marriage penalty tax relief.

Finally, at this point—I would reserve some time later—but at this point in time, if you have $30 billion taken out of this bill in the first 10 years—9 years, 10 years—added to the 40 percent that goes to the States, and add to that the component of the drug plan that came through yesterday, which takes 50 percent of the public health money, and we all know this bill is not leaving the floor of the Senate unless there is some kind of fix for the farmers, and we are going to look at somewhere between $9 and $18 billion—that is what you have, $9 billion; $18 billion, Senator LUGAR, I believe; $9 billion, the Senator from Kentucky.

All of a sudden the question has to be asked: Where is the money to stop kids from smoking? Where is the fundamental notion that this is a bill directed at children in order to stop those kids from smoking? And everyone has come to understand that you need counteradvertising, cessation, professional training, and other kinds of things in order to do that. So it is simply unacceptable that suddenly all of the fundamental purpose of the legislation could be stripped away in a manner that would be unacceptable.

Now, obviously, if this were to pass, I think everyone knows it is not going to be able to stay that way. There is no way. So the choice before the Senate is very clear: Do we want to make good policy about the marriage penalty, which I support fixing, but I have said all along it has to be done within the confines of reasonableness as to how much is available in this overall package so that we can still accomplish the fundamental purposes of the legislation. We are going to have to clearly visit that a little more over the course of the afternoon.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, the pending amendment begins to address tax relief in two important areas. The first is the marriage penalty that exists in the code. The second is health care costs. This amendment begins to give back to the people some of the money that is raised through the tobacco tax in the bill. And for these reasons I intend to support the pending amendment.

Personally, I think the spending is still too high in the tobacco bill. More of the revenue should be returned to the taxpayer.

In addition, there are many measures that the Finance Committee recommended which are not adequately included in the final bill. For example, the tobacco bill is inconsistent with the work of the Finance Committee, which has jurisdiction over the Medicaid program. The tobacco bill also reopens the Balanced Budget Act by increasing spending beyond the $24 billion we have already provided for the State Children's Health Insurance Program. Another aspect of the overall bill which concerns me is the way that the international trade provisions are drafted.

Mr. President, there have been media reports that the tobacco bill is in trouble because the managers have to accommodate so many factions within the Senate and that today they have to accommodate the tax-cutters to make progress on the bill. I take exception with the suggestion that tax relief is just another nuisance to be accommodated. My perspective on this bill is quite different.

It is repeatedly asserted that this bill's purpose is to reduce teen smoking. That is a very desirable goal. I support that goal. However, in the bill I find only two policies that bear on that goal.

The first one—the tax increase—is said to bring in $65 billion over 5 years. The second one—under $1 billion in the President's budget—is a cessation program for teenagers.

In my opinion, we have accomplished the goal with $64 billion left on the table. That money should be returned to the people, not be used as a slush fund to make government bigger. Making government bigger is not the goal of this legislation. But it seems to be the effect.

In my opinion, the debate on this bill should center on how we rebate excess revenues to the people not on how we can fund government spending increases that cannot survive the traditional discipline of the budget and appropriations process. I support this amendment because it is philosophically the only legitimate course, in my opinion, for the Senate to take.

The pending amendment provides tax relief in two specific ways. First, it partially reduces the inequity of the marriage tax penalty.

As my colleagues know, this penalty places an unfair burden on two-earner married couples.

According to a recent Congressional Budget Office study, a married couple filing a joint tax return in 1996 could face a tax bill more than $20,000 higher than they would pay if they were not married and could file individual tax returns. The same study estimated that according to one measure of the marriage penalty more than 21 million married couples paid an average of nearly $1,400 in additional taxes in 1996 because they filed jointly. Marriage tax penalties totaled $29 billion in 1996.

Let me take a few minutes to describe the history of the penalty—which has been around for almost 30 years. Before 1948, all taxpayers filed as single individuals. In that year, Congress gave taxpayers the ability to file jointly—meaning that a couple had the benefit on income splitting. The tax bracket for married couples was double the bracket for single individuals. Because of complaints that singles were being unfairly penalized, in 1969, Congress devised a special rate schedule and standard deduction amounts for singles. This new rate schedule created a marriage penalty for some taxpayers.

Because of changing demographics and the prevalence of two-earner couples in America, the marriage tax penalty has become an even greater concern. Moreover, after being reduced during the 1980s, the tax increases and creation of additional tax brackets in 1990 and 1993 have made it much worse today.

In the current tax code, there are over 65 examples of provisions causing the marriage tax penalty. The most obvious and dramatic one is the rate structure itself.

But there are numerous others, all of which can have a significant effect on the pocketbook of a married couple. The penalty provisions are built into deductions, exemptions, credits, and other facets of the code.

What the pending amendment does is take a step toward providing some relief for this inequitable condition. It provides a deduction, up to an amount of roughly $3,400, for married couples. This deduction is phased in over 10 years. It will partially alleviate the burden, and toward doing this, I am a strong advocate. However, I regret that this relief does not go far enough.

The phased-in deduction is only available to couples with an adjusted gross income of less than $50,000. In other words, Mr. President, someone

who works in the Chrysler or GM plant in Delaware and whose spouse is a school teacher would have too high an income to qualify for marriage penalty relief. That doesn't seem fair. I would have liked to see us give relief from the marriage penalty to many more Americans. Frankly, I would like to see us get rid of the marriage penalty altogether.

The second major component of tax relief in this amendment is in the area of health care. The amendment provides self-employed individuals next year with a 100 percent deduction for their health insurance. This is long over-due. It will help farmers, small business people, and others who buy their own health insurance. Because of this amendment, 3 million taxpayers and their families will have more affordable health care, and you cannot overstate how important this is.

This is a good first step. But I want to be clear that I do not consider it to be everything we must do. There are 18 million other Americans who lack health insurance, some are unemployed, others are elderly, and many have jobs. Simply put, I would like to see these individuals receive an above-the-line deduction for the cost of their health care. This is something I have worked on for some time.

When the Finance Committee marked up the tobacco legislation I placed before the committee a two-part proposal in the area of health care.

The first part was an immediate increase to 100 percent deductibility for health insurance for the self-employed. The second part provided the same benefit to the other 18 million Americans who need health insurance. This attempt was a natural follow-on to my successful efforts in 1995 to raise the deductible percentage from 25 to 30 percent and to make it permanent. Unfortunately, this time my tax cut proposal was not approved by the Finance Committee.

I intended to offer the same tax cut amendment on the floor, and I was pleased that several members—Republicans and Democrats—agreed to support it.

This proposal was also supported by farmers and small business, and I am pleased that it is reflected in the amendment before us now. Though, again, I want to go further. This is a good start, but I hope that in the future we revisit this with a mind to making health insurance more affordable for millions more of American workers.

It is the same with the marriage penalty. It is egregious that married couples are penalized by our tax code. I believe this sends the wrong message in more ways than one, and it must be addressed. We have attempted to do this in the past. For example, in 1995, in the Balanced Budget Act, Congress approved a proposal to phase out the marriage penalty in the standard deduction. Our legislation was vetoed by President Clinton.

I realize that at this point we are constrained by financial limitations and other priorities, and I compliment my colleagues for moving as far as they have with this bill. But I want all of my colleagues to agree with me that this should be seen as only the beginning. There is no justification for a married couple to be penalized just because they are married.

Mr. President, though it is not perfect, and while it does not go as far as I would like, I intend to support this amendment. It sends the right message.

It does provide partial relief. And it is a step in the right direction. I encourage my colleagues to support this effort.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Alaska is recognized.

VISIT TO THE SENATE BY ANSON CHAN, CHIEF SECRETARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

Mr. MURKOWSKI. Madam President, it gives me a great deal of pleasure to introduce to this body, the U.S. Senate, Mrs. Anson Chan. Anson Chan is the Chief Secretary of the Hong Kong Special Administrative Region, known to many Senators in this body.

Anson Chan is the head of Hong Kong's 190,000-strong Civil Service. She was appointed to the position back in 1993 by then-Governor Chris Patten and has continued to serve in this capacity under C.H. Tung, the Chief Executive of the Hong Kong Special Administrative Region.

RECESS

Mr. MURKOWSKI. Madam President, I ask unanimous consent the Senate stand in recess for 5 minutes, so colleagues may greet Anson Chan, our dear friend.

There being no objection, the Senate, at 3:10 p.m., recessed until 3:14 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Ms. COLLINS).

Mr. MURKOWSKI. I thank the Chair for recognizing Anson Chan. I thank my colleagues who visited with her, as well as the pages.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. GRAMM. Madam President, I think somewhere I heard the old saying, ''No good deed goes unpunished.'' In trying to see if we might find some consensus on this issue, I tried to write our marriage penalty repeal amendment in such a way as to limit the amount of resources that it took from the underlying bill.

I did it recognizing that the underlying bill is as full of fat as any bill could possibly be. It is a bill that provides funding for a Native American antismoking campaign that will spend $18,615.55 per Native American who will be served. It is a bill that pays trial lawyers $92,000 an hour. It is a bill that pays tobacco farmers $23,000 an acre, and they can keep the land and go on farming tobacco.

With all of these gross expenditures, our colleagues say that if we take more than a third of the money we are raising in taxes—which they say they are not increasing the tax to raise money—but if we take any more than a third of it and give it back, then somehow the bill is going to collapse.

Then I try to adjust the amendment to keep it within those constraints, and our dear colleague from Massachusetts accuses me of taking money from Social Security. And it goes on and on and on. ''No good deed goes unpunished.''

I have the ability to modify my amendment. I want my colleagues to understand that if we don't work out something on this amendment pretty soon, I am going to modify my amendment, and I am going to take every penny of this money out of this larded bill. So I can solve all of these problems. I tried to help somebody. I tried to work out a consensus, and now we are not able to do it. But I can fix that problem. I can fix the problem by taking the money out of this bill, and I am prepared to do that. I am not going to do it right now. I am going to wait and see if we can work something out. But I am prepared to do it. I have a modification. I have a right to modify my amendment, and I will modify my amendment at some point if we don't work something out.

Madam President, I want to address a number of issues that our colleague from Massachusetts raised.

Our colleague from Massachusetts says, ''Well, I have a marriage penalty correction device, but mine doesn't cost as much and gives more relief.''

So the question is, How is that possible? Well, the answer is that it gives no relief to one particular kind of family. That is a family where one of the parents decides to stay at home and work within the home—one of the hardest and most difficult jobs in America and one of the most important jobs in America.

We have not seen their amendment, but the way our Democrat colleagues could give a marriage penalty for so much less money is that it is a marriage penalty correction that you get only if both parents work outside the

home. That is not the way we have done it. We have not done it that way because I do not want the Government to be making the decision as to whether a parent works outside the home or works inside the home.

Let me say, it is a tough decision for people to make. Some people make it based on economics; some people make it based on their careers. And I think families need to make it, not the Government. My mama, as I have said earlier, worked all my life because she had to. My wife has worked all my children's lives because she chose to. She had a career. She wanted to do it. But the point is, the Tax Code should not discriminate against parents who choose to make an economic sacrifice to have one of the parents stay home and raise the children.

So the magic in this Democrat alternative, if such an alternative exists, is they can do it for less but the way they do it for less is, they say if you have a stay-at-home parent, you get no relief from the marriage penalty.

They are going to complicate this issue. But, fortunately, I understand this issue. So let me try to straighten it all out before they waste all the time trying to complicate it, because I can answer it and will save everybody time.

There is something called a marriage bonus. If there has ever been a totally fraudulent concept, it is the marriage bonus. This thing that we call in the Tax Code a marriage bonus is, if you marry—and let me just speak from the point of view of a male—if you marry a lady and she comes and lives with you in marriage, you get to take her personal exemption and you also get an adjustment to your standard deduction.

So I am sure that people will laugh at this, but since our colleagues are going to go to great lengths to talk about it, let me just destroy it, and we will not waste our time.

Something is called a marriage bonus when—let us say you have John and Josephine who fall in love. And Josephine is just getting out of college. Her father and mother have been taking a personal exemption for Josephine. She marries John. And John is already working. Josephine is getting ready to go into the labor market. They went to the graduation and she got her diploma. Then they walked down the aisle and said, ''I do.'' And sure enough, John gets to declare $2,700 on his tax return for her personal exemption. And John gets $2,850 added to his standard deduction. But does anybody believe that John can feed, clothe, and house Josephine for $5,550? Some bonus. That is no bonus.

Let me show you what has happened. In 1950, the Tax Code of America was such that for the average family of four—husband, wife, two children—75.3 percent of their income was totally shielded from any Federal income tax. This meant that by the time they took their personal exemptions—and they got four of them—that shield was 65.3 percent of their income. Then they got their standard deduction, and that shielded 10 percent of their income, for a total of 75.3 percent.

So in 1950, the cold war had heated up, we were going into Korea, defense spending was rising, but we still shielded 75.3 percent of the income of the average family of four in America from any income taxes because of the personal exemptions and the standard deduction.

The personal exemption was $500 in 1950. To be the same level today, the personal exemption would have to be $5,000. But it is $2,700. So today, the same family of four, making the average income in the country in 1996, has only 32.8 percent of their income shielded. Every bit of the additional income is being subject to income taxes.

So what happened between 1950 and 1998? What happened between 1950 and 1998 is that the real value of the standard deduction and the personal exemption declined dramatically because it did not keep pace with inflation. So whereas in 1950, 75.3 percent of the income of the average working family in America was totally shielded from income taxes, now the average family in America, family of four, making the average income, has only 32.8 percent of their income shielded from taxes.

So since 1950, what has happened? Rich people paid a lot of taxes in 1950, and rich people pay a lot of taxes today. Poor people paid no income taxes in 1950, and they do not pay any income taxes today. What happened to the tax burden between 1950 and today? It almost doubled. Who paid it? Middle-class families. Today, the number that just came out showed that 20.4 percent of all income earned by all Americans is taken by the Federal Government, and when you take State and local taxes, the tax burden today is at the highest level in the peacetime history of the United States of America. No American has ever lived with a peacetime tax burden higher than today. Even though we won the cold war, tore down the Berlin Wall, cut defense by 50 percent, we still have the highest tax burden in American peacetime history because of passing bills like the one that is before us today.

What is the amendment that I have offered with Senator DOMENICI and Senator ROTH trying to do? What it is trying to do is address the problem, shown on this chart, where working families end up paying more and more of their income. When you have a working spouse today, that working spouse is paying 60 percent of their income in taxes that did not exist in 1950.

What Senator DOMENICI, Senator ROTH, and I are trying to do is to correct that. We are trying to take a first step to correct this marriage penalty, which is basically a penalty that falls on 31 million Americans where they actually pay an average of $1,400 a year more because they are married than they would pay if they were single. We want to give them an additional $3,300 deduction. We want to put it above the line so it applies to the earned-income tax credit. And our Democrat colleagues say, ''No, we don't want to do it that way.''

Let me tell you what they want to do. No. 1, they want to say that if a family chooses to have one of the parents stay at home with their children, that that parent is worthless and therefore they should get no correction for the marriage penalty at all.

What Senator DOMENICI, Senator ROTH, and I are trying to do is to not tilt the Tax Code against stay-at-home parents.

I am not trying to make a judgment. In the two families I have had the privilege to live in my parents'; and now my own family—both parents have worked. I am not trying to stand in judgment on whether both parents should work or they should not work. Families should do what works for them. But we should not have a Tax Code that penalizes people who give up income in order to have one parent stay at home with the children. That is the proposal that the Democrats are making.

The second proposal they are making is, do not give any of this to moderate-income people. I did not hear anything in their proposal about making it a rebate to people who are getting the earned-income tax credit.

Let me tell you why that is so important. You have a lady who is washing dishes and you have a man who is a janitor in a school. They might be about as well off on welfare as they are working, but they are proud, they are ambitious, they want to be self-reliant. So every morning they set the alarm for 6 o'clock. When the alarm clock goes off, their feet hit the ground. They get up, they get dressed, they go to work. They often work more than one job. They meet and fall in love. It looks like their dream has come true because together they can have more.

But under the existing Tax Code each of them making very low income qualifies them for an earned-income tax credit. They lose the earned-income tax credit if they get married. So they face a huge penalty, often more than $1,400 a year if they get married.

In our amendment, we apply the correction to this perversion in the Tax Code called the marriage penalty so that even people that are getting the earned-income tax credit can deduct this $3,300 before they gauge their eligibility. Why? First of all, we are for love. Secondly, if a lady washing dishes and a man who is a janitor in a school fall in love, we want them to get married. What society would want to discourage that from happening? They may get married, have a child, their child may become President of the United States.

The alternative being offered is so much cheaper. One of the reasons it is cheaper is that it doesn't apply to these very low-income people. We thought it should apply to very low-income people. The reason is 34 percent

of the money they are taking out of the pockets of working Americans through this tobacco tax come from people that make $15,000 a year or less. They should not be excluded from this provision.

To sum up the points I wanted to make, I want the marriage penalty to be corrected. I want this tax deduction to apply to families, whether they both work outside the home or whether they decide they will sacrifice, take less income, and one of them will stay home and raise their children. I am not trying to make a judgment as to whether that is better or worse. I think it depends on the people and what they want. But I don't think the Tax Code should treat people differently based on that decision. Our colleagues who supposedly are offering an alternative think it should. Our colleagues say, look, if you don't work outside the home, you don't work. If you don't work outside the home, you are not due any correction for this penalty.

Then as the final absurdity they say, after all, John, by marrying Josephine, he already got $5,550 tax deduction by getting her personal exemption and part of her standard deduction. But who can live on $5,550? What kind of bonus is that? It just shows you the absurd language we have developed to defend a provision in the Tax Code which is absolutely indefensible.

I want, in this amendment, to give at least a third of the money we are taking from working Americans back to them. Our colleagues try to get us to focus on these terrible tobacco companies and forget about the fact that tobacco companies are paying no taxes at all under this bill. In fact, this bill makes it illegal for the tobacco companies not to pass through the tax to consumers. Who is paying this tax? A majority, 59.1 percent of this tax is being paid by families that make less than $30,000 a year. So I have made the modest proposal to give a third of the money back to moderate-income families so that those who were in favor of the bill can say, well, we raised tobacco prices. Hopefully, that will discourage children from smoking. Hopefully, it will discourage other people from smoking. Just don't impoverish blue-collar workers in America who smoke and who, paradoxically, are the victims of this whole process.

The incredible, unthinkable, virtually unspeakable truth about this bill is it doesn't penalize the tobacco companies. It penalizes the victims. We tell everybody you have been victimized by the tobacco companies. They knew you would get addicted to nicotine, and they conspired to get you to smoke. Then this bill says we are going to do something about it; we are going to tax you, not the tobacco companies.

Always seeking to do good, I had this modest amendment to take a third of the money and give it back to moderate-income families in repealing the marriage penalty and making health insurance tax deductible for the self-employed. I tried to do it in such a way as to protect some of their huge trust funds. Now they say, no; you can't do that. So at some point, if we don't work this out, I am going to modify my amendment and I am going to take all the money out of the bills trust fund.

The truth is we should be giving back about 80 percent of this money in tax cuts. We should be using the other 20 percent—10 percent of it on anti-smoking, 10 percent of it on antidrugs, and that ought to be it.

In any case, if we are going to debate this issue, I think our colleagues are going to be a long time explaining why, if mom or dad decides to stay at home, they are discriminated against under this Tax Code. I don't think people are going to be in favor of that and I hope something can be worked out.

Finally, at the end of the budget cycle in the year 2007, we have a choice: We can repeal these marriage penalty provisions and take all of it out of this trust fund, or we can set a portion of it out of this trust fund. I can do it either way.

I am beginning to be convinced, as my dear colleague from Arizona has been convinced throughout this debate, that no good deed goes unpunished, even when you try to do what you believe is a good work. If you try to do something good and you try to be reasonable and you try to make things work, something is going to happen to punish you for it. I think that is a shame for the process.

I wanted my colleagues to be aware, when we are talking about giving a $3,300 tax deduction for working families, that you have to wonder why is that reasonable? Well, in 1950, 75.3 percent of their income was totally shielded from income taxes because of the standard deduction and the dependent exemption. Because of inflation since that time and because the personal exemption has not been raised to equal inflation, now only 32.8 percent of their income is shielded from taxes.

I am not going to apologize for trying to let working families keep more of what they earn. Nor am I going to apologize for having a provision that says to parents you can get this tax deduction if both of you work or you can get it if one of you works and you have to make the decision about what works for you and your family. I don't think doing it any other way is going to be successful. I hope we can work this out. But it may be preordained somewhere at a higher level than we are and maybe for some good purpose that this can never work out and this might never be done.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I will speak for a moment and then spend a moment to visit with the Senator from Arizona.

Let me correct one thing the Senator from Texas said. The Senator knows just a little while ago I was talking to him and I offered him a compromise which includes the capacity to raise the level of benefit to the spouse—working mom or pop—who stays home with kids.

But what the Senator is ignoring also is that under the marriage penalty, so-called, the mother who stays home, or father who stays home today and isn't working and that he wants to reward, is, in fact, already rewarded because the structure of tax is such that with a single earner and one parent staying home, they get a marriage bonus.

So we have a tax structure that already rewards the very person the Senator from Texas is talking about. In addition to that, I suggested to him that we ought to be able to work out some way to augment that a little bit. I think that is reasonable. So let's not get into a notion that somehow people want to be more protective of mom and pop who want to stay home with the kids. This debate is about whether or not we are going to be able to have enough money to do the things this tobacco bill must do, which is to reduce the number of kids smoking.

You never hear the Senator from Texas talk about how we are going to save lives in America. We hear him talking about saving taxes, but not saving lives. We never hear him talk about the 400,000 people a year who die because they smoke. You also don't hear him refute the tobacco company's own memoranda, which talks about how they know that when the price goes up, the number of people who buy their cigarettes goes down. That is tobacco company fact; it is not made up on the floor of the Senate.

So let's begin to deal with the reality here. The reality is that if you don't have the ability to affect the behavior of our kids in this country, we are not doing the job on this legislation. And while it is all well and good to want to restore some money back to people to take care of the marriage penalty—and I am for that—we want to do that in a way that is reasonable within the other obligations of this legislation. That is what we are fighting for here—to maintain common sense in this.

I am happy to work out some kind of compromise with the Senator. I think it is important to understand that has to be fair. If we take 80 percent of this bill in order to rebate people who are already getting benefits, we will have departed from all common sense and fairness.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Madam President, I am interested to see that at a time when the tobacco bill is on the floor of

the Senate, we are debating the marriage tax penalty. It is unique, I suppose, that in the U.S. Senate one does not have to talk about the subject that is on the Senate floor at that time. We experienced, earlier in this session, the majority leader bringing to the floor a piece of legislation which created a parliamentary situation where no one could offer any other amendments except those he would prefer to have offered because he was afraid someone on this side of the political aisle would offer an amendment not related to the subject. So we had a legislative logjam on a number of pieces of legislation. That was his right, and I complained about it at the time. And at the same time, the majority leader was complaining that somebody might offer an amendment that had nothing to do with the bill on the floor of the Senate.

Well, here we are. We have a tobacco bill on the floor of the Senate and what have we been talking about now for a number of days? The marriage tax penalty. We had a tax bill on the floor of the Senate some long while ago and we debated that. But now, on the tobacco bill, we are talking about the marriage tax penalty.

I don't think the Senator from Texas will get anybody to swallow the bait here that a marriage tax penalty is justifiable. The Congress has worked on the marriage tax penalty attempting to fix it, to reduce it, to abolish it, and to otherwise change it for a long, long time. Long after this debate is over, there will be discussion about this so-called marriage tax penalty. Should it be abolished, should it be fixed? Of course, it should. Easier said than done, but we ought to do it.

But we are now on a tobacco bill. I bring this discussion back to the reason that we have a bill on the floor of the Senate dealing with tobacco. I want to read again, for some of my colleagues and those who are interested, what persuades those of us in the Senate who support this tobacco legislation and think this legislation is necessary.

I was on the Senate Commerce Committee when we passed the legislation out of the committee. I voted for it, and I supported it. Senator MCCAIN was the principal author of the bill, and Senator CONRAD, my colleague from North Dakota, has also written a piece of legislation which found its way, or at least in large part, into the McCain legislation. I compliment both of them, and others, including the Senator from Massachusetts, and a number of others who have worked hard on this legislation.

But why tobacco legislation? Because many of us believe that it is inappropriate in this country to allow the tobacco industry to continue to try to addict America's children to nicotine. Some say, ''Well, gee, that is not what has been happening.'' Of course it has been happening. Several court cases have now unearthed the memoranda and the information from the bowels of the tobacco companies that they didn't want to disclose but were required to disclose. This information showed exactly what their strategies were in recent decades to try to addict America's children to tobacco.

Almost no one reaches adult age and discovers that what we really wanted to do and have failed to do is start smoking. Does anybody know a thoughtful adult who scratches their head and says, ''Gosh, what have I missed in life? I know what it is. I need to start smoking. That is what I am missing. That is what will enrich my life.'' Did you ever hear of anybody doing that? I don't think so. The only way you get new smokers is to get kids to smoke.

On Friday, I described for my colleagues some of the data and the memoranda that were in the files of the tobacco companies. I want to read some of them again, because I want us to be talking about the subject of tobacco on the floor of the Senate.

But why do we want to do something to tell the tobacco industry they can't addict America's children to nicotine when it is legal to smoke, and it will always be legal to smoke. It is an adult choice. But it is not legal, and ought not be legal nor morally defensible for anyone to say we are going to try to addict 15-year-old kids, or 13-year-old kids, to our cigarettes in the name of profit.

So let me proceed to describe some of the documents, that we have unearthed in various court cases and elsewhere, that describe what the tobacco industry has done. At the end of that, I will ask my colleagues if they think this behavior is defensible. If you don't, then we ought to pass this kind of legislation and stop talking about other subjects.

In 1972, Brown & Williamson, a tobacco company: ''It is a well known fact that teenagers like sweet products. Honey might be considered.''

In 1972, they are talking about adding honey to cigarettes. Why? Because kids like sweet products. Does that sound like a company that is trying to addict kids to cigarettes? It does to me.

In 1973, RJR, a tobacco company, says: ''Comic strip type of copy might get a much higher readership among younger people than another type of copy.''

They are talking about advertising. Does this sound like a cigarette company that is interested in trying to get kids to smoke? It does to me.

In 1973, Brown & Williamson: ''Kool''—

This is a quote. The cigarette brand Kool:

> Kool has shown little or no growth in the share of the users in the 26 and up age group. Growth is from 16- to 25-year-olds. At the present rate, a smoker in the 16- to 25-year-old age group will soon be three times as important to Kool as a prospect in any other broad age category.

This is a company that is talking about 16-year-olds and how attractive it is that 16-year-olds are using their cigarettes.

Philip Morris, 1974: ''We are not sure that anything can be done to halt a major exodus if one gets going among the young.''

''This group''—now speaking to the young, according to Philip Morris—''follows the crowd, and we don't pretend to know what gets them going from one thing or another. Certainly Philip Morris should continue efforts for Marlboro in the youth market.''

Is this a company looking at selling cigarettes to kids? I think so.

In 1974, R.J. Reynolds, they write, speaking of kids: ''They represent tomorrow's cigarette business. As this 14- to 24-age group matures, they will account for a key share of the total cigarette volume for at least the next 25 years.''

This is a company talking about the 14-year-old smoker.

In 1975, a researcher for Philip Morris writes: ''Marlboro's phenomenal growth rate in the past has been attributable in large part to our high market penetration among young smokers 15 to 19 years old. My own data, which includes younger teenagers, even shows higher Marlboro market penetration among 15- to 17-year-olds.''

Does anybody who reads believe after reading this that the tobacco companies weren't vitally interested in selling cigarettes to these kids? Of course they were.

In 1975, RJR-Nabisco talks about increasing penetration among the 14- to 24-year-olds: ''Evidence is now available to indicate the 14- to 18-year-old group is an increasing segment of the smoking population. RJR Tobacco must soon establish a successful new brand in this market if our position in the industry is to be maintained.''

In 1976, that is RJR saying about 14- to 18-year-olds that we have got to get a new cigarette out there to attract these people if we are going to retain our position.

In 1978, the Lorillard Cigarette Company said the following: ''The base of our business is the high school student.''

''The base of our business is the high school student!'' This from a tobacco company.

In 1979: ''Marlboro dominates in the 17 and younger category capturing over 50 percent of the market,'' Philip Morris writes proudly.

In the name of profit, they say: Our cigarettes dominated the 17-year and younger category. We capture over 50 percent of the market.

They make it sound like a county fair, don't they? A blue ribbon—a fat steer gets a blue ribbon. We were able to get 15-, 16-, and 17-year-old kids to smoke. We win.

Now tell me that this industry doesn't target young kids to smoke.

Marlboro Red, a derivative of Marlboro, I guess—I have not seen a Marlboro Red cigarette. But a Marlboro Red in 1981, a Philip Morris researcher

writes: ''The overwhelming majority of smokers first begin to smoke while in their teens. At least part of the success of our Marlboro Red during its most rapid growth period was because it became the brand of choice among teenagers who then stuck with it.''

I think maybe ''stuck with it'' is a misnomer. I think maybe ''who were addicted to it'' rather than ''stuck with it.'' The whole purpose, of course, is you attract a 15-year-old to start smoking and you have got a customer for life.

Smoking is legal in this country, and it will always be legal. Adults have the right to make the choice to smoke. Three hundred thousand to four hundred thousand people a year die in this country from choosing to smoke, from smoking and smoking-related causes. Three hundred thousand to four hundred thousand people a year die from having made that choice. You have heard the statistics: every day, 3,000 kids will start to smoke; 1,000 of them will die from having made that choice.

The question for us is, will we as a country continue to sit on our hands and say to the tobacco industry, ''It is all right, we understand your future customers are our children; it is all right, our sons and daughters are available to be a marketing target for you? Should it be all right to say that you can advertise to them; you can make pitches to them; you can provide all kinds of subtle approaches to our kids that smoking is cool, smoking is something you ought to do, smoking tastes good, smoking feels good, your peers smoke so you ought to smoke''? Is that something this country wants? Is that something this country is going to allow to continue? I don't think so.

Let me continue.

The tobacco industry in 1983, says Brown & Williamson, will not support a youth smoking program which discourages young people from smoking. In 1983, you heard all of the references that I used about the pitches that were made by the industry to the children and the importance they placed in having those children as their customer base.

And then in 1983 they say this tobacco company ''will not support a youth smoking program which discourages young people from smoking.''

Well, I guess that is because they knew who their customers were. They knew where their future profits would come from.

''Strategies and Opportunities,'' a memorandum, 1984, from R.J. Reynolds, and I quote:

> Younger adult smokers have been the critical factor in the growth and decline of every major brand and company over the last 50 years. They will continue to be just as important to brands [and] companies in the future for two simple reasons: The renewal of the market stems almost entirely from 18-year-old smokers. No more than 5 percent of smokers start after age 24. . . . Younger adult smokers are the only source of replacement smokers. . . . If younger adults turn away from smoking, the industry must decline, just as a population which does not give birth will eventually dwindle.

Let me read again what the tobacco industry understood.

> No more than 5 percent of the smokers start after the age 24.

If you don't get them when they are kids, you are not likely to get them. If you don't addict someone in childhood to nicotine, you are not likely to be able to addict them when they become adults.

In 1986, R.J. Reynolds—they were talking about their advertising for Camels:

> [Camel advertising will create] the perception that Camel smokers are non-conformist, self-confident, and [they] project a cool attitude, which is admired by their peers. . . . [They aspire] to be perceived as cool [and] a member of the in-group is one of the strongest influences affecting the behavior of [young adults].

It is pretty clear. And this is just a smidgeon of the evidence that has come from the tobacco industry about what they have been doing over the years to appeal to a customer base coming from our children.

Now, they have always insisted they have not been doing this. In fact, until a couple of years ago the CEOs of tobacco companies insisted that nicotine was not addictive. Nicotine was not addictive. They are the last Americans, apparently, to be willing to testify under oath that nicotine was not addictive. But, of course, now most of them admit they understand nicotine is addictive. And we raised the question in a piece of tobacco legislation whether this country wants to continue to countenance this behavior. Smoking is legal, but should we allow tobacco companies to target children to become addicted to nicotine? The answer clearly ought to be no, and the answer ought to be delivered with some urgency on the floor of the Senate.

We have a tobacco bill that was brought to the floor of the Senate which had a number of very important goals, the most important of which, in my judgment, was to interrupt, intercept, and stop the tobacco industry from appealing to our children. Among other things, it will raise the price of a pack of cigarettes. But what will happen as a result of that price increase and the revenue that comes from it will be a range of programs such as smoking cessation programs, so that those who are now addicted to cigarettes and want to get off of that addiction will have the opportunity, the resources, and the wherewithal to do that.

Also, the bill had a prohibition on advertising directed at children and a prohibition on vending machines in areas that are available to children. The smoking cessation programs will be supplemented by counteradvertising programs. Counteradvertising programs that tell America's children that smoking does not make sense, smoking can injure your health, smoking can cause death, smoking is a contributing factor to causing heart disease and cancer and more. Counteradvertising will be very helpful, it seems to me, to warn kids away from cigarettes.

Additionally, the resources will be used to invest in the National Institutes of Health where research occurs every single day to try to respond to the health consequences of not just the addiction to cigarettes, but cancer and heart disease, and a range of other problems as well. I cannot think of anything that gives me more pride than to decide that we are going to take substantial new resources and invest them in the National Institutes of Health which will result in exciting, wonderful, and breathtaking new changes in health care and medicines.

That is the subject for the Senate: Do we want to stop the tobacco industry from trying to addict our children? Do we want to put together an approach that does all of these things, counteradvertising, smoking cessation, investment in the National Institutes of Health, and a whole range of things? I think most people would say, absolutely, this legislation makes a great deal of sense?

And so the bill comes to the floor of the Senate, and to describe the pace in the Senate as a glacial pace is to describe a condition of speeding. I mean, glacial doesn't begin to describe the pace of the Senate when we have a bunch of people who are determined to slow something down. Glaciers at least move forward by inches. You bring a tobacco bill to the floor of the Senate and then we have somebody who wants to speak for 46 hours on the Tax Code. Well, God love them, they have every right under the rules of the Senate to talk about whatever they want. We could talk about almost anything that anybody wants to come and talk about on the floor of the Senate, and so today we are talking about the marriage tax penalty.

The Tax Code is a fascinating subject, and if ever there was anything in need of reform it is America's Tax Code. It seems to me that there is a time and a place for us to work together in a thoughtful way to reform the Tax Code, to fix the marriage penalty, and to do a whole range of other things that decrease its complexity, make the code much more understandable, and much fairer. But I wonder if we ought not keep our eye on the ball this afternoon and see if we can't pass the tobacco bill, see if we can't do what this piece of legislation that we designed will do, and that includes the five or six steps I have just described.

If one thinks they are unimportant, I suppose you can conceive of a dozen other things that you want to do to change the subject. We could have a discussion, I suppose, this afternoon about the space station. Gee, that is a controversial subject. You could have an amendment here and we could debate the space station for the next 4 or 5 hours. Or we could have a discussion about the nutrition of canned soup

from the grocery store shelves or our trade problems with Australia.

There is no end to the subjects if somebody wants to change the subject. There is no end to the other things to ruminate about or talk about if one doesn't like the subject of this bill, which is producing a piece of legislation that deals with the tobacco issue the way I have just described it.

Let me go back to where I started. After having read the evidence and information that comes from the files of the tobacco industry, if anyone does not yet believe that these companies were targeting children because they knew the only opportunity for them to profit in the future would be to get a customer base among young people, if anyone doesn't yet believe that, they are not prepared to believe anything about this subject.

The evidence is clear. It is not debatable. It is in black and white. The industry didn't want to give it up. They were forced to. And this country now should make a decision: is this behavior tolerable or should we stop it? I hope at every desk of this Senate when the roll is called and the Senator is named, I hope they would stand up and say that we ought to stop it. No company in this country has the right to try to attract a 14-year-old son or daughter in an American family to become addicted to tobacco. No company has that right. Tobacco is a legal product for those age 21 or over. It ought not be right for any company to try to addict our children to tobacco.

That is what this is all about. It is not about the marriage tax penalty. It is not about the space program. It is not about Food for Peace. It is not about the Food Stamp Program. It is not about any of that. It is about the tobacco issue.

I am as patient as anybody. I can be here 2 weeks from now and we can be talking about new discoveries in the habits of earthworms or whatever it is somebody wants to talk about 2 weeks from now.

But in the end, this Congress will have to deal with this bill. Are we going to pass a tobacco bill? And to those who do not want to pass it, those who do not want to vote for it, I would say: Just give it your best shot and then stand up and vote against it. If you don't like it, vote against it. But don't thwart the will of the American people to pass legislation that will stop the tobacco companies from addicting our children. Don't do that. You will be on the wrong side of history on this question.

Ten years from now, 5 years from now, you will look back at that vote, you will look back at this debate, and you will have to ask yourself, if you vote the wrong way—How on Earth could I have been so out of step with common sense? How on Earth could I have been so out of step with what this country needed to have done at that time?

I notice my colleague from North Dakota is on his feet, waiting patiently to speak. I have only 25 more minutes—I am, of course, only kidding. Senator CONRAD from North Dakota has been a principal author of a piece of legislation that has become a part of the bill that is now on the floor of the Senate. I mentioned the role that Senator MCCAIN and Senator CONRAD and others have played. I think it has been very important. I know there are people outside this Chamber who watch this debate and whose teeth you can hear gritting a mile away, they are so upset about what is going on here. Tough luck. Just tough luck. Times have changed.

With Senator CONRAD's help and Senator MCCAIN's help and the help of others who have done, I think, remarkable work on this kind of legislation, we will in the end—whether the opponents like it or not—pass this tobacco bill. There will be enormous pressure on the House of Representatives to pass a similar piece of legislation. We will have a conference. I predict we will have a new law in this country before the end of this session of Congress that does something that we can be proud of and should be proud of on behalf of our children.

So as I yield the floor, let me compliment my colleague, Senator CONRAD, for the work he has done for so many months on this legislation. And, as I do, let me also pay a compliment to the chairman of the committee on which I serve, Senator MCCAIN, who similarly has done some wonderful work on this legislation.

I yield the floor.

The PRESIDING OFFICER (Mr. FAIRCLOTH). The Chair recognizes the distinguished Senator from North Dakota.

Mr. CONRAD. Mr. President, I thank my colleague from North Dakota for his strong advocacy, because this is an important issue. It is an issue that is going to affect the lives of the American people for years to come. We all know the statistics—over 400,000 people a year die in this country from tobacco-related illness. As we have held hearings all across the country, we have heard from the people affected by those deaths very moving testimony. I still remember very clearly in Newark, NJ, hearing from a coach, Pierce Frauenheim, a big, tough, strong guy who is a football coach and assistant principal.

When he testified, you could barely hear him talk. He described how after a lifetime of smoking he was diagnosed with cancer of the larynx, and he described to us the terror that he felt when the doctor told him that his life was threatened and that the only hope for him was a laryngectomy in which his larynx would be taken out. He went through that procedure, and thank God it did save his life. But he is left now as somebody who can barely talk. You can barely hear him. He told us of how much he hoped his message would influence others and that perhaps by his experience and his suffering others could avoid the fate that he had experienced. How often we heard that story.

Most recently, when the task force met we heard from a former Winston man. He would go around to parties and events, representing Winston. Now he has lung cancer. He described to us what it is like to be under a death threat.

And we heard from a woman who was a model for Lucky Strike, who has also had a laryngectomy, and also had other forms of cancer. She was required by the terms of her contract to smoke. She took up the habit as a very young woman and now describes the pain and suffering she has experienced.

So many of these witnesses have actually broken down and cried at our hearings, moved by the emotion of what they have experienced. I wish my colleagues could have been there through every hour of what we heard, because I don't think there is a Member of this Chamber who could have remained unmoved. But we know the history of this industry.

We had a representative of the industry come and see me and tell me we are unfairly vilifying this industry. I said to him, frankly, this industry has done a great job of vilifying itself. They came before Congress. They said under oath their products didn't cause these diseases. They said their products were not addictive. They said they had not targeted kids. They said they had not manipulated nicotine levels to foster addiction.

We now know each and every one of those statements was false. We do not know it by somebody else's words, we know it by the industry's own words, because we have now seen the documents. I have read hundreds of pages of these documents that reveal how this industry testified falsely, knowing full well what they were saying was untrue.

I was kind of struck by this cartoon by Herblock that was just in the Washington Post on May 27. The headline is, ''Have I Ever Lied To You?'' It is a picture of the tobacco companies. This man in the fancy suit has a button on saying ''tobacco companies.'' He is a representative of the tobacco companies. Here is a person who is reading a tobacco industry ad and watching a tobacco message on taxes on television, all with the headline, ''Have I Ever Lied To You?'' We know the tobacco industry has lied to us. They have done it repeatedly. I regret to say they are doing it in this debate.

I would like to focus now on the question that is before us, the amendment of the Senator from Texas, because during the budget debate the Republicans on the Budget Committee repeatedly said: The tobacco funds should go to Medicare and should not be used as a piggy bank for unrelated spending or tax priorities. That was the position they took in the Budget Committee.

The Senator from Texas serves on the Budget Committee. Now he is sponsoring an amendment that uses the

money substantially in a way that is at variance from what he said in the Budget Committee. He said, and I quote:

> The fundamental issue is going to be that we want to dedicate the tobacco settlement to saving Medicare, and the minority wants to spend the money on a myriad of programs, many of which have absolutely nothing to do with the tobacco settlement.

That is what the Senator from Texas said in the Budget Committee. He said all of the money ought to go to Medicare. Now we look at his amendment—not a dime of the money goes to Medicare. My, what a change a few months has made. We in the Budget Committee debated this issue for an entire day, and over and over and over the Senator from Texas said: All of the money ought to go to save Medicare. Now he offered an amendment on the floor of the U.S. Senate and guess what? There is not one penny for Medicare. What happened? We were supposed to be using this money, he said in the Budget Committee, to save Medicare. Now all of a sudden Medicare gets nothing.

Under the bill I introduced, Medicare got a chunk. We also gave a substantial chunk to the States because they are the ones that brought the suits that are before us. We also used the money for health research and for public health care campaigns—countertobacco advertising, smoking cessation, smoking prevention. Under the amendment of the Senator from Texas, not only is there no money left for Medicare, which he said all the money should go to just a few months ago, but you know what? There is no money left for public health programs—none—zero. This is a bill that is supposed to be protecting the public health. There is no money left for public health and there is no money for Medicare, which just a few months ago he said was the absolute priority.

This chart shows the effect of the Gramm amendment which really does turn the tobacco bill into a piggy bank for unrelated matters that our colleagues on the other side of the aisle were decrying during the Budget Committee deliberations. Look what has happened here: 35 percent of the money, if we agree to the Gramm amendment, goes for an unrelated tax cut. We have the Coverdell amendment that takes 13 percent of the money, so now half the money is for matters that are unrelated to tobacco legislation—half the money.

There is no money for Medicare. Research will get 13 percent of the money. Veterans will get 4 percent. Farmers will get 9.8 percent. The States, boy, they are going to be in for a big surprise. The States were going to get 40 percent of the money. They are the ones who brought the lawsuits. They were given 40 percent of the money because that is the amount of the money they got in the settlement with the tobacco industry. If we adopt the Gramm amendment, they are going to get 24 percent of the money.

Tobacco control and public health gets zero. Medicare gets zero, which they argued in the Budget Committee hour after hour ought to get all the money and now gets no money. And public health gets no money—nothing for smoking cessation, nothing for smoking prevention, nothing for countertobacco advertising.

I thought this was a public health bill. I thought that is what this was about. Our friends on the other side said it was a bill to help save Medicare. That is when we were in the Budget Committee. Now they come up with nothing for Medicare, not a penny. What a difference a few months makes.

The Gramm amendment, in conjunction with the Coverdell amendment, will spend tobacco money on programs that have nothing to do with the tobacco settlement.

Frankly, I am in favor of using some of the funds for drug control. I am in favor of using some of the money to address the marriage penalty. But the way they have done it, there is nothing left for Medicare and there is nothing left for public health. I just don't think that makes sense. I don't think that can stand the light of day. I don't think that can stand scrutiny. I think our colleagues are going to have some explaining to do if these amendments are adopted.

Every single public health expert has testified that if we are going to be serious about protecting the public health and reducing youth smoking, then we have to have a program that is comprehensive in nature, and part of that has to be smoking prevention programs, smoking cessation programs to help those who are addicted get off the products, and we also need countertobacco advertising to warn people of the dangers of using these products, to warn them of the cancer risks, to warn them of the risks to their heart, the risks of heart disease, the risks of emphysema and the other diseases which cost so many people in our country their lives.

I can remember very well a young woman who came and testified at our hearing, again, in New Jersey, a young woman named Gina Seagrave. She told about her mother who took up smoking at a young age and died at a very young age from a smoking-related illness. This young woman broke down and cried. She described to us the devastating effect this had on her whole family, because losing their mother really hurt the entire family. It hurt it very badly. She described what they had been through since their mother had passed away.

In every town and in every State I have gone to, to listen to witnesses, they have described to us the trauma that they have experienced because of the addiction and disease caused by the use of these products.

I grew up in a household where my grandparents raised me. My grandfather was a smoker. It probably shortened his life. I think of all those families we have heard from who told us of what it meant to have a father taken, a mother lost, a brother who died because of the addiction and disease caused by these products. This is the only legal product in America, when used as intended by the manufacturer, that addicts and kills its customers. Those are pretty harsh words, but it is the truth, and it is the reason we have a challenge and an opportunity. The challenge is to overcome the power of this industry that wants nothing done. The opportunity is for us to act and to make a difference in the lives of the people we represent.

The Senator from Texas talks a lot about this being a huge tax on low-income Americans. He doesn't tell the other side of the story. The other side of the story is that there is a huge tax already being placed on low-income Americans, and it is because of the use of these products. There is a massive shift that is going on in this country because of the costs of this industry.

Mr. President, $130 billion a year is the consensus calculation on what this industry costs Americans—$60 billion in health care costs, $60 billion in lost productivity, $10 billion in other costs. Nobody gets hurt worse by those facts than low-income Americans. Low-income workers' payroll taxes are paying about $18 billion a year in Medicare costs.

Our friends on the other side talked about that incessantly in the Budget Committee, that it is costing Medicare $18 billion a year and that all of the money ought to go to protect Medicare. That was their argument in the Budget Committee. Now they come out here on the floor and offer an amendment that gives zero for Medicare. How do they justify that? What caused this dramatic transformation? What caused this incredible change from being the defenders of Medicare to now not caring about Medicare at all? I don't know what happened. It is amazing what occurs in this body, the inconsistency. One month, Medicare is the priority; in fact, it is the only priority. The next month, it matters not at all. What a difference a few months makes.

The fact is, smoking is a huge tax on low-income Americans. The average pack-a-day smoker will spend $25,000 on cigarettes over his or her lifetime. The average pack-a-day smoker is being affected in many ways. Not only are they paying $25,000 for cigarettes, but they are paying $20,000 in medical costs over their lifetime—$25,000 for the cigarettes, $20,000 for medical costs. That is $45,000 tobacco use is costing the average pack-a-day smoker. We talk about a heavy economic impact on low-income folks; that is the heavy impact. It dwarfs anything that is being done here to counteract it.

Mr. President, the biggest tax cut we could give low-income Americans is to reduce that cost. The McCain bill will cut smoking by about one-third. That will produce a savings of $1.6 trillion over the next 25 years. That is the

smart way of helping low-income Americans.

When we look at the Gramm proposal with respect to the so-called marriage penalty, we see that he is not really just addressing the marriage penalty. In fact, a lot of folks are benefited in the Tax Code by being married. Maybe we can put that next chart up that shows what I am talking about.

This is something we know with great certainty, because we can study married couples and we can see who would benefit by filing as single individuals, who gets helped and who gets hurt by filing as a married couple. What we find is, for adjusted gross incomes of under $20,000, the significant majority of people get a bonus by filing as a married couple. We see a very small group—those are in red—who are actually penalized. A little over 10 percent of couples with combined income under $20,000 have a penalty by being married. The significant majority of people, almost two-thirds, receive a bonus by filing as a married couple, those who have adjusted gross incomes of under $20,000.

If we go to AGIs—adjusted gross incomes—of $20,000 to $50,000, over 50 percent benefit. They pay less filing as a married couple than they would pay filing separately. About 40 percent have a marriage penalty.

From adjusted gross incomes of $50,000 to $100,000, more of those, as a percentage, are penalized. About 50 percent have a marriage penalty; about 40 percent have a marriage bonus.

That is also true of those with adjusted gross incomes of over $100,000. About 50 percent have a penalty; about 40 percent have a bonus.

Given this information, it is relatively easy to put together a remedy that delivers the relief directly to those who actually have a marriage penalty. That is what the Democratic proposal does.

Unfortunately, this is not the approach of the Senator from Texas. He has opted instead to take a scattershot approach that benefits equally those who are helped and those who are hurt. The result is, those who are hurt get less help than they really deserve. That is why the Democratic alternative is superior for those who really have a marriage penalty.

I believe that this is unfair. We ought to give those who actually experience the marriage penalty the help they really need to overcome it. It does not make sense to me to give the help to those who are benefited by being married in the same way that you help those who are being hurt. The result is, you do not give enough to those who are being hurt. That is not fair. I just do not know what sense it makes.

The Senator from Texas has told us on the floor that the average family would save about $1,400 in taxes under his proposal. Let us look at an example. A couple earning $25,000 is in the 15 percent tax bracket. Under the Gramm proposal, this couple would get a $3,300 above-the-line deduction, but only when fully phased in. In actual tax savings, this couple would realize 15 percent of that deduction, or $495. That is a far cry from the $1,400 advertised on the floor of the Senate. A couple earning $50,000, in the 28 percent bracket, would get a savings of $924—again, a far cry from the $1,400 advertised here on the Senate floor.

Bear in mind that those calculations are based on the $3,300 deduction being fully phased in. The $25,000 couple waiting to realize its $495 savings is going to have to wait until the year 2008, because that is when it is fully phased in. What they will get next year, under the Gramm plan, is not the $1,400 that has been advertised, but $125. That is what they are going to get next year, not $1,400; they are going to get $125. For the year 2002, that savings goes up to almost $150. Well, that is a whole lot less than $1,400. By 2007, the savings is up to $297.

So millions of families, who think of themselves as average hard-working people, are going to be wondering where their $1,400 of savings are. The fact is, they are not going to see it, because it has been overstated here on the floor of the Senate what the savings actually will be.

I am hard pressed to decide what is the worst feature of the amendment of the Senator from Texas: The reckless reductions it will require in public health programs or the downright stinginess of the remedy it purports to deliver to couples who actually incur a marriage penalty.

If we are going to do something about the marriage penalty, we ought to focus the benefit on those who are being hurt. That would be dealing with the marriage penalty. But to spread it around to people who are helped and hurt by the marriage penalty denies those who are actually penalized from getting the help they deserve.

Mr. President, I think what we have before us is an important choice. The Democratic alternative focuses its relief on those taxpayers who are actually being penalized. By contrast, the proposal offered by the Senator from Texas dilutes that relief to provide for couples paying a marriage penalty as well as those who are actually receiving a marriage bonus.

You hear a lot of talk about the marriage penalty. We do not hear much talk about the marriage bonus. But the fact is, at many income levels many more are being benefited by the marriage bonus than are being affected by the marriage penalty. Because the Democratic alternative is targeted to low- and moderate-income couples, we can make their relief much greater. I think that makes sense for those who are actually experiencing a marriage penalty.

In addition, we can save money to use to promote the public health. After all, that is what this bill is supposed to be about. I must say, I have viewed with some concern the developments on the floor over the last week, because now we have an amendment before us that, amazingly enough in a public health bill, provides no money for public health.

And after the arguments of our friends on the other side of the aisle that were so strenuous in the Budget Committee—they said we had to take every dime of this money and use it for Medicare—now we are about to vote for an amendment that does not give one dime to Medicare. What a transformation. They have gone from 100 percent of the money going to protect Medicare to none of the money going for Medicare. While they are at it, there is not going to be a dime of money to protect public health, either, in a public health bill.

Let us defeat the Gramm amendment and stay on course with a public health bill that addresses the real concerns and the real challenges facing the American people.

I thank the Chair and yield the floor.

Mr. FORD. 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. CONRAD. 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. CONRAD. Mr. President, while we are waiting, I thought I would just go through what I call the top 10 tobacco ''tall tales'' that we have heard from the tobacco industry during this debate.

Tall tale No. 1 was that tobacco has no ill-health effects. Remember that? They came up to the Capitol, and they put up their hands, and they swore under oath that these products did not cause ill-health effects. But then we got the documents. We got them because of court action. We got access to the documents, and we found out, in the industry's own words, what the truth is.

Here is the truth on that claim that tobacco has no ill-health effects:

> Boy! Wouldn't it be wonderful if our company was first to produce a cancer-free cigarette. What we could do to the competition.

This is from a mid-1950s Hill & Knowlton memo quoting an unnamed tobacco company research director.

That is tall tale No. 1.

Tall tale No. 2 is, again, tobacco has no ill-health effects. Again, we have an industry document that reveals the falsity of that claim. This is from a 1978 Brown & Williamson document that says: ''Very few customers are aware of the effects of nicotine, i.e., its addictive nature and that nicotine is a poison.''

Again, that is not from the public health community. That is from the tobacco industry's own documents.

Tall tale No. 3: Nicotine is not addictive.

The truth, from a 1972 research planning memo by RJR Tobacco: ''Happily

for the tobacco industry, nicotine is both habituating and unique in its variety of physiological actions.''

This industry, I tell you, these guys come up here, they don't come with a lot of credibility because they have told a lot of tall tales.

Tall tale No. 4, again, the claim that nicotine is not addictive.

This is from a 1992 memo from the director of portfolio management for Philip Morris' domestic tobacco business: ''Different people smoke cigarettes for different reasons. But, the primary reason is to deliver nicotine into their bodies . . . similar organic chemicals include nicotine, quinine, cocaine, atropine and morphine.''

Now, again, this is the industry—their documents—revealing what they know and what they think of their own products. They say it is not addictive and yet they say it is the same as cocaine, the same as morphine, the same as atropine.

Tall tale No. 5: The tobacco companies did not manipulate nicotine levels.

The truth, again, from an industry document, a 1991 RJR report: ''We are basically in the nicotine business . . . effective control of nicotine in our products should equate to a significant product performance and cost advantage.''

Tall tale No. 6: Tobacco companies did not manipulate nicotine levels.

This is from a 1984 British-American Tobacco memo: ''Irrespective of the ethics involved,''—that is an interesting statement—''Irrespective of the ethics involved, we should develop alternative designs which will allow the smoker to obtain significant enhanced deliveries [of nicotine] should he so wish.''

They have been manipulating nicotine levels for a long time.

Tall tale No. 7: Tobacco companies don't market to children.

This is from a 1978 memo from a Lorillard Tobacco executive: ''The base of our business are high school students.''

They didn't market to kids? They didn't target kids? Here you have a major tobacco company executive saying the major business is high school kids, the same kids tobacco companies don't market to—children.

This is from a 1976 RJR research department forecast: ''Evidence is now available to indicate that the 14- to 18-year-old age group is an increasing segment of the smoking population. RJR must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long term.''

Well, I don't know how it can be more clear.

Tall tale No. 9: Tobacco companies don't market to children.

This is from a 1975 report from a Philip Morris researcher: ''Marlboro's phenomenal growth rate in the past has been attributable in large part to our high market penetration among young smokers . . . 15 to 19 years old . . . my own data . . . shows an even higher Marlboro market penetration among 15–17-year-olds.''

You wonder what they thought when they went home at night.

Tall tale number 10, again, the claim tobacco companies don't market to children.

This is from ''apparently problematic research,'' a Brown & Williamson document:

''The studies reported on youngsters' motivation for starting, their brand preferences, as well as the starting behavior of children as young as 5 years old . . . the studies examined . . . young smokers' attitudes toward addiction and contain multiple references to how very young smokers at first believe they cannot become addicted, only to later discover, to their regret, that they are.''

That kind of sums it up. That is the issue before the Senate. Are we here to protect kids or are we here to protect the bottom line of the tobacco industry?

The Wall Street analysts that came before my task force indicated that, indeed, if this legislation were passed, it would reduce the profits of the industry, but not dramatically. In fact, the industry would still enjoy very, very high profit levels. Remember, this industry has a profit margin that is three times the profit margin of most companies that are in packaged good industries in America. They have a profit margin of 30 percent. Other package goods average a profit margin of 10 percent. They would still enjoy dramatic profits, even if we passed this legislation according to the analysis of the people who should know best, the Wall Street analysts that report on this industry.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, thank you.

With this amendment we are debating today, which is a critical amendment, we will bring the last significant aspect of our Federal Tax Code that is of particular concern to Idahoans, and I think really all Americans, and that is the marriage tax penalty.

I ask myself one fundamental question before I make up my mind on any issue we deal with on the floor of the U.S. Senate. That is, Does this policy make sense for the American people?

Let's apply this question to our current Federal Tax Code which, quite simply, penalizes a working couple for getting married. Should folks pay more tax because they are married? Absolutely not.

The marriage tax penalty raises revenue for the government—no question about that. It raises revenue. But it is bad public policy. It most often raises taxes on lower and middle-income families who claim the standard deduction. Now, that is wrong. We must strengthen the bonds of family to strengthen the fabric of our society. If we believe in family, we believe in marriage. So why in the world do we have a public policy on the books that somehow creates a penalty for being married? That is totally counterproductive to our values of this society, of this Nation.

Before 1969, marriages were treated by the Federal Tax Code like partnerships, allowing husbands and wives to split their income evenly. In 1969, however, this practice of income splitting was ended, and thus was created the marriage tax penalty.

Since that time, with our Nation's progressive tax rates, tax laws have meant that working married couples are forced, forced to pay significantly more money in taxes than they would if they were both single. Currently, 42 percent of married couples suffer because of the marriage tax penalty.

Let me provide an example. A single person earning $24,000 per year is taxed at a 15 percent rate. Now, if two people, each earning $24,000, get married, however, the IRS, by taxing them on their combined income, taxes them in the 28 percent bracket, not the 15 percent that they would be taxed as individuals, but 28 percent because they have joined in holy matrimony.

It is also important to be aware that the marriage tax penalty hits the American people not only at the Federal level but also on their State taxes. Idaho generally conforms its State tax code to the Federal law. If the Federal Government alters its standard deduction levels, for instance, Idaho most likely will as well. While the focus of ending the marriage tax penalty has been primarily at the Federal level, we cannot discount the fact that this is, in essence, a double hit for working American couples who are trying to fulfill what this country believes in.

I think that we can all agree that the Federal Government should not be penalizing marriages, a sacrosanct institution and the bedrock of our social structure. It is time for the Federal Government to end this injustice to the American family.

I urge my colleagues to support the amendment of the Senator from Texas, Senator GRAMM. I commend him for his efforts.

Mr. President, just to reiterate, we think about this society and we think about all the problems and challenges that are facing America today. Senator FRIST of Tennessee was chairman of a task force on education in America. He pointed out many of the statistics, many of the problems that we are having with regard to our children. He pointed out how many of these children, more and more, are coming from families where there is not both a father and a mother. That is a significant problem—a significant problem.

How do we respond with public policy? Well, if you are married, there will be a penalty. I happen to be the chairman of the Military Personnel Subcommittee of the Armed Services Committee. We are starting to have problems with recruitment of young people

to the military services. We need 176,000 young people every year to join the military—the finest military in the world. At one of the hearings, I asked the generals and admirals testifying this: ''Tell me, is there something about this issue of values that we are hearing about?'' And they said: ''Yes, there is; there is very much a problem with values among all people.'' In fact, all branches of the military services have now added 1 week to the basic training to try to somehow instill in them core values—knowing right from wrong. A three-star general of the Marine Corps said, ''We now have a new category of young person; we just call them 'evil,' and there is nothing we can do with them.''

As the occupant of the Chair knows, it used to be that if you had a troubled youth, in all likelihood if you could send them off to the military, they would be straightened out. That is not the case anymore. I mention these challenges because it comes back. Do any of us believe that 1 week of basic training with 17- and 18-year-olds is somehow going to instill in them the values they should have learned many, many years ago, that they should have been raised upon, knowing right from wrong? That comes from a family environment, a family environment where a mother and father are there, where mother and father will tuck the child into bed, where mother and father will listen to their prayers—a mother and father, a married couple.

Yet, we have public policy on the books today that penalizes married couples. That is wrong; that is flawed public policy. It is time that this Nation correct that. That is why I am proud to stand in support of this amendment that will correct this. It is a clear signal, a loud signal, that we are going to reclaim this society and the fabric of this society by affirming that marriage is positive; we will not penalize those who choose to go into marriage.

So, again, I urge all my colleagues to support this amendment by the Senator from Texas.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. GRAMM. Mr. President, I wanted to respond to some comments. I was over in a conference on the IRS reform bill when several of our colleagues came over to comment on the pending amendment. I want to try to address briefly some of the issues that they raised.

Let me begin by trying to delineate between the marriage penalty that is pending in the amendment before us and some of the alternatives that appear to be supported by opponents of this amendment.

The principal feature of the amendment before us is an effort to give back roughly a third of the money that is collected in the cigarette tax embodied in the bill before us. A tax that is very regressive in its impact. As I noted earlier, 59.1 percent of the taxes are collected from people who make less than $30,000 a year.

This amendment gives a rebate to moderate-income Americans, who will be devastated by this bill which will raise the tax by $1,015 per year, for the average smoker who smokes one pack of cigarettes a day. If the objective of the tax is to discourage smoking, if we hope to get a 50-percent reduction in smoking among teenagers as a result of raising the tax, if the objective is to discourage smoking and not to take money away from blue-collar workers to give to Government to spend, then the logic of the amendment that is now pending is that we should take roughly a third of the money we collect and give it back to people and families who make less than $50,000 a year by repealing the marriage penalty.

Some of our colleagues have come to the floor with very pretty charts with my name on them. I appreciate the free advertising. I hope my mother saw them. They were beautiful charts. But they refer to something called a marriage bonus, and I think what is happening is this whole debate is getting skewed by people who do not want to focus on the issue. So let me explain what we are doing. Then I want to say a little bit about this marriage bonus, and then talk about why doing the marriage penalty in the way that is being suggested by the minority will discriminate against stay-at-home parents.

First of all, under the current Tax Code there are 31 million families that end up paying an average of $1,400 a year more in income taxes because they fall in love and get married than they would pay if they stayed single. I think it is a uniform position in the country as a whole and in the Senate in particular that it cannot be prudent tax policy, even in the economy of the greatest nation in the history of the world, to have a tax policy that discourages people that fall in love from getting married.

I think our colleagues on both sides of the aisle would agree with the premise that the family has been the most powerful institution in the history of mankind in terms of promoting progress and happiness. Those are two important things. So what I am trying to do in this amendment is to repeal that marriage penalty so we do not discourage people who fall in love from getting married and forming families and achieving the stability and the happiness and the fulfillment that comes from being married.

Now, I think there is a general view that we should do that. Not everybody wants to pay for it. Not everybody supports the fact that I am taking a third of the money from this bill which was going to things like paying lawyers $92,000 an hour, or paying farmers $23,000 an acre when they do not have to give up the land and do not have to stop farming tobacco, or paying $18,615.55 for smoker cessation programs for every Native American who smokes. They would rather spend the money on those things than to correct the marriage penalty. But I do not think philosophically anybody objects to the thesis that a tax policy that discriminates against marriage is counterproductive, in this Nation or any other nation.

Now, there are two issues that have been raised by opponents. One issue has been that we could do it cheaper if we excluded couples where one of the parents does not work outside the home. That is, if we only gave the marriage penalty correction to those couples that make roughly the same income.

Now, when we put our amendment together, we looked at that. We thought about it for about a microsecond, and we rejected it because if you do it the way the minority wants to do it, you end up giving a tax break only to those couples where both have roughly equal incomes. But for families that make a decision to sacrifice so that one of them can stay home and work in the home, which is real work, maybe the most important work on the planet, for those who choose to do that they would be discriminated against by the provision that the minority is proposing to offer.

Under our amendment, you get $3,300 of deductions whether or not both parents work outside the home.

Now, why did we do that? We did it because we do not believe the tax policy of the country should discriminate against people based on whether or not they both work outside the home. And let me make it clear. I am not trying to tilt the Tax Code one direction or the other. My mother worked all my life because she had to work. My wife has worked all our children's lives because she wanted to work. And I am not making a judgment about whether it is better for both parents to work or one parent to stay at home. I think that is something each family has to make a decision on based on what they want for themselves, their children and what they can afford. But the point I want people to understand is that the amendment that is before us treats couples exactly the same whether they both work outside of the home or whether one works outside the home and one stays home to be a homemaker, to raise the children. I do not believe the Tax Code should discriminate against people based on the decision they make about whether to work inside or outside the home.

The way we have written the bill we do not discriminate. You get the benefit if both parents work and you get the benefit if only one parent works because we give a $3,300 tax deduction.

We do it above the line so you get to deduct it before you calculate what your taxable income is.

So that very modest-income people who get an earned tax credit, but who still work, can still take the credit. For example: a lady who is washing dishes and a man who is a janitor are both working. They are trying to get ahead, they are trying to be self-sufficient, they both get an earned-income tax credit, and they each have two children. They meet and say, ''I have found the solution; I am going to form a family.'' They find if they get married, they lose the earned-income tax credit and they suffer a substantial decline in income. So they decide not to get married.

Well, one of the things we wanted to do in our amendment was to assure that we made this adjustment so that people at very low-income levels who in many cases are penalized most by the marriage penalty would get the relief. That is why we did our amendment the way we did, and it does cost more to do it that way. But if you do not do it that way, you discriminate against families where one parent stays at home and works at home, and you discriminate against very low-income people who are working and often working two or more jobs, but are still getting some assistance in the earned-income tax credit.

I think when our colleagues criticize this they do not really understand that what they are saying is if you stay home and raise your children, you should be discriminated against. I think when people understand the distinction they are not going to be for doing it their way.

The second issue I wanted to address because it did come up while I was gone is the so-called misnomer of a marriage bonus. If there has ever been a fraudulent concept in the history of American taxation, it is the so-called marriage bonus.

Now, let me define this marriage bonus. You have a guy named John, and he has a job, and he is out working. He is a sales representative, and he is traveling all over the country selling school supplies. And you have a girl named Josephine, a young lady who is graduating from high school. Now, she graduates from high school and then the next day she and John walk down the aisle and get married.

What the minority is calling a tax bonus is that Josephine's father was taking a dependent exemption because he was supporting Josephine while she was living in the family home, going to school. He was paying her expenses, and he got to write off on his income taxes every year or deduct $2,700.

Now, what is being called a marriage bonus is that by marrying Josephine and forming this family, before Josephine goes out next year and gets a job herself, John is going to be able to write off $2,700 in a dependent exemption. He is also going to be able to raise his standard deduction, because he is married, by $2,850. So that he is going to get a deduction by marrying Josephine of $5,550.

I want to pose this question to our colleagues who think that is such a terrible thing and that anybody who is getting that should not get the benefit of eliminating the marriage penalty. How many fathers go to the wedding and when they get to the point where they say, ''Is there anybody here who objects?'' Bill, Josephine's father, stands up and says, ''Wait a minute, I object to this marriage, because if Josephine gets married, I'm going to lose $2,700 of deductions and, as a result, it is a bad deal for me''? I never heard of that happening.

How many people rush out to get married because, by marrying someone with no income, you get $5,550 of deductions? That is not that much less in taxes; that is just the amount you get to deduct. Does anybody believe that you can feed, clothe, and house a spouse for $5,550?

But to listen to our colleagues talk, you get the idea that this is some big bonus, that this is some unfair provision in the Tax Code, because by John marrying Josephine and forming a couple and filing jointly, his deductions go up by $5,500, and that is a ''marriage bonus.'' Some bonus. Does anybody believe that John can pay for having a wife for $5,550? No. It is not a bonus; it is simply the way the Tax Code works.

Why should we give more protection to family income? This chart really tells the whole story. This chart shows 1950 and 1996, the last year when we have complete data on how much of the income of average-income working families with two children was shielded from Federal income taxes by personal exemptions and by the standard deduction. Basically, what this chart shows is that in 1950 the personal exemption and the standard deduction for a family of four making the average income in the country shielded 75.3 percent of their income from any Federal taxes. In fact, in 1950 the average family with two children was sending $1 out of every $50 it earned to Washington, DC; $1 out of every $50. Because of inflation not keeping up with the rise in real income and because the standard deduction and personal exemption didn't keep up with inflation, today they shield only 32.8 percent of the income of the average family of four. So, whereas in 1950 the average family making the average income, with two children, was sending $1 out of every $50 it earned to Washington, today the average family with two children is sending $1 out of every $4 it earns to Washington, DC.

Under these circumstances, is it obvious that one of the things we need to do is to shield more family income from Federal taxes? That is what this amendment is about. In 1950, rich people paid a lot of taxes. Today, rich people pay a lot of taxes. In 1950, poor people paid no income taxes. And in 1996, poor people pay no income taxes.

How did the tax take double? How did taxes, as a percentage of the economy, double the Federal level between 1950 and 1996? It doubled by raising the burden on families with children from $1 out of every $50 to $1 out of every $4. So, under these circumstances, it makes perfectly good sense to me that we would want to do something to help working families shield more of their income and, in doing so, end the starvation of the one institution in America that works, and that is the family. We are feeding Government, and we are starving families.

What the amendment I have offered, with Senator DOMENICI and Senator ROTH, tries to do is to give some of this money that is being taken from working families in this confiscatory excise tax back to working families. So while raising the price of tobacco products and hopefully discouraging people from using it, we do not impoverish people who are, in this case, the victims by having become addicted to tobacco products.

That is what this debate is about. So I hope people do not get confused about this silly business about a marriage bonus. The idea that somehow you are getting a bonus when you take a spouse, by the fact that your tax deductions go up by $5,500 ridiculous. Nobody ever got married thinking that they were going to benefit with a $5,500 is deduction when they have to pay for the expenses of their spouse. That is not a bonus. In fact, that is inadequate. That is outrageous. It ought to be higher.

Finally, to suggest that we want to fix the marriage penalty but only if both parents work is ludicrous. I want to fix the marriage penalty, but I don't want to tilt the Tax Code against families where one parent decides to stay at home. That is really what the debate is about.

I hope reason will prevail here. Sometimes it does; sometimes it doesn't. But, I hope it will in this case. And I yield the floor.

Ms. MOSELEY-BRAUN. Mr. President, I oppose the Gramm amendment. It is an attempt to distract the Senate's attention from what should be the focus of our attention. It is a thinly veiled ploy to kill this bill, the only vehicle this body has had to address the epidemic of teen smoking and the disastrous effects on the health and well-being of generations of Americans who were lured into smoking by tobacco companies.

This amendment has no place as a part of this bill, and because of the way it is financed, it has no place in any bill. I strongly agree we ought to face the marriage penalty issue as soon as possible, and I also would like to accelerate full deduction of health insurance expenses for the self-employed. I do not think, however, that we can address these issues by adding to one of the greatest problems facing our country's future economy—the solvency of the Social Security system.

Just two months ago, this body agreed that the budget surplus should be reserved for reforming our Social Security System. It was a wise decision, for no one can honestly deny that the Social Security Trust Fund faces long-term problems. Based on information from the 1998 Social Security Trustees' report, it appears that, by the year 2013, Social Security benefit payments will begin to exceed the payments into the Social Security Trust Fund from employers and employees. By the year 2032, the Trust Fund will have used up its accumulated surpluses and will be unable to fully meet its obligations to American retirees. In order to guarantee the viability of the Trust Fund for our children and grandchildren, we must focus on its long-term future and begin the process of making necessary changes.

Workers, the very workers that Senator GRAMM seeks to help under his amendment, pay into the Trust Fund all their lives and expect—rightfully so, I might add—Social Security to be there for them when they retire.

Because Congress has not yet acted to preserve the long-term viability of Social Security, I cannot support any proposal that would exacerbate the financial difficulties facing the Social Security Trust Fund. This amendment, however, will do exactly that. I cannot, in good conscience, vote for this amendment.

I want to be clear that I am extremely troubled that some married couples are being taxed at a higher rate than they would be if they were single filers. I find it appalling that 20.9 million couples, some 42% of all American couples paid penalties totaling $28.8 billion just last year alone. Senator Gramm's right—we ought to fix this problem. But it is wrong to do it at the expense of further damaging a retirement security component that is so vital to the American people.

Fortunately, we have another option. The Democratic alternative would address the marriage penalty problem without further endangering Social Security. This alternative targets more tax relief directly to the couples who are actually penalized by the tax code. The Gramm amendment, on the other hand, would not only provide less relief to the 42% of couples who currently pay a penalty, but would also provide a windfall to the 51% of married couples who currently receive a bonus (on average of $1,380 per couple) under our tax code. In addition, the Democratic alternative addresses the need to accelerate the health insurance deduction for the self employed in an manner that is sensible and sound.

Overall, the Democratic alternative is a more thorough, more targeted, and more sound proposal, and in any event, it is better tax policy.

I do not believe that it is wise to try to solve one problem by creating another, and I believe that the Democratic alternative avoids that pitfall, whereas the Gramm amendment does not. I urge all my colleagues to vote against the Gramm amendment, and for the Democratic alternative.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. TORRICELLI. 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. TORRICELLI. Mr. President, anyone who has been listening to this debate on the Senate floor in the last few weeks is now familiar with the painful but very real statistics. Each day, 3,000 young Americans begin smoking and eventually 1,000 will die. I can think of no issue on the floor of this Congress which could more directly affect the lives of Americans for a generation to come to finally deal with the reality of tobacco and its assorted dangers.

Legislation offered by Senator MCCAIN, which I enthusiastically support, makes a contribution in several important ways to dealing with this problem: First, it requires a warning label and restricts advertising designed to attract children to smoking cigarettes; second, it grants broad authority to the Federal Drug and Food Administration to regulate tobacco products, their advertising, and their distribution; third, it establishes a national tobacco trust fund for smoke cessation programs, health research, and compensation for States and farmers as a result of tobacco smoking and the program; and, finally, it also penalizes companies up to $3.5 billion per year if they fail to meet their targets to reduce youth smoking.

There is, however, a less addressed but equally significant impact of this legislation that also needs to be addressed. It has been raised by the Senator from Texas, Senator GRAMM, and now by the Senator from South Dakota, Senator DASCHLE, that there are unintended tax consequences of this legislation. I am relieved that my colleagues joined in the judgment not to raise the tobacco tax to $1.50 per pack but cast their votes, as I did, to keep this tax $1.10. It is, nevertheless, the reality that this taxation upon cigarettes could be the most regressive tax ever passed in American history. This tax burden is falling disproportionately on the working poor and, indeed, on poor families themselves.

It has been noted that the total tax burden of families who earn under $10,000 a year would increase by 40 percent as a result of this tobacco tax. Indeed, three-quarters of the tax would be paid by families who earn under $50,000 per year. This would add a tax burden to an American population that is already excessively taxed.

I understand that it is President Clinton's priority that a new Federal surplus be used primarily to deal with the future obligations of Social Security. I support him in that initiative, as I believe there are important initiatives of education and health care that are unaddressed in our country. But the tobacco legislation brings into focus another reality: The average American family is still paying too much taxation. Indeed, the CBO reports that taxes on the American public have recently reached 20 percent of the gross domestic product. Not since the Second World War has the total tax burden on the American people, as a percentage of our economy, been so high. According to the Joint Committee on Tax, Americans earning $30,000 and less will pay 59 percent of this new tobacco tax, which is being added on this already heavy burden.

The answer of the Senator from Texas is to primarily deal with this new burden by dealing with what is known as the marriage penalty. Indeed, in 1996, 21 million couples encountered an average penalty because of their joint filings as a result of their marriage of $1,400. That represents 42 percent of the American people—married couples—are paying more as a consequence of their marriage.

A proposal by Senator GRAMM combines a phase-in of tax relief for the marriage penalty, with tax credits for the self-employed to purchase health insurance, for costs of upwards of $16 billion during the first 5 years, and $30 billion in years 6 through 10.

Responding to criticism that earlier versions of his amendment would have completely drained the public health funds in this bill, Senator GRAMM now proposes to limit the use of the tobacco trust fund from one-half to one-third of the revenues in the outyears for dealing with this elimination of the marriage penalty. He does so, however, by using the general revenues of the Federal Government. The consequences of using these general revenues for the admittedly important objective of eliminating the marriage penalty is that it contradicts President Clinton's goal of first using Federal surpluses to deal with Social Security.

Indeed, on a bipartisan basis, I could not understand and it would be difficult to accept that this Congress would not want to first deal with ensuring the financial safety of Social Security before dealing with other admittedly important tax objectives. Specifically, the Gramm amendment potentially would remove $90 to $125 billion worth of Federal revenues that the President has designed to deal with the future security of Social Security, specifically for the baby boom generation.

I think Senator DASCHLE has a better idea. He offers an alternative which allows this Congress to remain focused on securing Social Security for the next generation while dealing with this admittedly high tax burden and the unintended consequence of regressivity of the tobacco tax.

First, Senator DASCHLE would ease the tax burden on American families

by providing full deductibility for health insurance premiums for the self-employed. No issue could be more important for people starting their own businesses, for middle-income families, than dealing with this full deductibility of health insurance.

Second, it maintains the integrity of the tobacco bill and still protects Social Security. So the programs now envisioned in the tobacco bill would remain—dealing with public health, tobacco farmers, reimbursement to the States—while at the same time allowing us to provide this tax relief.

The difference, of course, between Senator DASCHLE's proposal and Senator GRAMM's proposal is that Senator GRAMM did not simply deal with the marriage penalty—because only 40 percent of all married couples are paying a marriage penalty, he was providing tax relief beyond this and thereby causing this financial strain. The alternative offered by the Senator from South Dakota, Senator DASCHLE, deals simply with those families who are actually paying the marriage penalty and thereby allows us to do so in a more responsible fashion.

This, I believe, is the better alternative, but I hope the Senate does not simply deal this year with the question of the tax burden on the American people by only addressing the question of the marriage tax penalty. That will suffice for the tobacco legislation. I hope and I trust by the time the Senate is finished dealing with tobacco legislation that we have dealt with deductibility for the self-employed of their health insurance and the elimination of the marriage penalty.

Before yielding the floor, I hope that the Senate would follow the debate that has now begun as a consequence of the important analysis offered by the Senator from Texas, Senator GRAMM, on both the overall national tax burden and its regressivity by dealing with other tax issues in the remainder of this session.

First, if not in this legislation, then before this session adjourns, the Senate should deal with the fact that there are too many Americans of modest means who are finding themselves in the highest tax bracket. Today, a single individual is paying a 28 percent Federal income tax with a salary of $25,300, and a married couple with only $42,350 in income is paying a Federal tax of 28 percent in income taxes. Therefore, we are applying the highest rate to people of genuinely modest means.

I believe we would make a real contribution to tax fairness in the Senate in this year if the 15 percent bracket could be expanded to $35,000 for individuals and $70,000 for married couples. This would move more than 10 million Americans from the 28 percent tax bracket to the 15 percent tax bracket and genuinely ensure that middle-income people are able to take advantage of a lower 15 percent bracket. No single proposal would grant tax relief on a broader, more comprehensive basis to middle-income Americans.

Second, before this Congress adjourns this year, I hope the Congress will return to the issue of capital gains simplification. I have joined with Senator MACK and Senator BREAUX to encourage that savings and investment income be restored to a 12-month holding period in order to avail ourselves of the lower capital gains tax rate that was instituted by this Congress on an earlier date.

Third, return again to the issue of estate taxes by building on the $1 million exemption from the estate tax in last year's tax bill by slashing the estate tax rate by 25 percent. We made real progress last year by raising the exemption to a $1 million, but the Federal tax rate and the State tax remain confiscatory at an unbelievable 55 percent.

Fourth, and finally, I hope this Congress, before concluding its work this year on the Federal Tax Code, will return to the incredibly poor savings rates in this Nation. The United States now suffers from the lowest savings rate in nearly 60 years. I believe this Senate should exempt the first $500 in interest from taxation, ensuring that any family in America that saves $10,000, whether in equity or bonds or savings accounts, would not pay taxes on that first $10,000. Nothing would do more for Americans to prepare for their own retirement, to provide security for American families, than transforming every $10,000 in savings in America by every family instantly into a tax-free account. This could be done simply by exempting the first $500 in interest. For those 60 percent of American families that have no equity, no savings other than their house, and live in the dangerous position of paycheck-to-paycheck, this, for the first time, would provide a real incentive for those families to save money.

Mr. President, my purpose today primarily was to draw attention to the worthwhile objective of providing some tax relief in the tobacco legislation for those families, primarily of low and moderate means, who will disproportionately be shouldering this burden of increased tobacco taxes. But I wanted to take advantage of the opportunity both to demonstrate the relative advantage of Senator DASCHLE's proposal, to provide this tax relief within the tobacco bill, thereby not jeopardizing the revenues available to deal with providing some safety for Social Security, but also to point out to the Senate that, beyond dealing with the tax burden of families because of the tobacco legislation and thereby providing relief in the marriage penalty and the self-employment full deductibility on health insurance, the Senate should be setting its sights on other areas as well in the remainder of this year—an encouragement in savings, general income tax relief for middle-income families, and on the inheritance tax. The Senate has a larger obligation of easing the tax burden, and I believe the debate that has begun in the Senate has begun to outline the possible components, beyond the tobacco legislation, of broader tax relief for the American families.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SANTORUM). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRAMM. 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. 2686, AS MODIFIED

Mr. GRAMM. Mr. President, I send a modification of my amendment to the desk.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 2686), as modified, is as follows:

At the end of the amendment, insert:

SEC. ___. ELIMINATION OF MARRIAGE PENALTY.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 222 as section 223 and by inserting after section 221 the following new section:

"SEC. 222. DEDUCTION FOR MARRIED COUPLES TO ELIMINATE THE MARRIAGE PENALTY.

''(a) IN GENERAL.—In the case of a joint return under section 6013 for the taxable year, there shall be allowed as a deduction an amount equal to the applicable percentage of the excess (if any) of—

''(1) the sum of the amounts determined under subparagraphs (B) and (C) of section 63(c)(2) for such taxable year (relating to the basic standard deduction for a head of a household and a single individual, respectively), over

''(2) the amount determined under section 63(c)(2)(A) for such taxable year (relating to the basic standard deduction for a joint return).

''(b) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(1) IN GENERAL.—No deduction shall be allowed under subsection (a) if the modified adjusted gross income of the taxpayer for the taxable year exceeds $50,000.

''(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term 'modified adjusted gross income' means adjusted gross income determined—

''(A) after application of sections 86, 219, and 469, and

''(B) without regard to sections 135, 137, and 911 or the deduction allowable under this section.

''(3) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2007, the $50,000 amount under paragraph (1) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that subparagraph (B) thereof shall be applied by substituting 'calendar year 2008' for 'calendar year 1992'. If any amount as adjusted under this paragraph is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, the applicable percentage shall be—

''(1) 25 percent in the case of taxable years beginning in 1999,

''(2) 30 percent in the case of taxable years beginning in 2000, 2001, and 2002,

''(3) 40 percent in the case of taxable years beginning in 2003, 2004, and 2005,

''(4) 50 percent in the case of taxable years beginning in 2006,

''(5) 60 percent in the case of taxable years beginning in 2007, and

''(6) 100 percent in the case of taxable years beginning in 2008 and thereafter.''

(b) DEDUCTION TO BE ABOVE-THE-LINE.—Section 62(a) of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by adding after paragraph (17) the following new paragraph:

''(18) DEDUCTION FOR MARRIED COUPLES.—The deduction allowed by section 222.''

(c) EARNED INCOME CREDIT PHASEOUT TO REFLECT DEDUCTION.—Section 32(c)(2) of the Internal Revenue Code of 1986 (defining earned income) is amended by adding at the end the following new subparagraph:

''(C) MARRIAGE PENALTY REDUCTION.—Solely for purposes of applying subsection (a)(2)(B), earned income for any taxable year shall be reduced by an amount equal to the amount of the deduction allowed to the taxpayer for such taxable year under section 222.''

(d) FULL DEDUCTION FOR HEALTH INSURANCE FOR SELF-EMPLOYEDS.—The table contained in section 162(l)(1)(B) is amended—

(1) by striking ''and 1999'',

(2) by striking the items relating to years 1998 through 2006, and

(3) by striking ''2007 and thereafter'' and inserting ''1999 and thereafter''.

(e) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 222 and inserting the following new items:

''Sec. 222. Deduction for married couples to eliminate the marriage penalty.

''Sec. 223. Cross reference.''

(f) REDUCTION IN TRANSFERS TO NATIONAL TOBACCO TRUST FUND.—

(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of this Act, the amount credited to the National Tobacco Trust Fund under section 401(b) of this Act for any fiscal year shall be reduced by the amount of the decrease in Federal revenues for such fiscal year which the Secretary of the Treasury estimates will result from the amendments made by this title. The Secretary shall increase or decrease the amount of any reduction under this section to reflect any incorrect estimate for any preceding fiscal year.

(2) LIMITATION ON REDUCTION AFTER FISCAL YEAR 2007.—

(A) IN GENERAL.—Except as provided in subparagraph (B), with respect to any fiscal year after fiscal year 2007, the reduction determined under paragraph (1) shall not exceed 33 percent of the total amount credited to the National Tobacco Trust Fund for such fiscal year.

(B) SPECIAL RULE.—If in any fiscal year the youth smoking reduction goals under section 203 are attained, the limitation under subparagraph (A) shall not apply.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

Mr. GRAMM. 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. KERRY. 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. KERRY. Mr. President, the pending business, I believe, is the Gramm amendment; is that correct?

The PRESIDING OFFICER. That is correct.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment No. 2686, as modified. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

Mr. FORD. I announce that the Senator from Delaware (Mr. BIDEN) is necessarily absent.

The result was announced—yeas 48, nays 50, as follows:

[Rollcall Vote No. 154 Leg.]

YEAS—48

Akaka	Feingold	Levin
Baucus	Feinstein	Lieberman
Bingaman	Ford	Mack
Boxer	Glenn	Mikulski
Breaux	Graham	Moseley-Braun
Bryan	Harkin	Moynihan
Bumpers	Inouye	Murray
Byrd	Jeffords	Reed
Chafee	Johnson	Reid
Cleland	Kennedy	Robb
Collins	Kerrey	Rockefeller
Conrad	Kerry	Sarbanes
Daschle	Kohl	Snowe
Dodd	Landrieu	Torricelli
Dorgan	Lautenberg	Wellstone
Durbin	Leahy	Wyden

NAYS—50

Abraham	Frist	McCain
Allard	Gorton	McConnell
Ashcroft	Gramm	Murkowski
Bennett	Grams	Nickles
Bond	Grassley	Roberts
Brownback	Gregg	Roth
Burns	Hagel	Santorum
Campbell	Hatch	Sessions
Coats	Helms	Shelby
Cochran	Hollings	Smith (NH)
Coverdell	Hutchinson	Smith (OR)
Craig	Hutchison	Stevens
D'Amato	Inhofe	Thomas
DeWine	Kempthorne	Thompson
Domenici	Kyl	Thurmond
Enzi	Lott	Warner
Faircloth	Lugar	

NOT VOTING—2

Biden	Specter

The motion to lay on the table the amendment (No. 2686), as modified, was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2686, as modified.

The amendment (No. 2686), as modified, was agreed to.

AMENDMENT NO. 2688 TO AMENDMENT NO. 2437

(Purpose: To provide a deduction for two-earner married couples, to allow self-employed individuals a 100-percent deduction for health insurance costs, and for other purposes)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 2688 to amendment No. 2437.

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

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

The amendment is as follows:

At the end of the amendment add the following:

The provisons of Senate Amendment No. 2686 are null and void.

TITLE ___—TAX BENEFITS FOR MARRIED COUPLES AND SELF-EMPLOYED INDIVIDUALS

SEC. ___01. DEDUCTION FOR TWO-EARNER MARRIED COUPLES.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 222 as section 223 and by inserting after section 221 the following new section:

''SEC. 222. DEDUCTION FOR MARRIED COUPLES TO ELIMINATE THE MARRIAGE PENALTY.

''(a) IN GENERAL.—In the case of a joint return under section 6013 for the taxable year, there shall be allowed as a deduction an amount equal to the applicable percentage of the qualified earned income of the spouse with the lower qualified earned income for the taxable year.

''(b) APPLICABLE PERCENTAGE.—For purposes of this section—

''(1) IN GENERAL.—The term 'applicable percentage' means 20 percent, reduced by 2 percentage points for each $1,000 (or fraction thereof) by which the taxpayer's modified adjusted gross income for the taxable year exceeds $50,000.

''(2) TRANSITION RULE FOR 1999 AND 2000.—In the case of taxable years beginning in 1999 and 2000, paragraph (1) shall be applied by substituting '10 percent' for '20 percent' and '1 percentage point' for '2 percentage points'.

''(3) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term 'modified adjusted gross income' means adjusted gross income determined—

''(A) after application of sections 86, 219, and 469, and

''(B) without regard to sections 135, 137, and 911 or the deduction allowable under this section.

''(4) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2002, the $50,000 amount under paragraph (1) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that subparagraph (B) thereof shall be applied by substituting 'calendar year 2002' for 'calendar year 1992'. If any amount as adjusted under this paragraph is not a multiple of $2,000, such amount shall be rounded to the next lowest multiple of $2,000.

''(c) QUALIFIED EARNED INCOME DEFINED.—

''(1) IN GENERAL.—For purposes of this section, the term 'qualified earned income' means an amount equal to the excess of—

''(A) the earned income of the spouse for the taxable year, over

''(B) an amount equal to the sum of the deductions described in paragraphs (1), (2), (7), and (15) of section 62 to the extent such deductions are properly allocable to or chargeable against earned income described in subparagraph (A).

The amount of qualified earned income shall be determined without regard to any community property laws.''

''(2) EARNED INCOME.—For purposes of paragraph (1), the term 'earned income' means income which is earned income within the meaning of section 911(d)(2) or 401(c)(2)(C), except that—

''(A) such term shall not include any amount—

''(i) not includible in gross income,

''(ii) received as a pension or annuity,

''(iii) paid or distributed out of an individual retirement plan (within the meaning of section 7701(a)(37)),

''(iv) received as deferred compensation, or

''(v) received for services performed by an individual in the employ of his spouse (within the meaning of section 3121(b)(3)(A)), and

''(B) section 911(d)(2)(B) shall be applied without regard to the phrase 'not in excess of 30 percent of his share of net profits of such trade or business'.''

(b) DEDUCTION TO BE ABOVE-THE-LINE.—Section 62(a) of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by adding after paragraph (17) the following new paragraph:

''(18) DEDUCTION FOR TWO-EARNER MARRIED COUPLES.—The deduction allowed by section 222.''

(c) EARNED INCOME CREDIT PHASEOUT TO REFLECT DEDUCTION.—Section 32(c)(2) of the Internal Revenue Code of 1986 (defining earned income) is amended by adding at the end the following new subparagraph:

''(C) MARRIAGE PENALTY REDUCTION.—Solely for purposes of applying subsection (a)(2)(B), earned income for any taxable year shall be reduced by an amount equal to the amount of the deduction allowed to the taxpayer for such taxable year under section 222.''

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 222 and inserting the following new items:

''Sec. 222. Deduction for married couples to eliminate the marriage penalty.

''Sec. 223. Cross reference.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. ___02. DEDUCTION FOR HEALTH INSURANCE COSTS FOR SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (1) of section 162(l) of the Internal Revenue Code of 1986 is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 100 percent (75 percent in the case of taxable years beginning in 1999 and 2000) of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. ___03. REDUCTION IN TRANSFERS TO NATIONAL TOBACCO TRUST FUND.

Notwithstanding any other provision of this Act—

(1) the amount credited to the National Tobacco Trust Fund under section 401(b) of this Act for any fiscal year shall be reduced by the amount of the decrease in Federal revenues for such fiscal year which the Secretary of the Treasury estimates will result from the amendments made by this title, and

(2) for purposes of allocating amounts to accounts under section 451 of this Act, the reduction under paragraph (1) shall be treated as having been made proportionately from the amounts described in paragraphs (1), (2), and (3) of section 401(b) of this Act.

The Secretary shall increase or decrease the amount of any reduction under this section to reflect any incorrect estimate for any preceding fiscal year.

Mr. DASCHLE. Mr. President, I want to explain this particular amendment because I believe it is very important that everyone understand the juxtaposition of the Democratic amendment and the so-called Gramm amendment.

A vote for the Gramm amendment was a vote either to take about $120 billion of budget surpluses away from our effort to shore up Social Security or to drain 80 percent of the money out of the tobacco trust fund, money that would otherwise be going to States' antismoking efforts, medical research and farmers. That is the choice presented by the Gramm amendment from 2008 through 2022.

That was the problem we had with the Gramm amendment. In the out years, after 2008, it either took so much money out of Social Security and out of the surplus, or it took 80 percent of the tobacco money. We were not satisfied with this choice. We were not supportive of, first, the overall amount of money to be taken, and, secondly, the pots from which it was to be taken.

That is only the first problem—where the money to fund the tax cut would be drawn from in the out years. The second problem is that, in the first ten years, the revised amendment costs 50 percent more than the Democratic alternative; that is, $46 billion versus about $31 billion. But, here is the catch: it actually delivers far less marriage penalty tax relief. So while it costs more, it does far less with regard to the marriage penalty itself. The reason for that is about 60 percent of the Republican tax cut goes to couples who have a marriage bonus in the sense that they pay less if they are married than if they filed single returns.

Keep in mind that today about 52 percent of those who are married get a marriage bonus. There is actually an incentive built into the Tax Code to be married. The other 48 percent incur a marriage penalty. Sixty percent of the Gramm amendment goes to those who have a marriage bonus. So, in addition to the current marriage bonus, they will get a Gramm bonus. In our view, given the fact that this additional bonus costs so much and comes from either Social Security or tobacco, the additional Gramm bonus does not make a lot of sense.

The Democratic alternative, by contrast, focuses about 90 percent of its tax cut on families who are actually penalized by providing a 20% deduction against the income of the lesser-earning spouse, phased out between $50,000 and $60,000 of family income. If the Republicans were genuinely interested in the marriage penalty relief problem as Senator GRAMM and others have proclaimed, they would vote for the Democratic amendment. It would provide a bigger cut in the marriage penalty for most couples than the Gramm amendment over the next 10 years.

Let me give a couple of examples. A couple making $35,000, with income split $20,000 and $15,000 between the two spouses, would see the following circumstances if this amendment were to pass. In the year 2002, under Gramm the couple would receive an average additional income of about $1,000. By comparison, under our 20-percent second earner deduction alternative, the couple would receive an additional reduction of $3,000, that is, 20 percent of $15,000.

Mr. President, that represents about three times as large a tax deduction and would provide nearly three times as much tax relief—three times more tax relief under the Democratic amendment than under the so-called Gramm amendment. Next, take a couple making $50,000, split $25,000 and $25,000 between the two spouses. Again, under the Gramm amendment the couple would receive an average additional deduction of about $1,000 in 2002. By contrast, our amendment would provide an extra $5,000 deduction, representing five times the amount of relief as under the Gramm amendment.

So because we target our benefit to those who are actually penalized by the penalty rather than spread it across those who now enjoy a tax bonus for being married, we are able to deal with the penalty in a far more consequential way over the next ten years.

To recap, the Gramm amendment costs 50 percent more over the first 10 years than the Democratic alternative and gives far less marriage penalty relief during this period. It makes more sense to redirect the additional $15 billion that Senator GRAMM spends on bigger marriage bonuses to the original purposes of this bill—to public health, to research, to state programs, and to farmers.

That in essence is the difference between our two approaches. Let's spend and invest those resources on the things that this bill is designed to do. Let's do as Senator GRAMM suggests, focus on the problem he has described, that is, the marriage penalty, and try to deal with it as effectively as we can. By following that counsel, by taking that approach, we should pass the Democratic amendment, we should ultimately accept this compromise and the balance that it reflects, a balance between investments in public health and tax reductions. This is a prudent balance that recognizes the importance of this tobacco legislation as it was originally intended.

Mr. President, I yield the floor.

Mr. LOTT. 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 yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

Mr. FORD. I announce that the Senator from Delaware (Mr. BIDEN) is necessarily absent.

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

The result was announced—yeas 55, nays 43, as follows:

[Rollcall Vote No. 155 Leg.]

YEAS—55

Abraham	Feingold	McCain
Allard	Frist	McConnell
Ashcroft	Gorton	Murkowski
Bennett	Gramm	Nickles
Bond	Grams	Roberts
Brownback	Grassley	Roth
Burns	Gregg	Santorum
Campbell	Hagel	Sessions
Chafee	Hatch	Shelby
Coats	Helms	Smith (NH)
Cochran	Hutchinson	Smith (OR)
Collins	Hutchison	Snowe
Coverdell	Inhofe	Stevens
Craig	Jeffords	Thomas
D'Amato	Kempthorne	Thompson
DeWine	Kyl	Thurmond
Domenici	Lott	Warner
Enzi	Lugar	
Faircloth	Mack	

NAYS—43

Akaka	Ford	Lieberman
Baucus	Glenn	Mikulski
Bingaman	Graham	Moseley-Braun
Boxer	Harkin	Moynihan
Breaux	Hollings	Murray
Bryan	Inouye	Reed
Bumpers	Johnson	Reid
Byrd	Kennedy	Robb
Cleland	Kerrey	Rockefeller
Conrad	Kerry	Sarbanes
Daschle	Kohl	Torricelli
Dodd	Landrieu	Wellstone
Dorgan	Lautenberg	Wyden
Durbin	Leahy	
Feinstein	Levin	

NOT VOTING—2

Biden	Specter

The motion to lay on the table the amendment (No. 2688) was agreed to.

PRIVILEGE OF THE FLOOR

Mr. KERRY. Mr. President, I ask unanimous consent that the following members of my staff: Scott Bunton and Dave Kass, and Gregg Rothschild of the Small Business Committee staff be granted privileges of the floor during the pendency of the tobacco legislation.

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

MORNING BUSINESS

Ms. COLLINS. Mr. President, I ask unanimous consent there now be a period for the transaction of morning business with Senators permitted to speak for up to 10 minutes each.

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

THE 35TH ANNIVERSARY OF THE EQUAL PAY ACT

Mr. DASCHLE. Mr. President, 35 years ago, President Kennedy took the bold first step to secure equal pay for women. Although there has been much progress since 1963, women continue to earn less than men. That is why we mut take action to improve and strengthen President Kennedy's landmark law and ensure that America's working women and families are paid the wages they deserve.

In 1963, President Kennedy signed the Equal Pay Act prohibiting employers from paying women less than men for the same job. Knowing that the legislation was merely a first step in the right direction, President Kennedy noted that ''much remains to be done to achieve full equality of economic opportunity.''

While the Equal Pay Act prohibited discrimination against women in terms of wages, substantial pay disparities continue to exist. Women still earn, on average, only 74 cents to a man's dollar.

That's why fair pay continues to be a major issue for American women and working families. In fact, the dramatic increase in the number of women in the work force and the number of families who depend on women's earnings make fair pay a matter of justice and necessity now more than ever. My state of South Dakota has the highest percentage in the nation of working mothers with children under the age of 6. These families need and deserve both parents to be paid fairly for an honest day's work. Now is the time to take another step toward fair pay and equal treatment for all people.

Last year, I introduced the Paycheck Fairness Act to address the glaring inequities between men's and women's earnings. The bill seeks to eliminate the wage gap by beefing up enforcement of the Equal Pay Act, increasing penalties for pay discrimination, and lifting the gag rule imposed by many employees who forbid employees from discussing their wages with their coworkers. The bill would also ensure that employers who make real strides in establishing fair and equal workplaces would be recognized and celebrated.

As we commemorate the 35th anniversary of the passage of the Equal Pay Act, I join my colleagues, the President, and the Vice President in calling on Congress to schedule a vote on the Paycheck Fairness Act, and renew our efforts to advance the principles of equal pay for equal work. Through the Paycheck Fairness Act, Democrats honor and continue President Kennedy's legacy of equality for a better workplace economy, and country.

THE 50TH ANNIVERSARY OF MCCARRAN INTERNATIONAL AIRPORT

Mr. BRYAN. Mr. President. I rise today to recognize a milestone in Nevada history. This weekend, Nevadans will celebrate the 50th anniversary of McCarran International Airport and on Monday the opening of the new ''D'' gates.

Seventy-eight years ago, in 1920, pilot Randall Henderson landed his plane on a makeshift dirt runway marking Las Vegas' first flight. I am sure that Mr. Henderson had no idea that some 78 years later the McCarran International Airport would be one of the fastest growing airports in the country.

That runway was later used by such famous people as Amelia Earhart, Clarence Prest, and Emery Rogers and came to be named Rockwell Field.

Rockwell Field was sold in 1929. Fortunately, P.A. ''Pop'' Simon bought the land northeast of Las Vegas, the site of today's Nellis Air Force Base, and built the Las Vegas Airport. It was later named Western Air Express Field. In 1948, Clark County purchased an existing airfield on Las Vegas Boulevard South and established the Clark County Public Airport.

That year, the airport was renamed McCarran Field, after Nevada's senior Senator, Senator Pat McCarran, who authored the Civil Aeronautics Act and played a major role in the development of aviation not only in Nevada but in the country. McCarran Airport was at that time already servicing 12 flights a day, by four airlines. Later, the growth of Las Vegas necessitated the move of the airport terminal from the Las Vegas Boulevard South location to Paradise Road, and the present McCarran Field Terminal was opened in 1963. At this time the airport was serving nearly 1.5 million passengers. Three short years later, the annual passenger volume exceeded the two-million mark for the first time in the airport's history. By 1978, tourism to the Las Vegas area had increased dramatically, and the McCarran 2000 master plan was established to respond to the burgeoning tourism industry. This plan brought the addition of more terminals, parking, runways, and passenger assistance facilities. After Phase I of the McCarran 2000 project was completed, the size of the airport quadrupled, adding 16 more gates. Later, a fourth runway was added along with major renovations to the runways and terminals, and in 1994, a 1,400-foot extension was added, making it one of the longest civilian runways in the United States.

This Monday, McCarran will celebrate the opening of the new ''D'' gates, which will ultimately consist of 48 gates throughout four concourse wings. The completion of the ''D'' gates will enable the airport to serve a total of 55 million passengers per year, nearly double the current capacity.

The growth of Las Vegas is a fact that has been recorded on many occasions. It has been dramatic. That growth could not have occurred if McCarran International had not kept pace and indeed anticipated the phenomenal tourism growth in southern Nevada. We salute McCarran on the 50th anniversary of its establishment. It has become an international gateway to the entertainment capital of the world. We are sure it was the far-sighted leadership that has been provided in the past and its present expansion that will allow McCarran to continue to enjoy another 50 years of service to the community and to the millions of people who arrive by air each year making Las Vegas their destination.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, June 9, 1998, the federal debt stood at $5,493,569,839,079.81 (Five trillion, four hundred ninety-three billion, five hundred sixty-nine million, eight hundred thirty-nine thousand, seventy-nine dollars and eighty-one cents).

One year ago, June 9, 1997, the federal debt stood at $5,348,704,000,000 (Five trillion, three hundred forty-eight billion, seven hundred four million).

Five years ago, June 9, 1993, the federal debt stood at $4,300,363,000,000 (Four trillion, three hundred billion, three hundred sixty-three million).

Ten years ago, June 9, 1988, the federal debt stood at $2,534,222,000,000 (Two trillion, five hundred thirty-four billion, two hundred twenty-two million).

Fifteen years ago, June 9, 1983, the federal debt stood at $1,309,407,000,000 (One trillion, three hundred nine billion, four hundred seven million) which reflects a debt increase of more than $4 trillion—$4,184,162,839,079.81 (Four trillion, one hundred eighty-four billion, one hundred sixty-two million, eight hundred thirty-nine thousand, seventy-nine dollars and eighty-one cents) during the past 15 years.

TEST BAN TREATY—35TH ANNIVERSARY

Mr. KENNEDY. Mr. President, thirty-five years ago today, in his commencement address to the graduating class of The American University in 1963, President Kennedy announced his support for a comprehensive nuclear test ban. As he said on that occasion:

> The conclusion of such a treaty, so near and yet so far, would check the spiraling arms race in one of its most dangerous areas. It would place the nuclear powers in a position to deal more effectively with one of the greatest hazards which man faces in 1963, the further spread of nuclear arms. It would increase our security—it would decrease the prospects of war. Surely this goal is sufficiently important to require our steady pursuit, yielding neither to the temptation to give up the whole effort nor the temptation to give up our insistence on vital and responsible safeguards.

In the weeks that followed, President Kennedy secured one of the most important of successes of his New Frontier—the signing of the Limited Test Ban Treaty.

But, today, 35 years later, we still have not achieved the larger goal of a Comprehensive Test Ban Treaty. Especially in the wake of the recent nuclear tests by India and Pakistan, we need to do all we can to achieve the rapid ratification of this important treaty.

The arguments in favor of the CTBT are stronger and more important than ever. The recent tests are a reminder that the greatest threat to humanity is still the danger of nuclear war.

The end of the Cold War has presented us with a unique opportunity to step back from the nuclear brink and end nuclear testing worldwide. A Comprehensive Test Ban now would also end the current discrepancy between the world's recognized nuclear states which are permitted to test and the rest of the world's countries which are not. The Senate can take the lead in creating a more secure world by putting the United States in the front of the international effort to achieve a Comprehensive Test Ban.

This is the right time for the CTBT. We no longer need to develop more powerful or more accurate nuclear weapons to deter the nations of the former Soviet Union, or any other nuclear-capable state. Through the Stockpile Stewardship Program, we are learning more each day about how to keep our nuclear arsenal safe and reliable without testing.

One-hundred and forty-nine nations around the world have already signed the CTBT, including all five of the recognized nuclear states. The United States signed it in September 1996, but the Senate has not yet ratified it.

President Kennedy said it best 35 years ago when he told the students at American University, ". . . in the final analysis, our most basic common link is that we all inhabit this small planet. We all breathe the same air. We all cherish our children's future. And we are all mortal."

I urge the Senate to act on the ratification of the Comprehensive Test Ban Treaty. The most important single step we can take today to reduce the dangers of nuclear war.

MESSAGES FROM THE HOUSE

At 2:05 p.m., a message from the House of Representatives, delivered by one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1635. An act to establish within the United States National Park Service the National Underground Railroad Network to Freedom program, and for other purposes.

H.R. 3520. An act to adjust the boundaries of the Lake Chelan National Recreation Area and the adjacent Wenatchee National Forest in the State of Washington.

The message also announced that the House has passed the following bill, with an amendment, in which it requests the concurrence of the Senate:

S. 1990. An act to establish a commission to examine issues pertaining to the disposition of Holocaust-era assets in the United States before, during, and after World War II, and to make recommendations to the President on further action, and for other purposes.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 270. Concurrent resolution acknowledging Taiwan's desire to play a positive role in the current Asian financial crisis and affirming the support of the American people for peace and stability on the Taiwan Strait and security for Taiwan's democracy.

The message also announced that the House has passed the following bill, without amendment:

S. 423. An act to extend the legislative authority for the Board of Regents of Gunston Hall to establish a memorial to honor George Mason.

The message further announced that the House agrees to the amendments of the Senate to the bill (H.R. 2709) to impose certain sanctions on foreign persons who transfer items contributing to Iran's efforts to acquire, develop, or produce ballistic missiles, and to implement to obligations of the United States under the Chemical Weapons Conventions.

ENROLLED BILLS SIGNED

The message also announced that the Speaker has signed the following enrolled bills:

H.R. 2709. An act to improve certain sanctions on foreign persons who transfer persons who transfer items contributing to Iran's efforts to acquire, develop, or produce ballistic missiles, and to implement to obligations of the United States under the Chemical Weapons Conventions.

H.R. 3811. An act to establish felony violations for the failure to pay legal child support obligations, and for other purposes.

The enrolled bills were signed subsequently by the President pro tempore (Mr. THURMOND).

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 1635. An act to establish within the United States National Park Service the National Underground Railroad Network to Freedom program, and for other purposes; to the Committee on Energy and Natural Resources.

The following concurrent resolution was read and referred as indicated:

H. Con. Res. 270. Concurrent resolution acknowledging Taiwan's desire to play a positive role in the current Asian financial crisis and affirming the support of the American people for peace and stability on the Taiwan Strait and security for Taiwan's democracy; to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times, and placed on the calendar:

H.R. 3520. An act to adjust the boundaries of the Lake Chelan National Recreation Area and the adjacent Wenatchee National Forest in the State of Washington.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on June 10, 1998 he had presented to the President of the United States, the following enrolled bill:

S. 1244. An act to amend title 11, United States Code, to protect certain charitable contributions, and for other purposes.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–449. A resolution adopted by the St. Augustine Beach City Commission relative to funding of a shore protection project; to the Committee on Appropriations.

POM–450. A resolution adopted by the Nevada Legislature's Committee on Public Lands relative to the Interior Columbia Basin Ecosystem Management Project; to the Committee on Energy and Natural Resources.

POM–451. A joint resolution adopted by the Legislature of the State of New Hampshire; to the Committee on Environment and Public Works.

HOUSE JOINT RESOLUTION 23

Whereas, the state of New Hampshire has continued to decrease air pollution emissions in accordance with the federal Clean Air Act Amendments of 1990; and

Whereas, certain regions of the country, including the state of New Hampshire, are currently victims of air pollution emitted upwind from the region, but are being held responsible for that pollution by the federal Clean Air Act; and

Whereas, section 126 of the federal Clean Air Act allows states to petition the Administrator of the federal Environmental Protection Agency (EPA) to find that any stationary source or group of stationary sources emits any air pollutant in amounts which significantly contribute to levels of air pollution in excess of the national air quality standard outside of the state; and

Whereas, the state of New Hampshire filed a petition to section 126 before the EPA in August 1997; now therefore, be it

Resolved by the Senate and House of Representatives in General Court convened:

That the New Hampshire Senate and House of Representatives support the section 126 petition filed by the state of New Hampshire in August 1997; and

That the federal Clean Air Act should be amended so that section 126 petitions may refer not only to stationary sources and groups of stationary sources, but also to non-stationary sources and groups of non-stationary sources; and

That the EPA should exercise its duty under section 110 of the federal Clean Air Act to require states to submit plans consistent with attainment of the national air standards in their own state and in all areas downwind from them; and to refuse to accept plans containing emissions which significantly contribute to non-attainment of the national air standards in areas downwind, by determining what total reductions are needed to attain the standards and then apportioning the responsibility for reductions in a cost-effective equitable manner among all states that contribute significantly to non-attainment; and

That copies of this resolution be sent by the hours clerk to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the chairpersons of committees of the United State Congress having jurisdiction over the Clean Air Act, the Administrator of the United States Environmental Protection Agency, and each member of the New Hampshire congressional delegation.

POM–452. A resolution adopted by the Senate of the Legislature of the State of Tennessee; to the Committee on Commerce, Science, and Transportation.

SENATE RESOLUTION NO. 132

Whereas, This General Assembly acknowledges the importance and emerging dependence of business, government and society on the Internet as a growing part of our system of communications and commerce; and

Whereas, The members of this legislative body also recognizes that the Internet as a medium of free speech contains, in addition to its many salutory features, potential dangers for society and especially our youth, in that it can provide uncontrolled and instantaneous access to obscenity, child pornography and other adult-oriented materials that are harmful to youth; and

Whereas, in 1996 Congress attempted to place restrictions on the Internet to curb these dangers by the passage of the Communications Decency Act of 1996, which was declared unconstitutional in part by the United States Supreme Court in the case of *Reno* v. *ACLU;* and

Whereas, The Internet is in a developing stage and software developments and other market forces may eventually allow Internet providers to provide clean Internet services or products that will protect children from the harms of the Internet and permit users to block out offensive materials and services without compromising the beneficial aspects of the Internet; and

Whereas, The technology currently exists to more readily control these problems by the use of a designated top-level domain site for web sites that contain pornographic and adult-oriented materials and services which, if employed, will expedite and facilitate the development of clean Internet materials and services by the lawful classification of web sites; and

Whereas, In October of this year, the United States Department of Commerce plans to set up a private not-for-profit corporation whose directors will create five new top-level domains that will register web sites by subject type; and

Whereas, A federal requirement that an adult-oriented domain site be created and that all adult-oriented web sites be registered to such domain would greatly aid Internet users, parents and teachers in shielding America's youth from the harms of pornography and adult-oriented materials and services that are available and proliferating on the Internet, and

Whereas, The states are somewhat limited in the regulation they can provide in this area because of the federal Commerce Clause; and

Whereas, Congress and the Executive Branch are the appropriate governmental branches to provide leadership in this area and may lawfully act to resolve quickly this issue in a responsible manner that comports with the ideals of the First Amendment; now, therefore, be it

Resolved by the Senate of the One-Hundredth General Assembly of the State of Tennessee, That this Body hereby urges the United States Congress to establish and maintain a uniform resource locator system that contains a top-level domain for all Internet web sites providing pornographic or adult-oriented materials or services so as to facilitate and assist Internet users, service providers and software developers to manage the problem of uncontrolled access to obscenity, child pornography and other adult-oriented materials and services via the Internet. Be it

Further Resolved, That this Body respectfully urges the President and Vice President of the United States and the Secretary of the Department of Commerce to use their offices and considerable influence to bring about the aims of this resolution by the means of executive order or department regulation, or the promotion of federal regulation, as they deem appropriate. Be it

Further Resolved, That the Clerk of the Senate deliver enrolled copies of this resolution to each member of the Tennessee delegation, to the United States Senate and the United States House of Representatives, to the Chairmen of the United States Senate Commerce, Science and Transportation Committee and the United States House Commerce Committee, and to the President and Vice President of the United States and the Secretary of the United States Department of Commerce.

POM–453. A resolution adopted by the House of the Legislature of the State of Michigan; to the Committee on Finance.

HOUSE RESOLUTION NO. 212

Whereas, Housing credits are the primary state-federal tool for making affordable rental housing available for low-income people. Since 1987, state agencies have allocated housing credits that have helped finance nearly 900,000 apartments for low-income families; and

Whereas, The cap on the amount of housing credits was set ten years ago. Over the past decade, less and less housing is becoming available. As a result of the impact of inflation, demand for this highly successful program exceeds supply by a three-to-one ratio; and

Whereas, The Congress of the United States is considering two bills that would rectify the problem of inadequate housing credits by adjusting the cap to reflect inflationary growth. These bills, H.R. 2990 and S. 1252, will reopen doors to more low-income housing. In Michigan, it is estimated that the legislation will result in enough credit authority to create another 1,000 units of much-needed housing. Another key to the bills is a provision to index the cap for housing credits to reflect inflationary change. This is an appropriate strategy to ensure the continuing availability of low-income housing; now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress of the United States to enact legislation to increase the cap on low-income housing credits; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–454. A resolution adopted by the Senate of the Legislature of the State of Michigan; to the Committee on Finance.

SENATE RESOLUTION NO. 171

Whereas, The Internal Revenue Code is beyond repair; and

Whereas, The Internal Revenue Code is the core of the distrust of government the American people feel; and

Whereas, the current tax code is 7 million words, compared to Lincoln's Gettysburg Address of 269 words and the Declaration of Independence, which is 1,337 words; and

Whereas, The IRS's ''simplest'' return, the EZ Form 1040, has 33 pages of instructions, and the IRS Form 1040 has 76 pages of instructions; and

Whereas, Individual taxpayers spend 1.7 billion hours and American business will spend 3.4 billion hours each year simply trying to comply with the tax code. That effort is equivalent to a ''staff'' of 3 million people working full time, year round, just on taxes; and

Whereas, Taxes are too high, but any steps to lower taxes by modifying the existing tax code would make it even longer and more confusing; and

Whereas, A proposal to abolish the Internal Revenue Code by December 31, 2001, embodies a prudent method and provides adequate time for developing a new tax code; now, therefore, be it

Resolved by the Senate, That we memorialize the Congress of the United States to enact legislation to abolish the Internal Revenue Code by December 31, 2001, and replace it with a new method of taxation. The new tax code must:

—Lower taxes—to create job opportunities;

—Foster growth—by encouraging work and savings;

—Be fair—for all taxpayers;

—Be simple enough for all taxpayers to understand;

—Be neutral—allowing people, not government to make choices;

—Be visible, so people know the cost of government;

—Be stable, so people can plan for the future; and be it further

Resolved, That we request the other states to urge Congress to enact this proposal; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate the Speaker of the United States House of Representatives, to members of the Michigan congressional delegation, and to the legislatures of the other states.

POM–455. A joint resolution adopted by the Legislature of the State of California; to the Committee on Finance.

ASSEMBLY JOINT RESOLUTION NO. 65

Whereas, The California Legislature and the Governor, on a bipartisan basis, enacted Assembly Bill 1126 and other conforming legislation to establish the Healthy Families Program; and

Whereas, The Healthy Families Program embodies the Governor's vision of providing private insurance to the children of working parents whose employers do not provide dependent health insurance coverage and whose family income is insufficient to purchase private health care coverage for their children; and

Whereas, It was the Legislature's intent, in enacting the Healthy Families Program, that children of low-income parents who work receive the same beneficial treatment, with regard to income disregards, as families applying for Medi-Cal; and

Whereas, The state government expressly requested the use of income disregards to establish eligibility for the Healthy Families program, similar to the disregards applied to low-income persons applying for Medi-Cal coverage for their children; and

Whereas, The federal government accepted the plan developed by the administration, including the provisions of the plan which protect against crowd out; and

Whereas, The delay and potential elimination of families who want and need to participate in the program, since they do not have the means to purchase insurance without financial assistance, would place a great hardship on these families and their children; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California memorializes the federal Health Care Financing Administration, and the Congress and the President of the United States to preserve the state plan to implement the Healthy Families Program in its current approved form; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Secretary of Health and Human Services, and to each Senator and Representative from California in the Congress of the United States.

POM–456. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Commerce, Science, and Transportation.

HOUSE JOINT RESOLUTION 98–1036

Whereas, The Aircraft Repair Station Safety Act of 1997 pending in the federal congress would require all aircraft maintenance facilities, whether domestic or abroad, to adhere to the same safety and operating procedures; and

Whereas, The Aircraft Repair Station Safety Act of 1997 would provide for more stringent standards for certification of foreign aircraft repair stations by the Federal Aviation Administration and would revoke the certification of any repair facility that knowingly uses defective parts; and

Whereas, There are over five hundred fifty persons with a combined annual income of over twenty-nine million dollars employed in the aircraft repair industry in Colorado whose jobs are at risk of being moved out of the United States unless foreign aircraft repair stations are required to adhere to our safety and operating procedures; and

Whereas, On January 9, 1997, House Resolution No. 145 was introduced in the House of Representatives of the United States by Representative Robert Borski; and

Whereas, On July 30, 1997, a companion bill, S. 1089, was introduced in the Senate of the United States by Senator Arlen Specter; and

Whereas, H.R. 145 and S. 1089 both propose to enact the Aircraft Repair Station Safety Act of 1997: Now, therefore, be it

Resolved by the House of Representatives of the Sixty-first General Assembly of the State of Colorado, the Senate concurring herein: That the General Assembly requests the United States Congress to enact and the President to sign the Aircraft Repair Station Safety Act of 1997, be it further

Resolved, That copies of this Joint Resolution be sent to the President and Vice-President of the United States, the President of the Senate and the Speaker of the House of Representatives of the United States Congress, and to each member of the Congressional delegation from Colorado.

POM–457. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Foreign Relations.

HOUSE CONCURRENT RESOLUTION NO. 13

Whereas, the Republic of Poland is a free, democratic, and independent nation with a long and proud history, being the first nation in Central Europe to stand up for democratic values and to undergo a systematic transformation; and

Whereas, the North Atlantic Treaty Organization is dedicated to the preservation of freedom and security of its member nations; and

Whereas, Poland and its Central European neighbors the Republic of Hungary and the Czech Republic recognize their responsibilities as democratic nations and wish to exercise such responsibilities in concert with members of NATO; and

Whereas, Poland will bring to the alliance its defense potential, its stabilizing role in the region, and its good relations with its neighbors; and

Whereas, Hungary and the Czech Republic have also shown their commitment to democracy and its preservation throughout the world; and

Whereas, the Republic of Poland, Hungary, and the Czech Republic desire to become a part of NATO's efforts to prevent the extremes of nationalism and to spread democracy and stability; and

Whereas, the security of the United States is dependent upon the stability of Central Europe. Therefore, be it

Resolved, That the Legislature of Louisiana does respectfully urge the United States Senate to support the establishment of a timetable for the admission of the Republic of Poland, Hungary, and the Czech Republic to the North Atlantic Treaty Organization. Be it

Further Resolved, That a copy of this Resolution be transmitted to the president of the United States Senate, to each member of the Louisiana congressional delegation, and to the ambassadors of the Republic of Poland, the Republic of Hungary, and the Czech Republic to the United States.

POM–458. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Foreign Relations.

HOUSE CONCURRENT RESOLUTION NO. 33

Whereas, the Republic of Poland is a free, democratic, and independent nation with a long and proud history, being the first nation in Central Europe to stand up for democratic values and to undergo a systematic transformation; and

Whereas, the North Atlantic Treaty Organization is dedicated to the preservation of freedom and security of its member nations; and

Whereas, Poland and its Central European neighbors, the Republic of Hungary and the Czech Republic, recognize their responsibilities as democratic nations and wish to exercise such responsibilities in concert with members of NATO; and

Whereas, Poland will bring to the alliance its defense potential, its stabilizing role in the region, and its good relations with its neighbors; and

Whereas, Hungary and the Czech Republic have also shown their commitment to democracy and its preservation throughout the world; and

Whereas, the Republic of Poland, Hungary, and the Czech Republic desire to become a part of NATO's efforts to prevent the extremes of nationalism and to spread democracy and stability; and

Whereas, the security of the United States is dependent upon the stability of Central Europe. Therefore, be it

Resolved, that the Legislature of Louisiana does respectfully urge the United States Senate to support the establishment of a timetable for the admission of the Republic of Poland, Hungary, and the Czech Republic to the North Atlantic Treaty Organization. Be it

Further Resolved, That a copy of this Resolution be transmitted to the President of the United States Senate, to each member of the Louisiana congressional delegation, and to the ambassadors of the Republic of Poland, the Republic of Hungary, and the Czech Republic to the United States.

POM–459. A concurrent resolution adopted by the Legislature of the State of Louisiana;

to the Committee on Agriculture, Nutrition, and Forestry.

HOUSE CONCURRENT RESOLUTION NO. 41

Whereas, congress, through the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act), mandated that the Secretary of the United States Department of Agriculture consolidate the then existing thirty-two federal milk marketing orders into not less than ten nor more than fourteen orders by April 4, 1999; and

Whereas, the FAIR Act also authorized the Secretary of the United States Department of Agriculture to review and reform the pricing and other provisions of the consolidated orders; and

Whereas, on January 23, 1998, the Secretary of the United States Department of Agriculture issued proposed rules for federal milk order consolidations and reforms; and

Whereas, these proposed rules included two options for pricing milk used in Class I (fluid milk products), which are noted and referred to as Option 1A and Option 1B; and

Whereas, Option 1A is similar to the present geographic price structures; however, Option 1B would reduce the minimum federal order prices in Louisiana by more than one dollar per hundredweight; and

Whereas, while demand has been rising due to increasing population, milk production in Louisiana and the entire Southeast has declined during each of the past seven years; and as a result, larger quantities of milk are imported from other regions at higher cost than local milk; and

Whereas, implementation of Option 1B, even with the highest transition option, would aggravate the loss of dairy farms and local milk production; and

Whereas, such loss will be devastating to the dairy farmer, the rural communities, and the consumers. Therefore, be it

Resolved, That the Legislature of Louisiana memorializes the Congress of the United Stated to support, and urges and requests the United States Secretary of Agriculture to incorporate, Option 1A as the pricing procedure in all federal milk marketing orders in his final decision on consolidation and reform of these orders. Be it

Further Resolved, That a copy of this Resolution shall be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America, each member of the Louisiana congressional delegation, and the Secretary of the United States Department of Agriculture.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JEFFORDS, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

H.R. 2614. A bill to improve the reading and literacy skills of children and families by improving in-service instructional practices for teachers who teach reading, to stimulate the development of more high-quality family literacy programs, to support extended learning-time opportunities for children, to ensure that children can read well and independently not later than third grade, and for other purposes (Rept. No. 105–208).

By Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute and an amended preamble:

H. Con. Res. 131. A concurrent resolution expressing the sense of Congress regarding the ocean (Rept. No. 105–209).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment and with a preamble:

S.J. Res. 41. A joint resolution approving the location of a Martin Luther King, Jr., Memorial in the Nation's Capital (Rept. No. 105–210).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 1683. A bill to transfer administrative jurisdiction over part of the Lake Chelan National Recreation Area from the Secretary of the Interior to the Secretary of Agriculture for inclusion in the Wenatchee National Forest.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DURBIN (for himself, Ms. SNOWE, Mr. GORTON, Mr. WELLSTONE, Ms. MIKULSKI, Mrs. FEINSTEIN, Mr. CHAFEE, Mrs. BOXER, Mrs. MURRAY, Mr. GRASSLEY, Mr. WYDEN, Mr. BINGAMAN, Mr. KERRY, Mr. ROBB, Mr. INOUYE, Mr. TORRICELLI, Mr. LEVIN, Mr. BUMPERS, Mr. JOHNSON, Mr. DEWINE, Mr. KOHL, Ms. COLLINS, Mr. CLELAND, and Mr. MOYNIHAN):

S. 2152. A bill to establish a program to provide credit and other assistance for encouraging microenterprises in developing countries, and for other purposes; to the Committee on Foreign Relations.

By Mr. DORGAN (for himself and Mr. REID):

S. 2153. A bill to require certain expenditures by the Federal Reserve System to be made subject to congressional appropriations, to prohibit the maintenance of surplus accounts by Federal reserve banks, to provide for annual independent audits of Federal reserve banks, to apply Federal procurement regulations to the Federal Reserve System, to reform the pricing practices of the Federal Reserve System for services provided to the domestic banking system, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mrs. BOXER:

S. 2154. A bill to promote research to identify and evaluate the health effects of silicone breast implants, and to ensure that women and their doctors receive accurate information about such implants; to the Committee on Labor and Human Resources.

By Mr. BINGAMAN:

S. 2155. A bill to provide restitution of the economic potential lost to communities dependent on Spanish and Mexican Land Grants in New Mexico due to inadequate implementation of the 1848 Treaty of Guadalupe Hidalgo; to the Committee on Energy and Natural Resources.

By Mr. BOND (for himself, Mr. GRASSLEY, Mr. LOTT, Mr. BREAUX, Mr. BURNS, Mr. MACK, Mr. BINGAMAN, Mr. FRIST, Mr. MURKOWSKI, Mrs. MURRAY, Mr. ROBERTS, Mr. HOLLINGS, Mr. DODD, Mr. FAIRCLOTH, Ms. COLLINS, Mr. JEFFORDS, Mr. THOMAS, Mr. D'AMATO, Mr. HATCH, Mr. SHELBY, Mr. ASHCROFT, Mr. KEMPTHORNE, Mr. ROBB, Mr. CLELAND, Mr. CRAIG, Mr. SANTORUM, and Mr. LEAHY):

S.J. Res. 50. A joint resolution to disapprove the rule submitted by the Health Care Financing Administration, Department of Health and Human Services on June 1, 1998, relating to surety bond requirements for home health agencies under the medicare and medicaid programs; to the Committee on Finance.

By Mr. SARBANES (for himself, Mr. BYRD, Mr. ROCKEFELLER, and Ms. MIKULSKI):

S.J. Res. 51. A joint resolution granting the consent of Congress to the Potomac Highlands Airport Authority Compact entered into between the States of Maryland and West Virginia; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT (for himself and Mr. DASCHLE):

S. Res. 246. A resolution authorizing the taking of a photograph in the Chamber of the United States Senate; considered and agreed to.

By Mr. MOYNIHAN (for himself, Mr. HELMS, Mr. LEAHY, Mr. MACK, Mr. WELLSTONE, and Mr. FEINGOLD):

S. Con. Res. 103. A concurrent resolution expressing the sense of the Congress in support of the recommendations of the International Commission of Jurists on Tibet and on United States policy with regard to Tibet; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURBIN (for himself, Ms. SNOWE, Mr. GORTON, Mr. WELLSTONE, Ms. MIKULSKI, Mrs. FEINSTEIN, Mr. CHAFEE, Mrs. BOXER, Mrs. MURRAY, Mr. GRASSLEY, Mr. WYDEN, Mr. BINGAMAN, Mr. KERRY, Mr. ROBB, Mr. INOUYE, Mr. TORRICELLI, Mr. LEVIN, Mr. BUMPERS, Mr. JOHNSON, Mr. DEWINE, Mr. KOHL, Ms. COLLINS, Mr. CLELAND, and Mr. MOYNIHAN):

S. 2152. A bill to establish a program to provide credit and other assistance for encouraging microenterprises in developing countries, and for other purposes; to the Committee on Foreign Relations.

MICROCREDIT FOR SELF-SUFFICIENCY ACT OF 1998

Mr. DURBIN. Mr. President, I rise to introduce a bill today which is cosponsored by at least 20 of my colleagues in the Senate, a bipartisan offering on an issue which I came to be familiar with over 10 years ago. I traveled to the country of Bangladesh. It is not exactly on the itinerary of favorite congressional trips because it is a country which, although it is large and very interesting, has had its share of misfortune. It seems whenever any natural disaster would strike in the world it would stop in Bangladesh. We, of course, conjure an image in our mind of people who have suffered through typhoons and tornadoes and flooding and all sorts of deprivation. It is a very poor country.

Then Congressman, the late Mike Synar, and I went to Bangladesh. One of the reasons we went was to explore an issue which we had heard a lot about. There is an institution created in Bangladesh known as the Grameen Bank. Grameen means ''people's bank.'' It is an extraordinary institution because it is an unusual bank; it is

a bank designed to provide very small loans to very poor people. So Congressman Synar and I joined with people from the American Embassy and got in our four-wheel drive vehicle and drove out from Dakar into the countryside until the road ended, and then our four-wheel vehicle could go no further and we got out and started hiking a few miles into the brush and came upon a tiny little village. In this village we were invited to a bank meeting, a meeting of the board of directors of the Grameen Bank, in this tiny, obscure, almost nameless Bangladesh village. The bank meeting was unlike any meeting of any board of directors one would ever imagine.

Seated in a little shelter were about 30 or 40 women, all dressed in brightly colored saris, with a third eye in their foreheads, many of them holding babies in a typical Asian squatting position and looking up at these visitors who had come to see them.

Our host, a professor from a university in Bangladesh who was familiar with the program, Dr. Huk, introduced us to the women in the audience. He said at one point, ''Is there anyone here who has ever heard of the United States of America?'' Not one of them had. And here we were, these two Congressmen standing before them, looking like creatures from some other planet I am sure, wanting to know more about this little bank.

This bank has grown in size and scope in an effort to provide microcredit, small loans, to some of the poorest people in the world. What does $100 mean to an American? For us, it might be a nice trip shopping or a trip to a restaurant. But for a woman living in Bangladesh, $100 might mean that she can buy some tools and develop a skill and a craft to feed her family; $100 might mean that she can buy a milking cow that she can then use, not only to feed her family, but to sell the products and to make some money for her future.

How does this work, that people who are so poor, with literally no earthly possessions, can be debtors, can borrow money from a bank? It works because the concept is that when they undertake this debt, several other villagers will sign up with them, cosign the note, if you will, in a guarantee that the payment will be made because, you see, the cosigners cannot get a debt of their own until the original debt is paid off. So they look very carefully to make sure that the debt is repaid on a monthly basis. The payback rate on Grameen Bank is over 95 percent.

Why in the world would I raise this question here on the floor of the U.S. Senate in the great country that we live in, with all of our wealth and opportunity? Because I, frankly, think that this is a model that we should encourage and follow around the world. We do not spend an extraordinarily great amount of money on foreign aid compared to other nations, but we do spend billions of dollars. The bill that I introduce suggests that we should take a portion of that money each year and dedicate it to microcredit projects, projects like the Grameen Bank around the world.

Many Americans might say, ''Well, Senator, it sounds like a great idea, but why should we worry about a woman in Bangladesh?'' One of the women in this meeting I attended came up to me afterwards and, with an interpreter—she had a baby in her arms—she told me her life story.

She was 18 years old. The baby she was holding was her third child. She told me, quite proudly, that she was not going to have any more children. She was practicing birth control. She said, ''My other two children are alive.'' Now, that is an amazing statement in the United States. You think, ''Well, of course, why would you bring that up?'' But in a developing country, it is a very serious concern: Will my baby survive? Do I need to have another baby? That is why many of the developing countries have such high birth rates.

She had decided that because of good health techniques, which the United States and United Nations had encouraged, that her babies had a chance to live, and with the Grameen Bank, she had a chance to improve their livelihood. She said, quite proudly, ''I'm going to have a family of three and that is all we need and Grameen Bank has really helped to make this possible.''

A tiny loan of $100, a family planning program, some public health techniques and this woman is going to limit her family to three. Is that important to us in the United States? It is, because in Asia, in Africa and around the world, the problem of overpopulation is one that is not local or regional, it is a global problem.

Overpopulation leads to many problems—economic instability, political instability, environmental degradation. Look at the nation of India today. India is in the headlines because of its recent nuclear test, its fears of China and Pakistan. Yet, India is going to be in the headlines in a few years because it will be the most populated nation in the world. It will pass China. As that teeming population grows and creates political pressures, it becomes a concern in the United States.

I hope we will make modest investments in those foreign aid programs that really can improve the quality of life in developing countries and can really cope with some of the problems such as overpopulation. Microcredit enjoys broad bipartisan support.

An organization known as RESULTS, which is nationwide but has a very significant chapter in Chicago, has encouraged me to introduce this legislation, which I am happy to do. There are many people who are strong supporters of this. One of them is well known to many of us who grew up watching ''The Mary Tyler Moore Show.'' Her name is Valerie Harper, also known as Rhoda.

For some reason, this has become a passion for her, a commitment to helping women around the world receive basic credit so that they can lift their lives and improve their families. I salute Valerie Harper for her leadership on this. Microcredit encourages entrepreneurship and free market economic development.

The repayment rates on these loans are over 95 percent, and it is found that $1 million put into microcredit can generate $15 million in small loans over 5 years as people get better off and start building their own livelihoods. It gives poor people, and especially women, the means to meet the needs of their family in areas of health, education, and nutrition.

Our First Lady Hillary Rodham Clinton spoke in Chicago a few years ago, and I thought she made a very important observation. She said, if you will look at the underdeveloped nations and wonder if they have a chance to move toward democracy or toward a free market economy, the first place you should look is how they treat women. Are women given an opportunity to be educated? Are they given an opportunity to work outside the home and develop their skills? How are they treated? I think we are finding in countries where microcredit is becoming an important part of the program that women are given that chance.

This bill in particular requires the U.S. Agency for International Development to spend $160 million for fiscal year 1999 on its Microenterprise Assistance Program, with at least 50 percent of that amount dedicated to serving the poorest in the world with microcredit loans under $300. We know that these loans are repaid, and we know that they are recycled, so we are creating a stock, a basic pool of money that can be reinvested in nations around the world to bring them up to higher living standards.

One-fifth of the world's population lives in extreme poverty. Microcredit is one of the most effective antipoverty tools in existence. I talked to one of my colleagues and asked him to cosponsor this bill the other day and he said, ''You know, I like this bill. There are so many things we do in foreign aid that end up creating more bureaucracies and agencies and studies; this is real, this gives to people who need a helping hand the kind of help that they really need.''

Unfortunately, AID has had this program, even though it has not been specifically authorized, and they have not funded it at levels that I think are adequate. So this legislation will set a standard for how much we invest in this program each and every year. Many of my colleagues have joined me on this legislation. I hope that others who have not will take a look at it. I think they will find that this is a reasonable approach, a successful approach, and one where the investment in America's foreign aid dollars will not only be in our best interest, but in

the best interest of people around the world who just need a helping hand and opportunity. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2152

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Microcredit for Self-Sufficiency Act of 1998''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) More than 1,000,000,000 people in the developing world are living in severe poverty.

(2) According to the United Nations Children's Fund, the mortality for children under the age of 5 is 10 percent in all developing countries and nearly 20 percent in the poorest countries.

(3) Nearly 33,000 children die each day from malnutrition and disease which is largely preventable.

(4)(A) Women in poverty generally have larger work loads and less access to educational and economic opportunities than their male counterparts.

(B) Directly aiding the poorest of the poor, especially women, in the developing world has a positive effect not only on family incomes, but also on child nutrition, health, and education, since women tend to reinvest income in their families.

(5)(A) The poor in the developing world, particularly women, generally lack stable employment and social safety nets.

(B) Many women turn to self-employment to generate a substantial portion of their livelihood.

(C) These poor entrepreneurs are often trapped in poverty because they cannot obtain credit at reasonable rates to build their asset base or expand their otherwise viable self-employment activities.

(D) Many of the poor are forced to pay interest rates as high as 10 percent per day to money lenders.

(6)(A) On February 2–4, 1997, an international Microcredit Summit was held in Washington, D.C., to launch a plan to expand access to credit for self-employment and other financial and business services to 100,000,000 of the world's poorest families, especially the women of those families, by 2005.

(B) With an average of 5 people to a family, achieving this goal will mean that the benefits of microcredit will reach nearly half of the world's more than 1,000,000,000 absolute poor.

(7)(A) The poor are able to expand their incomes and their businesses dramatically when they have access to loans at reasonable interest rates.

(B) Through the development of self-sustaining microcredit programs, poor people themselves can lead the fight against hunger and poverty.

(8)(A) Nongovernmental organizations such as the Grameen Bank, Accion International, and the Foundation for International Community Assistance (FINCA) have been successful in lending directly to the very poor.

(B) These institutions generate repayment rates averaging 95 percent or higher.

(9)(A) Microcredit institutions not only reduce poverty, but also reduce the dependency on foreign assistance.

(B) Interest income on a credit portfolio can be used to pay recurring institutional costs, assuring that the long-term development is sustained.

(10) Microcredit institutions leverage foreign assistance resources because loans are recycled, generating new benefits to program participants.

(11) The development of sustainable microcredit institutions that provide credit and training, and mobilize domestic savings, are critical to a global strategy of poverty reduction and broad-based economic development.

(12)(A) In 1994, AID launched a Microenterprise Initiative in consultation with Congress.

(B) The Initiative was committed to expanding funding for AID's microenterprise programs, provided funding of $137,000,000 for fiscal year 1994, and set a goal that, by the end of fiscal year 1996, half of all microenterprise resources would support programs and institutions providing credit to the poorest with loans under $300.

(C) In fiscal year 1996, total funding for microenterprise activities fell to $111,000,000 of which only 39 percent was used for programs benefiting the poorest with loans under $300.

(D) Increased investment in microcredit institutions serving the poorest is critical to achieving the Microcredit Summit's goal.

(E) AID's funding for microenterprise activities in the developing world should be expanded to $160,000,000 for fiscal year 1999 to parallel the growing capacity of microcredit institutions in the developing world.

(13) Providing the United States share of the global investment needed to achieve the goal of the Microcredit Summit will require only a modest increase in United States funding for international microcredit programs, with an increased focus on institutions serving the poorest.

(14)(A) In order to reach tens of millions of the poorest with microcredit, it is crucial to expand and replicate successful microcredit institutions.

(B) Microcredit institutions need assistance in developing their institutional capacity to expand their services and tap commercial sources of capital.

(15) PVOs and other nongovernmental organizations have demonstrated competence in developing networks of local microcredit institutions that can reach large numbers of the very poor, and help the very poor achieve financial sustainability.

(16) Since AID has developed very effective partnerships with PVOs and other nongovernmental organizations, AID should place a priority on investing in PVOs and other nongovernmental organizations through AID's central funding mechanisms.

(17) By expanding and replicating successful microcredit institutions, AID should be able to assure the creation of a global infrastructure to provide financial services to the world's poorest families.

(18)(A) AID can provide leadership among bilateral and multilateral development aid agencies as such agencies expand their support of microenterprise for the poorest.

(B) AID should seek to improve the coordination of efforts at the operational level to promote the best practices for providing financial services to the poor and to ensure that adequate institutional capacity is developed.

(b) PURPOSES.—The purposes of this Act are—

(1) to provide for the continuation and expansion of AID's commitment to develop microcredit institutions;

(2) to make microenterprise development the centerpiece of the overall economic growth strategy of AID;

(3) to support and develop the capacity of United States PVOs, and other international nongovernmental organizations to provide credit, savings, and training services to microentrepreneurs; and

(4) to increase the amount of assistance devoted to providing access to credit for the poorest sector in developing countries, particularly women.

SEC. 3. DEFINITIONS.

In this Act:

(1) AID.—The term ''AID'' means the United States Agency for International Development.

(2) MICROCREDIT, MICROENTERPRISE, POVERTY LENDING; POVERTY LENDING PORTION OF MIXED PROGRAMS; MIXED PROGRAMS.—The terms ''microcredit'', ''microenterprise'', ''poverty lending portion of mixed programs'', and ''mixed programs'' have the meaning given such terms under the 1994 Microenterprise Initiative of AID.

(3) PVOS AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—The term ''PVOs and other nongovernmental organizations'' means—

(A) private voluntary organizations (including cooperative organizations), and

(B) international, regional, or national nongovernmental organizations,

that are active in the region or country where the project is located and that have the capacity to develop and implement microenterprise programs that are oriented toward working directly with the poor, especially the poorest and women.

SEC. 4. MICROENTERPRISE ASSISTANCE.

(a) AUTHORIZATION.—

(1) IN GENERAL.—The President, acting through the Administrator of AID, is authorized to establish programs to provide credit and other assistance for microenterprises in developing countries.

(2) USE OF PVOS AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Programs to provide credit for microenterprises and related activities under this section shall be carried out primarily by United States PVOs and other United States and indigenous nongovernmental organizations, including credit unions, cooperative organizations, and other private financial intermediaries.

(b) ELIGIBILITY CRITERIA.—The Administrator of AID shall establish criteria for determining which entities described in subsection (a)(2) are eligible to carry out the purposes described in section 2(b). Such criteria shall include the following:

(1) The extent to which the recipients of credit from the entity lack access to the local formal financial sector.

(2) The extent to which the recipients of credit from the entity are among the poorest people in the country.

(3) The extent to which the entity is oriented toward working directly with poor women.

(4) The extent to which the entity is implementing a plan to become financially self-reliant by charging realistic interest rates to its borrowers.

(c) FUNDING LEVELS FOR FISCAL YEAR 1999.—

(1) IN GENERAL.—Of the amounts made available to carry out chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), not less than $160,000,000 of the funds made available for fiscal year 1999 shall be used to provide assistance under this Act. The funds authorized under the preceding sentence shall be in addition to any funds made available in fiscal year 1999 for microenterprise activities in the former Soviet Union and Eastern Europe pursuant to the FREEDOM Support Act and any funds for special assistance initiatives within Europe, the newly independent states of the Former Soviet Union, Asia, and the Near East.

(2) ADDITIONAL REQUIREMENTS.—

(A) POVERTY LENDING.—Of the funds made available under paragraph (1), not less than

$80,000,000 shall be used to support poverty lending.

(B) SUPPORT OF PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Of the funds made available under paragraph (1), not less than $35,000,000 shall be provided through the central funding mechanisms of AID for support of United States PVOs and United States and indigenous nongovernmental organizations.

(C) MATCHING GRANT PROGRAM.—Of the funds made available under paragraph (1), not less than $10,000,000 shall be used for the private voluntary organizations matching grant program of AID for support of United States PVOs.

(3) DEFINITIONS.—For purposes of this subsection—

(A) TO SUPPORT POVERTY LENDING.—The term ''to support poverty lending'' means—

(i) funds lent to members of the poverty target population (as defined in subparagraph (B)) in low-income countries in amounts equivalent to $300 or less in 1997 United States dollars; and

(ii) funds used for institutional development of an entity described in subsection (a)(2), that is engaged in—

(I) making loans of $300 or less in 1997 United States dollars to members of the poverty target population; or

(II) the poverty lending portion of a mixed program.

(B) POVERTY TARGET POPULATION.—The term ''poverty target population'' means the poorest 50 percent of those individuals living below the poverty line, defined by the national government of the foreign country to which funds are being provided.

SEC. 5. PROGRAM PERFORMANCE CRITERIA.

(a) STRENGTHENING OF APPROPRIATE MECHANISMS.—The Administrator of AID shall—

(1) strengthen appropriate mechanisms, including mechanisms for central microenterprise programs, for the purpose of strengthening the institutional development of the entities described in section 4(a)(2); and

(2) develop and strengthen appropriate mechanisms for the purpose of gathering and disseminating the best practice for targeting microcredit to the poorest segment of the population.

(b) MONITORING SYSTEM.—In order to sustain the impact of the assistance authorized under section 4, the Administrator of AID shall establish a monitoring system that—

(1) establishes performance goals for such assistance and expresses such goals in an objective and quantifiable form;

(2) establishes performance systems or indicators to measure the extent to which projects are achieving such goals; and

(3) provides a basis for recommendations for adjustments to such assistance to enhance the benefit of such assistance for the very poor, particularly women.

(c) ADDITIONAL MONITORING REQUIREMENTS.—As a part of the monitoring system established under subsection (b), the Administrator of AID—

(1) using data provided by lending institutions, shall monitor the actual amount of microenterprise credit and the number of loans made available to the poverty target population as a result of each project or program carried out pursuant to this Act;

(2) using data provided by lending institutions, shall monitor the amount of funding provided pursuant to this Act which is allocated to organizations engaged in making loans of under $300 to the poverty target population, or to the poverty lending portion of mixed programs;

(3) shall report to Congress annually on the progress in implementing AID's institutional plan of action to achieve the Microcredit Summit goal of expanding access to credit and other financial and business services to 100,000,000 of the world's poorest families, especially the women in those families, by 2005; and

(4) shall include a summary of the information collected under paragraphs (1) and (2) in AID's annual presentation to Congress.

Ms. SNOWE. Mr. President, I am pleased to be the lead cosponsor of the Microcredit for Self-Sufficiency Act of 1998. This bipartisan measure is an excellent means of fighting poverty and allowing the world's enterprising poor to escape it.

Microcredit programs extend small loans to very poor people for self-employment projects that generate income to allow them to care for themselves and their families. These loans are provided without collateral to poor people so they can start or expand small businesses. Microcredit encourages entrepreneurship and productivity among the poorest people in the world and allows them and their families to escape from poverty with dignity.

I have always believed that the foreign assistance expenditures made by the United States should provide the maximum benefit in a cost-efficient manner. Microcredit meets this most important test. Microcredit loans are repaid by borrowers at commercial interest rates or higher, and repayment rates reach 95% and above. The money invested in microcredit programs is continually recycled, allowing lenders to reach more people over time.

This assessment is borne out by the Foundation for International Community Assistance (FINCA) which is a non-governmental organization working in Latin America, Africa, Asia and the United States. It estimates that, over 5 years, $1 million invested in one of their microcredit programs generates $15 million in new loans.

The microcredit concept has been a great success. Around the world, small investments have allowed an estimated 10 million poor people to begin self-employment ventures as opposed to relying on government handouts. Far more families could benefit from microcredit, but do not yet have access to such opportunities as this type of lending is not typically done by most financial institutions. It is microcredit institutions that will undertake such opportunities to provide a poor woman in Bangladesh, for example, with the funds to buy an extra cow or goat to increase her modest farming output.

Indeed, one real-life illustration of the success of this program has been the Grameen Bank in Bangladesh. In 1976, a man named Muhammad Yunus conducted an innovative research endeavor to examine the possibility of designing a credit delivery system to provide banking services to help the rural poor. These are individuals who want to escape poverty but find that conventional sources of lending are unavailable to them because they lack the collateral to get a loan.

The Grameen Bank Project began with the goals of extending banking facilities to poor men and women, and creating opportunities for self-employment. It also aimed to reverse the vicious cycle of low income, low savings, and low investment by providing these individuals with credit that would yield greater investment and income.

Today, the Grameen Bank is the largest rural credit institution in Bangladesh. It has over two million borrowers—94 percent of whom are women. The Grameen Bank covers more than half of all villages in Bangladesh and the repayment of its loans, which average $160 in United States dollars, is over 95%. The Bank has also helped train approximately 4,000 individuals from about 100 nations over the last 10 years. There have been 223 Grameen style programs replicated in some 58 nations in the last decade. This success story demonstrates what an individual is capable of when given the opportunity to help himself or herself escape poverty.

Take the instance of Amena Begum, who in 1993, lived in poverty with her family in a village in Bangladesh. She and her family survived by living as squatters and earning money as day laborers or by operating micro-businesses in constant debt to loansharks. That same year, she convinced her husband to move the family to another village and joined the Grameen Bank. A neighbor told her ''We're all poor—or at least we all were when we joined. I'll stick up for you because I know you'll succeed in business.''

Well, she was elected secretary of her Grameen Bank group and repaid a loan she received to start a chicken and duck raising business. Grameen then gave her a second loan and, today, her business is growing and providing for her family's basic needs.

A continent away in Ethiopia another woman, Alemnesh Geressu, her landless husband, and their seven children were also struggling. For several years, she bought grain from a trader and sold it in the local market. However, most of her profit went back to the lender who charged more than 10 percent interest per month. With loans from a Catholic Relief Services Program, she was able to buy grain at a lower price from nearby farmers and make higher profits. Her business grew dramatically and she now sells a local beverage, grows vegetables and even raised a cow—all in addition to her grain marketing activities.

Alemnesh now pays back her loan at a commercial rate that is ten times less than she used to pay to the local money lenders. She has enough to feed her family well and to send two of her children to school. Alemnesh says she now has ''more confidence and skills in myself and I wish the program could accommodate more women to improve their lives.''

More families need to be touched by such programs. Just last year, at the 1997 Global Microcredit Summit, donor nations and international institutions established the goal of reaching 100 million of the world's poorest families,

especially the women in those families with microcredit loans by the year 2005. I believe that this bill, the Microcredit for Self-Sufficiency Act of 1998, puts the United States on track to provide its share of funding to help achieve this worthwhile goal.

This bill authorizes not less than $160 million in Fiscal Year 1999 for the United States Agency for International Development's microenterprise program. To ensure that microcredit assistance goes to those most in need of assistance, the bill targets at least half of these resources to institutions serving the world's poorest families, with loans under $300. Further, the bill channels a larger proportion of microcredit assistance through effective nongovernmental organizations that promote the development and expansion of microcredit programs worldwide.

Mr. President, microcredit programs enjoy broad bipartisan support not only because they help millions to work their way out of poverty but because they also recycle foreign aid dollars through loan repayments. Microcredit programs are self-sustainable, can be replicated, and are powerful vehicles for social development.

This bill would increase the number of families that have access to such programs. Microcedit programs would be raised to a higher priority among our nation's foreign aid initiatives. And the investments called for in this bill will help bring the possibility of financial independence to millions of potential entrepreneurs who struggle to survive on less than $1 a day.

By Mr. DORGAN (for himself and Mr. REID):

S. 2153. A bill to require certain expenditures by the Federal Reserve System to be made subject to congressional appropriations, to prohibit the maintenance of surplus accounts by Federal reserve banks, to provide for annual independent audits of Federal reserve banks, to apply Federal procurement regulations to the Federal Reserve System, to reform the pricing practices of the Federal Reserve System for services provided to the domestic banking system, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE FEDERAL RESERVE FISCAL ACCOUNTABILITY ACT OF 1998

Mr. DORGAN. Mr. President, today Senator REID and I are introducing legislation to help address a number of budgetary excesses and accountability lapses at the Federal Reserve Board.

When the General Accounting Office (GAO) released its comprehensive and historic report about the management of the Federal Reserve system—which took over two years to assemble —we learned about disturbing financial practices and management failures within the Federal Reserve system. The report is packed with examples of where the Fed could substantially trim costs, and it makes specific recommendations for changes in Fed operations. Unfortunately, the Federal Reserve dismissed most of the GAO's recommendations as irrelevant or unnecessary.

The GAO report shows that during the late 1980s and early 1990s, Federal Reserve expenditures jumped by twice the rate of inflation, while the rest of the federal government has been downsizing. This runaway spending is remarkable given Chairman Greenspan's advice about the need for belt-tightening in the rest of government.

The gold-plated hood ornament of the Federal Reserve System's questionable practices is, in my judgment, its huge cash surplus account that's funded with billions of dollars in taxpayer money to protect against losses, despite the fact that the Fed hasn't suffered a loss for more than 80 consecutive years. When the GAO's report was released a couple of years ago, the Fed had squirreled away some $3.7 billion into the surplus account, which was up some 79% from its level in the late 1980s. Now the Fed has increased the surplus account by another 40% to about $5.2 billion—even though the GAO concluded that ''it is unlikely that the Federal Reserve will ever incur sufficient annual losses such that it would be required to use any funds in the surplus account.''

Our bill, the ''Federal Reserve Fiscal Accountability Act of 1998,'' includes many of the changes recommended by the GAO. It would do the following:

First, the Federal Reserve is required to immediately return to the general fund of the federal Treasury the $5.2 billion of taxpayer's money that has unnecessarily accumulated in the Fed's surplus fund. In addition, the bill asks the GAO to determine the extent to which the Fed's future net earnings should be transferred to the federal Treasury each year.

Second, the GAO, in consultation with the Federal Reserve, will identify and report to Congress a list of the Federal Reserve System activities that are not related to the making of monetary policy. After the report is completed, all non-monetary policy expenditures, as identified by the GAO, would be subject to the congressional appropriations process.

We do not intend to inject politics into monetary policy with this provision. However, over 90 percent of the Fed's operations have nothing to do with interest rate policy according to the GAO. And there is simply no good reason why the Fed's non-monetary expenditures are immune from the same kind of oversight and review required of other federal agencies.

Third, the regional Federal Reserve banks and the Board of Governors will be subjected to annual independent audits. This provision merely codifies what the Federal Reserve has been doing for the most part in recent practice. The detection of any possible illegal acts must be reported to the Comptroller General.

Fourth, the Federal Reserve will be required to follow the same procurement and contracting rules that apply to other federal agencies. These rules should help to prevent the examples of favoritism highlighted in the GAO report and increase competition among contract bidders with the Fed. This requirement ought to substantially reduce procurement costs on a system-wide basis.

Finally, we've made some changes to require the Fed to compete more fairly with the private sector in providing a variety of payment system services, such as check clearing and transportation to banks and other financial institutions.

I invite my colleagues to join us as cosponsors of this much-needed legislation.

Mr. REID. Mr. President, I rise today with the Senator from North Dakota to introduce legislation which we believe will improve fiscal management within the Federal Reserve System and will allow private-sector competitors to compete fairly in ''priced services.'' We assure you that nothing in this bill affects monetary policy of the Federal Reserve.

Back in September 1993, Senator DORGAN and I requested a GAO investigation of the operations and management of the Federal Reserve System. We were concerned because no close examination of the Fed's operations had ever been conducted before. The GAO report that was issued in 1996 raised serious questions about management within the Fed which this bill will address.

One of the most astonishing findings in the 1996 report was the Fed had squirreled-away $3.7 billion in taxpayer money in a slush fund. As of January 1998, this amount has now grown to $5.2 billion. This money could be used for deficit reduction. The Fed claims the slush fund is needed to cover system losses. Since it was created in 1913, however, the Fed has never operated at a loss. This bill prohibits maintenance of surplus accounts and the surplus funds must be sent to Treasury.

The bill requires the Comptroller General of U.S. and the Fed Board of Governors to identify the functions and activities of the Board and each Fed bank which relate to U.S. monetary policy. After six months after enactment, all non-monetary policy expenses of Federal Reserve System, will be subject to congressional appropriations. The Fed will now have to justify its use of operating expenses.

Because of the Fed's self-financing nature, its operating costs have escaped public investigation. In order to be fiscally responsible, all activities regarding government finances need to be scrutinized. Surprisingly, the GAO study was the very first look into the internal operations of the Fed. We think that oversight is needed on the workings of this large and influential public entity. While the rest of Federal government has tightened its belt and

down-sized, the Fed enjoyed enormous growth in its operating costs and questionable growth in its staffing.

Clearly, the Fed could do much more to increase its fiscal responsibility, particularly as it urges frugal practices for other agencies. The picture the GAO report painted of the internal management of the Fed is one of conflicting policies, questionable spending, erratic personnel treatment, and favoritism in procurement and contracting policies.

To date, there has never been an annual, independent audit of the nation's central banking system. This bill provides for annual independent audits of the banks, the Board of Governors and the Federal Reserve System. The detection of any possible illegal acts must be reported to the Comptroller General. The bill requires an annual audit of each Federal reserve bank, the Federal reserve board of governors and in turn, an audit of the Federal reserve system. This Auditor must be a certified public accountant who is totally independent of the Fed. An annual audit is fiscally sound policy which would instill greater public confidence in our banking system.

This bill would also would reform the pricing practices of Federal Reserve System so that fair competition with private businesses would exist. It will eliminate the possibility of accusations of favoritism and conflict of interest in procurement and contracting. This examination will ensure that the Federal Reserve is competing fairly with its private-sector competitors. This matter of fairness becomes very important when the agency both competes with the private sector and also regulates their competitors.

The Federal Reserve operates several lines of business, which compete with the private sector. These businesses are referred to as ''priced services.'' This legislation will ensure that the Federal Reserve is accountable for the manner in which these businesses are run and how the prices for these services are calculated. The Federal Reserve is required by the Monetary Control Act of 1980 to match its revenues with its costs so that the prices for services it sells are not subsidized.

We want to make sure that no accounting or pricing policy hides any subsidy. This legislation will benefit anyone who cashes a check in this country because it promotes a fair and competitive market place for those who provide the many services necessary to process the collection of checks. Costs should be fully recovered in the Federal Reserve's pricing. These annual audits will ensure that they are recovered and will level the playing field for those who can offer competitive services

We usually think of the Federal Reserve in the terms of monetary policy, of setting interest rates. I want to make it very clear, I'm not attempting to interfere with, or impugn, the monetary policy of the Fed. I am simply seeking greater accountability in the operating expenses and internal management of one of our most influential institutions. I believe that the Federal Reserve could do more to increase its cost consciousness and to operate as efficiently as possible. This bill will ensure that this happens and I look forward to greater discussion of this issue by Congress. I encourage the committee to give favorable consideration to our legislation.

By Mrs. BOXER:

S. 2154. A bill to promote research to identify and evaluate the health effects of silicone breast implants, and to ensure that women and their doctors receive accurate information about such implants; to the Committee on Labor and Human Resources.

SILICONE BREAST IMPLANT RESEARCH AND INFORMATION ACT

● Mrs. BOXER. Mr. President, today I am introducing a bill that will make a significant difference in the lives of millions of American women—the Silicone Breast Implant Research and Information Act. There is one basic reason for this bill: to make sure women have accurate and complete information so they can make informed decisions about their health.

Each year, nearly 180,000 women are diagnosed with breast cancer in the United States. In total, approximately 2.6 million Americans live with breast cancer. When a women undergoes a mastectomy, she faces the decision of whether to have reconstructive surgery, and one important option she has is to have a silicone breast implant.

Between 1 and 2 million women in the United States have received silicone breast implants over the last 35 years, as part of reconstructive surgery after mastectomy, or for cosmetic purposes.

Many women with silicone implants have come forward with a variety of symptoms and atypical illnesses. Although research over the years has attempted to get to the bottom of this, we still don't have the answers women need and deserve.

In 1992, the Food and Drug Administration restricted the availability of silicone breast implants because it had not received enough evidence to prove that these implants are safe. Currently, silicone breast implants are only available to women who have had breast cancer surgery or who have other special medical needs, such as a severe injury or birth defect. Women who need to have an implant replaced for medical reasons, such as rupture of the implant, are also eligible.

These women should have access to the broadest possible treatment options—including breast implants. But it is just as essential that women can count on sound scientific research regarding the safety of implants. It is essential that the Federal Government coordinate its efforts on this issue to maximize the use of limited resources.

This bill contains three components women need to make informed decisions about silicone breast implants—research, information, and coordination. It gives women not only options, but information and peace of mind.

I am proud to introduce this bill in the Senate, and to be joined by Congressman Gene Green, who is introducing this bill in the House of Representatives. I ask unanimous consent that the full text of this bill be printed in the RECORD.

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

S. 2154

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Silicone Breast Implant Research and Information Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) According to the Institute of Medicine, it is estimated that 1,000,000 to 2,000,000 American women have received silicone breast implants over the last 35 years.

(2) Silicone breast implants have been used primarily for breast augmentation, but also as an important part of reconstruction surgery for breast cancer or other conditions.

(3) Women with breast cancer or other medical conditions seek access to the broadest possible treatment options, including silicone breast implants.

(4) Women need complete and accurate information about the potential health risks and advantages of silicone breast implants so that women can make informed decisions.

(5) Although the rate of implant rupture and silicone leakage has not been definitively established, estimates are as high as 70 percent.

(6) According to a 1997 Mayo Clinic study, 1 in 4 women required additional surgery because of their implants within 5 years of receiving them.

(7) In addition to potential systemic complications, local changes in breast tissue such as hardening, contraction of scar tissue surrounding implants, blood clots, severe pain, burning rashes, serious inflammation, or other complications requiring surgical intervention following implantation have been reported.

(8) According to the Institute of Medicine, concern remains that exposure to silicone or other components in silicone breast implants may result in currently undefined connective tissue or autoimmune diseases.

(9) A group of independent scientists and clinicians convened by the National Institute of Arthritis and Musculoskeletal and Skin Diseases in April of 1997 addressed concerns that an association may exist between atypical connective tissue disease and silicone breast implants, and called for additional basic research on the components of silicone as well as biological responses to silicone.

(10) According to many reports, including a study published in the Journal of the National Cancer Institute, the presence of silicone breast implants may create difficulties in obtaining complete mammograms.

(11) According to a 1995 Food and Drug Administration publication, although silicone breast implants usually do not interfere with a woman's ability to nurse, if the implants leak, there is some concern that the silicone may harm the baby. Some studies suggest a link between breast feeding with implants and problems with the child's esophagus.

(b) PURPOSE.—It is the purpose of this Act to promote research to identify and evaluate the health effects of silicone breast implants, and to ensure that women and their doctors receive accurate information about such implants.

(c) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to affect any rule or regulation promulgated under the authority of the Food, Drug and Cosmetic Act that is in effect on the date of enactment of this Act relating to the availability of silicone breast implants for reconstruction after mastectomy, correction of congenital deformities, or replacement for ruptured silicone implants for augmentation.

SEC. 3. EXPANSION AND INTENSIFICATION OF ACTIVITIES REGARDING SILICONE BREAST IMPLANTS AT THE NATIONAL INSTITUTES OF HEALTH.

Part H of title IV of the Public Health Service Act (42 U.S.C. 289 et seq.) is amended by adding at the end the following:

"SEC. 498C. SILICONE BREAST IMPLANT RESEARCH.

''(a) INSTITUTE-WIDE COORDINATOR.—The Director of NIH shall appoint an appropriate official of the Department of Health and Human Services to serve as the National Institutes of Health coordinator regarding silicone breast implant research. Such coordinator shall encourage and coordinate the participation of all appropriate Institutes in research on silicone breast implants, including—

''(1) the National Institute of Allergy and Infectious Diseases;

''(2) the National Institute of Arthritis and Musculoskeletal and Skin Diseases;

''(3) the National Institute of Child Health and Human Development;

''(4) the National Institute of Environmental Health Sciences;

''(5) the National Institute of Neurological Disorders and Stroke; and

''(6) the National Cancer Institute.

''(b) STUDY SECTIONS.—The Director of NIH shall establish a study section or special emphasis panel if determined to be appropriate, for the National Institutes of Health to review extramural research grant applications regarding silicone breast implants to ensure the appropriate design and high quality of such research and shall take appropriate action to ensure the quality of intramural research activities.

''(c) CLINICAL STUDY.—

''(1) IN GENERAL.—The Director of NIH shall conduct or support research to expand the understanding of the health implications of silicone breast implants. Such research should, if determined to be scientifically appropriate, include a multidisciplinary, clinical, case-controlled study of women with silicone breast implants. Such a study should involve women who have had such implants in place for at least 8 years, focus on atypical disease presentation, neurological dysfunction, and immune system irregularities, and evaluate to what extent if any, their health differs from that of suitable controls, including women with saline implants as a subset.

''(2) ANNUAL REPORT.—The Director of NIH shall annually prepare and submit to the appropriate Committees of Congress a report concerning the results of the study conducted under paragraph (1).''.

SEC. 4. EXPANSION AND INTENSIFICATION OF ACTIVITIES REGARDING SILICONE BREAST IMPLANTS AT THE FOOD AND DRUG ADMINISTRATION.

To assist women and doctors in receiving accurate and complete information about the risks of silicone breast implants, the Commissioner on Food and Drugs shall—

(1) ensure that the toll-free Consumer Information Line and materials concerning breast implants provided by the Food and Drug Administration are available, up to date, and responsive to reports of problems with silicone breast implants, and that timely aggregate data concerning such reports shall be made available to the public upon request and consistent with existing confidentiality standards;

(2) revise the Administration's breast implant information update to clarify the procedure for reporting problems with silicone implants or with the conduct of adjunct studies, and specifically regarding the use of the Medwatch reporting program;

(3) require that manufacturers of silicone breast implants update implant package inserts and informed consent documents regularly to reflect accurate information about such implants, particularly the rupture rate of such implants; and

(4) require that any manufacturer of such implants that is conducting an adjunct study on silicone breast implants—

(A) amend such study protocol and informed consent document to reflect that patients must be provided with a copy of informed consent documents at the initial, or earliest possible, consultation regarding breast prosthesis;

(B) amend the informed consent to inform women about how to obtain a Medwatch form and encourage any woman who withdraws from the study, or who would like to report a problem, to submit a Medwatch form to report such problem or concerns with the study and reasons for withdrawing; and

(C) amend the informed consent document to provide potential participants with the inclusion criteria for the clinical trial and the toll-free Consumer Information number.

SEC. 5. PRESIDENT'S INTERAGENCY COMMITTEE ON SILICONE BREAST IMPLANTS.

(a) ESTABLISHMENT.—There is established an interagency committee, to be known as the President's Interagency Committee on Silicone Breast Implants (referred to in this Act as the ''Committee''), to ensure the strategic management, communication, and oversight of the policy formation, research, and activities of the Federal Government regarding silicone breast implants.

(b) COMPOSITION.—The Committee shall be composed of—

(1) an individual to be appointed by the President who represents the White House domestic policy staff;

(2) a representative, to be appointed by the Secretary of Health and Human Services, from—

(A) the Office of Women's Health at the Department of Health and Human Services;

(B) the National Institutes of Health;

(C) the Food and Drug Administration; and

(D) the Centers for Disease Control and Prevention;

(3) a representative of the Department of Defense with experience in the Department's breast cancer research program;

(4) representatives of any other agencies deemed necessary to accomplish the mission of the Committee, including the Social Security Administration if appropriate;

(5) up to 4 individuals to be appointed by the President from scientists with established credentials and publications in the area of silicone breast implants; and

(6) 2 women who have or have had silicone breast implants to be appointed by the President.

(c) CHAIRPERSON.—

(1) IN GENERAL.—The individual appointed under subsection (b)(2)(A), or other official if the President determines that such other official is more appropriate, shall service as the chairperson of the Committee.

(2) DUTIES.—The chairperson of the Committee shall—

(A) not less than twice each year, convene meetings of the Committee; and

(B) compile information for the consideration of the full Committee at such meetings.

(d) MEETINGS.—The meetings of the Committee shall be open to the public and public witnesses shall be given the opportunity to speak and make presentations at such meetings. Each member of the Committee shall make a presentation to the full Committee at each such meeting concerning the activities conducted by such member or by the entity that such member is representing related to silicone breast implants.

(e) ADMINISTRATIVE PROVISIONS.—

(1) TERMS AND VACANCIES.—A member of the Committee shall serve for a term of 2 or 4 years (rotating terms). A member may be reappointed 2 times, but shall not exceed 8 years of service. Any vacancy in the membership of the Committee shall be filled in the manner in which the original appointment was made and shall not affect the power of the remaining members to carry out the duties of the Committee.

(2) COMPENSATION; REIMBURSEMENT OF EXPENSES.—Members of the Committee may not receive compensation for service on the Committee. Such members may, in accordance with chapter 57 of title 5, United States Code, be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Committee.

(3) STAFF; ADMINISTRATIVE SUPPORT.—The Secretary of Health and Human Services shall, on a reimbursable basis, provide to the Committee such staff, administrative support, and other assistance as may be necessary for the Committee to effectively carry out the duties under this section.

(4) CONFLICT OF INTEREST.—The members of the Committee shall not be in violation of any Federal conflict of interest laws.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.●

By Mr. BINGAMAN:

S. 2155. A bill to provide restitution of the economic potential lost to communities dependent on Spanish and Mexican Land Grants in New Mexico due to inadequate implementation of the 1848 Treaty of Guadalupe Hidalgo; to the Committee on Energy and Natural Resources.

FAIR DEAL FOR NORTHERN NEW MEXICO ACT OF 1998

● Mr. BINGAMAN. Mr. President, today, I introduce a bill to resolve a long standing controversy between many citizens of my State of New Mexico, and their government.

In 1848, the United States entered into a treaty with Mexico to end the Mexican/American War called the Treaty of Guadalupe-Hidalgo. In that treaty, Mexico ceded an enormous tract of land that was to become the American Southwest including the State of New Mexico. In return the Treaty stipulated that the property rights of the Mexican citizens who lived in the area, and who were to become new citizens of the United States, would be protected.

We must recall that these new citizens had had a long, and sometimes ancient, connection to the land. The Native American tribal peoples who had lived there for thousands of years, had

become citizens of Spain and then Mexico. Also many of those new citizens of Spanish descent had a family heritage of living on the this land dating back 250 years to 1598, when the Spanish colonial capital in New Mexico was established at San Juan Pueblo. They had built towns and cities, churches, and vast irrigation systems for their farms.

Unfortunately, the treaty provisions protecting title to land were not well and evenly implemented. It has been fairly well documented by scholars such as Professor Malcolm Ebright at the University of New Mexico, and Professor Emeritus Michael Meyer from the University of Northern Arizona, that many people lost title to their land who should have been protected by the treaty. In some cases this was due to faulty surveying by the Surveyor General, in some cases it was due to a lack of knowledge by American Territorial Courts about how title was acquired under Spanish and Mexican law, and most egregiously people sometimes lost their land through outright fraud by government officials and land speculators.

As I said earlier, the implementation of the treaty was not uniform. In some areas property rights were fairly well adhered to, but in others legitimate titles were wiped out wholesale. A group of people that were particularly hurt in this process were the relatively poor subsistence farmers and ranchers living in northern New Mexico. These new American citizens were easy prey for land speculators. Not only were they learning a new language and legal system, but usually they did not have the financial resources to defend their property rights in the courts. In some cases, people were told that if they signed a given document that they would be assured the continued use of their land forever. However in reality, what they were signing were quit claim deeds, giving title to their land to some nefarious speculator.

The ramifications of this history have caused bitter disputes and economic hardship in northern New Mexico for generations. The issue is still relevant for many New Mexicans feel their government has an obligation to compensate them for their loss of land. In many cases they may be right.

Mr. President, after 150 years it may not be possible or practicable to revisit the thousands of title claims originally made in 1848. So much time has passed, and so many title transfers have taken place since then that the legal review could be a never ending legal maze. However, Spanish and Mexican law recognized community as well as individual land titles. Under a grant from the King of Spain or the Mexican government, whole communities had a claim on certain lands. These community land grants form a distinct, and often better documented, subset of the claims made under the Treaty of Guadalupe-Hidalgo. Given that this is a smaller, more defined group of claims, and because of they affect whole communities, it may be possible to settle these long standing claims and provide a sense of justice to people in northern New Mexico.

Last year former Representative Richardson introduced a bill, H.R. 260, to create a commission to study and recommend settlement of these claims. His successor in office, Representative Redmond has carried on this issue in his own bill, H.R. 2538. These bills have been useful in bringing the issue to national attention and I commend both of my colleagues for introducing them.

Mr. President, my bill, which I call the Fair Deal for Northern New Mexico Act, builds upon the efforts in the other body. For example, the House bill is focused on an exhaustive legal review of the various community land grant claims and whether land should be transferred back to the claimants. My bill also has a review of these claims, but acknowledges that after 150 years, that we may never be able to reach legal certainty in some cases. We may find that a claim is colorable, that it has a legal basis, but not exactly what is owed. Also, we may find that the other people in the community currently either own the land in question, or if it's federal land, they may have long standing leases on which they depend. For that reason, my bill creates a package of options for settlement of these claims with the involvement and support of the whole community that would be affected.

I won't dwell on the differences between this bill and the one in the House because I see this bill as a broadening and strengthening of that effort. Let me just run briefly what my bill would do, and my hope is that as this works its way through committee and on the floor that we'll reach an agreement with the House sponsors on legislation that will resolve this long standing legal dispute in New Mexico.

My bill has three key components: the creation of county-wide settlement committees, the reasonable but expedited time-frame, and a broad range of settlement options. First, it would create seven member settlement committees, one for each county in New Mexico in which their are these community land grant claims. To get the federal agencies actively involved in a solution to the issue, the Secretaries of Agriculture and Interior would each have a representative on these committees. The State Lands Commissioner would represent the interests of the State's educational trust fund. Finally, each county commission would appoint four representatives, at least one of which must be a Tribal member if there is an Indian Pueblo within that county, and at least one of which is a non-Indian heir to a Spanish or Mexican Land Grant.

Second, the bill tries to keep the issue on the front burner by limiting the settlement committees to a set schedule. The settlement committees would have ninety days to publish a set of guidelines on to how to document a land claim, and then people would have one year to file their claims. These committees would then have three years in which to review the claims and develop a proposed settlement to be submitted to Congress.

The whole process from creation of these committees to proposals to Congress would take about five years. I think this very important. It should be long enough to develop some solid settlement proposals, but it is a short enough time-frame that the people in New Mexico will see action before they just become frustrated.

Finally, the settlement committees would have a number of options to choose from to create a settlement that will satisfy the claims and the communities in which they are made. As with the House bill, one options would be to transfer land directly back to a particular community land grant. However, the committee might propose that federal lands be set aside for under special designations for community use, or that lands should be transferred to local municipalities to benefit everyone in the community. Further, a settlement committee could recommend that a package of economic develop grants or tuition scholarships would better meet the current needs of claimants and the community than a transfer of whatever land might be available. All of these options would be tools available to a county settlement committee to use in crafting a settlement that the people of that county would find to be fair and just.

Mr. President, it is time for the United States to respond to its citizens on this issue, to bring this controversy to closure, and to give the citizens of northern New Mexico a sense that justice has been done so that they can move forward both socially and economically without this cloud from the past hanging over them. I think this bill will move us forward towards those goals. I would like to call on the Committee on Energy and Natural Resources to hold hearings on this bill at the earliest possible time. I hope to work with the rest of the New Mexico delegation and the other members of Congress to pass good legislation regarding the issue.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 2155

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fair Deal for Northern New Mexico Act of 1998.''

SEC. 2. PURPOSE, DEFINITIONS AND FINDINGS.

(a) PURPOSE.—

The purpose of this Act is to create a mechanism for the settlement of Spanish and Mexican land grant claims in New Mexico as claimed under the Treaty of Guadalupe-Hildalgo.

(b) DEFINITIONS.—For Purposes of this Act:

(1) TREATY OF GUADALUPE-HIDALGO.—The term ''Treaty of Guadalupe-Hidalgo'' means the Treaty of Peace, Friendship, Limits, and Settlement (Treaty of Guadalupe Hidalgo), between the United States and the Republic of Mexico, signed February 2, 1848 (TS 207; 9 Bevans 791);

(2) COMMUNITY LAND GRANT.—The term ''community land grant'' means a village, town, settlement, or pueblo consisting of land held in common (accompanied by lesser private allotments) by three or more families under a grant from the King of Spain (or his representative) before the effective date of the Treaty of Cordova, August 24, 1821, or from the authorities of the Republic of Mexico before May 30, 1848, in what became the State of New Mexico, regardless of the original character of the grant.

(3) LAND GRANT CLAIM.—The term ''land grant claim'' means a claim of title to land by a community land grant under the terms of the Treaty of Guadalupe-Hidalgo.

(4) ELIGIBLE DESCENDANT.—The term ''eligible descendant'' means a descendant of a person who—

(A) was a Mexican citizen before the Treaty of Guadalupe-Hildalgo;

(B) was a member of a community land grant; and

(C) became a United States citizen within ten years after the effective date of the Treaty of Guadalupe-Hidalgo, May 30, 1848, pursuant to the terms of the Treaty.

(5) SETTLEMENT COMMITTEE.—The term ''settlement committee'' refers to committee, or one of the county specific subcommittees as appropriate, authorized in Section 3 of this Act.

(6) RECONSTITUTED.—The term ''reconstituted,'' with regard to a valid community land grant, means restoration to full status as a municipality with rights properly belonging to a municipality under State law, including the nontaxability of municipal property (common lands) and the right of local self-government.

(c) FINDINGS.—Congress Finds the Following:

(1) New Mexico has a unique and complex history regarding land ownership due to the substantial number of Spanish and Mexican land grants that were an integral part of the colonization of New Mexico before the United States acquired the area in the Treaty of Guadalupe-Hidalgo.

(2) Under the terms of the Treaty of Guadalupe-Hidalgo, these land grant claims were recognized as valid property claims under United States' law.

(3) Several studies, including the New Mexico Land Grant Series published by the University of New Mexico, have documented that the Treaty of Guadalupe-Hidalgo in regards to these land grant claims in New Mexico was never well implemented. Whether because of a lack of knowledge of Spanish land law on the part of the judicial system in the then new Territory of New Mexico, whether because of inadequate or conflicting documentation of these claims, or whether it was due to sharp legal practices, many of the former citizens of Mexico, and then new citizens of the United States, lost title to lands that had been guaranteed to them by treaty.

(4) Following the United States' war with Mexico, the economy of the Territory of New Mexico was dependent on the use of land resources, and that held true for much of this century as well. When the land grant claimants lost title to their land, the predominantly Hispanic communities in northern New Mexico lost a keystone to their economy. The effects of this loss have had long lasting economic consequences and are in part the cause that these communities remain some of the poorest in the United States.

(5) The history of the implementation of the Treaty of Guadalupe-Hidalgo has been a source of continuing controversy for generations and has left a lingering sense of injustice in the communities in northern New Mexico, which has periodically lead to armed conflicts.

(6) The government of the United States has an obligation to try to find an equitable remedy for the inadequate implementation of the Treaty of Guadalupe-Hidalgo and the consequences that has had on the communities and people of New Mexico. This should be done as expeditiously as possible. However, reconstructing the one hundred and fifty year history of land title claims and transfers in these communities is likely to prove lengthy and costly. In some cases it may never be possible to adequately reconstruct the title history.

(7) The Secretary of the Interior has had a experience in administratively developing settlement packages to resolve large and complex Tribal water rights claims as an alternative to lengthy and expensive litigation. This experience may be invaluable in resolving the large, complex, and sometimes conflicting Spanish and Mexican land grant claims in northern New Mexico.

(8) The history of colonial Spanish America, the system of land distribution under Spanish and Mexican law, and the subsequent impacts to that system following the transfer of territory from Mexico to the United States under the Treaty of Guadalupe-Hidalgo is a requisite body of knowledge in determining an appropriate settlement of land grant claims. It is also an integral part of the national history and culture of the United States of America and, as such, deserves formal recognition and interpretation by our institutions of historical preservation.

SEC. 3. CREATION OF SETTLEMENT COMMITTEES.

(A) Within one hundred and eighty (180) days of enactment of this Act, the Secretary of the Interior working through the Bureau of Land Management and the Bureau of Indian Affairs, and the and the Secretary of Agriculture working through the Forest Service are hereby authorized and directed to establish a ''Settlement Committee'' to develop comprehensive settlements for land grant claims on a county by county basis.

(b) The Settlement Committee will be comprised of separate subcommittees for each county in which there are land grant claims in New Mexico.

(c) Each county subcommittee shall be comprised of seven members including: (1) a representative of the Secretary of the Interior; (2) a representative of the Secretary of Agriculture; (3) a representative of the State Commissioner of Public Lands; and (4) four residents of the particular county in question. The four county representatives are to be appointed their county commissions: *Provided,* That in counties with Federally recognized Native American Indian Tribes that at least one county representative shall be an enrolled member of a tribe whose reservation pueblo boundaries come within that county: *Provided further,* That at least one county representative shall be an eligible descendent who is not an enrolled member of a Native American Indian Tribe.

(d) Each member shall be appointed for the life of the Settlement Committee. A vacancy in the Settlement Committee shall be filled in the manner in which the original appointment was made.

SEC. 4. SUBMISSION OF LAND GRANT CLAIMS.

(a) Within ninety (90) days of the creation of the settlement committee it shall establish a set of guidelines for the submission of land grant claims, and publish these guidelines within papers of general circulation in each of the counties in New Mexico.

(b) Land grant claims must be submitted to the appropriate county settlement committee within one year of the publication of the guidelines.

SEC. 5 REVIEW AND SETTLEMENT PACKAGE.

(a) The settlement committee for each county shall review all of the submitted claims in the county and, based on the documentation at its disposal, make an initial determination concerning their potential validity including: possible past conveyances, the accuracy of the boundaries of the land claimed, and the number of eligible heirs affected.

(b) Upon completing this review, the settlement committee shall develop a proposed settlement package in satisfaction of land grant claims within that county. In creating the settlement package, the settlement committee shall take into account: the degree of certainty with which it has determined that various claims are valid, the impacts, including economic and social impacts, that any unfulfilled land grant claims may have had on the communities within that county, the relative benefits of various settlement options on those communities, and whether there is a legal entity that can accept settlement. The elements of a proposed settlement package may include, but are not limited to:

(1) Restoration of lands to a given land grant community or communities;

(2) Reconstitution of a given land grant community or communities;

(3) The setting aside of certain lands for communal use for fuel wood, building materials, hunting, recreation, etc. These lands could be set aside as special managerial units within existing federal land management agencies or transferred to local county, tribal, or municipal, governments;

(4) Trust funds for scholarships or home and business loans; or

(5) Land for commercial use with the proceeds to be deposited into the trust funds.

(c) The settlement committee shall complete its review and proposed settlement package within three years of the deadline for submission of land grant claims under this Act, and submit them in a report to the Senate Committee on Energy and Natural Resources and the Senate Committee on Indian Affairs, and to the House Resources Committee. Any proposal that require action by the government of the State of New Mexico shall be submitted to the Governor, to the Speaker of the State House of Representatives, and to the President Pro Tem of the State Senate for New Mexico.

SEC. 6. ADMINISTRATION OF THE SETTLEMENT COMMITTEE.

(a) To complete its tasks the settlement committee may use a variety of methods to gather information and to build community consensus on the form of a proposed settlement package, including: the use of town meetings, holding formal hearings, the solicitation of written comments, and the use of mediators trained in alternative dispute resolution methods. The settlement committee is also authorized to hire consultants as it may choose for historical, economic, and legal analysis. In its efforts to develop a consensus on a settlement package, the Settlement Committee is not subject to the Federal Advisory Committee Act (Pub. L. 92–462; 5 U.S.C. Ap. 2 §1).

(b) GIFTS, BEQUESTS, AND DEVISES.—The Settlement Committee may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Settlement Committee. Gifts, bequests, or devises of money and proceeds from sales of other property received as

gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Settlement Committee. For purposes of the Federal income, estates, and gift taxes, property accepted under this subsection shall be considered as a gift, bequest, or devise to the United States.

(c) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Settlement Committee, the Administrator of General Services shall provide to the Settlement Committee, on a reimbursable basis, the administrative support services necessary for the Settlement Committee to carry out its responsibilities under this Act.

(d) IMMUNITY.—The Settlement Committee is an agency of the United States for the purpose of part V of title 18, United States Code (relating to the immunity of witnesses).

(e) COMPENSATION.—Members of the Settlement Committee shall each be entitled to receive the daily equivalent of level V of the Executive Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Settlement Committee.

SEC. 7. SPANISH LAND GRANT STUDY PROGRAM.

(a) The Secretary of the Smithsonian Institution and the Settlement Committee working in conjunction with the University of New Mexico, and Highlands University shall establish a Spanish Land Grant Study program with a research archive at the Oñate Center in Alcalde, New Mexico. This program shall be designed to meet the requirements of the Smithsonian Institution's Affiliated Institutions Program.

(b) The purposes of the Spanish Land Grant Study Program are to assist the Settlement Committee in the performance of its activities under section 5, and to archive and interpret the history of land distribution in the southwestern United States under Spanish and Mexican law, and the changes to this land distribution system following the transfer of territory from Mexico to the United States under the terms of the Treaty of Guadalupe-Hidalgo in 1848.

SEC. 8. TERMINATION.

The Settlement Committee shall terminate on 180 days after submitting its final report to Congress under section 5.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $1,500,000 for each of the fiscal years 1999 through 2003 for the purpose of carrying out the activities of the Settlement Committee created in section 3, and the Spanish Land Grant Study Program created section 7.●

By Mr. BOND (for himself, Mr. GRASSLEY, Mr. LOTT, Mr. BREAUX, Mr. BURNS, Mr. MACK, Mr. BINGAMAN, Mr. FRIST, Mr. MURKOWSKI, Mrs. MURRAY, Mr. ROBERTS, Mr. HOLLINGS, Mr. DODD, Mr. FAIRCLOTH, Ms. COLLINS, Mr. JEFFORDS, Mr. THOMAS, Mr. D'AMATO, Mr. HATCH, Mr. SHELBY, Mr. ASHCROFT, Mr. KEMPTHORNE, Mr. ROBB, Mr. BAUCUS, Mr. CLELAND, Mr. CRAIG, and Mr. SANTORUM):

S.J. Res. 50. A joint resolution to disapprove the rule submitted by the Health Care Financing Administration, Department of Health and Human Services on June 1, 1998, relating to surety bond requirements for home health agencies under the Medicare and Medicaid programs; to the Committee on Finance.

RESOLUTION DISAPPROVING OF HCFA'S SURETY BOND RULE

Mr. BOND. Mr. President, today I introduce a measure on behalf of myself, Mr. BAUCUS, Mr. GRASSLEY, and others which sends a strong message to the Health Care Financing Administration (HCFA) that the United States Senate disapproves of the agency's recent rule regarding surety bond requirements for home health agencies.

The surety bond regulation, coupled with HCFA's implementation of the Interim Payment System (IPS) for home health, are crippling the ability of our Nation's home health agencies to provide high quality care to our Nation's seniors and disabled.

Over this past month alone, in St. Louis, Missouri, the two largest home health providers decided to get out of the home health business—leaving hundreds of elderly and disabled patients searching for a new provider. The invaluable, dedicated services provided by the largest independent provider in St. Louis , the Visiting Nurses Association (VNA), will no longer be realized by the approximately 600 home care patients the agency has served.

It is regrettable that a government bureaucracy is forcing a home health agency, that has served the St. Louis area for 87 years, out of the home health care business.

The Balanced Budget Act of 1997 requires that all Medicare-participating home care agencies hold surety bonds in an amount that is not less than $50,000. This provision was modeled after a successful Florida Medicaid statute which imposes surety bonds on home care providers as a way of ensuring that only reputable businesses entered Florida's Medicaid program.

This needed and modest idea, however, has been severely distorted by HCFA. HCFA's surety bond rule deviates from Florida's program in two major ways:

First, the Florida program requires a $50,000 bond. HCFA's rule requires the bond amount to be the greater of $50,000 or 15 percent of the home care agency's previous year's Medicare revenues.

Since HCFA issued its initial rule back in January of 1998, constituents in my home State have reported numerous problems in securing these bonds. These reputable individuals inform me that most bond companies are refusing to sell home care bonds under the regulation's requirements. Those few companies that are selling bonds are requiring backup collateral equal to the full face value of the bond, or personal guarantees of two or even three times the value of the bond.

Second, the Florida program requires only new home care agencies to secure these bonds. Agencies with at least one year in the program and with no history of payment problems were exempted from the bond requirement. HCFA's rule, however, requires all Medicare-participating home care agencies to hold bonds, regardless of how long an agency has been in Medicare and regardless of the agency's good Medicare history. Further, HCFA's rule requires every home care agency to purchase new surety bonds every year.

HCFA's rule is outrageous. These requirements and costs are unaffordable, especially for the smaller, freestanding home health agencies. HCFA's surety bond regulations threaten the existence of many small business home health providers and the essential services they provide to the most vulnerable and most frail of our society.

The surety bond requirement reflects HCFA's attitude that all Medicare providers are suspect. Rather than keeping unscrupulous providers out of the home health business, HCFA's rule will penalize and put many decent home health agencies out of business.

In promulgating this rule, HCFA did not consider the long-standing reputation of most home health agencies, their years of compliance with Medicare's regulations, or their history of managing and avoiding overpayments from the government. These providers have worked long and hard within the convoluted Medicare program, have abided by the rules and regulations, and have been subjected to numerous audits by fiscal intermediaries.

HCFA's careless disregard, which has already put many conscientious law-abiding companies out of business, must be dealt with immediately. It is especially incomprehensible when the small businesses at risk provide a service so valued by the disabled and older Americans who receive it.

On Tuesday, June 8, the Regulatory Fairness Board for Region VII held a public meeting in Frontenac, Missouri, a suburb of St. Louis. My Red Tape Reduction Act of 1996 created ten Regional Fairness Boards to be the eyes and ears of small business, collecting comments from small businesses on their experience with Federal regulatory agencies. The Ombudsman, created under the same law, is to use these comments to evaluate the small business responsiveness of agency enforcement actions.

According to Scott George, a small business owner from Mt. Vernon, Missouri who serves on the Region VII Fairness Board, this particular meeting of the Fairness Board was dominated by testimony from smaller, freestanding home health care agencies that will be driven out of business by the HCFA regulations. They testified that more than 1,100 home health care providers nationwide have already closed their doors this year. Mr. George noted that every company that testified before the Region VII Fairness Board said they would be driven out of business by year-end. One couple traveled from Michigan to Missouri to testify that they will be out of business by the time of the Regional Fairness Board for their area holds a hearing absent relief from the HCFA regulations.

Mr. President, concerns similar to those expressed in Missouri this Tuesday were raised with HCFA during its rulemaking. Regrettably, HCFA reacted like a quarter horse down the home stretch with blinders on, ignoring the comments submitted by small business as well as the agency's statutory obligations under the Administrative Procedures Act (APA) and the Regulatory Flexibility Act of 1980 as amended by my Red Tape Reduction Act in 1996.

In April, at the urging of myself and other Senators, the Small Business Administration's Office of Advocacy sent a letter to HCFA to advise the agency of the significant NEGATIVE impact this rule would have on small home health care providers. SBA's letter documents the deficiencies in the HCFA efforts to implement the bonding requirement. As set forth by the Chief Counsel of Advocacy, HFCA appears to have: exceeded the Congressional mandate in the Balanced Budget Act of 1997, inappropriately waived the APA's requirement for a general notice of proposed rulemaking with the opportunity for comment, and bypassed the procedural and analytical safeguards provided by the Regulatory Flexibility Act as amended by my Red Tape Reduction Act in 1996.

The SBA Office of Advocacy petitioned HCFA to exclude the provisions requiring the 15 percent bond requirement and the capitalization requirement pending a ''proper and adequate analysis'' of the impacts on small businesses. HCFA did not exclude these requirements. Not only does this exceed the scope of the 1997 Congressional directive, but it also imposes an undue financial burden on reputable home health agencies. Furthermore, in its June final rule, HCFA did not conduct a Regulatory Flexibility analysis of the rules impact on small home health care agencies. Instead, HCFA certified that the rule would not have a significant economic impact on a substantial number of small entities. HCFA's certification is in direct conflict with the comments submitted by the Office of Advocacy and the home health care industry regarding the small business impacts of the rule.

In 1996, Congress voted to enhance its ability to put a stop to excessive regulations and sloppy agency rulemakings. Enacted as Subtitle E of my Red Tape Reduction Act, the Congressional Review Act enhances the ability of Congress to serve as such a backstop. Senators NICKLES and REID sponsored the bipartisan, Congressional Review portion of the Red Tape Reduction Act to provide a new process for Congress to review and disapprove new regulations and to make sure regulators are not exceeding or ignoring the Congressional intent of statutory law.

The simple fact is that HCFA has ignored everyone—Congress, the SBA, the home health industry, and most importantly the beneficiaries of home health services. Congress must therefore move expeditiously and exercise its authority under the Congressional Review Act to pass a resolution of disapproval to strike the June 1 HCFA rule because HFCA exceeded the Congressional mandate and issued this rule in total disregard of its statutory obligations under the APA, Regulatory Flexibility Act and the Red Tape Reduction Act. Although Congress did direct the agency to develop surety bonding requirements and provide a deadline for such a rule to be issued, this does not relieve the agency of its responsibility to conduct such a rulemaking in accordance with existing laws intended to ensure procedural fairness in the rulemaking process.

The practical implication of Congress expressing its disapproval of the June rule is to require HCFA to go back and to conduct rulemaking in accordance with the intent of Congress as expressed in the Balanced Budget Act of 1997 and in keeping with the APA and the Regulatory Flexibility Act. As part of the rulemaking, HCFA should conduct an appropriate initial and final Regulatory Flexibility analysis in accordance with Sections 603 and 604 of the Regulatory Flexibility Act. Congress enacted these procedural safeguards to require agencies to assess the impact of rules such as HCFA's on small entities and to ensure that agencies choose regulatory approaches that are consistent with the underlying statute while minimizing the impacts on small entities to the extent possible. We should pass the resolution we are introducing today to ensure HCFA implements its statutory responsibilities in accordance with the law.

While I strongly support the vigorous routing of fraud and abuse whenever and wherever it is found, Congress and HCFA must ensure the highest access to appropriate, high quality home care—because in-home care is the key to fulfilling the desire of virtually all seniors to remain independent and in their own homes. Home health provides a safety net for our Nation's elderly and disabled, and Congress must ensure that these protections continue long into the future.

Many of the elderly and disabled being cared for at home would not be able to remain there if it were not for the services provided by this vital industry. We should clean up the fraud and abuse, not shut the industry or cut off these critical services.

It is clear that HCFA must be held accountable, and I look forward to working with my colleagues in beginning this process today. Mr. President, I ask unanimous consent that a SBA Office of Advocacy letter be included in the RECORD.

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

U.S. SMALL BUSINESS ADMINISTRATION,
Washington, DC, April 15, 1998.

HEALTH CARE FINANCING ADMINISTRATION,
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
Attn: HCFA–1152–FC, Baltimore, MD.

DEAR DOCKETS MANAGEMENT CLERK: On January 5, 1998, the Heath Care Financing Administration (HCFA) published a final rule with comment period concerning surety bond and capitalization requirements for home health care agencies (HHAs). This regulation implements the surety bond requirement for such agencies established in the Balanced Budget Act of 1997 (BBA). The regulation also imposes additional minimum capitalization requirements on the agencies and includes an additional 15 percent surety bond requirements not contained in the BBA. The goal of the BBA and this final rule is to reduce Medicare/Medicaid fraud by regulating HHAs that do not or cannot reimburse Medicare/Medicaid for overpayments.

To address complaints by the surety bond industry and the HHA industry regarding the compliance deadline for obtaining surety bonds, HCFA published a final rule on March 4, 1998 deleting the February 27, 1998 effective date for all HHAs to furnish a surety bond. The new compliance date is on or about April 28, 1998, or 60 days after publication of the final rule.

In addition, to address complaints by the surety bond industry and members of the Senate Finance Committee regarding the potentially unlimited liability of sureties under the final rule, HCFA published a Notice of Intent to Amend Regulations on March 4, 1998 (concurrently with the final rule to extend the compliance date). The notice announces HCFA's intent to amend the final rule so as to limit the surety's liability under certain circumstances. It also establishes that a surety will only remain liable on a bond for an additional two years after the date an HHA leaves the Medicare/Medicaid program; and gives a surety the right to appeal an overpayment, civil money penalty or an assessment if the HHA fails to pursue its rights of appeal. HCFA claims that the changes will help smaller, reputable HHAs, like non-profit visiting nurse associations, to obtain surety bonds.

The Office of the Chief Counsel for Advocacy of the U.S. Small Business Administration was created in 1976 to represent the views and interests of small business in federal policy making activities.[1] The Chief Counsel participates in rulemakings when he deems it necessary to ensure proper representation of small business interests. In addition to these responsibilities, the Chief Counsel monitors compliance with the Regulatory Flexibility Act (RFA), and works with federal agencies to ensure that their rulemakings demonstrate an analysis of the impact that their decisions will have on small businesses.

The Chief Counsel has reviewed the final rules in the instant case and has determined that HCFA has not adequately analyzed the impact on small entities. This determination does not mean that regulating the problem of fraud and abuse is not an important public policy objective. Nor does it mean that small business interests supersede legitimate public policy objectives. Rather, the determination is based on the principle that public policy objectives must be achieved by utilizing recognized administrative procedures. The purpose of the procedures is not to place an unnecessary burden on federal regulatory agencies, but to ensure the promulgation of common sense regulations that do not unduly discourage or destroy competition in the marketplace.

Footnotes at end of letter.

The final rule is troubling for a number of reasons: 1) The proposal, although probably within HCFA's regulatory and statutory authority, goes far beyond the requirements contemplated by Congress when they enacted the BBA; 2) HCFA's good cause exception and waiver of the proposed rulemaking may be arbitrary and capricious under the Administrative Procedure Act (APA); and 3) Nearly all of the significant procedural and analytical requirements of the RFA were overlooked.

Action requested: Inasmuch as the rule is now final and in effect, the Chief Counsel of the Office of Advocacy herewith petitions the agency, pursuant to 5 U.S.C. §553(e), to amend the final rule to exclude the provisions concerning the 15 percent bond requirement and the capitalization requirement until such time as a proper and adequate analysis can be prepared to determine the impact on small entities.

I. LEGISLATIVE HISTORY AND INTENT

Prior to August 5, 1997, there were no provisions in the law pertaining to a surety bond requirement for home health agencies. Under the House bill (The Balanced Budget Act of 1997, H.R. 2015), there remained no provisions for the surety bond requirement. Under the Senate bill (as amended) (S. 947), a requirement was introduced to provide state Medicaid agencies with surety bonds in amounts not less than $50,000. Finally, in the conference agreement, the final bill was modified to require a surety bond of not less than $50,000, or such comparable surety bond as the Secretary may permit (applicable to home health care services furnished on or after January 1, 1998).[2] Congress, therefore, intended there to be a $50,000 or ''comparable'' bond, but did not intend the bond to be higher.

The surety bond issue had not been the subject of public hearings, and some members of Congress expressed concern about the potential impact of the fraud and abuse provisions.

According to a floor statement by Senator HATCH, the fraud and abuse provisions found in the amended Senate version were actually based on provisions contained in the Administrations fraud and abuse legislation introduced earlier in 1997, and on which no hearings were held in the Senate. Senator HATCH was concerned that the fraud and abuse provisions might have ''unintended consequences or implications that would penalize innocent parties who are following the letter of the law.''[3] He further stated that, ''As a general rule, we in the Congress should not act without the full and open benefit of hearings so that all parties have an opportunity to comment, and so that legislation can be modified as appropriate.''[4] With regard to the surety bond requirement, it seems that the affected business community had no real opportunity to provide meaningful input or comment.

After the legislation was enacted, HCFA had little choice but to implement the surety bond requirement. However, the agency created additional bonding and capitalization requirements and incorporated them into the instant final rule.[5] Not only were law abiding home health agencies denied an opportunity to comment during the legislative process, they are now faced with additional burdensome requirements effective almost immediately—with no true recourse (since the agency waived the notice of proposed rulemaking and the 30-day interim effective date).

Congress clearly intended to eliminate or reduce waste and fraud in the Medicare/Medicaid system and to preserve quality patient care. The presumably unintended effects of the legislation and HCFA's final rule are that legitimate, law abiding home health agencies will be forced to file bankruptcy, go out of business or curtail their business operations significantly. Patient care will likely suffer when there are not enough home health agencies to meet increasing public demand in an aging population. Moreover, the resulting lack of market competition and bloating of the large, hospital-based and government-based home health agencies may lead to increased prices.

II. WAIVER OF ADMINISTRATIVE PROCEDURE

An agency is subject to the notice and comment requirements contained in 5 U.S.C. 553 unless the agency rule is exempt from coverage of the APA, or the agency establishes ''good cause'' for not complying with the APA and waives notice and comment. When an agency waives the notice and comment procedures required by the APA, however, there should be compelling reasons therefor. In fact, courts have held that exceptions to APA procedures are to be ''narrowly construed and only reluctantly countenanced.'' *New Jersey* v. *EPA*, 26 F.2d 1038, 1045 (D.C.Cir. 1980).

In the instant case, the agency waived both the notice and comment requirement and the requirement to allow a 30-day interim period prior to a rules effective date. The agency based its ''good cause'' waiver on three factors: 1) Issuing a proposed rule would be impracticable because Congress mandated that the effective date for the surety bond requirement be January 1, 1998 five months after Congress passed the BBA of 1997; 2) Issuing a proposed rule is unnecessary with respect to Medicare regulations because there is a statutory exception when the implementation deadline is less than 150 days after enactment of the statute in which the deadline is contained; and 3) A delay in issuing the regulations would be contrary to the public interest.

First, with regard to the impracticability of issuing a proposed rule, as a general matter, ''strict congressionally imposed deadlines, without more, by no means warrant invocation of the good cause exception.'' *Petry* v. *Block*, 737 F.2d 1193, 1203 (D.C.Cir. 1984). In addition, there is no good cause exception where an agency unwilling to provide notice or an opportunity to comment could simply wait until the eve of a statutory . . . deadline, then raise up the ''good cause'' banner and promulgate rules without following APA procedures. *Council of Southern Mountains, Inc.* v. *Donovan*, 653 F.2d 573, 581 (D.C.Cir. 1981).

By way of example, in *Petry* v. *Block*, the court concluded that the passage of a complex and extraordinary statute concerning changes in administrative reimbursements under the Child Care Food Program that imposed a 60-day deadline for the promulgation of interim rules justified the agency's invocation of the good cause exception. Also, in *Methodist Hospital of Sacramento* v. *Shalala*, 38 F.3d 1225 1236, (D.C. Cir. 1994), the court stated that the agency had good cause to waive notice and comment because Congress imposed a statutory deadline of about 4½ months ''to implement a complete and radical overhaul of the Medicare reimbursement system.'' (Emphasis added). Moreover, ''[o]nce published, the interim rules took up 133 pages in the Federal Register: 55 pages of explanatory text; 37 pages of revised regulations, and 41 pages of new data tables.'' Id.

In the instant case, HCFA had five months to implement a relatively simple provision to require a $50,000 or comparable surety bond from home health agencies. After HCFA added additional bond requirements and capitalization requirements (never requested or contemplated by Congress), the regulation took up 63 pages in the Federal Register: 18 pages of explanatory text, 6 pages of revised regulations, and 39 pages of application documents. The final rule appeared in the Federal Register on January 5, 1998—four days after the mandatory effective date.

The Office of Advocacy opines that if HCFA had not included the additional requirements, which were not intended by Congress, and therefore not intended to be implemented within the five month window, there would have been ample time to follow proper notice and comment procedures. Based on the circumstances of this rulemaking and pointed case law, HCFA cannot rely on the impracticability argument to demonstrate that it had good cause to waive notice and comment.

Second, HCFA also based its good cause exception to notice and comment on the fact that they have the statutory authority to do so with regard to this particular type of rule. The agency states: ''Issuing a proposed rule prior to issuing a final rule is also unnecessary with respect to the Medicare surety bond regulation because the Congress has provided that a Medicare rule need not be issued as a proposed rule before issuing a final rule if, as here, a statute establishes a specific deadline for the implementation of a provision and the deadline is less than 150 days after the enactment of the statute in which the deadline is contained.''[6]

HCFA cannot rely on this statutory provision because the agency has gone way beyond their statutory mandate in issuing this final rule. Again, Congress only intended there to be a $50,000 or comparable surety bond. Therefore, only those provisions contemplated by Congress should be subject to the statute that permits HCFA to waive notice and comment when the deadline is less than 150 days.

Third, HCFA claims that a delay in implementing the final rule would be contrary to public policy. Quite the contrary—implementing the final rule as written would be contrary to public policy. The final rule imposes serious economic burdens on an industry already under increased scrutiny and financial hardship including a recent moratorium on entrants to the Medicare program and repeated audits.[7] HCFA has also announced its intention to include home health agencies in the enormously complicated prospective payment system now used by hospitals and physicians. As such, availability of home healthcare for those communities not served by giant hospital-based providers will surely decrease. This result seems contrary to the stated public policy objective of Congress and HCFA.

Finally, it should be noted that HCFA did insert a post-effective date comment period in the final rule. However, the fact that HCFA attached a comment period to the final rule is not a valid substitute for the normal provisions of the APA. The third circuit stated that: ''[i]f a period for comments, after issuance of a rule, could cure a violation of the APA's requirements, an agency could negate at will the Congressional decision that notice and an opportunity for comment must precede promulgation. Provisions of prior notice and comment allows effective participation in the rulemaking process while the decision maker is still receptive to information and argument. After the final rule is issued, the petitioner must come hat-in-hand and run the risk that the decision maker is likely to resist change.'' *Sharon Steel Corp.* v. *EPA*, 597 F.2d 377, 381 (3rd Cir. 1979).

HCFA's waiver of administrative procedure would be less troubling if the rule were not so burdensome. By waiving notice and comment procedures, the agency conveniently removes itself from the obligation to carefully analyze and solicit input on the impact

of the rule. Such an analysis could have yielded other, less burdensome alternatives that would have accomplished the agency's public policy objectives.

Since HCFA improperly waived notice and comment, the agency must comply with the Regulatory Flexibility Act.

III. REGULATORY FLEXIBILITY ACT REQUIREMENTS

Even when a regulation is statutorily mandated, agencies are obligated by law to adhere to certain requirements prior to issuing the implementing regulations. Specifically, the RFA requires agencies to analyze the impact of proposed regulations on small entities and consider flexible regulatory alternatives that reduce the burden on small entities—without abandoning the agency's regulatory objectives. Agencies may forgo the analysis if they certify (either in the proposed or final rule) that the rule will not have a significant economic impact on a substantial number of small entities. Agency compliance with certain provisions of the RFA is judicially reviewable under section 611 of the RFA.

It is not clear from the instant rule whether HCFA has actually certified the rule pursuant to section 605(b) of the RFA or attempted a final regulatory flexibility analysis (FRFA) pursuant to section 604 of the RFA. In either case, the agency failed to comply with the requirements of the RFA.

HCFA expresses confusing ''certification-like'' statements throughout the text of the final rule.[8] However, the actual certification and statement of factual basis are not to be found in the final rule. If the agency was attempting to certify, then it did so erroneously for reasons discussed more fully below. On the other hand, perhaps HCFA did not intend to certify, but instead intended to prepare a FRFA. The agency did do some type of analysis: ''we have prepared the following analysis, which in conjunction with other material provided in this preamble, constitutes an analysis under the [RFA].'' 63 Fed. Reg. at 303. The problem with that declaration is that there is more than one type of analysis under the RFA. There is the preliminary assessment analysis which helps agencies determine whether to certify, and in the case of a final rule, there is a FRFA when an agency determines that certification is not appropriate. If HCFA was attempting a FRFA, then the FRFA was not adequate because it contained no analysis of alternatives to reduce the burden on small home health care providers. This, too, is more fully discussed below.

A. CERTIFICATION

When an agency determines and certifies that a rule will not have a significant economic impact on a substantial number of small entities, then it is logical to assume that the agency has already performed some basic level of analysis to make that determination. Will a substantial number of small entities be impacted? In the instant case, the agency admits that all home health agencies will be affected. According to SBA's regulations, a small home health care agency is one whose annual receipts do not exceed $5 million, or one which is a not-for-profit organization.[9] Although the Office of Advocacy does not have data based on annual receipts, data is available based on number of employees. 1993 data obtained from the U.S. Bureau of the Census by the Office of Advocacy indicates that about 7% of home health care services (489 out of 6,928) have 500 or more employees and earn 51.2% of all annual receipts for the industry, 93% of home health care services (6,439 out of 6,928) have fewer than 500 employees and earn about 49% of all annual receipts for the industry, and 52.5% of home health care services (3,637 out of 6,928) have fewer than 20 employees and earn 6.3% of all annual receipts for the industry. Although it may be difficult to reconcile employment-based and receipt-based size standards, it is still fairly clear from the available data that a substantial number of small entities will be impacted by this final rule.

Will there be a significant economic impact? To determine whether the final rule is likely to have a significant economic impact, further analysis is required. It is not enough to claim that elimination of fraud and abuse in the Medicare/Medicaid system outweighs the need for further analysis. It is not enough to assume that only those agencies with ''past aberrant billing activities'' will be impacted. It is not enough to say that reducing a surety's liability means that there will not be a significant economic impact on home health agencies. The Office of Advocacy opines that the agency's ''analysis'' was doomed from the outset because of the agency's flawed assumptions about the number and type of small entities likely to be impacted, and about the cost of compliance.

Which small entities will be impacted? The agency did not take the basic and necessary step of adequately explaining why other small entities (presumably those whose billing practices are not ''aberrant'') will not be affected or whether small home health providers are even the primary offenders. At the least, the agency must consider the impact the bonding requirement will have on all small home health providers and not just the ones with ''aberrant'' billing practices. After all, the majority of home health agencies apparently do not have aberrant billing practices. HCFA presents evidence that, in 1996, Medicare overpayments were 7 percent of all claims paid to HHAs, and of that 7 percent, 14 percent remained uncollected by Medicare. Fourteen percent of 7 percent is .0098.[10] In other words, Medicare fails to collect overpayments less than one percent of the time. Despite this extremely low occurrence of failure to collect overpayments, HCFA deemed it necessary to place extremely costly and burdensome requirements on the entire industry. However, HCFA did not identify what percentage of the industry is contributing to the fraud problem, whether certain offenders were recidivist, or whether those offenders are primarily large or small.

With regard to the capitalization requirement, HCFA states that, ''An organization that is earnest in its attempt to be a financially sound provider of home health services under the Medicare program will already be properly capitalized without the need for Medicare to require such capitalization.'' This statement is basically true. However, the issue of adequate capitalization is relative and fungible because it is based on a number of factors like varying overhead costs, location, profit margins, competition in the area, etc. Surely some home health agencies cannot meet the capitalization requirements set by HCFA, but desire to be ''earnest'' in their efforts to be ''sound providers.'' The capitalization requirement is a barrier to market entry for all new home health agencies and not just the ones who enter the market for purposes of defrauding Medicare. A careful look at the questions like the ones raised in this and the preceding paragraph would have yielded a conclusion that the rule would have a significant economic impact on a substantial number of small businesses.

Congress weighed in on the issue of impact after the final rule is published. Even members of Congress recognized that HCFA went beyond its mandate and imposed a significant economic burden on home health agencies. Specifically, a bi-partisan group of three senators from the Senate from the Senate Finance Committee, on January 26, 1998, asked HCFA to delay and modify the requirement that all home health agencies secure a surety bond. The Senators believed that home health agencies would not be able to obtain bonds by the original February 27 deadline. According to a recent news article, the senators reportedly wrote that:

''HCFA has imposed conditions that go beyond the standard in the surety bond industry. Some of the biggest problems include cumulative liability, a short period of time in which to pay claims, and bond values of 15 percent of the previous year's Medicare revenues with no maximum, the letter said.

'The cumulative effect is that many surety companies are opting not to offer bonds to Medicare [home health agencies] at all', the letter said. 'Those companies which are offering the bonds are doing so at a cost which is prohibitive, or with demands for collateral or personal guarantees that HHAs cannot provide.'

The letter said Congress enacted the surety bond requirement to keep risky agencies out of the Medicare program. However, HCFA's rule seems to use the bonds as security for overpayments to providers, the letter said.

'We simply doubt that it is realistic to expect bonding companies to embrace a role as guarantors for overpayments from HCFA,' the senators wrote.''[11]

It should be fairly obvious to HCFA, as it was to these members of Congress, that obtaining a $50,000/15 percent bond in addition to the 3-month reserve capitalization requirement (where there were no such requirements before) is likely to be prohibitively costly for small home health care providers—particularly new providers or providers operation only a few years that typically have few hard assets and relatively little credit.[12] Moreover, most home health patients are Medicare patients. If a home health agency is not Medicare certified, then it is very difficult to attract patients, and without patients, there is no opportunity to increase capital. There is already a requirement in many states (pursuant to ''Operation Restore Trust'') that home health agencies have a minimum number of patients prior to obtaining a Medicare license. How can these small home health agencies absorb losses on these ten patients (—possibly long term patients requiring multiple services several times per week—), never be reimbursed for services to these patients, and continue to raise capital? It's a vicious circle and there is a tremendous cumulative effect of all the various state and federal regulations. In any event, it seems that with only a cursory analysis and a little industry outreach, HCFA should have been able to determine that the final rule would have a significant economic impact on a substantial number of small entities. Therefore, under the RFA, HCFA should have prepared a final regulatory flexibility analysis with all the required elements for that analysis.

B. FINAL REGULATORY FLEXIBILITY ANALYSIS

The preparation of a FRFA may be delayed but not waived. Section 608(b) of the RFA reads: ''Except as provided in section 605(b) [where an agency certifies that there will be no significant economic impact on a substantial number of small entities], an agency head may delay the completion of the requirements of section 604 of this title [regarding the preparation of FRFAs] for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with

the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency.''

FRFAs may not be waived because they serve a vital function in the regulatory process. The preparation of a FRFA allows an agency to carefully tailor its regulations and avoid unnecessary and costly requirements while maintaining important public policy objectives. Without a careful analysis—which should include things like data, public comments and a full description of costs—agencies would be operating in a vacuum without sufficient information to develop suitable alternatives.

Since the agency did not issue a proposed rule, the agency had an obligation to consider carefully all of the significant comments regarding the impact of the final rule. After all, the agency was apparently unsure of the impact.[13] The congressional letter should have been some indication that there would be a significant economic impact and that further analysis was required. HCFA did extend the deadline for obtaining a surety bond for 60 days, and in some ways limited the liability of sureties. However, the agency did not change the bond or capitalization requirements, or explain why such changes were not feasible. Inasmuch as the agency failed to heed any of the comments regarding impact—even those from Congress—the comment period served no real function here.

The dearth of information regarding less costly alternatives is possibly the most serious defect in the analysis presented. To begin with, HCFA never demonstrated why the $50,000 bond was insufficient or would not accomplish the objective of discouraging bad actors from entering the Medicare program. The agency did not demonstrate why the 15 percent rule would not cause a significant economic impact—particularly when the $50,000 bond amount changed from a maximum level to a maximum level. There is no evidence that HCFA attempted to find less costly alternatives. Before heaping on additional regulations, would it not be prudent to first determine whether the programs and policies recently put in place by the Administration, and the prospective payment rules yet to come will work?

IV. CONCLUSION

Not everyone in the home health industry is a bad actor. More importantly, home health providers that cannot afford to comply with HCFA's regulations are not necessarily bad actors either. HCFA has twisted Congress' intent and changed the rule into a vehicle for punishing legitimate home health agencies and for securing overpayments by Medicare rather than a vehicle to discourage bad actors from entering the Medicare program. There must be a middle ground—a place where legitimate home health providers can survive and compete in the marketplace, and where fraud and abuse can be controlled. This final rule is not that place.

Therefore, the Office of Advocacy petitions HCFA to amend its final rule to remove the 15% bonding requirement and the capitalization requirement until such time as proper notice and comment procedures can be completed. Thank you for your prompt attention to this urgent matter. Please contact our office if we may assist you in your efforts to comply with the RFA on this or any other rule effecting small entities, 202–205–6533.

Sincerely,

JERE W. GLOVER,
Chief Council for Advocacy.

SHAWNE CARTER MCGIBBON,
Asst. Chief Counsel for Advocacy.

FOOTNOTES

[1] Regulatory Flexibility Act. 5 U.S.C. §601, as amended by the Small Business Regulatory Enforcement Fairness Act, Pub. L. No. 104–121. 110 Stat. 866 (1996).

[2] *See* 143 CONG. REC. H6253–6254 (daily ed. July 29, 1997).

[3] 143 CONG. REC. S6159 (daily ed. July 24, 1997) (statement of Sen. Hatch).

[4] *Id.* at S6159–60.

[5] Those requirements include basing the amount of the bond on a flat rate in combination with the $50,000 minimum bond. The flat rate is designated as 15 percent of the annual amount paid to the HHA by Medicare as reflected in the HHA's most recently accepted cost report. The other major requirement for new the HHAs is for minimum capitalization. The amount of the reserve is to be determined by Medicare intermediaries based on the first year experience of other HHAs. First the intermediary determines an average cost per visit based on first-year cost report data for at least three HHAs that it serves that are comparable to the HHA seeking to enter the Medicare program. The average cost per visit is determined by dividing the sum of the total reported costs of care for all patients of the HHAs by the sum of their total visits. Then, the intermediary multiplies the average cost per visit by the projected number of visits for all patients (Medicare. Medicaid and all other patients) for the first three months of operation of the HHA asking to inter the program. HCFA also designates which funds count toward satisfying the capitalization requirement (—fifty percent of the funds required for capitalization must be non-borrowed funds) Medicare expects those funds to be available in cash or, in some cases short term highly liquid cash equivalents.

[6] 63 Fed. Reg. at 308.

[7] In September 1997. President Clinton announced that the Department of Health and Human Services was declaring the first ever moratorium to stop new home health providers from entering the Medicare program. The moratorium was lifted in January after the instant final rules were published in the Federal Register. The Office of Advocacy received at least one call form an anxious home health agency just starting their business. The agency had completed the reams of paperwork and all the other necessary requirements for entering the Medicare program, but had to put everything on hold because of the 4-month moratorium—announced just days before their Medicare application would have been approved. Where is this business going to get three months reserve to demonstrate that their business is adequately capitalized? Unable to enter the Medicare program, how have they survived thus far (when you consider that 95% of home health patients are Medicare eligible)?

Another business contacted the Office of Advocacy to complain that their home health agency had been audited three times in one year under the Administration's ''Operation Restore Trust.''

[8] Some of those statements include the following: ''Because of the scope of the rule, all HHAs will be affected, but we do not expect that effect to be significant.'' 63 Fed. Reg. at 303. ''We expect to have a 'significant impact' on an unknown number of such entities, effectively preventing some from repeating their past aberrant billing activities [but, t]he majority of HHAs will not be significantly affected by this rule.'' *Id.* ''[A]ny possible impact that this [capitalization] requirement may have on HHAs entering the Medicare program is more than offset by savings to the Trust Funds in situations in which HHAs go out of business due to undercapitalization . . .'' *Id.* at 308. ''We are not preparing a rural impact statement [pursuant to section 1102(b) of the Social Security Act] since we have determined, and certify, that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.'' *Id.* ''If a new HHA for some reason cannot raise the capital necessary to meet Medicare's [capitalization] requirement and, therefore, is not permitted to enter the Medicare program, that clearly has an impact on the HHA.'' *Id.*

[9] *See* 13 C.F.R. §121.201. Based on Standard Industrial Classification code 8082. Home Health Care Services include home health care agencies and visiting nurse associations (establishments primarily engaged in providing skilled nursing or medical care in the home, under supervision of a physician. Establishments of registered or practical nurses engaged in the independent practice of their professions and nurses' registries and classified in another category. Similarly, establishments primarily engaged in selling, renting or leasing health care products for personal or household use are classified in another category).

[10] In 1996. $14,357,504,894 was paid to HHAs, $1,061,157,961 was overpaid, and $153,628,056 was uncollected.

[11] *Senators Ask HCFA to Delay Final Rule Requiring Surety Bonds of All Agencies.* BNA DAILY REPORT FOR EXECUTIVES. Jan 27, 1998, at A–24.

[12] Small firms in service industries find it more difficult to obtain credit—where judgments in terms of character, markets, and cash flow are more likely to dominate—than in manufacturing industries, which typically have hard assets such as real property, equipment, and inventory. OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION. THE STATE OF SMALL BUSINESS: A REPORT OF THE PRESIDENT (1995) at 86.

[13] Unsure of the actual impact, the agency specifically solicited comments on its assertions and assumptions. *See* 63 Fed. Reg. at 304.

Mr. BAUCUS. Mr. President, I would like to say a few words about the Bond-Baucus-Grassley Joint Resolution introduced today that nullifies a regulation which threatens to put many of my state's home health agencies, or HHAs, out of business. Our resolution officially disapproves the regulation issued by the Health Care Financing Administration on June 1 of this year. The rule requires each home health agency that receives Medicare reimbursement to buy a costly surety bond. This expensive bond is out of reach for many of the agencies that provide in-home service to Montana's elderly and low income residents.

Let me say from the outset that I support the provision in the Balanced Budget Act of 1997 requiring HHAs to post a surety bond for Medicare and Medicaid. Perhaps we need to make some changes to the statute, but the underlying idea—to protect the Medicare program by requiring home health agencies to post a bond—is a good one. Unfortunately, the regulation HCFA plans to implement requires a much higher bond amount.

One Montana home health agency based in Butte would have to post a bond of more than $600,000 under the HCFA regulation. That's an outrage. And it will put that company, and many others across the country, out of business.

I am also concerned that HCFA has incorrectly interpreted Congressional intent by using the bonds to collect on Medicare overpayments, not just fraud. As a result, many HHA owners are being asked to put up personal assets, such as their house, as collateral for the bond. These agencies tend to be non-hospital based and not tied to a larger corporate structure. All have far less than $600,000 in personal and business assets. We shouldn't expect anyone to sign over those assets just to do business in the Medicare program.

Also, many HHAs are family-owned small businesses. We cannot let any federal regulation force small businesses to close their door. This not only affects businesses, but also their customers—our bed-ridden elderly.

That is why we have acted here today. The Bond-Baucus-Grassley resolution will invoke the Congressional

Review Act to disapprove HCFA's regulation. And I urge quick action in the Senate on this important matter.

By Mr. SARBANES (for himself, Mr. BYRD, Mr. ROCKEFELLER, and Ms. MIKULSKI):

S.J. Res. 51. A joint resolution granting the consent of Congress to the Potomac Highlands Airport Authority Compact entered into between the Stats of Maryland and West Virginia; to the Committee on the Judiciary.

POTOMAC HIGHLANDS AIRPORT AUTHORITY COMPACT

Mr. SARBANES. Mr. President, today I am introducing legislation together with my colleagues Senators BYRD, ROCKEFELLER, and MIKULSKI to grant Congressional consent to a Compact entered into between the States of West Virginia and Maryland that established the Potomac Highlands Airport Authority. The purpose of this legislation is to help facilitate a regional approach to the operations, use, management and future development of the Greater Cumberland Regional Airport.

Greater Cumberland Regional Airport is an important transportation hub serving the commercial, general aviation and corporate communities in the tri-state area of Maryland, Pennsylvania, and West Virginia. It is not only an essential link in the region's transportation network, but a critical part of the strategy to attract new business and tourism to the area.

The airport was established in 1944, when the City of Cumberland, Maryland purchased property in Wiley Ford, WV—three miles south of Cumberland—and began construction of airport facilities. Unfortunately, this unusual situation—a commercial service airport located in one state while owned by a local unit of government in a contiguous state—has greatly complicated the operation, financing and development of the airport over the years. With two states, two counties and two municipalities having jurisdiction over different aspects of the airport and enforcing different laws, taxing authorities and regulations, it was difficult, at best, to transcend the political and boundary lines and achieve a consensus on the future of the airport.

In order to address this situation, in 1976, the General Assemblies of the State of Maryland and the State of West Virginia enacted a bi-state compact authorizing creation of a public agency known as the Potomac Highlands Airport Authority (PHAA) to govern and operate the airport. However, no action was taken to implement that Compact until 1990, when the two states, the Board of County Commissioners of Allegany County, Maryland and Mineral County, West Virginia and the Mayor and City Council of Cumberland, Maryland signed an intergovernmental agreement to transfer airport management and control to the Authority and changed the name to the Greater Cumberland Regional Airport.

Since that time, the Potomac Highlands Airport Authority has actively maintained and operated the airport, and has been working to develop and implement a 20-year, $10 million airport modernization and expansion program designed to facilitate current operations and anticipated growth in utilization of the facility. In the process of seeking investment capital, loans and airport development grants, questions have been raised by the Federal Aviation Administration, USDA Rural Development, and others about the Authority's eligibility to function as legal sponsor for the airport and borrow money and give security, absent Congressional Consent to the Interstate Compact which established the Authority.

Article I, Section 10 of the Constitution requires Congressional approval of compacts between States and Bond Counsel for the airport has recommended that the Compact creating the Airport Authority receive the consent of Congress in order to provide some certainty as to the legal status of the airport and to permit the Authority to borrow funds.

The legislation I am introducing today would ratify the Interstate Compact enacted by Maryland and West Virginia in 1976 and reaffirmed in the 1990 Intergovernmental Agreement. It will allow the Potomac Highlands Airport Authority to fully exercise the powers and authority set forth by the Compact and to provide a truly regional approach to the operation, use and future development of the airport. It will help advance the public interest by ensuring the future viability of Greater Cumberland Regional Airport to serve the transportation needs of the tri-state area.

I urge the swift enactment of this legislation and ask unanimous consent that the legislation be printed in the RECORD.

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

S. J. RES. 51

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONGRESSIONAL CONSENT.

Congress hereby consents to the Potomac Highlands Airport Authority Compact entered into between the States of Maryland and West Virginia. The compact reads substantially as follows:

"Potomac Highlands Airport Authority Compact

"SECTION 1. COUNTY COMMISSIONS EMPOWERED TO ENTER INTO INTERGOVERNMENTAL AGREEMENTS RELATING TO CUMBERLAND MUNICIPAL AIRPORT.

''The county commissions of Mineral County, West Virginia, and of other West Virginia counties contiguous to Mineral County, and the governing bodies of municipal corporations situated in those counties, may enter into intergovernmental agreements with this State, Allegany County, Maryland, other Maryland counties contiguous to Allegany County and Cumberland, Maryland, and other municipal corporations situated in those Maryland counties, and with the Potomac Highlands Airport Authority regarding the operation and use of the Cumberland Municipal Airport situated in Mineral County, West Virginia. The agreements shall be reciprocal in nature and may include, but are not limited to, conditions governing the operation, use, and maintenance of airport facilities, taxation of aircraft owned by Maryland residents and others, and user fees.

"SEC. 2. POTOMAC HIGHLANDS AIRPORT AUTHORITY AUTHORIZED.

''The county commissions of Mineral County, West Virginia, and of other West Virginia counties contiguous to Mineral County, and the governing bodies of municipal corporations situated in those counties, or any one or more of them, jointly and severally, may create and establish, with proper governmental units of this State, Allegany County, Maryland, other Maryland counties contiguous to Allegany County, and Cumberland, Maryland, and other municipal corporations situated in those Maryland counties, or any one or more of them, a public agency to be known as the 'Potomac Highlands Airport Authority' in the manner and for the purposes set forth in this Compact.

"SEC. 3. AUTHORITY A CORPORATION.

''When created, the Authority and the members of the Authority shall constitute a public corporation and, as such, shall have perpetual succession, may contract and be contracted with, sue and be sued, and have and use a common seal.

"SEC. 4. PURPOSES.

''The Authority may acquire, equip, maintain, and operate an airport or landing field and appurtenant facilities in Mineral County, on the Potomac River near Ridgeley, West Virginia, to serve the area in which it is located.

"SEC. 5. MEMBERS OF AUTHORITY.

''(a) IN GENERAL.—The management and control of the Potomac Highlands Airport Authority, its property, operations, business, and affairs, shall be lodged in a board of seven or more persons who shall be known as members of the Authority and who shall be appointed for terms of three years each by those counties, municipal corporations, or other governmental units situated in West Virginia and Maryland as contribute to the funds of the Authority, in such proportion between those States and counties, municipal corporations, and units, and in whatever manner, as may from time to time be provided in the bylaws adopted by the Authority.

''(b) FIRST BOARD.—The first board shall be appointed as follows:

''(1) The County Commission of Mineral County shall appoint two members for terms of two and three years, respectively.

''(2) The governing official or body of the municipal corporation of Cumberland, Maryland, shall appoint three members for terms of one, two, and three years, respectively.

''(3) The governing official or body of Allegany County, Maryland, shall appoint two members for terms of one and two years, respectively.

"SEC. 6. POWERS.

''The Potomac Highlands Airport Authority has power and authority as follows:

''(1) To make and adopt all necessary bylaws, rules, and regulations for its organization and operations not inconsistent with law.

''(2) To take all legal actions necessary or desirable in relation to the general operation, governance, capital expansion, management, and protection of the Cumberland Municipal Airport.

''(3) To increase the number of members of the Authority, and to set the terms of office and appointment procedures for those additional members.

''(4) To elect its own officers, to appoint committees, and to employ and fix the compensation for personnel necessary for its operation.

''(5) To enter into contracts with any person, firm, or corporation, and generally to do anything necessary for the purpose of acquiring, equipping, expanding, maintaining, and operating an airport.

''(6) To delegate any authority given to it by law to any of its officers, committees, agents, or employees.

''(7) To apply for, receive, and use grants in aid, donations, and contributions from any sources.

''(8) To take or acquire lands by purchase, holding title to it in its own name.

''(9) To purchase, own, hold, sell, and dispose of personal property and to sell and dispose of any real estate which it may have acquired and may determine not to be needed for its purposes.

''(10) To borrow money.

''(11) To extend its funds in the execution of the powers and authority hereby given.

''(12) To take all necessary steps to provide for proper police protection at the airport.

''(13) To inventory airplanes and other personal property at the airport and provide the assessor of Mineral County and other proper governmental officials with full particulars in regard to the inventory.

''SEC. 7. PARTICIPATION BY WEST VIRGINIA.

''(a) APPOINTMENT OF MEMBERS; CONTRIBUTION TO COSTS.—The county commissions of Mineral County and of counties contiguous to Mineral County, and the governing bodies of municipal corporations situated in those counties, or any one or more of them, jointly and severally, may appoint members of the Authority and contribute to the cost of acquiring, equipping, maintaining, and operating the airport and appurtenant facilities.

''(b) TRANSFER OF PROPERTY.—Any of the foregoing county commissions or municipal corporations may transfer and convey to the Authority property of any kind acquired previously by the county commission or municipal corporation for airport purposes.

''SEC. 8. FUNDS AND ACCOUNTS.

''(a) CONTRIBUTION AND DEPOSIT OF FUNDS.—Contributions may be made to the Authority from time to time by the various bodies contributing to its funds and shall be deposited in whatever bank or banks a majority of the members of the Authority direct and may be withdrawn from them in whatever manner the Authority directs.

''(b) ACCOUNTS AND REPORTS.—The Authority shall keep strict account of all of its receipts and expenditures and shall make quarterly reports to the public and private bodies contributing to its funds, containing an itemized account of its operations in the preceding quarter. The accounts of the Authority shall be regularly examined by the State Tax Commissioner in the manner required by Article nine, Chapter six of the Code of West Virginia.

''SEC. 9. PROPERTY AND OBLIGATIONS OF AUTHORITY EXEMPT FROM TAXATION.

''The Authority is exempt from the payment of any taxes or fees to the State of West Virginia or any subdivisions of that State or to any officer or employee of the State or other subdivision of it. The property of the Authority is exempt from all local and municipal taxes. Notes, debentures, and other evidence of indebtedness of the Authority are declared to be issued for a public purpose and to be public instrumentalities, and, together with interest on them, are exempt from taxes.

''SEC. 10. SALE OR LEASE OF PROPERTY.

''In the event all of the public corporations contributing to the funds of the Authority so determine, the Authority shall make sale of all of its properties and assets and distribute the proceeds of the sale among those contributing to its funds. In the alternative, if such of the supporting corporations contributing a majority of the funds of the Authority so determine, the Authority may lease all of its property and equipment upon whatever terms and conditions the Authority may fix and determine.

''SEC. 11. EMPLOYEES TO BE COVERED BY WORKMEN'S COMPENSATION.

''All eligible employees of the Authority are considered to be within the Workmen's Compensation Act of West Virginia, and premiums on their compensation shall be paid by the Authority as required by law.

''SEC. 12. LIBERAL CONSTRUCTION OF COMPACT.

''It is the purpose of this Compact to provide for the maintenance and operation of an airport in a prudent and economical manner, and this Compact shall be liberally construed as giving to the Authority full and complete power reasonably required to give effect to the purposes hereof. The provisions of this Compact are in addition to and not in derogation of any power existing in the county commissions and municipal corporations herein named under any constitutional, statutory, or charter provisions which they or any of them may now have or may hereafter acquire or adopt.''.

SEC. 2. RIGHT TO ALTER, AMEND, OR REPEAL.

The right to alter, amend, or repeal this joint resolution is hereby expressly reserved. The consent granted by this joint resolution shall not be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the region which forms the subject of the compact.

ADDITIONAL COSPONSORS

S. 361

At the request of Mr. JEFFORDS, the name of the Senator from New Hampshire (Mr. SMITH) was added as a cosponsor of S. 361, a bill to amend the Endangered Species Act of 1973 to prohibit the sale, import, and export of products labeled as containing endangered species, and for other purposes.

S. 597

At the request of Mr. BINGAMAN, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 597, a bill to amend title XVIII of the Social Security Act to provide for coverage under part B of the medicare program of medical nutrition therapy services furnished by registered dietitians and nutrition professionals.

S. 831

At the request of Mr. SHELBY, the name of the Senator from Minnesota (Mr. GRAMS) was added as a cosponsor of S. 831, a bill to amend chapter 8 of title 5, United States Code, to provide for congressional review of any rule promulgated by the Internal Revenue Service that increases Federal revenue, and for other purposes.

S. 887

At the request of Ms. MOSELEY-BRAUN, the names of the Senator from Vermont (Mr. LEAHY) and the Senator from Ohio (Mr. GLENN) were added as cosponsors of S. 887, a bill to establish in the National Service the National Underground Railroad Network to Freedom program, and for other purposes.

S. 1413

At the request of Mr. LUGAR, the names of the Senator from Montana (Mr. BURNS) and the Senator from Oregon (Mr. SMITH) were added as cosponsors of S. 1413, a bill to provide a framework for consideration by the legislative and executive branches of unilateral economic sanctions.

S. 1423

At the request of Mr. HAGEL, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1423, a bill to modernize and improve the Federal Home Loan Bank System.

S. 1868

At the request of Mr. NICKLES, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 1868, a bill to express United States foreign policy with respect to, and to strengthen United States advocacy on behalf of, individuals persecuted for their faith worldwide; to authorize United States actions in response to religious persecution worldwide; to establish an Ambassador at Large on International Religious Freedom within the Department of State, a Commission on International Religious Persecution, and a Special Adviser on International Religious Freedom within the National Security Council; and for other purposes.

S. 1981

At the request of Mr. HUTCHINSON, the name of the Senator from North Carolina (Mr. FAIRCLOTH) was added as a cosponsor of S. 1981, a bill to preserve the balance of rights between employers, employees, and labor organizations which is fundamental to our system of collective bargaining while preserving the rights of workers to organize, or otherwise engage in concerted activities protected under the National Labor Relations Act.

S. 2007

At the request of Mr. COCHRAN, the name of the Senator from Minnesota (Mr. GRAMS) was added as a cosponsor of S. 2007, a bill to amend the false claims provisions of chapter 37 of title 31, United States Code.

S. 2017

At the request of Mr. D'AMATO, the names of the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Nevada (Mr. REID), the Senator from Illinois (Mr. DURBIN), and the Senator from Georgia (Mr. CLELAND) were added as cosponsors of S. 2017, a bill to amend title XIX of the Social Security Act to provide medical assistance for breast and cervical cancer-related treatment services to certain women screened and found to have breast or cervical cancer under a Federally funded screening program.

S. 2022

At the request of Mr. DEWINE, the name of the Senator from Arizona (Mr.

KYL) was added as a cosponsor of S. 2022, a bill to provide for the improvement of interstate criminal justice identification, information, communications, and forensics.

S. 2031

At the request of Mr. GRASSLEY, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 2031, a bill to combat waste, fraud, and abuse in payments for home health services provided under the medicare program, and to improve the quality of those home health services.

S. 2040

At the request of Mr. BAUCUS, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 2040, a bill to amend title XIX of the Social Security Act to extend the authority of State medicaid fraud control units to investigate and prosecute fraud in connection with Federal health care programs and abuse of residents of board and care facilities.

S. 2082

At the request of Mr. COCHRAN, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 2082, a bill to amend chapter 36 of title 39, United States Code, to provide authority to fix rates and fees for domestic and international postal services, and for other purposes.

S. 2151

At the request of Mr. NICKLES, the name of the Senator from New Hampshire (Mr. SMITH) was added as a cosponsor of S. 2151, a bill to clarify Federal law to prohibit the dispensing or distribution of a controlled substance for the purpose of causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual.

SENATE CONCURRENT RESOLUTION 94

At the request of Mr. LIEBERMAN, the names of the Senator from Maryland (Mr. SARBANES) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of Senate Concurrent Resolution 94, a concurrent resolution supporting the religious tolerance toward Muslims.

SENATE RESOLUTION 235

At the request of Mr. AKAKA, the names of the Senator from Connecticut (Mr. DODD), the Senator from Ohio (Mr. GLENN), the Senator from Texas (Mrs. HUTCHISON), the Senator from Arizona (Mr. MCCAIN), the Senator from Nevada (Mr. REID), the Senator from Maryland (Mr. SARBANES), the Senator from Oregon (Mr. SMITH), and the Senator from Virginia (Mr. WARNER) were added as cosponsors of Senate Resolution 235, a resolution commemorating 100 years of relations between the people of the United States and the people of the Philippines.

SENATE RESOLUTION 237

At the request of Mr. FEINGOLD, the names of the Senator from Illinois (Mr. DURBIN), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of Senate Resolution 237, a resolution expressing the sense of the Senate regarding the situation in Indonesia and East Timor.

SENATE CONCURRENT RESOLUTION 103—EXPRESSING THE SENSE OF THE CONGRESS IN SUPPORT OF THE INTERNATIONAL COMMISSION OF JURISTS ON TIBET AND ON UNITED STATES POLICY WITH REGARD TO TIBET

Mr. MOYNIHAN (for himself, Mr. HELMS, Mr. LEAHY, Mr. MACK, Mr. WELLSTONE, and Mr. FEINGOLD) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 103

Whereas the International Commission of Jurists is a non-governmental organization founded in 1952 to defend the Rule of Law throughout the world and to work towards the full observance of the provisions in the Universal Declaration of Human Rights;

Whereas in 1959, 1960, and 1964 the International Commission of Jurists examined Chinese policy in Tibet, violations of human rights in Tibet, and the position of Tibet in international law;

Whereas in 1960, the International Commission of Jurists found ''that acts of genocide had been committed in Tibet in an attempt to destroy the Tibetans as a religious group,...'' and concluded that Tibet was at least ''a de facto independent State'' prior to 1951 and that Tibet was a ''legitimate concern of the United Nations even on the restrictive interpretation of matters 'essentially within the domestic jurisdiction' of a State.'',

Whereas these findings were presented to the United Nations General Assembly, which adopted three resolutions (1959, 1961, and 1965) calling on the People's Republic of China to ensure respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life, and to cease practices which deprive the Tibetan people of their fundamental human rights and freedoms including their right to self-determination;

Whereas in December 1997, the International Commission of Jurists issued a fourth report on Tibet, examining human rights and the rule of law, including self-determination;

Whereas the President has repeatedly indicated his support for substantive dialogue between the Government of the People's Republic of China and the Dalai Lama or his representatives;

Whereas on October 31, 1997, the Secretary of State appointed a Special Coordinator for Tibetan Issues to oversee United States policy regarding Tibet: Now, therefore, be it

Resolved by the Senate (the House of Representative concurring), That Congress—

(1) expresses grave concern regarding the findings of the December 1997 International Commission of Jurists report on Tibet that——

(a) repression in Tibet has increased steadily since 1994, resulting in heightened control on religious activity; a denunciation campaign against the Dalai Lama unprecedented since the Cultural Revolution; an increase in political arrests; suppression of peaceful protests; and an accelerated movement of Chinese to Tibet; and

(b) in 1997, the People's Republic of China labeled the Tibetan Buddhist culture, which has flourished in Tibet since the seventh century, as a ''foreign culture'' in order to facilitate indoctrination of Tibetans in Chinese socialist ideology and the process of national and cultural extermination;

(2) support the recommendations contained in the report referred to in paragraph (1) that——

(a) call on the People's Republic of China——

(i) to enter into discussions with the Dalai Lama or his representatives on a solution to the question of Tibet based on the will of the Tibetan people;

(ii) to ensure respect for the fundamental human rights of the Tibetan people; and

(iii) to end those practices which threaten to erode the distinct cultural, religious and national identity of the Tibetan people and, in particular, to cease policies which result in the movement of Chinese people to Tibetan territory;

(b) call on the United Nations General Assembly to resume its debate on the question of Tibet based on its resolutions of 1959, 1961, and 1965, and to hold a referendum in Tibet; and

(c) calls on the Dalai Lama or his representatives to enter into discussions with the Government of the People's Republic of China on a solution to the question of Tibet based on the will of the Tibetan people;

(3) commends the appointment by the Secretary of State of a United States Special Coordinator for Tibetan Issues——

(a) to promote substantive dialogue between the Government of the People's Republic of China and the Dalai Lama or his representatives;

(b) to coordinate United States Government policies, programs, and projects concerning Tibet;

(c) to consult with the Congress on policies relevant to Tibet and the future and welfare of all Tibetan people, and to report to Congress in partial fulfillment of the requirements of Sec. 536(a) of Public Law 103–236; and

(d) to advance United States policy which seeks to protect the unique religious, cultural, and linguistic heritage of Tibet, and to encourage improved respect for Tibetan human rights;

(4) calls on the People's Republic of China to release from detention the 9-year old Panchen Lama, Gedhun Choekyi Nyima, to his home in Tibet from which he was taken on May 17, 1995, and to allow him to pursue his religious studies without interference and according to tradition; and

(5) call on the President, as a central objective of the 1998 presidential submit meeting with Jiang Zemin in Beijing, to secure an agreement to begin substantive negotiations between the Government of the People's Republic of China and the Dalai Lama or his representatives.

Mr. MOYNIHAN. Mr. President, I offer a resolution which speaks to many of the issues now facing the Tibetan people in their long struggle. This has been threatened for a half-century now, but there are efforts underway to resolve these issues. This resolution puts the Congress on record in support of these goals.

Begin with the International Commission of Jurists (ICJ), which has closely followed the situation in Tibet since the Dalai Lama was forced to flee into exile. In 1959, 1960, and 1964, the ICJ examined Chinese policies in Tibet and reported its findings to the Secretary-General of the United Nations. The 1960 report made the important international legal determination that ''acts of genocide had been committed

in Tibet in an attempt to destroy the Tibetans as a religious group . . .'' and concluded that Tibet was at least ''a de facto independent State'' prior to 1951.

Now the ICJ has returned to the issue of Tibet and produced another important report. It finds that repression in Tibet has increased since 1994. This is an assessment which my daughter Maura shares after having visited Tibet and having worked closely for many years with Tibetan refugees who continue to make the dangerous journey over the Himalayan mountains to flee persecution in their homeland.

In 1996 she returned from Tibet to report,

> . . . in recent months Beijing's leaders have renewed their assault on Tibetan culture, especially Buddhism, with and alarming vehemence. The rhetoric and the methods of the Cultural Revolution of the 1960s have been resurrected—reincarnated, what you will—to shape an aggressive campaign to vilify the Dalai Lama.

The Dalai Lama, of course, remains unstained, but it is time for the Chinese to consider a policy of ''constructive engagement'' of their own—with the Tibetans. The recent ICJ report calls on the People's Republic of China to enter into discussions with the Dalai Lama or his representatives on a solution to the question of Tibet. Mr. President, for many years now, the United States Congress has been calling for exactly this. I hope that while the President is in China, he will be able to convey the importance of this issue to secure a commitment from the Government of the People's Republic of China to begin such discussions with the Tibetans.

In 1979, Deng Xiaoping stated that ''except for the independence of Tibet, all other questions can be negotiated.'' The Dalai Lama has repeatedly stated his unambiguous willingness to begin substantive negotiations with the Chinese without preconditions, and that the issue of independence need not be on the agenda. This is not a concession easily made by the leader of the Tibetan people who, as the ICJ concluded in 1960, enjoyed de facto independence before the Chinese take-over. Nonetheless, he has made the offer sincerely, and repeatedly, and deserves a sincere response.

The United States can help elicit such a response. In addition to the opportunity posed by the upcoming visit by the President, we now have a Special Coordinator for Tibetan Issues, Gregory B. Craig, whom Secretary Albright appointed to achieve just such a result. A special coordinator is something that our beloved Claiborne Pell proposed in the 103d Congress and I am glad we have been able to achieve another one of his aspirations. Having a Special Coordinator for Tibetan Issues will better enable the Administration to facilitate a dialogue between the Dalai Lama and the Chinese Government.

Finally, Mr. President, atheists are rarely involved in choosing divine leaders, but the Chinese Communist Party has not only involved itself in the selection of the eleventh Panchen Lama, but Chinese officials have asserted that it is the party's sole right to make the selection, and they have detained the boy the Dalai Lama recognized as the next Panchen Lama. This resolution calls attention to this odious infringement on religious freedom.

The Tibetans—I think I am correct in saying—above all value their ability to practice religion. Religion infuse every aspect of Tibetan culture. We cannot begin to comprehend the affront to Tibetans of having an important religious figure detained and declared illegitimate by the Communist Party. Add to that affront that another boy is produced by the Party and proclaimed as the religious leader.

This resolution calls for the release of 9-year old Gedhun Choekyi Nyima, the boy selected by the Dalai Lama as the next Panchen Lama, who has been under detention for 3 years.

The Senate has always maintained strong support for the Tibetan cause. This resolution continues that tradition. I especially wish to thank my colleague, the Chairman of the Foreign Relations Committee, Senator HELMS, for his outstanding leadership on this issue. We are also joined in this effort by Senators LEAHY, MACK, WELLSTONE, and FEINGOLD. I thank them for their support.

SENATE RESOLUTION 246—AUTHORIZING THE TAKING OF A PHOTOGRAPH IN THE CHAMBER OF THE UNITED STATES SENATE

(Mr. LOTT (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 246

Resolved, That paragraph 1 of Rule IV of the Rules for the Regulation of the Senate Wing of the United States Capitol (prohibiting the taking of pictures in the Senate Chamber) be temporarily suspended for the sole and specific purpose of permitting an official photograph to be taken of the United States Senate in actual session on a date and time to be announced by the Majority Leader after consultation with the Democratic Leader.

SEC. 2. The Sergeant at Arms of the Senate is authorized and directed to make the necessary arrangements therefor, which arrangements shall provide for a minimum of disruption to Senate proceedings.

AMENDMENTS SUBMITTED

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

KOHL AMENDMENT NO. 2635

(Ordered to lie on the table.)

Mr. KOHL submitted an amendment intended to be proposed by him to the bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes; as follows:

At the appropriate place insert the following new section:

SEC. ___. PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY.

(a) SHORT TITLE.—This section may be cited as the ''Sunshine in Litigation Act of 1998''.

(b) PROTECTIVE ORDERS AND SEALING OF CASES.—Chapter 111 of title 28, United States Code, is amended by adding at the end the following new section:

''§ 1660. Protective orders and sealing of cases and settlements relating to public health or safety

''(a)(1) A court shall enter an order under rule 26(c) of the Federal Rules of Civil Procedure restricting the disclosure of information obtained through discovery, an order approving a settlement agreement that would restrict the disclosure of such information, or an order restricting access to court records in a civil case only after making particularized findings of fact that—

''(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

''(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

''(ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.

''(2) No order entered in accordance with paragraph (1) (other than an order approving a settlement agreement) shall continue in effect after the entry of final judgment, unless at or after such entry the court makes a separate particularized finding of fact that the requirements of paragraph (1) (A) or (B) have been met.

''(b) The party who is the proponent for the entry of an order, as provided under this section, shall have the burden of proof in obtaining such an order.

''(c)(1) No court of the United States may approve or enforce any provision of an agreement between or among parties to a civil action, or approve or enforce an order subject to subsection (a)(1), that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

''(2) Any such information disclosed to a Federal or State agency shall be confidential to the extent provided by law.''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 28, United States Code, is amended by adding after the item relating to section 1659 the following:

''1660. Protective orders and sealing of cases and settlements relating to public health or safety.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 30 days after the date of enactment of this Act and shall apply only to orders entered in civil actions or agreements entered into on or after such date.

DURBIN AMENDMENT NO. 2636

(Ordered to lie on the table.)

Mr. DURBIN submitted an amendment intended to be proposed by him to the bill, S. 1415, supra; as follows:

In title II, strike subtitle A and insert the following:

Subtitle A—Underage Use

SEC. 201. FINDINGS.

The Congress finds the following:

(1) Reductions in the underage use of tobacco products are critically important to the public health.

(2) Achieving this critical public health goal can be substantially furthered by increasing the price of tobacco products to discourage underage use if reduction targets are not achieved and by creating financial incentives for manufacturers to discourage youth from using their tobacco products.

(3) When reduction targets in underage use are not achieved on an industry-wide basis, the price increases that will result from an industry-wide assessment will provide an additional deterrence to youth tobacco use.

(4) Manufacturer-specific incentives that will be imposed if reduction targets are not met by a manufacturer provide a strong incentive for each manufacturer to make all efforts to discourage youth use of its brands and ensure the effectiveness of the industry-wide assessments.

SEC. 202. PURPOSE.

This title is intended to ensure that, in the event that other measures contained in this Act prove to be inadequate to produce substantial reductions in tobacco use by minors, tobacco companies will pay additional assessments. These additional assessments are designed to lower youth tobacco consumption in a variety of ways: by triggering further increases in the price of tobacco products, by encouraging tobacco companies to work to meet statutory targets for reductions in youth tobacco consumption, and by providing support for further reduction efforts.

SEC. 203. GOALS FOR REDUCING UNDERAGE TOBACCO USE.

(a) GOALS.—As part of a comprehensive national tobacco control policy, the Secretary, working in cooperation with State, Tribal, and local governments and the private sector, shall take all actions under this Act necessary to ensure that the required percentage reductions in underage use of tobacco products set forth in this title are achieved.

(b) REQUIRED REDUCTIONS FOR CIGARETTES.—With respect to cigarettes, the required percentage reduction in underage use, as set forth in section 204, means—

Calendar Year After Date of Enactment	Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Cigarette Use
Years 3 and 4	20 percent
Years 5 and 6	40 percent
Years 7, 8, and 9	55 percent
Year 10 and thereafter	67 percent

(c) REQUIRED REDUCTIONS FOR SMOKELESS TOBACCO.—With respect to smokeless tobacco products, the required percentage reduction in underage use, as set forth in section 204, means—

Calendar Year After Date of Enactment	Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Smokeless Tobacco Use
Years 3 and 4	12.5 percent
Years 5 and 6	25 percent
Years 7, 8, and 9	35 percent
Year 10 and thereafter	45 percent

SEC. 204. LOOK-BACK ASSESSMENT.

(a) ANNUAL PERFORMANCE SURVEY.—Beginning no later than 1999 and annually thereafter the Secretary shall conduct a survey, in accordance with the methodology in subsection (d)(1), to determine—

(1) the percentage of all young individuals who used a type of tobacco product within the past 30 days; and

(2) the percentage of young individuals who identify each brand of each type of tobacco product as the usual brand of that type smoked or used within the past 30 days.

(b) ANNUAL DETERMINATION.—The Secretary shall make an annual determination, based on the annual performance survey conducted under subsection (a), of whether the required percentage reductions in underage use of tobacco products for a year have been achieved for the year involved. The determination shall be based on the annual percent prevalence of the use of tobacco products, for the industry as a whole and of particular manufacturers, by young individuals (as determined by the surveys conducted by the Secretary) for the year involved as compared to the base incidence percentages.

(c) CONFIDENTIALITY OF DATA.—The Secretary may conduct a survey relating to tobacco use involving minors. If the information collected in the course of conducting the annual performance survey results in the individual supplying the information or described in it to be identifiable, the information may not be used for any purpose other than the purpose for which it was supplied unless that individual (or that individual's guardian) consents to its use for such other purpose. The information may not be published or released in any other form if the individual supplying the information or described in it is identifiable unless that individual (or that individual's guardian) consents to its publication or release in other form.

(d) METHODOLGY.—

(1) IN GENERAL.—The survey required by subsection (a) shall—

(A) be based on a nationally representative sample of young individuals;

(B) measure use of each type of tobacco product within the past 30 days;

(C) identify the usual brand of each type of tobacco product used within the past 30 days; and

(D) permit the calculation of the actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) based on the point estimates of the percentage of young individuals reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) from the annual performance survey.

(2) CRITERIA FOR DEEMING POINT ESTIMATES CORRECT.—Point estimates under paragraph (1)(D) are deemed conclusively to be correct and accurate for calculating actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a particular manufacturer) for the purpose of measuring compliance with percent reduction targets and calculating surcharges provided that the precision of estimates (based on sampling error) of the percentage of young individuals reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) is such that the 95-percent confidence interval around such point estimates is no more than plus or minus 1 percent.

(3) SURVEY DEEMED CORRECT, PROPER, AND ACCURATE.—A survey using the methodology required by this subsection is deemed conclusively to be proper, correct, and accurate for purposes of this Act.

(4) SECRETARY MAY ADOPT DIFFERENT METHODOLOGY.—The Secretary by notice and comment rulemaking may adopt a survey methodology that is different than the methodology described in paragraph (1) if the different methodology is at least as statistically precise as that methodology.

(e) INDUSTRY-WIDE NON-ATTAINMENT SURCHARGES.—

(1) SECRETARY TO DETERMINE INDUSTRY-WIDE NON-ATTAINMENT PERCENTAGE.—The Secretary shall determine the industry-wide non-attainment percentage for cigarettes and for smokeless tobacco for each calendar year.

(2) NON-ATTAINMENT SURCHARGE FOR CIGARETTES.—For each calendar year in which the percentage reduction in underage use required by section 203(b) is not attained, the Secretary shall assess a surcharge on cigarette manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percentage points	$40,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 20 percentage points	$200,000,000, plus $120,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 20 percentage points
More than 20 percentage points	$2,000,000,000

(3) NON-ATTAINMENT SURCHARGE FOR SMOKELESS TOBACCO.—For each year in which the percentage reduction in underage use required by section 203c) is not attained, the Secretary shall assess a surcharge on smokeless tobacco product manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percentage points	$4,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 20 percentage points	$20,000,000, plus $12,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 20 percentage points
More than 20 percentage points	$200,000,000

(4) STRICT LIABILITY; JOINT AND SEVERAL LIABILITY.—Liability for any surcharge imposed under subsection (e) shall be—

(A) strict liability; and

(B) joint and several liability—

(i) among all cigarette manufacturers for surcharges imposed under subsection (e)(2); and

(ii) among all smokeless tobacco manufacturers for surcharges imposed under subsection (e)(3).

(5) SURCHARGE LIABILITY AMONG MANUFACTURERS.—A tobacco product manufacturer shall be liable under this subsection to one or more other manufacturers if the plaintiff tobacco product manufacturer establishes by a preponderance of the evidence that the defendant tobacco product manufacturer, through its acts or omissions, was responsible for a disproportionate share of the non-attainment surcharge as compared to the responsibility of the plaintiff manufacturer.

(6) EXEMPTIONS FOR SMALL MANUFACTURERS.—

(A) ALLOCATION BY MARKET SHARE.—The Secretary shall make such allocations according to each manufacturer's share of the domestic cigarette or domestic smokeless tobacco market, as appropriate, in the year for which the surcharge is being assessed, based on actual Federal excise tax payments.

(B) EXEMPTION.—In any year in which a surcharge is being assessed, the Secretary shall exempt from payment any tobacco product manufacturer with less than 1 percent of the domestic market share for a specific category of tobacco product unless the Secretary finds that the manufacturer's products are used by underage individuals at a rate equal to or greater than the manufacturer's total market share for the type of tobacco product.

(f) MANUFACTURER-SPECIFIC SURCHARGES.—

(1) REQUIRED PERCENTAGE REDUCTIONS.—Each manufacturer which manufactured a brand or brands of tobacco product on or before the date of the enactment of this Act shall reduce the percentage of young individuals who use such manufacturer's brand or brands as their usual brand in accordance with the required percentage reductions described under subsections (b) (with respect to cigarettes) and (c) (with respect to smokeless tobacco).

(2) APPLICATION TO LESS POPULAR BRANDS.—Each manufacturer which manufactured a brand or brands of tobacco product on or before the date of the enactment of this Act for which the base incidence percentage is equal to or less than the *de minimis* level shall ensure that the percent prevalence of young individuals who use the manufacturer's tobacco products as their usual brand remains equal to or less than the *de minimis* level described in paragraph (4).

(3) NEW ENTRANTS.—Each manufacturer of a tobacco product which begins to manufacture a tobacco product after the date of the enactment of this Act shall ensure that the percent prevalence of young individuals who use the manufacturer's tobacco products as their usual brand is equal to or less than the *de minimis* level.

(4) DE MINIMIS LEVEL DEFINED.—The *de minimis* level is equal to 1 percent prevalence of the use of each manufacturer's brands of tobacco product by young individuals (as determined on the basis of the annual performance survey conducted by the Secretary) for a year.

(5) TARGET REDUCTION LEVELS.—

(A) EXISTING MANUFACTURERS.— For purposes of this section, the target reduction level for each type of tobacco product for a year for a manufacturer is the product of the required percentage reduction for a type of tobacco product for a year and the manufacturers base incidence percentage for such tobacco product.

(B) NEW MANUFACTURERS; MANUFACTURERS WITH LOW BASE INCIDENCE PERCENTAGES.—With respect to a manufacturer which begins to manufacture a tobacco product after the date of the enactment of this Act or a manufacturer for which the baseline level as measured by the annual performance survey is equal to or less than the *de minimis* level described in paragraph (4), the base incidence percentage is the *de minimis* level, and the required percentage reduction in underage use for a type of tobacco product with respect to a manufacturer for a year shall be deemed to be the percentage reduction necessary to reduce the actual percent prevalence of young individuals identifying a brand of such tobacco product of such manufacturer as the usual brand smoked or used for such year to the *de minimis* level.

(6) SURCHARGE AMOUNT.—

(A) IN GENERAL.—If the Secretary determines that the required percentage reduction in use of a type of tobacco product has not been achieved by such manufacturer for a year, the Secretary shall impose a surcharge on such manufacturer under this paragraph.

(B) CIGARETTES.—For a cigarette manufacturer, the amount of the manufacturer-specific surcharge shall be an amount equal to the manufacturer's share of youth incidence for cigarettes multiplied by the following surcharge level:

If the non-attainment percentage for the manufacturer is:	The surcharge level is:
Not more than 5 percentage points	$80,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 24.1 percentage points	$400,000,000, plus $240,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 24.1 percentage points
More than 24.1 percentage points	$5,000,000,000

(C) SMOKELESS TOBACCO.—For a smokeless tobacco product manufacturer, the amount of the manufacturer-specific surcharge shall be an amount equal to the manufacturer's share of youth incidence for smokeless tobacco products multiplied by the following surcharge level:

If the non-attainment percentage for the manufacturer is:	The surcharge level is:
Not more than 5 percentage points	$8,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 24.1 percentage points	$40,000,000, plus $24,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 24.1 percentage points
More than 24.1 percentage points	$500,000,000

(D) MANUFACTURER'S SHARE OF YOUTH INCIDENCE.—For purposes of this subsection, the term ''manufacturer's share of youth incidence'' means—

(i) for cigarettes, the percentage of all youth smokers determined to have used that manufacturer's cigarettes; and

(ii) for smokeless tobacco products, the percentage of all youth users of smokeless tobacco products determined to have used that manufacturer's smokeless tobacco products.

(E) DE MINIMIS LEVELS.—If a manufacturer begins to manufacturer a tobacco product after the date of enactment of this Act or the manufacturer's baseline level for a type of tobacco product is less than the de minimis level, the non-attainment percentage (for purposes of subparagraph (B) or (C)) shall be equal to the number of percentage points yielded from the percentage by which the percentage of children who used the manufacturer's tobacco products of the applicable type exceeds the de minimis level.

(g) SURCHARGES TO BE ADJUSTED FOR INFLATION.—

(1) IN GENERAL.—Beginning with the fourth calendar year after the date of enactment of this Act, each dollar amount in the tables in subsections (e)(2), (e)(3), (f)(6)(B), and (f)(6)(C) shall be increased by the inflation adjustment.

(2) INFLATION ADJUSTMENT.—For purposes of paragraph (1), the inflation adjustment for any calendar year is the percentage (if any) by which—

(A) the CPI for the preceding calendar year, exceeds

(B) the CPI for the calendar year 1998.

(3) CPI.—For purposes of paragraph (2), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(4) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

(h) METHOD OF SURCHARGE ASSESSMENT.—The Secretary shall assess a surcharge for a specific calendar year on or before May 1 of the subsequent calendar year. Surcharge payments shall be paid on or before July 1 of the year in which they are assessed. The Secretary may establish, by regulation, interest at a rate up to 3 times the prevailing prime rate at the time the surcharge is assessed, and additional charges in an amount up to 3 times the surcharge, for late payment of the surcharge.

(i) BUSINESS EXPENSE DEDUCTION.—Any surcharge paid by a tobacco product manufacturer under this section shall not be deductible as an ordinary and necessary business expense or otherwise under the Internal Revenue Code of 1986.

(j) APPEAL RIGHTS.—The amount of any surcharge is committed to the sound discretion of the Secretary and shall be subject to judicial review by the United States Court of Appeals for the District of Columbia Circuit, based on the arbitrary and capricious standard of section 706(2)(A) of title 5, United States Code. Notwithstanding any other provisions of law, no court shall have authority to stay any surcharge payments due the Secretary under this Act pending judicial review.

(k) RESPONSIBILITY FOR AGENTS.—In any action brought under this subsection, a tobacco product manufacturer shall be held responsible for any act or omission of its attorneys, advertising agencies, or other agents that contributed to that manufacturer's responsibility for the surcharge assessed under this section.

SEC. 205. DEFINITIONS.

In this subtitle:

(1) BASE INCIDENCE PERCENTAGE.—The term ''base incidence percentage'' means, with respect to each type of tobacco product, the percentage of young individuals determined to have used such tobacco product in the first annual performance survey for 1999.

(2) MANUFACTURERS BASE INCIDENCE PERCENTAGE.—The term ''manufacturers base incidence percentage'' is, with respect to each type of tobacco product, the percentage of young individuals determined to have identified a brand of such tobacco product of such manufacturer as the usual brand smoked or used in the first annual performance survey for 1999.

(3) YOUNG INDIVIDUALS.—The term ''young individuals'' means individuals who are over 11 years of age and under 18 years of age.

(4) CIGARETTE MANUFACTURERS.—The term ''cigarette manufacturers'' means manufacturers of cigarettes sold in the United States.

(5) NON-ATTAINMENT PERCENTAGE FOR CIGARETTES.—The term ''non-attainment percentage for cigarettes'' means the number of percentage points yielded—

(A) for a calendar year in which the percent incidence of underage use of cigarettes is less than the base incidence percentage, by subtracting—

(i) the percentage by which the percent incidence of underage use of cigarettes in that year is less than the base incidence percentage, from

(ii) the required percentage reduction applicable in that year; and

(B) for a calendar year in which the percent incidence of underage use of cigarettes is greater than the base incidence percentage, adding—

(i) the percentage by which the percent incidence of underage use of cigarettes in that year is greater than the base incidence percentage; and

(ii) the required percentage reduction applicable in that year.

(6) NON-ATTAINMENT PERCENTAGE FOR SMOKELESS TOBACCO PRODUCTS.—The term ''non-attainment percentage for smokeless tobacco products'' means the number of percentage points yielded—

(A) for a calendar year in which the percent incidence of underage use of smokeless tobacco products is less than the base incidence percentage, by subtracting—

(i) the percentage by which the percent incidence of underage use of smokeless tobacco products in that year is less than the base incidence percentage, from

(ii) the required percentage reduction applicable in that year; and

(B) for a calendar year in which the percent incidence of underage use of smokeless tobacco products is greater than the base incidence percentage, by adding—

(i) the percentage by which the percent incidence of underage use of smokeless tobacco products in that year is greater than the base incidence percentage; and

(ii) the required percentage reduction applicable in that year.

(7) SMOKELESS TOBACCO PRODUCT MANUFACTURERS.—The term ''smokeless tobacco product manufacturers'' means manufacturers of smokeless tobacco products sold in the United States.

LEAHY (AND DEWINE) AMENDMENT NO. 2637

(Ordered to lie on the table.)

Mr. LEAHY (for himself and Mr. DEWINE) submitted an amendment intended to be proposed by them to the bill, S. 1415, supra; as follows:

On page 376, line 23, insert after ''fined'' the following: ''in an amount up to 3 times the dollar amount of the taxes avoided or attempted to be avoided through the action that constitutes such a violation, fined''.

On page 379, line 13, strike ''and''.

On page 380, line 12, strike the end quotation marks and the second period and insert ''; and''.

On page 380, between lines 12 and 13, insert the following:

''(8) the term 'structured transaction' means any shipment, transportation, receipt, possession, sale, distribution or purchase of fewer than 30,000 contraband cigarettes or contraband tobacco products in more than one such instance, or combination of such instances, by one person, or two or more persons acting in concert, with the intention of evading the requirements of this section, in which the cumulative amount of such contraband cigarettes or tobacco products equals or exceeds 30,000.''.

On page 380, line 16, strike ''and''.

On page 380, between lines 16 and 17, insert the following:

''(2) in subsection (b), by inserting before the period the following: ''or structured transaction''.

On page 380, line 17, strike ''(2)'' and insert ''(3)''.

On page 383, line 12, insert before the semicolon the following: ''in a single or structured transaction''.

On page 383, line 21, strike ''and''.

On page 383, line 25, strike the end quotation marks and the second period and insert ''; and''.

On page 383, after line 25, add the following:

'' '(e) The Secretary of the Treasury shall prescribe regulations to address structured transactions for purposes of section 2342. Such regulations shall permit the cumulation of closely related events in order that such events may be considered collectively.'

''(4) in subsection (a), by inserting after 'fined' the following: 'in an amount up to 3 times the dollar amount of the taxes avoided or attempted to be avoided through the action that constitutes such a violation, fined'.''.

On page 385, between lines 8 and 9, insert the following:

SEC. 1141. SENTENCING FOR ILLEGAL TRAFFICKING IN TOBACCO PRODUCTS.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend its guidelines and its policy statements, if appropriate, for all unlawful acts of trafficking in tobacco products. The Commission shall submit to Congress explanations therefore and any additional policy recommendations for combating tobacco offenses.

(b) IN GENERAL.—In carrying out this section, the United States Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements for offenders convicted of offenses described in subsection (a), and any recommendations submitted under such subsection, reflect the strong public policy against such offenses, recognize the health risks of tobacco products and the special risks to minors of tobacco addiction, reflect the pivotal potential role of tobacco manufacturers in large-scale smuggling schemes, and carry sufficient penalties to deter and punish any involvement by tobacco product manufacturers and others, including—

(A) sales of cigarettes to minors;

(B) trafficking in contraband tobacco products;

(C) failure to pay any tax on or mark any tobacco product, or participation in the repackaging of marked tobacco products;

(D) shipment of tobacco products outside the United States for unauthorized reshipment into the United States; and

(E) the use of force or violence in the course of trafficking in tobacco products;

(2) consider amending the sentencing guidelines and policy statements to provide enhanced sentences for any defendant, who, in the course of an offense described in subsection (a)—

(A) encourages, or acts in willful ignorance of encouragement of, sales of tobacco products to any person under age 18;

(B) is or acts in cooperation with an officer or managing or supervising official of any tobacco manufacturer;

(C) is an official of any government or recruits or makes any bribe or other illegal payment to any official of any government, including any tribal government or any foreign government;

(D) uses sophisticated means to impede discovery of the existence or extent of the offense;

(E) is a corporation engaged in manufacture of tobacco products;

(F) uses a firearm or other dangerous weapon; or

(G) recruits or cooperates with or acts in willful ignorance of the activities of a person who is known to have a significant prior criminal record;

(3) amend the sentencing guidelines to provide a separate and enhanced schedule of fines for tobacco offenses;

(4) assure reasonable consistency with other relevant directives and with other guidelines;

(5) avoid duplicative punishment for substantially the same offense or offender characteristic;

(6) account for any aggravating or mitigating circumstances that might justify exceptions;

(7) ensure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code; and

(8) take any other action the Commission considers necessary to carry out this section.

In section ___99E (as added by amendment number 2451)—

(1) strike ''and'' at the end of paragraph (4)(C);

(2) strike the period at the end of paragraph (5) and insert ''; and''; and

(3) add at the end the following:

''(6) making grants, to be administered by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of Health and Human Services, to States for State and local law enforcement of anti-smuggling provisions of this Act.

FORD AMENDMENTS NOS. 2638–2681

(Ordered to lie on the table.)

Mr. FORD submitted 44 amendments intended to be proposed by him to the bill, S. 1415, supra; as follows:

AMENDMENT NO. 2638

Strike all beginning with page 25, line 1, and insert the following:

AMENDMENT NO. 2639

In lieu of the matter proposed to be inserted, strike all beginning with page 25, line 1, and insert the following:

AMENDMENT NO. 2640

Strike page 107, line 5 through page 182, line 21, and insert the following: a surcharge on cigarette manufacturers as follows:

If the non-attainment percentage is	The surcharge is
Not more than 5 percent	$160,000,000 multiplied by the non-attainment percentage.
More than 5% but not more than 10%.	$800,000,000, plus $320,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%.
More than 10%	$2,400,000, plus $480,000,000 multiplied by the non-attainment percentage in excess of 10%.
More than 21.6%	$8,000,000,000.

AMENDMENT NO. 2641

In lieu of the matter proposed to be inserted, strike page 107, line 5 through page 182, line 21, and insert the following: a surcharge on cigarette manufacturers as follows:

If the non-attainment percentage is	The surcharge is
Not more than 5 percent	$160,000,000 multiplied by the non-attainment percentage.
More than 5% but not more than 10%.	$800,000,000, plus $320,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%.
More than 10%	$2,400,000, plus $480,000,000 multiplied by the non-attainment percentage in excess of 10%.
More than 21.6%	$8,000,000,000.

AMENDMENT NO. 2642

On page 24, line 6, after ''increasing'' insert ''materially''.

AMENDMENT NO. 2643

On page 19, after line 10, insert the following new subsection and renumber all subsequent sections accordingly:

''(1) BLACK MARKET TOBACCO PRODUCT.—The term ''black market tobacco product'' means any tobacco product sold or distributed in the United States without payment of all applicable State or Federal excise taxes.''

AMENDMENT NO. 2644

On page 44, on line 23 change ''60'' to ''90''.

AMENDMENT NO. 2645

On page 44, on line 24 change ''90'' to ''120''.

AMENDMENT NO. 2646

On page 47, beginning on line 15 insert the following new subparagraph (i) and renumber the subsequent subparagraphs accordingly:

''(i) before issuing any regulation under subparagraph (A), consult with the Secretary of Labor, the United States Trade Representative and the Secretary of Agriculture to determine what effect that any proposed regulation shall have upon domestic employment

within the United States and, in consultation with each of these other agencies, issue a joint finding that the regulation to be issued under subparagraph (A) shall not adversely affect agricultural employment or manufacturing employment in the United States.''

AMENDMENT NO. 2647

On page 47, at line 23, delete '';'' and insert the following after ''hearing'': '', and all tobacco manufacturers shall have at least 120 days notice of such hearing and shall be extended an opportunity to appear at an oral hearing.''

AMENDMENT NO. 2648

On page 49, line 15 change ''may'' to ''shall''.

AMENDMENT NO. 2649

On page 55, after line 10 insert a new paragraph (5) as follows:

''(5) CONSULTATION WITH UNITED STATES TRADE REPRESENTATIVE AND SECRETARY OF AGRICULTURE.—Prior to issuing any regulations under this section, the Secretary shall consult with the United States Trade Representative and the Secretary of Agriculture. Before any regulation issued under this section may become final—

''(A) the Secretary shall issue a joint finding with the United States Trade Representative which certifies that the regulation does not violate any treaty or international obligation to which the United States is a party; and

''(B) the Secretary shall issue a joint finding with the Secretary of Agriculture which certifies that the proposed regulation shall not have an adverse effect on the domestic or international competitiveness of tobacco growers in the United States.''

AMENDMENT NO. 2650

On page 57, line 5 delete ''60'' and insert in lieu thereof ''180''.

AMENDMENT NO. 2651

On page 58, line 21 delete ''2'' and insert in lieu thereof ''5''.

AMENDMENT NO. 2652

On page 58, line 17 delete ''to zero'' and insert in lieu thereof ''by fifty percent or more''.

AMENDMENT NO. 2653

On page 59, strike lines 1 through 13 and insert in lieu thereof the following:

''By regulation promulgated after a period of notice and comment of at least 180 days, the Secretary may amend or revoke a performance standard. The Secretary shall be prohibited from issuing any regulation under this section that accelerates the effective date of a performance standard.''

AMENDMENT NO. 2654

On page 60, line 24 after ''substantial'' insert ''immediate''.

AMENDMENT NO. 2655

On page 62, line 3 before ''harm'' insert ''and immediate''.

AMENDMENT NO. 2656

On page 72, line 10, delete ''180''' and insert in lieu thereof ''90''.

AMENDMENT NO. 2657

On page 82, line 8 insert the following new subsection:

''(a) IMPLEMENTING REGULATIONS.—The Secretary shall not institute any requirements under this section unless and until the Secretary has issued final regulations, after proposing such regulations for a public comment period of at least 120 days. In no event shall the Secretary issue interim regulations within an effective date that precedes the expiration of the 120-day public comment period.''

AMENDMENT NO. 2658

On page 102, line 9 insert ''product'' immediately following ''tobacco''.

AMENDMENT NO. 2659

On page 102, line 11 immediately after ''private sector,'' insert the following: ''including representatives from tobacco manufacturers, distributors, retailers and growers,''.

AMENDMENT NO. 2660

On page 104 line 2 insert the following sentence after ''percentages.'': ''The Secretary shall also determine the percent incidence of underage use of black market tobacco products using the same calculations, the same categories, and the same years as used to determine the percentage incidence of underage use of cigarettes and smokeless tobacco products.''

AMENDMENT NO. 2661

On page 122 line 22 insert the following and renumber accordingly: ''(iii) the extent to which underage youth are using black market tobacco products within the State and the activity that the State has undertaken to reduce the teenage use of black market activities;''

AMENDMENT NO. 2662

On page 141 after line 12, insert the following new subsection:

''(f) INFORMATION RELATED TO BLACK MARKET TOBACCO PRODUCTS.—The Secretary shall require any grant recipient that administers a smoking cessation program under this section to survey all participants of such cessation programs. This purpose of this survey shall be to determine the attitudes among program participants concerning the general awareness of black market tobacco products, the frequency of use of black market tobacco products, and the demographic characteristics of users of black market tobacco products.''

AMENDMENT NO. 2663

On page 165, line 8, delete ''January 1, 2000'' and insert in lieu thereof ''January 1, 2002''.

AMENDMENT NO. 2664

On page 168 on line 20 insert the following at the end of paragraph (3); ''Any rulemaking conducted under this section shall be conducted to a notice and comment period which shall be at least 180 days and, in no event, shall the Secretary issue regulations which take effect sooner than 180 days after publication in the Federal Register.''

AMENDMENT NO. 2665

On page 175 on line 23 insert the following immediately after ''products.'': ''Any rulemaking conducted under this section shall be conducted under a notice and comment period which shall be at least 180 days and, in no event, shall the Secretary issue regulations which take effect sooner than 180 days after publication in the Federal Register.''

AMENDMENT NO. 2666

On page 177 after line 20 insert the following new subsection (D): ''(D) Any rulemaking conducted under this section shall be conducted under a notice and comment period which shall be at least 180 days and, in no event, shall the Secretary issue regulations which take effect sooner than 180 days after publication in the Federal Register.''

AMENDMENT NO. 2667

On page 178, on line 6, delete ''later than 24 months'' and insert in lieu thereof ''sooner than 36 months''.

AMENDMENT NO. 2668

On page 179 after line 4 insert the following new subsection (d):

''(d) Any rulemaking conducted under this section shall be conducted under a notice and comment period which shall be at least 180 days and, in no event, shall the Secretary issue regulations which take effect sooner than 180 days after publication in the Federal Register.''

AMENDMENT NO. 2669

On Page 188, after line 11, insert the following new subsection:

''(g) ADJUSTMENT FOR INCORRECT PAYMENTS.—The Secretary of the Treasury may order an adjustment for prior year payments, other than the first annual payment, upon a showing by a participating manufacturer that any payment in a previous year has been made on the basis of an incorrect annual apportionment. If the Secretary of the Treasury determines that prior payments must be adjusted, the Secretary of the Treasury shall then reapportion the annual payments for the previous year in dispute, and make adjustments as follows—

''(1) Any participating manufacturer found to have made an overpayment shall receive a credit toward future payments due under this section. The credit shall include the amount of the overpayment, together with interest computed as provided for in subsection (a). Interest shall accrue from the date of the overpayment until the date upon which the next payment is due under this section.

''(2) If the Secretary of the Treasury finds that a participating manufacturer must make additional payments because of an adjustment under this subsection, the payment shall include the amount of the underpayment, together with interest computed as provided for in subsection (a). The payments shall be due no later than 30 days after the Secretary of the Treasury notifies the participating manufacturers of the underpayment. Interest shall accrue from the date of the underpayment until the date on which the payment is received.''

AMENDEMENT NO. 2670

On page 214, on line 7, delete ''Citizen Actions'' and insert ''Enforcement and Penalties''.

AMENDMENT NO. 2671

On page 214, lines 9 and 10, delete ''any aggrieved person, or any State or local agency,'' and insert ''or any State or local agency''.

AMENDMENT NO. 2672

On page 211, on lines 7 and 8, delete ''10 or more individuals at least 1 day per week'' and insert in lieu thereof ''50 or more individuals at least 4 days per week''.

AMENDMENT NO. 2673

On page 211, on lines 7 and 8, delete ''10 or more individuals at least 1 day per week'' and insert in lieu thereof ''10 or more individuals at least 4 days per week''.

AMENDMENT NO. 2674

On page 214, line 22, delete ''60'' and insert ''180''.

AMENDMENT NO. 2675

On page 215 on line 2, delete ''60-day'' and insert ''120-day''.

AMENDMENT NO. 2676

On page 215, delete lines 3 through 7 and reletter the next subsection.

AMENDMENT NO. 2677

On page 216, on line 2, insert the following at the end of section 505:

''Any rulemaking conducted under this section shall provide a notice and comment period which shall be at least 180 days and, in no event, shall the Assistant Secretary issue any regulations which take effect sooner than 180 days after publication in the Federal Register.''

AMENDMENT NO. 2678

On page 216, delete lines 11 through 18 and insert in lieu thereof:

''This title shall not apply to any State, unless that State adopts a law that applies this title within its jurisdiction.''

AMENDMENT NO. 2679

On page 217, after line 13 insert a new paragraph and renumber subsequent paragraphs accordingly:

''(3) recognize the potential for this Act to create a black market for tobacco products on Indian lands and ensure that tribal governments, the Federal government and state and local governments cooperate to the maximum extent possible to reduce the potential for the manufacture, distribution, sale, and use of black market tobacco products on Indian lands;''

AMENDMENT NO. 2680

On page 227, after line 3, insert a new subsection (h) as follows:

''(h) REDUCTION OF BLACK MARKET.—Each Indian tribe shall establish a program to monitor the manufacture, distribution, sale and use of black market tobacco products on Indian lands and designate a government official to work with officials from the Federal, State and local governments to the fullest extent possible to minimize the manufacture, distribution, sale, and use of black market tobacco products on Indian lands. Within 60 days of the effective date of this Act, and no later than January 1 of each year thereafter, each Indian tribe shall submit the name, title and address of this responsible government official to the Secretary. The Secretary shall compile and update annually a list of these Tribal officials and make this list available to any Federal, State and local officials who request the information.''

AMENDMENT NO. 2681

On page 233, after line 25, insert the following new section:

''SEC. 703. IMMUNITY FOR TOBACCO GROWERS, COOPERATIVES OR WAREHOUSES.

''(a) GENERAL PURPOSE.—This section is intended to provide tobacco growers, tobacco cooperatives, and tobacco warehouses immunity from any Federal or State, civil or criminal actions arising out health-related claims concerning the use of tobacco products.

''(b) GENERAL PREEMPTION.—No civil action or criminal action in any court of the United States or in any State asserting a tobacco claim shall be brought against any tobacco grower, tobacco association or cooperative or owner or employee of such association or cooperative, or tobacco warehouse or owner or employee of such warehouse, if such claim arises out of actions or failures to act during the cultivation, harvesting, marketing, distribution or sale of tobacco leaf.

''(c) DEFINITIONS.—For purposes of this section—

''(1) CIVIL ACTION.—The term 'civil action' means any Federal or State action, lawsuit or proceeding that is not a criminal action.

''(2) TOBACCO CLAIM.—The term 'tobacco claim' means a claim directly or indirectly arising out of, based on, or related to the health-related effects of tobacco products, including without limitation a claim arising out of, based on, or related to allegations regarding any conduct, statement or omission respecting the health-related effects of such products. Tobacco claim also means any State or Federal action for relief which is predicated upon claims of addictions to, or dependence on, tobacco products, even if such claims are not based upon the manifestation of tobacco-related diseases.

''(3) TOBACCO GROWER.—The term 'tobacco grower' means any individual or entity that owns or has owned a farm for which a tobacco farm marketing quota or farm acreage allotment was established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.), as well as any tobacco farmer that leases or has leased such a quota or allotment or produces or has produced tobacco under such quota or allotment pursuant to a lease, transfer, or tenant or sharecropping arrangement.

''(4) TOBACCO PRODUCT.—The term 'tobacco product' means cigarettes, cigarette tobacco, smokeless tobacco, little cigars, roll-your-own tobacco, and fine cut tobacco products.

''(d) RELATIONSHIP TO OTHER LAWS.—This section shall supersede Federal and State laws only to the extent that Federal and State laws are inconsistent with this section.''

HOLLINGS (AND OTHERS) AMENDMENTS NOS. 2682–2683

(Ordered to lie on the table.)

Mr. HOLLINGS (for himself, Mr. ROBB, and Mr. FORD) submitted two amendments intended to be proposed by them to amendment No. 2492 proposed by Mr. LUGAR to the bill, S. 1415, supra; as follows:

AMENDMENT NO. 2682

In lieu of the matter proposed to be struck, insert the following:

SEC. 1024. FLUE-CURED TOBACCO PRODUCTION PERMITS.

The Agricultural Adjustment Act of 1938 is amended by inserting after section 317 (7 U.S.C. 1314c) the following:

''SEC. 317A. FLUE-CURED TOBACCO PRODUCTION PERMITS.

''(a) DEFINITIONS.—In this section:

''(1) INDIVIDUAL ACREAGE LIMITATION.—The term ''individual acreage limitation' means the number of acres of flue-cured tobacco that may be planted by the holder of a permit during a marketing year, calculated—

''(A) prior to—

''(i) any increase or decrease in the number due to undermarketings or overmarketing; and

''(ii) any reduction under subsection (i); and

''(B) in a manner that ensures that—

''(i) the total of all individual acreage limitations is equal to the national acreage allotment, less the reserve provided under subsection (h); and

''(ii) the individual acreage limitation for a marketing year bears the same ratio to the individual acreage limitation for the previous marketing year as the ratio that the national acreage allotment for the marketing year bears to the national acreage allotment for the previous marketing year, subject to adjustments by the Secretary to account for any reserve provided under subsection (h).

''(2) INDIVIDUAL MARKETING LIMITATION.—The term ''individual marketing limitation' means the number of pounds of flue-cured tobacco that may be marketed by the holder of a permit during a marketing year, calculated—

''(A) prior to—

''(i) any increase or decrease in the number due to undermarketings or overmarketing; and

''(ii) any reduction under subsection (i); and

''(B) in a manner that ensures that—

''(i) the total of all individual marketing limitations is equal to the national marketing quota, less the reserve provided under subsection (h); and

''(ii) the individual marketing limitation for a marketing year is obtained by multiplying the individual acreage limitation by the permit yield, prior to any adjustment for undermarketing or overmarketings.

''(3) INDIVIDUAL TOBACCO PRODUCTION PERMIT.—The term 'individual tobacco production permit' means a permit issued by the Secretary to a person authorizing the production of flue-cured tobacco for any marketing year during which this section is effective.

''(4) NATIONAL ACREAGE ALLOTMENT.—The term 'national acreage allotment' means the quantity determined by dividing—

''(A) the national marketing quota; by

''(B) the national average yield goal.

''(5) NATIONAL AVERAGE YIELD GOAL.—The term 'national average yield goal' means the national average yield for flue-cured tobacco during the 5 marketing years immediately preceding the marketing year for which the determination is being made.

''(6) NATIONAL MARKETING QUOTA.—For the 1999 and each subsequent crop of flue-cured tobacco, the term 'national marketing quota' for a marketing year means the quantity of flue-cured tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

''(A) the aggregate of the quantities of flue-cured tobacco that domestic manufacturers of cigarettes estimate that the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as complied and determined under section 320A;

''(B) the average annual quantity of flue-cured tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

''(C) the quantity, if any, of flue-cured tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of flue-cured tobacco to establish or maintain the inventory at the reserve stock level for the flue-cured tobacco.

''(7) PERMIT YIELD.—The term 'permit yield' means the yield of tobacco per acre for an individual tobacco production permit holder that is—

''(A) based on a preliminary permit yield that is equal to the average yield during the 5 marketing years immediately preceding the marketing years for which the determination is made in the country where the holder of the permit is authorized to plant flue-cured tobacco, as determined by the Secretary, on the basis of actual yields of farms in the country; and

''(B) adjusted by a weighted national yield factor calculated by—

''(i) multiplying each preliminary permit yield by the individual acreage limitation, prior to adjustments for overmarketing, undermarketings, undermarketings, or reductions required under subsection (i); and

''(ii) dividing the sum of the products under clause (i) for all flue-cured individual tobacco production permit holders by the national acreage allotment.

''(b) INITIAL ISSUANCE OF PERMITS.—

''(1) TERMINATION OF FLUE-CURED MARKETING QUOTAS.—On the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, farm marketing quotas as provided under section 317 shall no longer be in effect for flue-cured tobacco.

''(2) ISSUANCE OF PERMITS TO QUOTA HOLDERS THAT WERE PRINCIPAL PRODUCERS.—

''(A) IN GENERAL.—By January 15, 1999, each individual quota holder under section 317 that was a principal producer of flue-cured tobacco during the 1998 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

''(B) NOTIFICATION.—The Secretary shall notify the holder of each permit of the individual acreage limitation and the individual marketing limitation applicable to the holder for each marketing year.

''(C) INDIVIDUAL ACREAGE LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

''(D) INDIVIDUAL MARKETING LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the farm marketing quota that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual marketing limitation for the previous marketing year.

''(3) QUOTA HOLDERS THAT WERE NOT PRINCIPAL PRODUCERS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), on approval through a referendum under subsection (c)—

''(i) each person that was a quota holder under section 317 but that was not a principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall not be eligible to own a permit; and

''(ii) the Secretary shall not issue any permit during the 25-year period beginning on the date of enactment of this Act to any person that was a quota holder and was not the principal producer of flue-cured tobacco during the 1997 marketing year.

''(B) MEDICAL HARDSHIPS AND CROP DISASTERS.—Subparagraph (A) shall not apply to a person that would have been the principal producer of flue-cured tobacco during the 1997 marketing year but for a medical hardship or crop disaster that occurred during the 1997 marketing year.

''(C) ADMINISTRATION.—The Secretary shall issue regulations—

''(i) defining the term 'person' for the purpose of this paragraph; and

''(ii) prescribing such rules as the Secretary determines are necessary to ensure a fair and reasonable application of the prohibition established under this paragraph.

''(4) ISSUANCE OF PERMITS TO PRINCIPAL PRODUCERS OF FLUE-CURED TOBACCO.—

''(A) IN GENERAL.—By January 15, 1999, each individual quota lessee or quota tenant (as defined in section 1002 of the LEAF Act) that was the principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

''(B) INDIVIDUAL ACREAGE LIMITATIONS.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by a quota holder for whom the quota lessee or quota tenant was the principal producer of flue-cured tobacco during the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

''(C) INDIVIDUAL MARKETING LIMITATIONS.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the individual marketing limitation for the previous year for an individual described in this paragraph shall be calculated by multiplying—

''(i) the farm marketing quota that was allotted to a farm owned by a quota holder for whom the quota lessee or quota holder was the principal producer of flue-cured tobacco during the 1997 marketing year, by

''(ii) the ratio that—

''(I) the sum of all flue-cured tobacco farm marketing quotas for the 1997 marketing year prior to adjusting for undermarketing and overmarketing; bears to

''(II) the sum of all flue-cured tobacco farm marketing quotas for the 1998 marketing year, after adjusting for undermarketing and overmarketing.

''(D) SPECIAL RULE FOR TENANT OF LEASED FLUE-CURED TOBACCO.—If the farm marketing quota or farm acreage allotment of a quota holder was produced pursuant to an agreement under which a quota lessee rented land from a quota holder and a quota tenant was the primary producer, as determined by the Secretary, of flue-cured tobacco pursuant to the farm marketing quota or farm acreage allotment, the farm marketing quota or farm acreage allotment shall be divided proportionately between the quota lessee and quota tenant for purposes of issuing individual tobacco production permits under this paragraph.

''(5) OPTION OF QUOTA LESSEE OR QUOTA TENANT TO RELINQUISH PERMIT.—

''(A) IN GENERAL.—Each quota lessee or quota tenant that is issued an individual tobacco production permit under paragraph (4) shall be given the option of relinquishing the permit in exchange for payments made under section 1021(e)(5) of the LEAF Act.

''(B) NOTIFICATION.—A quota lessee or quota tenant that is issued an individual tobacco production permit shall give notification of the intention to exercise the option at such time and in such manner as the Secretary may require, but not later than 45 days after the permit is issued.

''(C) REALLOCATION OF PERMIT.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit relinquished under this paragraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

''(6) ACTIVE PRODUCER REQUIREMENT.—

''(A) REQUIREMENT FOR SHARING RISK.—No individual tobacco production permit shall be issued to, or maintained by, a person that does not fully share in the risk of producing a crop of flue-cured tobacco.

''(B) CRITERIA FOR SHARING RISK.—For purposes of this paragraph, a person shall be considered to have fully shared in the risk of production of a crop if—

''(i) the investment of the person in the production of the crop is not less than 100 percent of the costs of production associated with the crop;

''(ii) the amount of the person's return on the investment is dependent solely on the sale price of the crop; and

''(iii) the person may not receive any of the return before the sale of the crop.

''(C) PERSONS NOT SHARING RISK.—

''(i) FORFEITURE.—Any person that fails to fully share in the risks of production under this paragraph shall forfeit an individual tobacco production permit if, after notice and opportunity for a hearing, the appropriate county committee determines that the conditions for forfeiture exist.

''(ii) REALLOCATION.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit forfeited under this subparagraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

''(D) NOTICE.—Notice of any determination made by a county committee under subparagraph (C) shall be mailed, as soon as practicable, to the person involved.

''(E) REVIEW.—If the person is dissatisfied with the determination, the person may request, not later than 15 days after notice of the determination is received, a review of the determination by a local review committee under the procedures established under section 363 for farm marketing quotas.

''(7) COUNTY OF ORIGIN REQUIREMENT.—For the 1999 and each subsequent crop of flue-cured tobacco, all tobacco produced pursuant to an individual tobacco production permit shall be produced in the same county in which was produced the tobacco produced during the 1997 marketing year pursuant to the farm marketing quota or farm acreage allotment on which the individual tobacco production permit is based.

''(8) COUNTY PRODUCTION POOL.—

''(A) IN GENERAL.—The authority to produce flue-cured tobacco under an individual tobacco production permit that is forfeited, relinquished, or surrendered within a county may be reallocated by the appropriate county committee to tobacco producers located in the same county that apply to the committee to produce flue-cured tobacco under the authority.

''(B) PRIORITY.—In reallocating individual tobacco production permits under this paragraph, a county committee shall provide a priority to—

''(i) an active tobacco producer that controls the authority to produce a quantity of flue-cured tobacco under an individual tobacco production permit that is equal to or less than the average number of pounds of flue-cured tobacco that was produced by the producer during each of the 1995 through 1997 marketing years, as determined by the Secretary; and

''(ii) a new tobacco producer.

''(C) CRITERIA.—Individual tobacco production permits shall be reallocated by the appropriate county committee under this paragraph in a fair and equitable manner after taking into consideration—

''(i) the experience of the producer;

''(ii) the availability of land, labor, and equipment for the production of tobacco;

''(iii) crop rotation practices; and

''(iv) the soil and other physical factors affecting the production of tobacco.

''(D) MEDICAL HARDSHIPS AND CROP DISASTERS.—Notwithstanding any other provision of this Act, the Secretary may issue an individual tobacco production permit under this paragraph to a producer that is otherwise ineligible for the permit due to a medical hardship or crop disaster that occurred during the 1997 marketing year.

''(c) REFERENDUM.—

''(1) ANNOUNCEMENT OF QUOTA AND ALLOTMENT.—Not later than December 15, 1998, the Secretary pursuant to subsection (b) shall determine and announce—

''(A) the quantity of the national marketing quota for flue-cured tobacco for the 1999 marketing year; and

''(B) the national acreage allotment and national average yield goal for the 1999 crop of flue-cured tobacco.

''(2) SPECIAL REFERENDUM.—Not later than 30 days after the announcement of the quantity of the national marketing quota in 2001, the Secretary shall conduct a special referendum of the tobacco production permit holders that were the principal producers of flue-cured tobacco of the 1997 crop to determine whether the producers approve or oppose the continuation of individual tobacco production permits on an acreage-poundage basis as provided in this section for the 2002 through 2004 marketing years.

''(3) APPROVAL OF PERMITS.—If the Secretary determines that more than 66⅔ percent of the producers voting in the special referendum approve the establishment of individual tobacco production permits on an acreage-poundage basis—

''(A) individual tobacco production permits on an acreage-poundage basis as provided in this section shall be in effect for the 2002 through 2004 maketing years; and

''(B) marketing quotas on an acreage-poundage basis shall cease to be in effect for the 2002 through 2004 marketing years.

''(4) DISAPPROVAL OF PERMITS.—If individual tobacco production permits on an acreage-poundage basis are not approved by more than 66⅔ percent of the producers voting in the referendum, no marketing quotas on an acreage-poundage basis shall continue in effect that were proclaimed under section 317 prior to the referendum.

''(5) APPLICABLE MARKETING YEARS.—If individual tobacco production permits have been made effective for flue-cured tobacco on an acreage-poundage basis pursuant to this subsection, the Secretary shall, not later than December 15 of any future marketing year, announce a national marketing quota for that type of tobacco for the next 3 succeeding marketing years if the marketing year is the last year of 3 consecutive years for which individual tobacco production permits previously proclaimed will be in effect.

''(d) ANNUAL ANNOUNCEMENT OF NATIONAL MARKETING QUOTA.—The Secretary shall determine and announce the national marketing quota, national acreage allotment, and national average yield goal for the second and third marketing years of any 3-year period for which individual tobacco production permits are in effect on or before the December 15 immediately preceding the beginning of the marketing year to which the quota, allotment, and goal apply.

''(e) ANNUAL ANNOUNCEMENT OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—If a national marketing quota, national acreage allotment, and national average yield goal are determined and announced, the Secretary shall provide for the determination of individual tobacco production permits, individual acreage limitations, and individual marketing limitations under this section for the crop and marketing year covered by the determinations.

''(f) ASSIGNMENT OF TOBACCO PRODUCTION PERMITS.—

''(1) LIMITATION TO SAME COUNTY.—Each individual tobacco production permit holder shall assign the individual acreage limitation and individual marketing limitation to 1 or more farms located within the county of origin of the individual tobacco production permit.

''(2) FILING WITH COUNTY COMMITTEE.—The assignment of an individual acreage limitations and individual marketing limitation shall not be effective until evidence of the assignment, in such form as required by the Secretary, is filed with and determined by the county committee for the county in which the farm involved is located.

''(3) LIMITATION ON TILLABLE CROPLAND.—The total acreage assigned to any farm under this subsection shall not exceed the acreage of cropland on the farm.

''(g) PROHIBITION ON SALE OR LEASING OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall not permit the sale and transfer, or lease and transfer, of an individual tobacco production permit issued under this section.

''(2) TRANSFER TO DESCENDANTS.—

''(A) DEATH.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section, the permit shall transfer to the surviving spouse of the person or, if there is no surviving spouse, to surviving direct descendants of the person.

''(B) TEMPORARY INABILITY TO FARM.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section and whose descendants are temporarily unable to produce a crop of tobacco, the Secretary may hold the license in the name of the descendants for a period of not more than 18 months.

''(3) VOLUNTARY TRANSFERS.—A person that is eligible to obtain an individual tobacco production permit under this section may at any time transfer all or part of the permit to the person's spouse or direct descendants that are actively engaged in the production of tobacco.

''(h) RESERVE.—

''(1) IN GENERAL.—For each marketing year for which individual tobacco production permits are in effect under this section, the Secretary may establish a reserve from the national marketing quota in a quantity equal to not more than 1 percent of the national marketing quota to be available for—

''(A) making corrections of errors in individual acreage limitations and individual marketing limitations;

''(B) adjusting inequities; and

''(C) establishing individual tobacco production permits for new tobacco producers (except that not less than two-thirds of the reserve shall be for establishing such permits for new tobacco producers).

''(2) ELIGIBLE PERSONS.—To be eligible for a new individual tobacco production permit, a producer must not have been the principal producer of tobacco during the immediately preceding 5 years.

''(3) APPORTIONMENT FOR NEW PRODUCERS.—The part of the reserve held for apportionment to new individual tobacco producers shall be allotted on the basis of—

''(A) land, labor, and equipment available for the production of tobacco;

''(B) crop rotation practices;

''(C) soil and other physical factors affecting the production of tobacco; and

''(D) the past tobacco-producing experience of the producer.

''(4) PERMIT YIELD.—The permit yield for any producer for which a new individual tobacco production permit is established shall be determined on the basis of available productivity data for the land involved and yields for similar farms in the same county.

''(i) PENALTIES.—

''(1) PRODUCTION ON OTHER FARMS.—If any quantity of tobacco is marketed as having been produced under an individual acreage limitation or individual marketing limitation assigned to a farm but was produced on a different farm, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

''(2) FALSE REPORT.—If a person to which an individual tobacco production permit is issued files, or aids or acquiesces in the filing of, a false report with respect to the assignment of an individual acreage limitation or individual marketing limitation for a quantity of tobacco, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

''(j) MARKETING PENALTIES.—

''(1) IN GENERAL.—When individual tobacco production permits under this section are in effect, provisions with respect to penalties for the marketing of excess tobacco and the other provisions contained in section 314 shall apply in the same manner and to the same extent as they would apply under section 317(g) if farm marketing quotas were in effect.

''(2) PRODUCTION ON OTHER FARMS.—If a producer falsely identifies tobacco as having been produced on or marketed from a farm to which an individual acreage limitation or individual marketing limitation has been assigned, future individual acreage limitations and individual marketing limitations shall be forfeited.''.

SEC. 1024A. RESOLUTION OF CONFLICT WITH TITLE XV.

Notwithstanding any other provision of this Act, title XV of this act shall have no force or effect.

AMENDMENT NO. 2683

In lieu of the matter proposed to be struck, insert the following:

SEC. 1024. FLUE-CURED TOBACCO PRODUCTION PERMITS.

The Agricultural Adjustment Act of 1938 is amended by inserting after section 317 (7 U.S.C. 1314c) the following:

"SEC. 317A. FLUE-CURED TOBACCO PRODUCTION PERMITS.

''(a) DEFINITIONS.—In this section:

''(1) INDIVIDUAL ACREAGE LIMITATION.—The term 'individual acreage limitation' means the number of acres of flue-cured tobacco that may be planted by the holder of a permit during a marketing year, calculated—

''(A) prior to—

''(i) any increase or decrease in the number due to undermarketings or overmarketings; and

''(ii) any reduction under subsection (i); and

''(B) in a manner that ensures that—

''(i) the total of all individual acreage limitations is equal to the national acreage allotment, less the reserve provided under subsection (h); and

''(ii) the individual acreage limitation for a marketing year bears the same ratio to the individual acreage limitation for the previous marketing year as the ratio that the national acreage allotment for the marketing year bears to the national acreage allotment for the previous marketing year, subject to adjustments by the Secretary to account for any reserve provided under subsection (h).

''(2) INDIVIDUAL MARKETING LIMITATION.—The term 'individual marketing limitation' means the number of pounds of flue-cured tobacco that may be marketed by the holder of a permit during a marketing year, calculated—

''(A) prior to—

''(i) any increase or decrease in the number due to undermarketings or overmarketings; and

''(ii) any reduction under subsection (i); and

''(B) in a manner that ensures that—

''(i) the total of all individual marketing limitations is equal to the national marketing quota, less the reserve provided under subsection (h); and

''(ii) the individual marketing limitation for a marketing year is obtained by multiplying the individual acreage limitation by the permit yield, prior to any adjustment for undermarketings or overmarketings.

''(3) INDIVIDUAL TOBACCO PRODUCTION PERMIT.—The term 'individual tobacco production permit' means a permit issued by the Secretary to a person authorizing the production of flue-cured tobacco for any marketing year during which this section is effective.

''(4) NATIONAL ACREAGE ALLOTMENT.—The term 'national acreage allotment' means the quantity determined by dividing—

''(A) the national marketing quota; by

''(B) the national average yield goal.

''(5) NATIONAL AVERAGE YIELD GOAL.—The term 'national average yield goal' means the national average yield for flue-cured tobacco during the 5 marketing years immediately preceding the marketing year for which the determination is being made.

''(6) NATIONAL MARKETING QUOTA.—For the 1999 and each subsequent crop of flue-cured tobacco, the term 'national marketing quota' for a marketing year means the quantity of flue-cured tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

''(A) the aggregate of the quantities of flue-cured tobacco that domestic manufacturers of cigarettes estimate that the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as compiled and determined under section 302A;

''(B) the average annual quantity of flue-cured tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

''(C) the quantity, if any, of flue-cured tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of flue-cured tobacco to establish or maintain the inventory at the reserve stock level for flue-cured tobacco.

''(7) PERMIT YIELD.—The term 'permit yield' means the yield of tobacco per acre for an individual tobacco production permit holder that is—

''(A) based on a preliminary permit yield that is equal to the average yield during the 5 marketing years immediately preceding the marketing year for which the determination is made in the county where the holder of the permit is authorized to plant flue-cured tobacco, as determined by the Secretary, on the basis of actual yields of farms in the county; and

''(B) adjusted by a weighted national yield factor calculated by—

''(i) multiplying each preliminary permit yield by the individual acreage limitation, prior to adjustments for overmarketings, undermarketings, or reductions required under subsection (i); and

''(ii) dividing the sum of the products under clause (i) for all flue-cured individual tobacco production permit holders by the national acreage allotment.

''(b) INITIAL ISSUANCE OF PERMITS.—

''(1) TERMINATION OF FLUE-CURED MARKETING QUOTAS.—On the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, farm marketing quotas as provided under section 317 shall no longer be in effect for flue-cured tobacco.

''(2) ISSUANCE OF PERMITS TO QUOTA HOLDERS THAT WERE PRINCIPAL PRODUCERS.—

''(A) IN GENERAL.—By January 15, 1999, each individual quota holder under section 317 that was a principal producer of flue-cured tobacco during the 1998 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

''(B) NOTIFICATION.—The Secretary shall notify the holder of each permit of the individual acreage limitation and the individual marketing limitation applicable to the holder for each marketing year.

''(C) INDIVIDUAL ACREAGE LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

''(D) INDIVIDUAL MARKETING LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the farm marketing quota that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual marketing limitation for the previous marketing year.

''(3) QUOTA HOLDERS THAT WERE NOT PRINCIPAL PRODUCERS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), on approval through a referendum under subsection (c)—

''(i) each person that was a quota holder under section 317 but that was not a principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall not be eligible to own a permit; and

''(ii) the Secretary shall not issue any permit during the 25-year period beginning on the date of enactment of this Act to any person that was a quota holder and was not the principal producer of flue-cured tobacco during the 1997 marketing year.

''(B) MEDICAL HARDSHIPS AND CROP DISASTERS.—Subparagraph (A) shall not apply to a person that would have been the principal producer of flue-cured tobacco during the 1997 marketing year but for a medical hardship or crop disaster that occurred during the 1997 marketing year.

''(C) ADMINISTRATION.—The Secretary shall issue regulations—

''(i) defining the term 'person' for the purpose of this paragraph; and

''(ii) prescribing such rules as the Secretary determines are necessary to ensure a fair and reasonable application of the prohibition established under this paragraph.

''(4) ISSUANCE OF PERMITS TO PRINCIPAL PRODUCERS OF FLUE-CURED TOBACCO.—

''(A) IN GENERAL.—By January 15, 1999, each individual quota lessee or quota tenant (as defined in section 1002 of the LEAF Act) that was the principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

''(B) INDIVIDUAL ACREAGE LIMITATIONS.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by a quota holder for whom the quota lessee or quota tenant was the principal producer of flue-cured tobacco during the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

''(C) INDIVIDUAL MARKETING LIMITATIONS.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the individual marketing limitation for the previous year for an individual described in this paragraph shall be calculated by multiplying—

''(i) the farm marketing quota that was allotted to a farm owned by a quota holder for whom the quota lessee or quota holder was the principal producer of flue-cured tobacco during the 1997 marketing year, by

''(ii) the ratio that—

''(I) the sum of all flue-cured tobacco farm marketing quotas for the 1997 marketing year prior to adjusting for undermarketing and over-marketing; bears to

''(II) the sum of all flue-cured tobacco farm marketing quotas for the 1998 marketing year, after adjusting for undermarketing and overmarketing.

''(D) SPECIAL RULE FOR TENANT OF LEASED FLUE-CURED TOBACCO.—If the farm marketing quota or farm acreage allotment of a quota holder was produced pursuant to an agreement under which a quota lessee rented land from a quota holder and a quota tenant was the primary producer, as determined by the Secretary, of flue-cured tobacco pursuant to the farm marketing quota or farm acreage allotment, the farm marketing quota or farm acreage allotment shall be divided proportionately between the quota lessee and quota tenant for purposes of issuing individual tobacco production permits under this paragraph.

''(5) OPTION OF QUOTA LESSEE OR QUOTA TENANT TO RELINQUISH PERMIT.—

''(A) IN GENERAL.—Each quota lessee or quota tenant that is issued an individual tobacco production permit under paragraph (4) shall be given the option of relinquishing the permit in exchange for payments made under section 1021(e)(5) of the LEAF Act.

''(B) NOTIFICATION.—A quota lessee or quota tenant that is issued an individual tobacco production permit shall give notification of the intention to exercise the option at such time and in such manner as the Secretary may require, but not later than 45 days after the permit is issued.

''(C) REALLOCATION OF PERMIT.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit relinquished under this paragraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

''(6) ACTIVE PRODUCER REQUIREMENT.—

''(A) REQUIREMENT FOR SHARING RISK.—No individual tobacco production permit shall be issued to, or maintained by, a person that does not fully share in the risk of producing a crop of flue-cured tobacco.

''(B) CRITERIA FOR SHARING RISK.—For purposes of this paragraph, a person shall be considered to have fully shared in the risk of production of a crop if—

''(i) the investment of the person in the production of the crop is not less than 100 percent of the costs of production associated with the crop;

''(ii) the amount of the person's return on the investment is dependent solely on the sale price of the crop; and

''(iii) the person may not receive any of the return before the sale of the crop.

''(C) PERSONS NOT SHARING RISK.—

''(i) FORFEITURE.—Any person that fails to fully share in the risks of production under this paragraph shall forfeit an individual tobacco production permit if, after notice and opportunity for a hearing, the appropriate county committee determines that the conditions for forfeiture exist.

''(ii) REALLOCATION.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit forfeited under this subparagraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

''(D) NOTICE. —Notice of any determination made by a county committee under subparagraph (C) shall be mailed, as soon as practicable, to the person involved.

''(E) REVIEW.—If the person is dissatisfied with the determination, the person may request, not later than 15 days after notice of the determination is received, a review of the determination by a local review committee under the procedures established under section 363 for farm marketing quotas.

''(7) COUNTY OF ORIGIN REQUIREMENT.—For the 1999 and each subsequent crop of flue-cured tobacco, all tobacco produced pursuant to an individual tobacco production permit shall be produced in the same county in which was produced the tobacco produced

during the 1997 marketing year pursuant to the farm marketing quota or farm acreage allotment on which the individual tobacco production permit is based.

''(8) COUNTY PRODUCTION POOL.—

''(A) IN GENERAL.—The authority to produce flue-cured tobacco under an individual tobacco production permit that is forfeited, relinquished, or surrendered within a county may be reallocated by the appropriate county committee to tobacco producers located in the same county they apply to the committee to produce flue-cured tobacco under the authority.

''(B) PRIORITY.—In reallocating individual tobacco production permits under this paragraph, a county committee shall provide a priority to—

''(i) an active tobacco producer that controls the authority to produce a quantity of flue-cured tobacco under an individual tobacco production permit that is equal to or less than the average number of pounds of flue-cured tobacco that was produced by the producer during each of the 1995 through 1997 marketing years, as determined by the Secretary; and

''(ii) a new tobacco producer.

''(C) CRITERIA.—Individual tobacco production permits shall be reallocated by the appropriate county committee under this paragraph in a fair and equitable manner after taking into consideration—

''(i) the experience of the producer;

''(ii) the availability of land, labor, and equipment for the production of tobacco;

''(iii) crop rotation practices; and

''(iv) the soil and other physical factors affecting the production of tobacco.

''(D) MEDICAL HARDSHIPS AND CROP DISASTERS.—Notwithstanding any other provision of this Act, the Secretary may issue an individual tobacco production permit under this paragraph to a producer that is otherwise ineligible for the permit due to a medical hardship or crop disaster that occurred during the 1997 marketing year.

''(c) REFERENDUM.—

''(1) ANNOUNCEMENT OF QUOTA AND ALLOTMENT.—Not later than December 15, 1998, the Secretary, pursuant to subsection (b), shall determine and announce—

''(A) the quantity of the national marketing quota for flue-cured tobacco for the 1999 marketing year; and

''(B) the national acreage allotment and national average yield goal for the 1999 crop of flue-cured tobacco.

''(2) SPECIAL REFERENDUM.—Not later than 30 days after the announcement of the quantity of the national marketing quota in 2001, the Secretary shall conduct a special referendum of the tobacco production permit holders that were the principal producers of flue-cured tobacco of the 1997 crop to determine whether the producers approve or oppose the continuation of individual tobacco production permits on an acreage-poundage basis as provided in this section for the 2002 through 2004 marketing years.

''(3) APPROVAL OF PERMITS.—If the Secretary determines that more than 66⅔ percent of the producers voting in the special referendum approve the establishment of individual tobacco production permits on an acreage-poundage basis—

''(A) individual tobacco production permits on an acreage-poundage basis as provided in this section shall be in effect for the 2002 through 2004 marketing years; and

''(B) marketing quotas on an acreage-poundage basis shall cease to be in effect for the 2002 through 2004 marketing years.

''(4) DISAPPROVAL OF PERMITS.—If individual tobacco production permits on an acreage-poundage basis are not approved by more than 66⅔ percent of the producers voting in the referendum, no marketing quotas on an acreage-poundage basis shall continue in effect that were proclaimed under section 317 prior to the referendum.

''(5) APPLICABLE MARKETING YEARS.—If individual tobacco production permits have been made effective for flue-cured tobacco on an acreage-poundage basis pursuant to this subsection, the Secretary shall, not later than December 15 of any future marketing year, announce a national marketing quota for that type of tobacco for the next 3 succeeding marketing years if the marketing year is the last year of 3 consecutive years for which individual tobacco production permits previously proclaimed will be in effect.

''(d) ANNUAL ANNOUNCEMENT OF NATIONAL MARKETING QUOTA.—The Secretary shall determine and announce the national marketing quota, national acreage allotment, and national average yield goal for the second and third marketing years of any 3-year period for which individual tobacco production permits are in effect on or before the December 15 immediately preceding the beginning of the marketing year to which the quota, allotment, and goal apply.

''(e) ANNUAL ANNOUNCEMENT OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—If a national marketing quota, national acreage allotment, and national average yield goal are determined and announced, the Secretary shall provide for the determination of individual tobacco production permits, individual acreage limitations, and individual marketing limitations under this section for the crop and marketing year covered by the determinations.

''(f) ASSIGNMENT OF TOBACCO PRODUCTION PERMITS.—

''(1) LIMITATION TO SAME COUNTY.—Each individual tobacco production permit holder shall assign the individual acreage limitation and individual marketing limitation to 1 or more farms located within the county of origin of the individual tobacco production permit.

''(2) FILING WITH COUNTY COMMITTEE.—The assignment of an individual acreage limitation and individual marketing limitation shall not be effective until evidence of the assignment, in such form as required by the Secretary, is filed with an determined by the county committee for the county in which the farm involved is located.

''(3) LIMITATION ON TILLABLE CROPLAND.—The total acreage assigned to any farm under this subsection shall not exceed the acreage of cropland on the farm.

''(g) PROHIBITION ON SALE OR LEASING OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall not permit the sale and transfer, or lease and transfer, of an individual tobacco production permit issued under this section.

''(2) TRANSFER TO DESCENDANTS.—

''(A) DEATH.— In the case of the death of a person to whom an individual tobacco production permit has been issued under this section, the permit shall transfer to the surviving spouse of the person, if there is no surviving spouse, to surviving direct descendants of the person.

''(B) TEMPORARY INABILITY TO FARM.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section and whose descendants are temporarily unable to produce a crop of tobacco, the Secretary may hold the license in the name of the descendants for a period of not more than 18 months.

''(3) VOLUNTARY TRANSFERS.—A person that is eligible to obtain an individual tobacco production permit under this section may at any time transfer all or part of the permit to the person's spouse or direct descendants that are actively engaged in the production of tobacco.

''(h) RESERVE.—

''(1) IN GENERAL.—For each marketing year for which individual tobacco production permits are in effect under this section, the Secretary may establish a reserve from the national marketing quota in a quantity equal to not more than 1 percent of the national marketing quota to be available for—

''(A) making corrections of errors in individual acreage limitations and individual marketing limitations;

''(B) adjusting inequities; and

''(C) establishing individual tobacco production permits for new tobacco producers (except that not less than two-thirds of the reserve shall be for establishing such permits for new tobacco producers).

''(2) ELIGIBLE PERSONS.—To be eligible for a new individual tobacco production permit, a producer must not have been the principal producer of tobacco during the immediately preceding 5 years.

''(3) APPOINTMENT FOR NEW PRODUCERS.—The part of the reserve held for apportionment to new individual tobacco producers shall be allotted on the basis of—

''(A) land, labor, and equipment available for the production of tobacco;

''(B) crop rotation practices;

''(C) soil and other physical factors affecting the production of tobacco; and

''(D) the past tobacco-producing experience of the producer.

''(4) PERMIT YIELD.—The permit yield for any producer for which a new individual tobacco production permit is established shall be determined on the basis of available productivity data for the land involved and yields for similar farms in the same county.

''(i) PENALTIES.—

''(1) PRODUCTION ON OTHER FARMS.—If any quantity of tobacco is marketed as having been produced under an individual acreage limitation or individual marketing limitation assigned to a farm but was produced on a different farm, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

''(2) FALSE REPORT.—If a person to which an individual tobacco production permit is issued files, or aids or acquiesces in the filing of, a false report with respect to the assignment of an individual acreage limitation or individual marketing limitation for a quantity of tobacco, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

''(j) MARKETING PENALTIES.—

''(1) IN GENERAL.—When individual tobacco production permits under this section are in effect, provisions with respect to penalties for the marketing of excess tobacco and the other provisions contained in section 314 shall apply in the same manner and to the same extent as they would apply under section 317(g) if farm marketing quotas were in effect.

''(2) PRODUCTION ON OTHER FARMS.—If a producer falsely identifies tobacco as having been produced on or marketed from a farm to which an individual acreage limitation or individual marketing limitation has been assigned, future individual acreage limitations and individual marketing limitations shall be forfeited.''.

SEC. 1024A. RESOLUTION OF CONFLICT WITH TITLE XV.

Notwithstanding any other provision of this Act, title XV of this Act shall have no force or effect.

SEC. 1024B. ASSISTANCE FOR PRODUCERS EXPERIENCING LOSSES OF FARM INCOME.

(a) IN GENERAL.—Notwithstanding any other provision of this title, from amounts made available to carry out this title, the

Secretary of Agriculture shall use $250,000,000 for each of fiscal years 1999 through 2004 to establish a program to indemnify eligible producers that have experienced, or are experiencing, catastrophic losses in farm income, as determined by the Secretary.

(b) GROSS INCOME AND PAYMENT LIMITATIONS.—In carrying out this section, the Secretary shall, to the maximum extent practicable, use gross income and payment limitations established for the Disaster Reserve Assistance Program under section 813 of the Agricultural Act of 1970 (7 U.S.C. 1427a).

FORD AMENDMENT NO. 2684

(Ordered to lie on the table.)

Mr. FORD submitted an amendment intended to be proposed by him to the bill, S. 1415, supra; as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''National Tobacco Policy and Youth Smoking Reduction Act''.

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

* * * * *

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The use of tobacco products by the Nation's children is a pediatric disease of epic and worsening proportions that results in new generations of tobacco-dependent children and adults.

(2) A consensus exists within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects.

(3) Nicotine is an addictive drug.

(4) Virtually all new users of tobacco products are under the minimum legal age to purchase such products.

(5) Tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents.

(6) Because past efforts to restrict advertising and marketing of tobacco products have failed adequately to curb tobacco use by adolescents, comprehensive restrictions on the sale, promotion, and distribution of such products are needed.

(7) Federal and State governments have lacked the legal and regulatory authority and resources they need to address comprehensively the public health and societal problems caused by the use of tobacco products.

(8) Federal and State public health officials, the public health community, and the public at large recognize that the tobacco industry should be subject to ongoing oversight.

(9) Under Article I, Section 8 of the Constitution, the Congress is vested with the responsibility for regulating interstate commerce and commerce with Indian tribes.

(10) The sale, distribution, marketing, advertising, and use of tobacco products are activities in and substantially affecting interstate commerce because they are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation's economy.

(11) The sale, distribution, marketing, advertising, and use of such products substantially affect interstate commerce through the health care and other costs attributable to the use of tobacco products.

(12) The citizens of the several States are exposed to, and adversely affected by, environmental smoke in public buildings and other facilities which imposes a burden on interstate commerce.

(13) Civil actions against tobacco product manufacturers and others are pending in Federal and State courts arising from the use, marketing, and sale of tobacco products. Among these actions are cases brought by the attorneys general of more than 40 States, certain cities and counties, and the Commonwealth of Puerto Rico, and other parties, including Indian tribes, and class actions brought by private claimants (such as in the Castano Civil Actions), seeking to recover monies expended to treat tobacco-related diseases and for the protection of minors and consumers, as well as penalties and other relief for violations of antitrust, health, consumer protection, and other laws.

(14) Civil actions have been filed throughout the United States against tobacco product manufacturers and their distributors, trade associations, law firms, and consultants on behalf of individuals or classes of individuals claiming to be dependent upon and injured by tobacco products.

(15) These civil actions are complex, time-consuming, expensive, and burdensome for both the litigants and Federal and State courts. To date, these civil actions have not resulted in sufficient redress for smokers or non-governmental third-party payers. To the extent that governmental entities have been or may in the future be compensated for tobacco-related claims they have brought, it is not now possible to identify what portions of such past or future recoveries can be attributed to their various antitrust, health, consumer protection, or other causes of action.

(16) It is in the public interest for Congress to adopt comprehensive public health legislation because of tobacco's unique position in the Nation's history and economy; the need to prevent the sale, distribution, marketing and advertising of tobacco products to persons under the minimum legal age to purchase such products; and the need to educate the public, especially young people, regarding the health effects of using tobacco products.

(17) The public interest requires a timely, fair, equitable, and consistent result that will serve the public interest by (A) providing that a portion of the costs of treatment for diseases and adverse health effects associated with the use of tobacco products is borne by the manufacturers of these products, and (B) restricting throughout the Nation the sale, distribution, marketing, and advertising of tobacco products only to persons of legal age to purchase such products.

(18) Public health authorities estimate that the benefits to the Nation of enacting Federal legislation to accomplish these goals would be significant in human and economic terms.

(19) Reducing the use of tobacco by minors by 50 percent would prevent well over 60,000 early deaths each year and save up to $43 billion each year in reduced medical costs, improved productivity, and the avoidance of premature deaths.

(20) Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products and these efforts have resulted in increased use of such products by youth. Past efforts to oversee these activities have not been successful in adequately preventing such increased use.

(21) In 1995, the tobacco industry spent close to $4,900,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

(22) Tobacco product advertising often misleadingly portrays the use of tobacco as socially acceptable and healthful to minors.

(23) Tobacco product advertising is regularly seen by persons under the age of 18, and persons under the age of 18 are regularly exposed to tobacco product promotional efforts.

(24) Through advertisements during and sponsorship of sporting events, tobacco has become strongly associated with sports and has become portrayed as an integral part of sports and the healthy lifestyle associated with rigorous sporting activity.

(25) Children are exposed to substantial and unavoidable tobacco advertising that leads to favorable beliefs about tobacco use, plays a role in leading young people to overestimate the prevalence of tobacco use, and increases the number of young people who begin to use tobacco.

(26) Tobacco advertising increases the size of the tobacco market by increasing consumption of tobacco products including increasing tobacco use by young people.

(27) Children are more influenced by tobacco advertising than adults, they smoke the most advertised brands, and children as young as 3 to 6 years old can recognize a character associated with smoking at the same rate as they recognize cartoons and fast food characters.

(28) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market.

(29) Comprehensive advertising restrictions will have a positive effect on the smoking rates of young people.

(30) Restrictions on advertising are necessary to prevent unrestricted tobacco advertising from undermining legislation prohibiting access to young people and providing for education about tobacco use.

(31) International experience shows that advertising regulations that are stringent and comprehensive have a greater impact on overall tobacco use and young people's use than weaker or less comprehensive ones. Text-only requirements, while not as stringent as a ban, will help reduce underage use of tobacco products while preserving the informational function of advertising.

(32) It is in the public interest for Congress to adopt legislation to address the public health crisis created by actions of the tobacco industry.

(33) If, as a direct or indirect result of this Act, the consumption of tobacco products in the United States is reduced significantly, then tobacco farmers, their families, and their communities may suffer economic hardship and displacement, notwithstanding their lack of involvement in the manufacturing and marketing of tobacco products.

(34) The use of tobacco products in motion pictures and other mass media glamorizes its use for young people and encourages them to use tobacco products.

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to clarify the authority of the Food and Drug Administration to regulate tobacco products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), by recognizing it as the primary Federal regulatory authority with respect to the manufacture, marketing, and distribution of tobacco products;

(2) to require the tobacco industry to fund both Federal and State oversight of the tobacco industry from on-going payments by tobacco product manufacturers;

(3) to require tobacco product manufacturers to provide ongoing funding to be used for an aggressive Federal, State, and local enforcement program and for a nationwide licensing system to prevent minors from obtaining tobacco products and to prevent the unlawful distribution of tobacco products, while expressly permitting the States to

adopt additional measures that further restrict or eliminate the products' use;

(4) to ensure that the Food and Drug Administration and the States may continue to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(5) to impose financial surcharges on tobacco product manufacturers if tobacco use by young people does not substantially decline;

(6) to authorize appropriate agencies of the Federal government to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(7) to provide new and flexible enforcement authority to ensure that the tobacco industry makes efforts to develop and introduce less harmful tobacco products;

(8) to confirm the Food and Drug Administration's authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(9) in order to ensure that adults are better informed, to require tobacco product manufacturers to disclose research which has not previously been made available, as well as research generated in the future, relating to the health and dependency effects or safety of tobacco products;

(10) to impose on tobacco product manufacturers the obligation to provide funding for a variety of public health initiatives;

(11) to establish a minimum Federal standard for stringent restrictions on smoking in public places, while also to permit State, Tribal, and local governments to enact additional and more stringent standards or elect not to be covered by the Federal standard if that State's standard is as protective, or more protective, of the public health;

(12) to authorize and fund from payments by tobacco product manufacturers a continuing national counter-advertising and tobacco control campaign which seeks to educate consumers and discourage children and adolescents from beginning to use tobacco products, and which encourages current users of tobacco products to discontinue using such products;

(13) to establish a mechanism to compensate the States in settlement of their various claims against tobacco product manufacturers;

(14) to authorize and to fund from payments by tobacco product manufacturers a nationwide program of smoking cessation administered through State and Tribal governments and the private sector;

(15) to establish and fund from payments by tobacco product manufacturers a National Tobacco Fund;

(16) to affirm the rights of individuals to access to the courts, to civil trial by jury, and to damages to compensate them for harm caused by tobacco products;

(17) to continue to permit the sale of tobacco products to adults in conjunction with measures to ensure that they are not sold or accessible to underage purchasers;

(18) to impose appropriate regulatory controls on the tobacco industry; and

(19) to protect tobacco farmers and their communities from the economic impact of this Act by providing full funding for and the continuation of the Federal tobacco program and by providing funds for farmers and communities to develop new opportunities in tobacco-dependent communities.

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—This Act is not intended to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action; or

(2) except as provided in this Act, affect any action pending in State, Tribal, or Federal court, or any agreement, consent decree, or contract of any kind.

(b) TAXATION.—Notwithstanding any other provision of law, this Act and the amendments made by this Act shall not affect any authority of the Secretary of the Treasury (including any authority assigned to the Bureau of Alcohol, Tobacco and Firearms) or of State or local governments with regard to taxation for tobacco or tobacco products.

(c) AGRICULTURAL ACTIVITIES.—The provisions of this Act which authorize the Secretary to take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

SEC. 5. RELATIONSHIP TO OTHER, RELATED FEDERAL, STATE, LOCAL, AND TRIBAL LAWS.

(a) AGE RESTRICTIONS.—Nothing in this Act or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), as amended by this Act, shall prevent a Federal agency (including the Armed Forces), a State or its political subdivisions, or the government of an Indian tribe from adopting and enforcing additional measures that further restrict or prohibit tobacco product sale to, use by, and accessibility to persons under the legal age of purchase established by such agency, State, subdivision, or government of an Indian tribe.

(b) ADDITIONAL MEASURES.—Except as otherwise expressly provided in this Act, nothing in this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), or rules promulgated under such Acts, shall limit the authority of a Federal agency (including the Armed Forces), a State or its political subdivisions, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products, including laws, rules, regulations, or other measures relating to or prohibiting the sale, distribution, possession, exposure to, or use of tobacco products by persons of any age that are in addition to the provisions of this Act and the amendments made by this Act. No provision of this Act or amendment made by this Act shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

(c) NO LESS STRINGENT.—Nothing in this Act or the amendments made by this Act is intended to supersede any State, local, or Tribal law that is not less stringent than this Act, or other Acts as amended by this Act.

(d) STATE LAW NOT AFFECTED.—Except as otherwise expressly provided in this Act, nothing in this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), or rules promulgated under such Acts, shall supersede the authority of the States, pursuant to State law, to expend funds provided by this Act.

SEC. 6. DEFINITIONS.

In this Act:

(1) BRAND.—The term ''brand'' means a variety of tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, or packaging, logo, registered trademark or brand name, identifiable pattern of colors, or any combination of such attributes.

(2) CIGARETTE.—The term ''cigarette'' has the meaning given that term by section 3(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(1)), but also includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

(3) CIGARETTE TOBACCO.—The term ''cigarette tobacco'' means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements for cigarettes shall also apply to cigarette tobacco.

(4) COMMERCE.—The term ''commerce'' has the meaning given that term by section 3(2) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(2)).

(5) DISTRIBUTOR.—The term ''distributor'' as regards a tobacco product means any person who furthers the distribution of cigarette or smokeless tobacco, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for purposes of this Act.

(6) INDIAN COUNTRY; INDIAN LANDS.—The terms ''Indian country'' and ''Indian lands'' have the meaning given the term ''Indian country'' by section 1151 of title 18, United States Code, and includes lands owned by an Indian tribe or a member thereof over which the United States exercises jurisdiction on behalf of the tribe or tribal member.

(7) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given such term in section 4(e) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(8) LITTLE CIGAR.—The term ''little cigar'' has the meaning given that term by section 3(7) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(7)).

(9) NICOTINE.—The term ''nicotine'' means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or C[10]H[14]N[2], including any salt or complex of nicotine.

(10) PACKAGE.—The term ''package'' means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane), in which cigarettes or smokeless tobacco are offered for sale, sold, or otherwise distributed to consumers.

(11) POINT-OF-SALE.—The term ''point-of-sale'' means any location at which a consumer can purchase or otherwise obtain cigarettes or smokeless tobacco for personal consumption.

(12) RETAILER.—The term ''retailer'' means any person who sells cigarettes or smokeless tobacco to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.

(13) ROLL-YOUR-OWN TOBACCO.—The term ''roll-your-own tobacco'' means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

(14) SECRETARY.—Except in title VII and where the context otherwise requires, the term ''Secretary'' means the Secretary of Health and Human Services.

(15) SMOKELESS TOBACCO.—The term ''smokeless tobacco'' means any product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

(16) STATE.—The term ''State'' means any State of the United States and, for purposes of this Act, includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

(17) TOBACCO PRODUCT.—The term ''tobacco product'' means cigarettes, cigarette tobacco, smokeless tobacco, little cigars, roll-your-own tobacco, and fine cut products.

(18) TOBACCO PRODUCT MANUFACTURER.—Except in titles VII, X, and XIV, the term ''tobacco product manufacturer'' means any person, including any repacker or relabeler, who—

(A) manufactures, fabricates, assembles, processes, or labels a finished cigarette or smokeless tobacco product; or

(B) imports a finished cigarette or smokeless tobacco product for sale or distribution in the United States.

(19) UNITED STATES.—The term ''United States'' means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

SEC. 7. NOTIFICATION IF YOUTHFUL CIGARETTE SMOKING RESTRICTIONS INCREASE YOUTHFUL PIPE AND CIGAR SMOKING.

The Secretary shall notify the Congress if the Secretary determines that underage use of pipe tobacco and cigars is increasing.

SEC. 8. FTC JURISDICTION NOT AFFECTED.

(a) IN GENERAL.—Except where expressly provided in this Act, nothing in this Act shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

(b) ENFORCEMENT BY FTC.—Any advertising that violates this Act or part 897 of title 21, Code of Federal Regulations, is an unfair or deceptive act or practice under section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) and shall be considered a violation of a rule promulgated under section 18 of that Act (15 U.S.C. 57a).

SEC. 9. CONGRESSIONAL REVIEW PROVISIONS.

In accordance with section 801 of title 5, United States Code, the Congress shall review, and may disapprove, any rule under this Act that is subject to section 801. This section does not apply to the rule set forth in part 897 of title 21, Code of Federal Regulations.

TITLE I—REGULATION OF THE TOBACCO INDUSTRY

SEC. 101. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT OF 1938.

(a) DEFINITION OF TOBACCO PRODUCTS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(kk) The term 'tobacco product' means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).''.

(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 907 as sections 1001 through 1007; and

(3) by inserting after section 803 the following:

''CHAPTER IX—TOBACCO PRODUCTS

''SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS

''(a) IN GENERAL.—Tobacco products shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V, unless—

''(1) such products are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease (within the meaning of section 201(g)(1)(B) or section 201(h)(2)); or

''(2) a health claim is made for such products under section 201(g)(1)(C) or 201(h)(3).

''(b) APPLICABILITY.—This chapter shall apply to all tobacco products subject to the provisions of part 897 of title 21, Code of Federal Regulations, and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

''(c) SCOPE.—

''(1) Nothing in this chapter, any policy issued or regulation promulgated thereunder, or the National Tobacco Policy and Youth Smoking Reduction Act, shall be construed to affect the Secretary's authority over, or the regulation of, products under this Act that are not tobacco products under chapter V of the Federal Food, Drug and Cosmetic Act or any other chapter of that Act.

''(2) The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of the manufacturer, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority whatsoever to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer. Notwithstanding any other provision of this subparagraph, if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer. Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production. For purposes of the preceding sentence, the term 'controlled by' means a member of the same controlled group of corporations as that term is used in section 52(a) of the Internal Revenue Code of 1986, or under common control within the meaning of the regulations promulgated under section 52(b) of such Code.

''SEC. 902. ADULTERATED TOBACCO PRODUCTS.

''A tobacco product shall be deemed to be adulterated if—

''(1) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise contaminated by any poisonous or deleterious substance that may render the product injurious to health;

''(2) it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;

''(3) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

''(4) it is, or purports to be or is represented as, a tobacco product which is subject to a performance standard established under section 907 unless such tobacco product is in all respects in conformity with such standard;

''(5) it is required by section 910(a) to have premarket approval, is not exempt under section 906(f), and does not have an approved application in effect;

''(6) the methods used in, or the facilities or controls used for, its manufacture, packing or storage are not in conformity with applicable requirements under section 906(e)(1) or an applicable condition prescribed by an order under section 906(e)(2); or

''(7) it is a tobacco product for which an exemption has been granted under section 906(f) for investigational use and the person who was granted such exemption or any investigator who uses such tobacco product under such exemption fails to comply with a requirement prescribed by or under such section.

''SEC. 903. MISBRANDED TOBACCO PRODUCTS.

''(a) IN GENERAL.—A tobacco product shall be deemed to be misbranded—

''(1) if its labeling is false or misleading in any particular;

''(2) if in package form unless it bears a label containing—

''(A) the name and place of business of the tobacco product manufacturer, packer, or distributor; and

''(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count,

except that under subparagraph (B) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary;

''(3) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

''(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in type as required by the Secretary by regulation;

''(5) if the Secretary has issued regulations requiring that its labeling bear adequate directions for use, or adequate warnings against use by children, that are necessary for the protection of users unless its labeling conforms in all respects to such regulations;

''(6) if it was manufactured, prepared, propagated, compounded, or processed in any State in an establishment not duly registered under section 905(b), if it was not included in a list required by section 905(i), if a notice or other information respecting it was not provided as required by such section or section 905(j), or if it does not bear such symbols from the uniform system for identification of tobacco products prescribed under section 905(e) as the Secretary by regulation requires;

''(7) if, in the case of any tobacco product distributed or offered for sale in any State—

''(A) its advertising is false or misleading in any particular; or

''(B) it is sold, distributed, or used in violation of regulations prescribed under section 906(d);

''(8) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that tobacco product—

''(A) a true statement of the tobacco product's established name as defined in paragraph (4) of this subsection, printed prominently; and

''(B) a brief statement of—

''(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications; and

''(ii) in the case of specific tobacco products made subject to a finding by the Secretary after notice and opportunity for comment that such action is necessary to protect the public health, a full description of the components of such tobacco product or the formula showing quantitatively each ingredient of such tobacco product to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing;

''(9) if it is a tobacco product subject to a performance standard established under section 907, unless it bears such labeling as may be prescribed in such performance standard; or

''(10) if there was a failure or refusal—

''(A) to comply with any requirement prescribed under section 904 or 908;

''(B) to furnish any material or information required by or under section 909; or

''(C) to comply with a requirement under section 912.

''(b) PRIOR APPROVAL OF STATEMENTS ON LABEL.—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product. No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement and no advertisement of a tobacco product, published after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act shall, with respect to the matters specified in this section or covered by regulations issued hereunder, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act (15 U.S.C. 52 through 55). This subsection does not apply to any printed matter which the Secretary determines to be labeling as defined in section 201(m).

''SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE SECRETARY.

''(a) REQUIREMENT.—Not later than 6 months after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit to the Secretary the following information:

''(1) A listing of all tobacco ingredients, substances and compounds that are, on such date, added by the manufacturer to the tobacco, paper, filter, or other component of each tobacco product by brand and by quantity in each brand and subbrand.

''(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine.

''(3) All documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, behavioral, or physiologic effects of tobacco products, their constituents, ingredients, and components, and tobacco additives, described in paragraph (1).

''(4) All documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) that relate to the issue of whether a reduction in risk to health from tobacco products can occur upon the employment of technology available or known to the manufacturer.

''(5) All documents (including underlying scientific information) relating to marketing research involving the use of tobacco products.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

''(b) ANNUAL SUBMISSION.—A tobacco product manufacturer or importer that is required to submit information under subsection (a) shall update such information on an annual basis under a schedule determined by the Secretary.

''(c) TIME FOR SUBMISSION.—

''(1) NEW PRODUCTS.—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment of this chapter, the manufacturer of such product shall provide the information required under subsection (a) and such product shall be subject to the annual submission under subsection (b).

''(2) MODIFICATION OF EXISTING PRODUCTS.—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive, increases or decreases the quantity of an existing tobacco additive or the nicotine content, delivery, or form, or eliminates a tobacco additive from any tobacco product, the manufacturer shall within 60 days of such action so advise the Secretary in writing and reference such modification in submissions made under subsection (b).

''SEC. 905. ANNUAL REGISTRATION.

''(a) DEFINITIONS.—As used in this section—

''(1) the term 'manufacture, preparation, compounding, or processing' shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user; and

''(2) the term 'name' shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation.

''(b) REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person.

''(c) REGISTRATION OF NEW OWNERS AND OPERATORS.—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment.

''(d) REGISTRATION OF ADDED ESTABLISHMENTS.—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional establishment which that person owns or operates in any State and in which that person begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.

''(e) UNIFORM PRODUCT IDENTIFICATION SYSTEM.—The Secretary may by regulation prescribe a uniform system for the identification of tobacco products and may require that persons who are required to list such tobacco products under subsection (i) of this section shall list such tobacco products in accordance with such system.

''(f) PUBLIC ACCESS TO REGISTRATION INFORMATION.—The Secretary shall make available for inspection, to any person so requesting, any registration filed under this section.

''(g) BIENNIAL INSPECTION OF REGISTERED ESTABLISHMENTS.—Every establishment in any State registered with the Secretary under this section shall be subject to inspection under section 704, and every such establishment engaged in the manufacture, compounding, or processing of a tobacco product or tobacco products shall be so inspected by one or more officers or employees duly designated by the Secretary at least once in the 2-year period beginning with the date of registration of such establishment under this section and at least once in every successive 2-year period thereafter.

''(h) FOREIGN ESTABLISHMENTS MAY REGISTER.—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, may register under this section under regulations promulgated by the Secretary. Such regulations shall require such establishment to provide the information required by subsection (i) of this section and shall include provisions for registration of any such establishment upon condition that adequate and effective means are available, by arrangement with the government of such foreign country or otherwise, to enable the Secretary to determine from time to time whether tobacco products manufactured, prepared, compounded, or processed in such establishment, if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 801(a).

''(i) REGISTRATION INFORMATION.—

''(1) PRODUCT LIST.—Every person who registers with the Secretary under subsection (b), (c), or (d) of this section shall, at the time of registration under any such subsection, file with the Secretary a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which has not been included in any list of tobacco products filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

''(A) in the case of a tobacco product contained in the applicable list with respect to which a performance standard has been established under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;

''(B) in the case of any other tobacco product contained in an applicable list, a copy of all consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and

''(C) if the registrant filing a list has determined that a tobacco product contained in such list is not subject to a performance standard established under section 907, a brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.

''(2) BIANNUAL REPORT OF ANY CHANGE IN PRODUCT LIST.—Each person who registers with the Secretary under this section shall report to the Secretary once during the month of June of each year and once during the month of December of each year the following:

''(A) A list of each tobacco product introduced by the registrant for commercial distribution which has not been included in any list previously filed by that person with the Secretary under this subparagraph or paragraph (1) of this subsection. A list under this subparagraph shall list a tobacco product by its established name and shall be accompanied by the other information required by paragraph (1).

''(B) If since the date the registrant last made a report under this paragraph that person has discontinued the manufacture, preparation, compounding, or processing for commercial distribution of a tobacco product included in a list filed under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity of its established name.

''(C) If since the date the registrant reported under subparagraph (B) a notice of discontinuance that person has resumed the

manufacture, preparation, compounding, or processing for commercial distribution of the tobacco product with respect to which such notice of discontinuance was reported, notice of such resumption, the date of such resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such resumption to the Secretary under this subparagraph.

''(D) Any material change in any information previously submitted under this paragraph or paragraph (1).

''(j) REPORT PRECEDING INTRODUCTION OF CERTAIN SUBSTANTIALLY-EQUIVALENT PRODUCTS INTO INTERSTATE COMMERCE.—

''(1) IN GENERAL.—Each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of August 11, 1995, as defined by the Secretary by regulation shall, at least 90 days before making such introduction or delivery, report to the Secretary (in such form and manner as the Secretary shall by regulation prescribe)—

''(A) the basis for such person's determination that the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of August 11, 1995, that is in compliance with the requirements of this Act; and

''(B) action taken by such person to comply with the requirements under section 907 that are applicable to the tobacco product.

''(2) APPLICATION TO CERTAIN POST-AUGUST 11TH PRODUCTS.—A report under this subsection for a tobacco product that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after August 11, 1995, and before the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act shall be submitted to the Secretary within 6 months after the date of enactment of that Act.

''SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

''(a) IN GENERAL.—Any requirement established by or under section 902, 903, 905, or 909 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 907, section 910, or subsection (d) of this section, and any requirement established by or under section 902, 903, 905, or 909 which is inconsistent with a requirement imposed on such tobacco product under section 907, section 910, or subsection (d) of this section shall not apply to such tobacco product.

''(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking under section 907, 908, 909, or 910, or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

''(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

''(2) the period within which interested persons may present their comments on the notice or findings (including the need therefor) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Secretary by a notice published in the Federal Register stating good cause therefor.

''(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Secretary or the Secretary's representative under section 904, 907, 908, 909, or 910 or 704, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be considered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

''(d) RESTRICTIONS.—

''(1) The Secretary may by regulation require that a tobacco product be restricted to sale, distribution, or use upon such conditions, including restrictions on the access to, and the advertising and promotion of, the tobacco product, as the Secretary may prescribe in such regulation if, because of its potentiality for harmful effect or the collateral measures necessary to its use, the Secretary determines that such regulation would be appropriate for the protection of the public health. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

No such condition may require that the sale or distribution of a tobacco product be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products.

''(2) The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Secretary may in such regulation prescribe.

''(3) No restriction under paragraph (1) may prohibit the sale of any tobacco product in face-to face transactions by a specific category of retail outlets.

''(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

''(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

''(A) The Secretary may, in accordance with subparagraph (B), prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, pre-production design validation (including a process to assess the performance of a tobacco product), packing and storage of a tobacco product, conform to current good manufacturing practice, as prescribed in such regulations, to assure that the public health is protected and that the tobacco product is in compliance with this chapter.

''(B) The Secretary shall—

''(i) before promulgating any regulation under subparagraph (A), afford an advisory committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

''(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

''(iii) provide the advisory committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A); and

''(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities; and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices.

''(2) EXEMPTIONS; VARIANCES.—

''(A) Any person subject to any requirement prescribed under paragraph (1) may petition the Secretary for a permanent or temporary exemption or variance from such requirement. Such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall—

''(i) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this chapter;

''(ii) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

''(iii) contain such other information as the Secretary shall prescribe.

''(B) The Secretary may refer to an advisory committee any petition submitted under subparagraph (A). The advisory committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

''(i) the date the petition was submitted to the Secretary under subparagraph (A); or

''(ii) the day after the petition was referred to an advisory committee,

whichever occurs later, the Secretary shall by order either deny the petition or approve it.

''(C) The Secretary may approve—

''(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this chapter; and

''(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, controls, and facilities prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this chapter.

''(D) An order of the Secretary approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to assure that the tobacco product will be in compliance with this chapter.

''(E) After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

''(3) Compliance with requirements under this subsection shall not be required before the period ending 3 years after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act.

''(f) EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from this chapter under such conditions as the Secretary may prescribe by regulation .

''(g) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes without regard to section 3324(a) and (b) of title 31, United States Code, and section 5 of title 41, United States Code.

''SEC. 907. PERFORMANCE STANDARDS.

''(a) IN GENERAL.—

''(1) FINDING REQUIRED.—The Secretary may adopt performance standards for a tobacco product if the Secretary finds that a performance standard is appropriate for the protection of the public health. This finding shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(2) CONTENT OF PERFORMANCE STANDARDS.—A performance standard established under this section for a tobacco product—

''(A) shall include provisions to provide performance that is appropriate for the protection of the public health, including provisions, where appropriate—

''(i) for the reduction or elimination of nicotine yields of the product;

''(ii) for the reduction or elimination of other constituents or harmful components of the product; or

''(iii) relating to any other requirement under (B);

''(B) shall, where necessary to be appropriate for the protection of the public health, include—

''(i) provisions respecting the construction, components, ingredients, and properties of the tobacco product;

''(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

''(iii) provisions for the measurement of the performance characteristics of the tobacco product;

''(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

''(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d); and

''(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product.

''(3) PERIODIC RE-EVALUATION OF PERFORMANCE STANDARDS.—The Secretary shall provide for periodic evaluation of performance standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (2) by any person.

''(4) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall, to the maximum extent practicable—

''(A) use personnel, facilities, and other technical support available in other Federal agencies;

''(B) consult with other Federal agencies concerned with standard-setting and other nationally or internationally recognized standard-setting entities; and

''(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, or consumer organizations who in the Secretary's judgment can make a significant contribution.

''(b) ESTABLISHMENT OF STANDARDS.—

''(1) NOTICE.—

(A) The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any performance standard for a tobacco product.

''(B) A notice of proposed rulemaking for the establishment or amendment of a performance standard for a tobacco product shall—

''(i) set forth a finding with supporting justification that the performance standard is appropriate for the protection of the public health;

''(ii) set forth proposed findings with respect to the risk of illness or injury that the performance standard is intended to reduce or eliminate; and

''(iii) invite interested persons to submit an existing performance standard for the tobacco product, including a draft or proposed performance standard, for consideration by the Secretary.

''(C) A notice of proposed rulemaking for the revocation of a performance standard shall set forth a finding with supporting justification that the performance standard is no longer necessary to be appropriate for the protection of the public health.

''(D) The Secretary shall consider all information submitted in connection with a proposed standard, including information concerning the countervailing effects of the performance standard on the health of adolescent tobacco users, adult tobacco users, or non-tobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand, and shall issue the standard if the Secretary determines that the standard would be appropriate for the protection of the public health.

''(E) The Secretary shall provide for a comment period of not less than 60 days.

''(2) PROMULGATION.—

''(A) After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a performance standard and after consideration of such comments and any report from an advisory committee, the Secretary shall—

''(i) promulgate a regulation establishing a performance standard and publish in the Federal Register findings on the matters referred to in paragraph (1); or

''(ii) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

''(B) A regulation establishing a performance standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before one year after the date of its publication unless the Secretary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade.

''(3) SPECIAL RULE FOR STANDARD BANNING CLASS OF PRODUCT OR ELIMINATING NICOTINE CONTENT.—Because of the importance of a decision of the Secretary to issue a regulation establishing a performance standard—

''(A) eliminating all cigarettes, all smokeless tobacco products, or any similar class of tobacco products, or

''(B) requiring the reduction of nicotine yields of a tobacco product to zero,

it is appropriate for the Congress to have the opportunity to review such a decision. Therefore, any such standard may not take effect before a date that is 2 years after the President notifies the Congress that a final regulation imposing the restriction has been issued.

''(4) AMENDMENT; REVOCATION.—

''(A) The Secretary, upon the Secretary's own initiative or upon petition of an interested person may by a regulation, promulgated in accordance with the requirements of paragraphs (1) and (2)(B) of this subsection, amend or revoke a performance standard.

''(B) The Secretary may declare a proposed amendment of a performance standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Secretary determines that making it so effective is in the public interest.

''(5) REFERENCE TO ADVISORY COMMITTEE.—The Secretary—

''(A) may, on the Secretary's own initiative, refer a proposed regulation for the establishment, amendment, or revocation of a performance standard; or

''(B) shall, upon the request of an interested person which demonstrates good cause for referral and which is made before the expiration of the period for submission of comments on such proposed regulation,

refer such proposed regulation to an advisory committee, for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment. If a proposed regulation is referred under this subparagraph to the advisory committee, the Secretary shall provide the advisory committee with the data and information on which such proposed regulation is based. The advisory committee shall, within 60 days after the referral of a proposed regulation and after independent study of the data and information furnished to it by the Secretary and other data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation. A copy of such report and recommendation shall be made public by the Secretary.

''SEC. 908. NOTIFICATION AND OTHER REMEDIES

''(a) NOTIFICATION.—If the Secretary determines that—

''(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm to the public health; and

''(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk,

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

''(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under

this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

''(c) RECALL AUTHORITY.—

''(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

''(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

''(A) If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

''(B) An amended order under subparagraph (A)—

''(i) shall not include recall of a tobacco product from individuals; and

''(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

''(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a) of this section.

''SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

''(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Secretary may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

''(1) may require a tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

''(2) shall require reporting of other significant adverse tobacco product experiences as determined by the Secretary to be necessary to be reported;

''(3) shall not impose requirements unduly burdensome to a tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

''(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submission of a report or information to the Secretary state the reason or purpose for such request and identify to the fullest extent practicable such report or information;

''(5) when requiring submission of a report or information to the Secretary, shall state the reason or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information; and

''(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients. The prohibitions of paragraph (6) of this subsection continue to apply to records, reports, and information concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

''(b) REPORTS OF REMOVALS AND CORRECTIONS.—

(1) Except as provided in paragraph (3), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a tobacco product undertaken by such manufacturer or importer if the removal or correction was undertaken—

''(A) to reduce a risk to health posed by the tobacco product; or

''(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal from the market of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

''(2) No report of the corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a) of this section.

''SEC. 910. PREMARKET REVIEW OF CERTAIN TOBACCO PRODUCTS.

''(a) IN GENERAL.—

''(1) PREMARKET APPROVAL REQUIRED.—

''(A) NEW PRODUCTS.—Approval under this section of an application for premarket approval for any tobacco product that is not commercially marketed (other than for test marketing) in the United States as of August 11, 1995, is required unless the manufacturer has submitted a report under section 905(j), and the Secretary has issued an order that the tobacco product is substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of August 11, 1995, that is in compliance with the requirements of this Act.

''(B) PRODUCTS INTRODUCED BETWEEN AUGUST 11, 1995, AND ENACTMENT OF THIS CHAPTER.—Subparagraph (A) does not apply to a tobacco product that—

''(i) was first introduced or delivered for introduction into interstate commerce for commerce for commercial distribution in the United States after August 11, 1995, and before the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act; and

''(ii) for which a report was submitted under section 905(j) within 6 months after such date,

until the Secretary issues an order that the tobacco product is substantially equivalent for purposes of this section or requires premarket approval.

''(2) SUBSTANTIALLY EQUIVALENT DEFINED.—

''(A) For purposes of this section and section 905(j), the term 'substantially equivalent' or 'substantial equivalence' mean, with respect to the tobacco product being compared to the predicate tobacco product, that the Secretary by order has found that the tobacco product—

''(i) has the same characteristics as the predicate tobacco product; or

''(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health.

''(B) For purposes of subparagraph (A), the term 'characteristics' means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

''(C) A tobacco product may not be found to be substantially equivalent to a predicate tobacco product that has been removed from the market at the initiative of the Secretary or that has been determined by a judicial order to be misbranded or adulterated.

''(3) HEALTH INFORMATION.—

''(A) As part of a submission under section 905(j) respecting a tobacco product, the person required to file a premarket notification under such section shall provide an adequate summary of any health information related to the tobacco product or state that such information will be made available upon request by any person.

''(B) Any summary under subparagraph (A) respecting a tobacco product shall contain detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such tobacco product is substantially equivalent to another tobacco product.

''(b) APPLICATION.—

''(1) CONTENTS.—An application for premarket approval shall contain—

''(A) full reports of all information, published or known to or which should reasonably be known to the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;

''(B) a full statement of the components, ingredients, and properties, and of the principle or principles of operation, of such tobacco product;

''(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;

''(D) an identifying reference to any performance standard under section 907 which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product fully meets such performance

standard or adequate information to justify any deviation from such standard;

''(E) such samples of such tobacco product and of components thereof as the Secretary may reasonably require;

''(F) specimens of the labeling proposed to be used for such tobacco product; and

''(G) such other information relevant to the subject matter of the application as the Secretary may require.

''(2) REFERENCE TO ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary—

''(A) may, on the Secretary's own initiative; or

''(B) shall, upon the request of an applicant,

refer such application to an advisory committee and for submission (within such period as the Secretary may establish) of a report and recommendation respecting approval of the application, together with all underlying data and the reasons or basis for the recommendation.

''(c) ACTION ON APPLICATION.—

''(1) DEADLINE.—

''(A) As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b) of this section, the Secretary, after considering the report and recommendation submitted under paragraph (2) of such subsection, shall—

''(i) issue an order approving the application if the Secretary finds that none of the grounds for denying approval specified in paragraph (2) of this subsection applies; or

''(ii) deny approval of the application if the Secretary finds (and sets forth the basis for such finding as part of or accompanying such denial) that one or more grounds for denial specified in paragraph (2) of this subsection apply.

''(B) An order approving an application for a tobacco product may require as a condition to such approval that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d).

''(2) DENIAL OF APPROVAL.—The Secretary shall deny approval of an application for a tobacco product if, upon the basis of the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such tobacco product, the Secretary finds that—

''(A) there is a lack of a showing that permitting such tobacco product to be marketed would be appropriate for the protection of the public health;

''(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such tobacco product do not conform to the requirements of section 906(e);

''(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

''(D) such tobacco product is not shown to conform in all respects to a performance standard in effect under section 907, compliance with which is a condition to approval of the application, and there is a lack of adequate information to justify the deviation from such standard.

''(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Secretary determines to be practicable, be accompanied by a statement informing the applicant of the measures required to place such application in approvable form (which measures may include further research by the applicant in accordance with one or more protocols prescribed by the Secretary).

''(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether approval of a tobacco product is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(5) BASIS FOR ACTION.—

''(A) For purposes of paragraph (2)(A), whether permitting a tobacco product to be marketed would be appropriate for the protection of the public health shall, when appropriate, be determined on the basis of well-controlled investigations, which may include one or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

''(B) If the Secretary determines that there exists valid scientific evidence (other than evidence derived from investigations described in subparagraph (A)) which is sufficient to evaluate the tobacco product the Secretary may authorize that the determination for purposes of paragraph (2)(A) be made on the basis of such evidence.

''(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

''(1) IN GENERAL.—The Secretary shall, upon obtaining, where appropriate, advice on scientific matters from an advisory committee, and after due notice and opportunity for informal hearing to the holder of an approved application for a tobacco product, issue an order withdrawing approval of the application if the Secretary finds—

''(A) that the continued marketing of such tobacco product no longer is appropriate for the protection of the public health;

''(B) that the application contained or was accompanied by an untrue statement of a material fact;

''(C) that the applicant—

''(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 909;

''(ii) has refused to permit access to, or copying or verification of, such records as required by section 704; or

''(iii) has not complied with the requirements of section 905;

''(D) on the basis of new information before the Secretary with respect to such tobacco product, evaluated together with the evidence before the Secretary when the application was approved, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such tobacco product do not conform with the requirements of section 906(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Secretary of nonconformity;

''(E) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary of such fact; or

''(F) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that such tobacco product is not shown to conform in all respects to a performance standard which is in effect under section 907, compliance with which was a condition to approval of the application, and that there is a lack of adequate information to justify the deviation from such standard.

''(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing approval of the application may, by petition filed on or before the thirtieth day after the date upon which he receives notice of such withdrawal, obtain review thereof in accordance with subsection (e) of this section.

''(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a tobacco product under an approved application would cause serious, adverse health consequences or death, that is greater than ordinarily caused by tobacco products on the market, the Secretary shall by order temporarily suspend the approval of the application approved under this section. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

''(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

''(1) in person by any officer or employee of the department designated by the Secretary; or

''(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Secretary.

''SEC. 911. JUDICIAL REVIEW.

''(a) IN GENERAL.—Not later than 30 days after—

''(1) the promulgation of a regulation under section 907 establishing, amending, or revoking a performance standard for a tobacco product; or

''(2) a denial of an application for approval under section 910(c),

any person adversely affected by such regulation or order may file a petition with the United States Court of Appeals for the District of Columbia or for the circuit wherein such person resides or has his principal place of business for judicial review of such regulation or order. A copy of the petition shall be transmitted by the clerk of the court to the Secretary or other officer designated by the Secretary for that purpose. The Secretary shall file in the court the record of the proceedings on which the Secretary based the Secretary's regulation or order and each record or order shall contain a statement of the reasons for its issuance and the basis, on the record, for its issuance. For purposes of this section, the term 'record' means all notices and other matter published in the Federal Register with respect to the regulation or order reviewed, all information submitted to the Secretary with respect to such regulation or order, proceedings of any panel or advisory committee with respect to such regulation or order, any hearing held with respect to such regulation or order, and any other information identified by the Secretary, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

''(b) COURT MAY ORDER SECRETARY TO MAKE ADDITIONAL FINDINGS.—If the petitioner applies to the court for leave to adduce additional data, views, or arguments respecting the regulation or order being reviewed and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceedings before the Secretary, the court may order the Secretary to provide additional opportunity for the oral presentation of data, views, or arguments and for

written submissions. The Secretary may modify the Secretary's findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file with the court such modified or new findings, and the Secretary's recommendation, if any, for the modification or setting aside of the regulation or order being reviewed, with the return of such additional data, views, or arguments.

''(c) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) of this section for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided in such chapter. A regulation or order described in paragraph (1) or (2) of subsection (a) of this section shall not be affirmed if it is found to be unsupported by substantial evidence on the record taken as a whole.

''(d) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

''(e) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law.

''(f) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review under this section or under any other provision of law of a regulation or order issued under section 906, 907, 908, 909, 910, or 914, each such regulation or order shall contain a statement of the reasons for its issuance and the basis, in the record of the proceedings held in connection with its issuance, for its issuance.

''SEC. 912. POSTMARKET SURVEILLANCE

''(a) DISCRETIONARY SURVEILLANCE.—The Secretary may require a tobacco product manufacturer to conduct postmarket surveillance for a tobacco product of the manufacturer if the Secretary determines that postmarket surveillance of the tobacco product is necessary to protect the public health or is necessary to provide information regarding the health risks and other safety issues involving the tobacco product.

''(b) SURVEILLANCE APPROVAL.—Each tobacco product manufacturer required to conduct a surveillance of a tobacco product under subsection (a) of this section shall, within 30 days after receiving notice that the manufacturer is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of useful data or other information necessary to protect the public health. The Secretary may not approve such a protocol until it has been reviewed by an appropriately qualified scientific and technical review committee established by the Secretary.

''SEC. 913. REDUCED RISK TOBACCO PRODUCTS.

''(a) REQUIREMENTS.—

''(1) IN GENERAL.—For purposes of this section, the term 'reduced risk tobacco product' means a tobacco product designated by the Secretary under paragraph (2).

''(2) DESIGNATION.—

''(A) IN GENERAL.—A product may be designated by the Secretary as a reduced risk tobacco product if the Secretary finds that the product will significantly reduce harm to individuals caused by a tobacco product and is otherwise appropriate to protect public health, based on an application submitted by the manufacturer of the product (or other responsible person) that—

''(i) demonstrates through testing on animals and short-term human testing that use of such product results in ingestion or inhalation of a substantially lower yield of toxic substances than use of conventional tobacco products in the same category as the proposed reduced risk product; and

''(ii) if required by the Secretary, includes studies of the long-term health effects of the product.

If such studies are required, the manufacturer may consult with the Secretary regarding protocols for conducting the studies.

''(B) BASIS FOR FINDING.—In making the finding under subparagraph (A), the Secretary shall take into account—

''(i) the risks and benefits to the population as a whole, including both users of tobacco products and non-users of tobacco products;

''(ii) the increased or decreased likelihood that existing users of tobacco products will stop using such products including reduced risk tobacco products;

''(iii) the increased or decreased likelihood that those who do not use tobacco products will start to use such products, including reduced risk tobacco products; and

''(iv) the risks and benefits to consumers from the use of a reduced risk tobacco product as compared to the use of products approved under chapter V to reduce exposure to tobacco.

''(3) MARKETING REQUIREMENTS.—A tobacco product may be marketed and labeled as a reduced risk tobacco product if it—

''(A) has been designated as a reduced risk tobacco product by the Secretary under paragraph (2);

''(B) bears a label prescribed by the Secretary concerning the product's contribution to reducing harm to health; and

''(C) complies with requirements prescribed by the Secretary relating to marketing and advertising of the product, and other provisions of this chapter as prescribed by the Secretary.

''(b) REVOCATION OF DESIGNATION.—At any time after the date on which a tobacco product is designated as a reduced risk tobacco product under this section the Secretary may, after providing an opportunity for an informal hearing, revoke such designation if the Secretary determines, based on information not available at the time of the designation, that—

''(1) the finding made under subsection (a)(2) is no longer valid; or

''(2) the product is being marketed in violation of subsection (a)(3).

''(c) LIMITATION.—A tobacco product that is designated as a reduced risk tobacco product that is in compliance with subsection (a) shall not be regulated as a drug or device.

''(d) DEVELOPMENT OF REDUCED RISK TOBACCO PRODUCT TECHNOLOGY.—A tobacco product manufacturer shall provide written notice to the Secretary upon the development or acquisition by the manufacturer of any technology that would reduce the risk of a tobacco product to the health of the user for which the manufacturer is not seeking designation as a 'reduced risk tobacco product' under subsection (a).

''SEC. 914. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''(a) ADDITIONAL REQUIREMENTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this Act shall be construed as prohibiting a State or political subdivision thereof from adopting or enforcing a requirement applicable to a tobacco product that is in addition to, or more stringent than, requirements established under this chapter.

''(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

''(A) Except as provided in subparagraph (B), no State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement applicable under the provisions of this chapter relating to performance standards, premarket approval, adulteration, misbranding, registration, reporting, good manufacturing standards, or reduced risk products.

''(B) Subparagraph (A) does not apply to requirements relating to the sale, use, or distribution of a tobacco product including requirements related to the access to, and the advertising and promotion of, a tobacco product.

''(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this chapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

''(c) WAIVERS.—Upon the application of a State or political subdivision thereof, the Secretary may, by regulation promulgated after notice and an opportunity for an oral hearing, exempt from subsection (a), under such conditions as may be prescribed in such regulation, a requirement of such State or political subdivision applicable to a tobacco product if—

''(1) the requirement is more stringent than a requirement applicable under the provisions described in subsection (a)(3) which would be applicable to the tobacco product if an exemption were not in effect under this subsection; or

''(2) the requirement—

''(A) is required by compelling local conditions; and

''(B) compliance with the requirement would not cause the tobacco product to be in violation of any applicable requirement of this chapter.

''SEC. 915. EQUAL TREATMENT OF RETAIL OUTLETS.

–''The Secretary shall issue regulations to require that retail establishments for which the predominant business is the sale of tobacco products comply with any advertising restrictions applicable to retail establishments accessible to individuals under the age of 18.''.

SEC. 102. CONFORMING AND OTHER AMENDMENTS TO GENERAL PROVISIONS.

(a) AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference is to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) SECTION 301.—Section 301 (21 U.S.C. 331) is amended—

(1) by inserting ''tobacco product,'' in subsection (a) after ''device,'';

(2) by inserting ''tobacco product,'' in subsection (b) after ''device,'';

(3) by inserting ''tobacco product,'' in subsection (c) after ''device,'';

(4) by striking ''515(f), or 519'' in subsection (e) and inserting ''515(f), 519, or 909'';

(5) by inserting ''tobacco product,'' in subsection (g) after ''device,'';

(6) by inserting ''tobacco product,'' in subsection (h) after ''device,'';

(7) by striking ''708, or 721'' in subsection (j) and inserting ''708, 721, 904, 905, 906, 907, 908, or 909'';

(8) by inserting ''tobacco product,'' in subsection (k) after ''device,'';

(9) by striking subsection (p) and inserting the following:

''(p) The failure to register in accordance with section 510 or 905, the failure to provide any information required by section 510(j), 510(k), 905(i), or 905(j), or the failure to provide a notice required by section 510(j)(2) or 905(J)(2).'';

(10) by striking subsection (q)(1) and inserting the following:

''(q)(1) The failure or refusal—

''(A) to comply with any requirement prescribed under section 518, 520(g), 906(f), or 908;

''(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 906(f), or 909; or

''(C) to comply with a requirement under section 522 or 912.'';

(11) by striking ''device,'' in subsection (q)(2) and inserting ''device or tobacco product,'';

(12) by inserting ''or tobacco product'' in subsection (r) after ''device'' each time that it appears; and

(13) by adding at the end thereof the following:

''(aa) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).''.

(c) SECTION 303.—Section 303(f) (21 U.S.C. 333(f)) is amended—

(1) by amending the caption to read as follows:

''(f) CIVIL PENALTIES; NO-TOBACCO-SALE ORDERS.—'';

(2) by inserting ''or tobacco products'' after ''devices'' in paragraph (1)(A);

(3) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), and inserting after paragraph (2) the following:

''(3) If the Secretary finds that a person has committed repeated violations of restrictions promulgated under section 906(d) at a particular retail outlet then the Secretary may impose a no-tobacco-sale order on that person prohibiting the sale of tobacco products in that outlet. A no-tobacco-sale order may be imposed with a civil penalty under paragraph (1).'';

(4) by striking ''assessed'' the first time it appears in subparagraph (A) of paragraph (4), as redesignated, and inserting ''assessed, or a no-tobacco-sale order may be imposed,'';

(5) by striking ''penalty'' in such subparagraph and inserting ''penalty, or upon whom a no-tobacco-order is to be imposed,'';

(6) by inserting after ''penalty,'' in subparagraph (B) of paragraph (4), as redesignated, the following: ''or the period to be covered by a no-tobacco-sale order,'';

(7) by adding at the end of such subparagraph the following: ''A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.'';

(8) by adding at the end of paragraph (4), as redesignated, the following:

''(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.'';

(9) by striking ''(3)(A)'' in paragraph (5), as resdesignated, and inserting ''(4)(A)'';

(10) by inserting ''or the imposition of a no-tobacco-sale order'' after ''penalty'' the first 2 places it appears in such paragraph;

(11) by striking ''issued.'' in such paragraph and inserting ''issued, or on which the no-tobacco-sale order was imposed, as the case may be.''; and

(12) by striking ''paragraph (4)'' each place it appears in paragraph (6), as redesignated, and inserting ''paragraph (5)''.

(d) SECTION 304.—Section 304 (21 U.S.C. 334) is amended—

(1) by striking ''and'' before ''(D)'' in subsection (a)(2);

(2) by striking ''device.'' in subsection (a)(2) and inserting a comma and ''(E) Any adulterated or misbranded tobacco product.'';

(3) by inserting ''tobacco product,'' in subsection (d)(1) after ''device,'';

(4) by inserting ''or tobacco product'' in subsection (g)(1) after ''device'' each place it appears; and

(5) by inserting ''or tobacco product'' in subsection (g)(2)(A) after ''device'' each place it appears.

(e) SECTION 702.—Section 702(a) (21 U.S.C. 372(a)) is amended—

(1) by inserting ''(1)'' after ''(a)''; and

(2) by adding at the end thereof the following:

''(2) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with paragraph (1) to carry out inspections of retailers in connection with the enforcement of this Act.''.

(f) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting ''tobacco product,'' after ''device,'' each place it appears; and

(2) by inserting ''tobacco products,'' after ''devices,'' each place it appears.

(g) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) by inserting ''tobacco products,'' in subsection (a)(1)(A) after ''devices,'' each place it appears;

(2) by inserting ''or tobacco products'' in subsection (a)(1)(B) after ''restricted devices'' each place it appears; and

(3) by inserting ''tobacco product,'' in subsection (b) after ''device,''.

(h) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting ''tobacco products,'' after ''devices,''.

(i) SECTION 709.—Section 709 (21 U.S. C. 379) is amended by inserting ''or tobacco product'' after ''device''.

(j) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) by inserting ''tobacco products,'' after ''devices,'' in subsection (a) the first time it appears;

(2) by inserting ''or subsection (j) of section 905'' in subsection (a) after ''section 510''; and

(3) by striking ''drugs or devices'' each time it appears in subsection (a) and inserting ''drugs, devices, or tobacco products'';

(4) by inserting ''tobacco product,'' in subsection (e)(1) after ''device,'';

(2) by redesignating paragraph (4) of subsection (e) as paragraph (5) and inserting after paragraph (3), the following:

''(4) Paragraph (1) does not apply to any tobacco product—

''(A) which does not comply with an applicable requirement of section 907 or 910; or

''(B) which under section 906(f) is exempt from either such section.

This paragraph does not apply if the Secretary has determined that the exportation of the tobacco product is not contrary to the public health and safety and has the approval of the country to which it is intended for export or the tobacco product is eligible for export under section 802.''.

(k) SECTION 802.—Section 802 (21 U.S.C. 382) is amended—

(1) by striking ''device—'' in subsection (a) and inserting ''device or tobacco product—'';

(2) by striking ''and'' after the semicolon in subsection (a)(1)(C);

(3) by striking subparagraph (C) of subsection (a)(2) and all that follows in that subsection and inserting the following:

''(C) is a banned device under section 516; or

''(3) which, in the case of a tobacco product—

''(A) does not comply with an applicable requirement of section 907 or 910; or

''(B) under section 906(f) is exempt from either such section,

is adulterated, misbranded, and in violation of such sections or Act unless the export of the drug, device, or tobacco product is, except as provided in subsection (f), authorized under subsection (b), (c), (d), or (e) of this section or section 801(e)(2) or 801(e)(4). If a drug, device, or tobacco product described in paragraph (1), (2), or (3) may be exported under subsection (b) and if an application for such drug or device under section 505, 515, or 910 of this Act or section 351 of the Public Health Service Act (42 U.S.C. 262) was disapproved, the Secretary shall notify the appropriate public health official of the country to which such drug, device, or tobacco product will be exported of such disapproval.'';

(4) by inserting ''or tobacco product'' in subsection (b)(1)(A) after ''device'' each time it appears;

(5) by inserting ''or tobacco product'' in subsection (c) after ''device'' and inserting ''or section 906(f)'' after ''520(g).'';

(6) by inserting ''or tobacco product'' in subsection (f) after ''device'' each time it appears; and

(7) by inserting ''or tobacco product'' in subsection (g) after ''device'' each time it appears.

(l) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(a)) is amended—

(1) by striking ''and'' after ''cosmetics,''; and

(2) inserting a comma and ''and tobacco products'' after ''devices''.

(m) EFFECTIVE DATE FOR NO-TOBACCO-SALE ORDER AMENDMENTS.—The amendments made by subsection (c), other than the amendment made by paragraph (2) thereof, shall take effect only upon the promulgation of final regulations by the Secretary—

(1) defining the term ''repeated violation'', as used in section 303(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)) as amended by subsection (c), by identifying the number of violations of particular requirements over a specified period of time that constitute a repeated violation;

(2) providing for notice to the retailer of each violation at a particular retail outlet;

(3) providing that a person may not be charged with a violation at a particular retail outlet unless the Secretary has provided notice to the retailer of all previous violations at that outlet;

(4) establishing a period of time during which, if there are no violations by a particular retail outlet, that outlet will not considered to have been the site of repeated violations when the next violation occurs; and

(5) providing that good faith reliance on false identification does not constitute a violation of any minimum age requirement for the sale of tobacco products.

SEC. 103. CONSTRUCTION OF CURRENT REGULATIONS.

(a) IN GENERAL.—The final regulations promulgated by the Secretary in the August 28, 1996, issue of the Federal Register (62 Red. Reg. 44615-44618) and codified at part 897 of title 21, Code of Federal Regulations, are hereby deemed to be lawful and to have been lawfully promulgated by the Secretary under chapter IX and section 701 of the Federal Food, Drug, and Cosmetic Act, as amended by this Act, and not under chapter V of the Federal Food, Drug, and Cosmetic Act. The provisions of part 897 that are not in effect on the date of enactment of this Act shall take effect as in such part or upon such later date as determined by the Secretary by

order. The Secretary shall amend the designation of authority in such regulations in accordance with this subsection.

(b) LIMITATION ON ADVISORY OPINIONS.—As of the date of enactment of this Act, the following documents issued by the Food and Drug Administration shall not constitute advisory opinions under section 10.85(d)(1) of title 21, Code of Federal Regulations, except as they apply to tobacco products, and shall not be cited by the Secretary or the Food and Drug Administration as binding precedent.

(1) The preamble to the proposed rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents'' (60 Fed. Reg. 41314-41372 (August 11, 1995)).

(2) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act;; (60 Fed. Reg. 41453-41787 (August 11, 1995)).

(3) The preamble to the final rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents'' (61 Fed. Reg. 44396-44615 (August 28, 1996)).

(4) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco is a Drug and These Products are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act; Jurisdictional Determination;; (61 Fed. Reg. 44619-45318 (August 28, 1996)).

TITLE II—REDUCTIONS IN UNDERAGE TOBACCO USE

Subtitle A—Underage Use

SEC. 201. FINDINGS.

The Congress finds the following:

(1) Reductions in the underage use of tobacco products are critically important to the public health.

(2) Achieving this critical public health goal can be substantially furthered by increasing the price of tobacco products to discourage underage use if reduction targets are not achieved and by creating financial incentives for manufacturers to discourage youth from using their tobacco products.

(3) When reduction targets in underage use are not achieved on an industry-wide basis, the price increases that will result from an industry-wide assessment will provide an additional deterrence to youth tobacco use.

(4) Manufacturer-specific incentives that will be imposed if reduction targets are not met by a manufacturer provide a strong incentive for each manufacturer to make all efforts to discourage youth use of its brands and ensure the effectiveness of the industry-wide assessments.

SEC. 202. PURPOSE.

This title is intended to ensure that, in the event that other measures contained in this Act prove to be inadequate to produce substantial reductions in tobacco use by minors, tobacco companies will pay additional assessments. These additional assessments are designed to lower youth tobacco consumption in a variety of ways: by triggering further increases in the price of tobacco products, by encouraging tobacco companies to work to meet statutory targets for reductions in youth tobacco consumption, and providing support for further reduction efforts.

SEC. 203. GOALS FOR REDUCING UNDERAGE TOBACCO USE.

(a) GOALS.—As part of a comprehensive national tobacco control policy, the Secretary, working in cooperation with State, Tribal, and local governments and the private sector, shall take all actions under this Act necessary to ensure that the required percentage reductions in underage use of tobacco products set forth in this title are achieved.

(b) REQUIRED REDUCTIONS FOR CIGARETTES.—With respect to cigarettes, the required percentage reduction in underage use, as set forth in section 204, means—

Calendar Year After Date of Enactment	Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Cigarette Use
Years 3 and 4	15 percent
Years 5 and 6	30 percent
Years 7, 8, and 9	50 percent
Year 10 and thereafter	60 percent

(c) REQUIRED REDUCTIONS FOR SMOKELESS TOBACCO.—With respect to smokeless tobacco products, the required percentage reduction in underage use, as set forth in section 204, means—

Calendar Year After Date of Enactment	Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Smokeless Tobacco Use
Years 3 and 4	12.5 percent
Years 5 and 6	25 percent
Years 7, 8, and 9	35 percent
Year 10 and thereafter	45 percent

SEC. 204. LOOK-BACK ASSESSMENT.

(a) ANNUAL PERFORMANCE SURVEY.—Beginning no later than 1999 and annually thereafter the Secretary shall conduct a survey, in accordance with the methodology in subsection (d)(1), to determine—

(1) the percentage of all young individuals who used a type of tobacco product within the past 30 days; and

(2) the percentage of young individuals who identify each brand of each type of tobacco product as the usual brand of that type smoked or used within the past 30 days.

(b) ANNUAL DETERMINATION.—The Secretary shall make an annual determination, based on the annual performance survey conducted under subsection (a), of whether the required percentage reductions in underage use of tobacco products for a year have been achieved for the year involved. The determination shall be based on the annual percent prevalence of the use of tobacco products, for the industry as a whole and of particular manufacturers, by young individuals (as determined by the surveys conducted by the Secretary) for the year involved as compared to the base incidence percentages.

(c) CONFIDENTIALITY OF DATA.—The Secretary may conduct a survey relating to tobacco use involving minors. If the information collected in the course of conducting the annual performance survey results in the individual supplying the information or described in it to be identifiable, the information may not be used for any purpose other than the purpose for which it was supplied unless that individual (or that individual's guardian) consents to its use for such other purpose. The information may not be published or released in any other form if the individual supplying the information or described in it is identifiable unless that individual (or that individual's guardian) consents to its publication or release in other form.

(d) METHODOLGY.—

(1) IN GENERAL.—The survey required by subsection (a) shall—

(A) be based on a nationally representative sample of young individuals;

(B) be a household-based, in person survey (which may include computer-assisted technology);

(C) measure use of each type of tobacco product within the past 30 days;

(D) identify the usual brand of each type of tobacco product used within the past 30 days; and

(E) permit the calculation of the actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) based on the point estimates of the percentage of young individuals reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) from the annual performance survey.

(2) CRITERIA FOR DEEMING POINT ESTIMATES CORRECT.—Point estimates under paragraph (1)(E) are deemed conclusively to be correct and accurate for calculating actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a particular manufacturer) for the purpose of measuring compliance with percent reduction targets and calculating surcharges provided that the precision of estimates (based on sampling error) of the percentage of young individuals reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) is such that the 95-percent confidence interval around such point estimates is no more than plus or minus 1 percent.

(3) SURVEY DEEMED CORRECT, PROPER, AND ACCURATE.—A survey using the methodology required by this subsection is deemed conclusively to be proper, correct, and accurate for purposes of this Act.

(4) SECRETARY MAY ADOPT DIFFERENT METHODOLOGY.—The Secretary by notice and comment rulemaking may adopt a survey methodology that is different than the methodology described in paragraph (1) if the different methodology is at least as statistically precise as that methodology.

(e) INDUSTRY-WIDE NON-ATTAINMENT SURCHARGES.—

(1) SECRETARY TO DETERMINE INDUSTRY-WIDE NON-ATTAINMENT PERCENTAGE.—The Secretary shall determine the industry-wide non-attainment percentage for cigarettes and for smokeless tobacco for each calendar year.

(2) NON-ATTAINMENT SURCHARGE FOR CIGARETTES.—For each calendar year in which the percentage reduction in underage use required by section 203b) is not attained, the Secretary shall assess a surcharge on cigarette manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percent	$80,000,000 multiplied by the non-attainment percentage
More than 5% but not more than 10%	$400,000,000, plus $160,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%
More than 10%	$1,200,000,000, plus $240,000,000 multiplied by the non-attainment percentage in excess of 10%
More than 21.6%	$4,000,000,000

(3) NON-ATTAINMENT SURCHARGE FOR SMOKELESS TOBACCO.—For each year in which the percentage reduction in underage use required by section 203c) is not attained, the Secretary shall assess a surcharge on smokeless tobacco product manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percent	$8,000,000 multiplied by the non-attainment percentage
More than 5% but not more than 10%	$40,000,000, plus $16,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%
More than 10%	$120,000,000, plus $24,000,000 multiplied by the non-attainment percentage in excess of 10%
More than 21.6%	$400,000,000

(4) STRICT LIABILITY; JOINT AND SEVERAL LIABILITY.—Liability for any surcharge imposed under subsection (e) shall be—

(A) strict liability; and

(B) joint and several liability—

(i) among all cigarette manufacturers for surcharges imposed under subsection (e)(2); and

(ii) among all smokeless tobacco manufacturers for surcharges imposed under subsection (e)(3).

(5) SURCHARGE LIABILITY AMONG MANUFACTURERS.—A tobacco product manufacturer shall be liable under this subsection to one or more other manufacturers if the plaintiff tobacco product manufacturer establishes by a preponderance of the evidence that the defendant tobacco product manufacturer, through its acts or omissions, was responsible for a disproportionate share of the non-attainment surcharge as compared to the responsibility of the plaintiff manufacturer.

(6) EXEMPTIONS FOR SMALL MANUFACTURERS.—

(A) ALLOCATION BY MARKET SHARE.—The Secretary shall make such allocations according to each manufacturer's share of the domestic cigarette or domestic smokeless tobacco market, as appropriate, in the year for which the surcharge is being assessed, based on actual Federal excise tax payments.

(B) EXEMPTION.—In any year in which a surcharge is being assessed, the Secretary shall exempt from payment any tobacco product manufacturer with less than 1 percent of the domestic market share for a specific category of tobacco product unless the Secretary finds that the manufacturer's products are used by underage individuals at a rate equal to or greater than the manufacturer's total market share for the type of tobacco product.

(f) MANUFACTURER-SPECIFIC SURCHARGES.—

(1) REQUIRED PERCENTAGE REDUCTIONS.—Each manufacturer which manufactured a brand or brands of tobacco product on or before the date of the enactment of this Act shall reduce the percentage of young individuals who use such manufacturer's brand or brands as their usual brand in accordance with the required percentage reductions described under subsections (b) (with respect to cigarettes) and (c) (with respect to smokeless tobacco).

(2) APPLICATION TO LESS POPULAR BRANDS.—Each manufacturer which manufactured a brand or brands of tobacco product on or before the date of the enactment of this Act for which the base incidence percentage is equal to or less than the *de minimis* level shall ensure that the percent prevalence of young individuals who use the manufacturer's tobacco products as their usual brand remains equal to or less than the *de minimis* level described in paragraph (4).

(3) NEW ENTRANTS.—Each manufacturer of a tobacco product which begins to manufacture a tobacco product after the date of the enactment of this Act shall ensure that the percent prevalence of young individuals who use the manufacturer's tobacco products as their usual brand is equal to or less than the *de minimis* level.

(4) DE MINIMIS LEVEL DEFINED.—The *de minimis* level is equal to 1 percent prevalence of the use of each manufacturer's brands of tobacco product by young individuals (as determined on the basis of the annual performance survey conducted by the Secretary) for a year.

(5) TARGET REDUCTION LEVELS.—

(A) EXISTING MANUFACTURERS.— For purposes of this section, the target reduction level for each type of tobacco product for a year for a manufacturer is the product of the required percentage reduction for a type of tobacco product for a year and the manufacturers base incidence percentage for such tobacco product.

(B) NEW MANUFACTURERS; MANUFACTURERS WITH LOW BASE INCIDENCE PERCENTAGES.—With respect to a manufacturer which begins to manufacture a tobacco product after the date of the enactment of this Act or a manufacturer for which the baseline level as measured by the annual performance survey is equal to or less than the *de minimis* level described in paragraph (4), the base incidence percentage is the *de minimis* level, and the required percentage reduction in underage use for a type of tobacco product with respect to a manufacturer for a year shall be deemed to be the number of percentage points necessary to reduce the actual percent prevalence of young individuals identifying a brand of such tobacco product of such manufacturer as the usual brand smoked or used for such year to the *de minimis* level.

(6) SURCHARGE AMOUNT.—

(A) IN GENERAL.—If the Secretary determines that the required percentage reduction in use of a type of tobacco product has not been achieved by such manufacturer for a year, the Secretary shall impose a surcharge on such manufacturer under this paragraph.

(B) AMOUNT.—The amount of the manufacturer-specific surcharge for a type of tobacco product for a year under this paragraph is $1,000, multiplied by the number of young individuals for which such firm is in noncompliance with respect to its target reduction level.

(C) DETERMINATION OF NUMBER OF YOUNG INDIVIDUALS.—For purposes of subparagraph (B) the number of young individuals for which a manufacturer is in noncompliance for a year shall be determined by the Secretary from the annual performance survey and shall be calculated based on the estimated total number of young individuals in such year and the actual percentage prevalence of young individuals identifying a brand of such tobacco product of such manufacturer as the usual brand smoked or used in such year as compared to such manufacturer's target reduction level for the year.

(7) DE MINIMIS RULE.—The Secretary may not impose a surcharge on a manufacturer for a type of tobacco product for a year if the Secretary determines that actual percent prevalence of young individuals identifying that manufacturer's brands of such tobacco product as the usual products smoked or used for such year is less than 1 percent.

(g) SURCHARGES TO BE ADJUSTED FOR INFLATION.—

(1) IN GENERAL.—Beginning with the fourth calendar year after the date of enactment of this Act, each dollar amount in the tables in subsections (e)(2), (e)(3), and (f)(6)(B) shall be increased by the inflation adjustment.

(2) INFLATION ADJUSTMENT.—For purposes of paragraph (1), the inflation adjustment for any calendar year is the percentage (if any) by which—

(A) the CPI for the preceding calendar year, exceeds

(B) the CPI for the calendar year 1998.

(3) CPI.—For purposes of paragraph (2), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(4) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

(h) METHOD OF SURCHARGE ASSESSMENT.—The Secretary shall assess a surcharge for a specific calendar year on or before May 1 of the subsequent calendar year. Surcharge payments shall be paid on or before July 1 of the year in which they are assessed. The Secretary may establish, by regulation, interest at a rate up to 3 times the prevailing prime rate at the time the surcharge is assessed, and additional charges in an amount up to 3 times the surcharge, for late payment of the surcharge.

(i) BUSINESS EXPENSE DEDUCTION.—Any surcharge paid by a tobacco product manufacturer under this section shall not be deductible as an ordinary and necessary business expense or otherwise under the Internal Revenue Code of 1986.

(j) APPEAL RIGHTS.—The amount of any surcharge is committed to the sound discretion of the Secretary and shall be subject to judicial review by the United States Court of Appeals for the District of Columbia Circuit, based on the arbitrary and capricious standard of section 706(2)(A) of title 5, United States Code. Notwithstanding any other provisions of law, no court shall have authority to stay any surcharge payments due the Secretary under this Act pending judicial review.

(k) RESPONSIBILITY FOR AGENTS.—In any action brought under this subsection, a tobacco product manufacturer shall be held responsible for any act or omission of its attorneys, advertising agencies, or other agents that contributed to that manufacturer's responsibility for the surcharge assessed under this section.

SEC. 205. DEFINITIONS.

In this subtitle:

(1) BASE INCIDENCE PERCENTAGE.—The term ''base incidence percentage'' means, with respect to each type of tobacco product, the percentage of young individuals determined to have used such tobacco product in the first annual performance survey for 1999.

(2) MANUFACTURERS BASE INCIDENCE PERCENTAGE.—The term ''manufacturers base incidence percentage'' is, with respect to each type of tobacco product, the percentage of young individuals determined to have identified a brand of such tobacco product of such manufacturer as the usual brand smoked or used in the first annual performance survey for 1999.

(3) YOUNG INDIVIDUALS.—The term ''young individuals'' means individuals who are over 11 years of age and under 18 years of age.

(4) CIGARETTE MANUFACTURERS.—The term ''cigarette manufacturers'' means manufacturers of cigarettes sold in the United States.

(5) NON-ATTAINMENT PERCENTAGE FOR CIGARETTES.—The term ''non-attainment percentage for cigarettes'' means the number of percentage points yielded—

(A) for a calendar year in which the percent incidence of underage use of cigarettes is less than the base incidence percentage, by subtracting—

(i) the percentage by which the percent incidence of underage use of cigarettes in that year is less than the base incidence percentage, from

(ii) the required percentage reduction applicable in that year; and

(B) for a calendar year in which the percent incidence of underage use of cigarettes is greater than the base incidence percentage, adding—

(i) the percentage by which the percent incidence of underage use of cigarettes in that year is greater than the base incidence percentage; and

(ii) the required percentage reduction applicable in that year.

(6) NON-ATTAINMENT PERCENTAGE FOR SMOKELESS TOBACCO PRODUCTS.—The term ''non-attainment percentage for smokeless tobacco products'' means the number of percentage points yielded—

(A) for a calendar year in which the percent incidence of underage use of smokeless tobacco products is less than the base incidence percentage, by subtracting—

(i) the percentage by which the percent incidence of underage use of smokeless tobacco products in that year is less than the base incidence percentage, from

(ii) the required percentage reduction applicable in that year; and

(B) for a calendar year in which the percent incidence of underage use of smokeless tobacco products is greater than the base incidence percentage, by adding—

(i) the percentage by which the percent incidence of underage use of smokeless tobacco products in that year is greater than the base incidence percentage; and

(ii) the required percentage reduction applicable in that year.

(7) SMOKELESS TOBACCO PRODUCT MANUFACTURERS.—The term ''smokeless tobacco product manufacturers'' means manufacturers of smokeless tobacco products sold in the United States.

Subtitle B—State Retail Licensing and Enforcement Incentives

SEC. 231. STATE RETAIL LICENSING AND ENFORCEMENT BLOCK GRANTS.

(a) IN GENERAL.—The Secretary shall make State retail licensing and enforcement block grants in accordance with the provisions of this section. There are authorized to be appropriated to the Secretary from the National Tobacco Trust Fund $200,000,000 for each fiscal year to carry out the provisions of this section.

(b) REQUIREMENTS.—

(1) ESTABLISHMENT.—The Secretary shall provide a block grant, based on population, under this subtitle to each State that has in effect a law that—

(A) provides for the licensing of entities engaged in the sale or distribution of tobacco products directly to consumers;

(B) makes it illegal to sell or distribute tobacco products to individuals under 18 years of age; and

(C) meets the standards described in this section.

(2) STATE AGREEMENT REQUIRED.—In order to receive a block grant under this section, a State—

(A) shall enter into an agreement with the Secretary to assume responsibilities for the implementation and enforcement of a tobacco retailer licensing program;

(B) shall prohibit retailers from selling or otherwise distributing tobacco products to individuals under 18 years of age in accordance with the Youth Access Restrictions regulations promulgated by the Secretary (21 C.F.R. 897.14(a) and (b));

(C) shall make available to appropriate Federal agencies designated by the Secretary requested information concerning retail establishments involved in the sale or distribution of tobacco products to consumers; and

(D) shall establish to the satisfaction of the Secretary that it has a law or regulation that includes the following:

(i) LICENSURE; SOURCES; AND NOTICE.—A requirement for a State license for each retail establishment involved in the sale or distribution of tobacco products to consumers. A requirement that a retail establishment may purchase tobacco products only from Federally-licensed manufacturers, importers, or wholesalers. A program under which notice is provided to such establishments and their employees of all licensing requirements and responsibilities under State and Federal law relating to the retail distribution of tobacco products.

(ii) PENALTIES.—

(I) CRIMINAL.—Criminal penalties for the sale or distribution of tobacco products to a consumer without a license.

(II) CIVIL.—Civil penalties for the sale or distribution of tobacco products in violation of State law, including graduated fines and suspension or revocation of licenses for repeated violations.

(III) OTHER.—Other programs, including such measures as fines, suspension of driver's license privileges, or community service requirements, for underage youths who possess, purchase, or attempt to purchase tobacco products.

(iii) JUDICIAL REVIEW.—Judicial review procedures for an action of the State suspending, revoking, denying, or refusing to renew any license under its program.

(c) ENFORCEMENT.—

(1) UNDERTAKING.—Each State that receives a grant under this subtitle shall undertake to enforce compliance with its tobacco retailing licensing program in a manner that can reasonably be expected to reduce the sale and distribution of tobacco products to individuals under 18 years of age. If the Secretary determines that a State is not enforcing the law in accordance with such an undertaking, the Secretary may withhold a portion of any unobligated funds under this section otherwise payable to that State.

(2) ACTIVITIES AND REPORTS REGARDING ENFORCEMENT.—A State that receives a grant under this subtitle shall—

(A) conduct monthly random, unannounced inspections of sales or distribution outlets in the State to ensure compliance with a law prohibiting sales of tobacco products to individuals under 18 years of age;

(B) annually submit to the Secretary a report describing in detail—

(i) the activities carried out by the State to enforce underage access laws during the fiscal year;

(ii) the extent of success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18 years;

(iii) how the inspections described in subparagraph (A) were conducted and the methods used to identify outlets, with appropriate protection for the confidentiality of information regarding the timing of inspections and other investigative techniques whose effectiveness depends on continued confidentiality; and

(iv) the identity of the single State agency designated by the Governor of the State to be responsible for the implementation of the requirements of this section.

(3) MINIMUM INSPECTION STANDARDS.—Inspections conducted by the State shall be conducted by the State in such a way as to ensure a scientifically sound estimate (with a 95 percent confidence interval that such estimates are accurate to within plus or minus 3 percentage points), using an accurate list of retail establishments throughout the State. Such inspections shall cover a range of outlets (not preselected on the basis of prior violations) to measure overall levels of compliance as well as to identify violations. The sample must reflect the distribution of the population under the age of 18 years throughout the State and the distribution of the outlets throughout the State accessible to youth. Except as provided in this paragraph, any reports required by this paragraph shall be made public. As used in this paragraph, the term ''outlet'' refers to any location that sells at retail or otherwise distributes tobacco products to consumers, including to locations that sell such products over-the-counter.

(d) NONCOMPLIANCE.—

(1) INSPECTIONS.—The Secretary shall withhold from any State that fails to meet the requirements of subsection (b) in any calendar year an amount equal to 5 percent of the amount otherwise payable under this subtitle to that State for the next fiscal year.

(2) COMPLIANCE RATE.—The Secretary shall withhold from any State that fails to demonstrate a compliance rate of—

(A) at least the annual compliance targets that were negotiated with the Secretary under section 1926 of the Public Health Service Act (42 U.S.C. 300x—26) as such section was in effect before its repeal by this Act through the third fiscal year after the date of enactment of this Act;

(B) at least 80 percent in the fourth fiscal year after such date;

(C) at least 85 percent in the fifth and sixth fiscal years after such date; and

(D) at least 90 percent in every fiscal year beginning with the seventh fiscal year after such date,

an amount equal to one percentage point for each percentage point by which the State failed to meet the percentage set forth in this subsection for that year from the amount otherwise payable under this subtitle for that fiscal year.

(e) RELEASE AND DISBURSEMENT.—

(1) Upon notice from the Secretary that an amount payable under this section has been ordered withheld under subsection (d), a State may petition the Secretary for a release and disbursement of up to 75 percent of the amount withheld, and shall give timely written notice of such petition to the attorney general of that State and to all tobacco product manufacturers.

(2) The agency shall conduct a hearing on such a petition, in which the attorney general of the State may participate and be heard.

(3) The burden shall be on the State to prove, by a preponderance of the evidence, that the release and disbursement should be made. The Secretary's decision on whether to grant such a release, and the amount of any such disbursement, shall be based on whether—

(A) the State presents scientifically sound survey data showing that the State is making significant progress toward reducing the use of tobacco products by individuals who have not attained the age of 18 years;

(B) the State presents scientifically-based data showing that it has progressively decreased the availability of tobacco products to such individuals;

(C) the State has acted in good faith and in full compliance with this Act, and any rules or regulations promulgated under this Act;

(D) the State provides evidence that it plans to improve enforcement of these laws in the next fiscal year; and

(E) any other relevant evidence.

(4) A State is entitled to interest on any withheld amount released at the average United States 52-Week Treasury Bill rate for the period between the withholding of the amount and its release.

(5) Any State attorney general or tobacco product manufacturer aggrieved by a final decision on a petition filed under this subsection may seek judicial review of such decision within 30 days in the United States Court of Appeals for the District of Columbia Circuit. Unless otherwise specified in this Act, judicial review under this section shall be governed by sections 701 through 706 of title 5, United States Code.

(6) No stay or other injunctive relief enjoining a reduction in a State's allotment pending appeal or otherwise may be granted by the Secretary or any court.

(f) NON-PARTICIPATING STATES LICENSING REQUIREMENTS.—For retailers in States which have not established a licensing program under subsection (a), the Secretary shall promulgate regulations establishing Federal retail licensing for retailers engaged in tobacco sales to consumers in those States. The Secretary may enter into agreements with States for the enforcement of

those regulations. A State that enters into such an agreement shall receive a grant under this section to reimburse it for costs incurred in carrying out that agreement.

(g) DEFINITION.—For the purposes of this section, the term ''first applicable fiscal year'' means the first fiscal year beginning after the fiscal year in which funding is made available to the States under this section.

SEC. 232. BLOCK GRANTS FOR COMPLIANCE BONUSES.

(a) IN GENERAL.—The Secretary shall make block grants to States determined to be eligible under subsection (b) in accordance with the provisions of this section. There are authorized to be appropriated to the Secretary from the National Tobacco Trust Fund $100,000,000 for each fiscal year to carry out the provisions of this section.

(b) ELIGIBLE STATES.—To be eligible to receive a grant under subsection (a), a State shall—

(1) prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require; and

(2) with respect to the year involved, demonstrate to the satisfaction of the Secretary that fewer than 5 percent of all individuals under 18 years of age who attempt to purchase tobacco products in the State in such year are successful in such purchase.

(c) PAYOUT.—

(1) PAYMENT TO STATE.—If one or more States are eligible to receive a grant under this section for any fiscal year, the amount payable for that fiscal year shall be apportioned among such eligible States on the basis of population.

(2) YEAR IN WHICH NO STATE RECEIVES GRANT.—If in any fiscal year no State is eligible to receive a grant under this section, then the Secretary may use not more than 25 percent of the amount appropriated to carry out this section for that fiscal year to support efforts to improve State and local enforcement of laws regulating the use, sale, and distribution of tobacco products to individuals under the age of 18 years.

(3) AMOUNTS AVAILABLE WITHOUT FISCAL YEAR LIMITATION.—Any amount appropriated under this section remaining unexpended and unobligated at the end of a fiscal year shall remain available for obligation and expenditure in the following fiscal year.

SEC. 233. CONFORMING CHANGE.

Section 1926 of the Public Health Service Act (42 U.S.C. 300x—26) is hereby repealed.

Subtitle C—Tobacco Use Prevention and Cessation Initiatives

SEC. 261. TOBACCO USE PREVENTION AND CESSATION INITIATIVES.

Title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.) is amended by adding at the end the following:

''PART D—TOBACCO USE PREVENTION AND CESSATION INITIATIVES

''SUBPART I—CESSATION AND COMMUNITY-BASED PREVENTION BLOCK GRANTS

''SEC. 1981. FUNDING FROM TOBACCO SETTLEMENT TRUST FUND.

''(a) IN GENERAL.—From amounts contained in the Public Health Allocation Account under section 451(b)(2)(A) and (C) of the National Tobacco Policy and Youth Smoking Reduction Act for a fiscal year, there are authorized to be appropriated (under subsection (d) of such section) to carry out this subpart—

(1) for cessation activities, the amounts appropriated under section 451 (b)(2)(A); and

(2) for prevention and education activities, the amounts appropriated under section 451 (b)(2)(C).

''(b) NATIONAL ACTIVITIES.—

''(1)Not more than 10 percent of the amount made available for any fiscal year under subsection (a) shall be made available to the Secretary to carry out activities under section 1981B and 1981D(d).

''(2) Not more than 10 percent of the amount available for any fiscal year under subsection (a)(1) shall be available to the Secretary to carry out activities under section 1981D(d).

''SEC. 1981A. ALLOTMENTS.

''(a) AMOUNT.—

''(1) IN GENERAL.—From the amount made available under section 1981 for any fiscal year the Secretary, acting through the Director of the Centers for Disease Control and Prevention (referred to in this subpart as the 'Director'), shall allot to each State an amount based on a formula to be developed by the Secretary that is based on the tobacco prevention and cessation needs of each State including the needs of the State's minority populations.

''(2) MINIMUM AMOUNT.—In determining the amount of allotments under paragraph (1), the Secretary shall ensure that no State receives less than ½ of 1 percent of the amount available under section 1981(a) for the fiscal year involved.

''(b) REALLOTMENT.—To the extent that amounts made available under section 1981 for a fiscal year are not otherwise allotted to States because—

''(1) 1 or more States have not submitted an application or description of activities in accordance with section 1981D for the fiscal year;

''(2) 1 or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

''(3) the Secretary has determined that the State is not in compliance with this subpart, and therefore is subject to penalties under section 1981D(g);

such excess amount shall be reallotted among each of the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year involved without regard to this subsection.

''(c) PAYMENTS.—

''(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall utilize the funds made available under this section to make payments to States under allotments under this subpart as provided for under section 203 of the Intergovernmental Cooperation Act of 1968.

''(2) FEDERAL GRANTEES.—From amounts available under section 1981(b)(2), the Secretary may make grants, or supplement existing grants, to entities eligible for funds under the programs described in section 1981C(d)(1) and (10) to enable such entities to carry out smoking cessation activities under this subpart, except not less than 25 percent of this amount shall be used for the program described in 1981C(d)(6).

''(3) AVAILABILITY OF FUNDS.—Any amount paid to a State for a fiscal year under this subpart and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such payment was made.

''(d) REGULATIONS.—Not later than 9 months after the date of enactment of this part, the Secretary shall promulgate regulations to implement this subpart. This subpart shall take effect regardless of the date on which such regulations are promulgated.

''SEC. 1981B. TECHNICAL ASSISTANCE AND PROVISION OF SUPPLIES AND SERVICES IN LIEU OF FUNDS.

''(a) TECHNICAL ASSISTANCE.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall, without charge to a State receiving an allotment under section 1981A, provide to such State (or to any public or nonprofit private entity within the State) technical assistance and training with respect to the planning, development, operation, and evaluation of any program or service carried out pursuant to the program involved. The Secretary may provide such technical assistance or training directly, through contract, or through grants.

''(b) PROVISION OF SUPPLIES AND SERVICE IN LIEU OF GRANT FUNDS.—The Secretary, at the request of a State, may reduce the amount of payments to the State under section 1981A(c) by—

''(1) the fair market value of any supplies or equipment furnished by the Secretary to the State; and

''(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Federal Government when detailed to the State and the amount of any other costs incurred in connection with the detail of such officer or employee;

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of the State and for the purpose of conducting activities described in section 1981C. The amount by which any payment is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment or in detailing the personnel, on which reduction of the payment is based, and the amount shall be deemed to be part of the payment and shall be deemed to have been paid to the State.

''SEC. 1981C. PERMITTED USERS OF CESSATION BLOCK GRANTS AND OF COMMUNITY-BASED PREVENTION BLOCK GRANTS.

''(a) TOBACCO USE CESSATION ACTIVITIES.—Except as provided in subsections (d) and (e), amounts described in subsection (a)(1) may be used for the following:

''(1) Evidence-based cessation activities described in the plan of the State, submitted in accordance with section 1981D, including—

''(A) evidence-based programs designed to assist individuals, especially young people and minorities who have been targeted by tobacco product manufacturers, to quit their use of tobacco products;

''(B) training in cessation intervention methods for health plans and health professionals, including physicians, nurses, dentists, health educators, public health professionals, and other health care providers;

''(C) programs to encourage health insurers and health plans to provide coverage for evidence-based tobacco use cessation interventions and therapies, except that the use of any funds under this clause to offset the cost of providing a smoking cessation benefit shall be on a temporary demonstration basis only;

''(D) culturally and linguistically appropriate programs targeted toward minority and low-income individuals, individuals residing in medically underserved areas, uninsured individuals, and pregnant women;

''(E) programs to encourage employer-based wellness programs to provide evidence-based tobacco use cessation intervention and therapies; and

''(F) programs that target populations whose smoking rate is disproportionately high in comparison to the smoking rate population-wide in the State.

''(2) Planning, administration, and educational activities related to the activities described in paragraph (1).

''(3) The monitoring and evaluation of activities carried out under paragraphs (1) and (2), and reporting and disseminating resulting information to health professionals and the public.

''(4) Targeted pilot programs with evaluation components to encourage innovation and experimentation with new methodologies.

''(b) STATE AND COMMUNITY ACTION ACTIVITIES.—Except as provided in subsections (d) and (e), amounts described in subsection (a)(2) may be used for the following:

''(1) Evidence-based activities for tobacco use prevention and control described in the plan of the State, submitted in accordance with section 1981D, including—

''(A) State and community initiatives;

''(B) community-based prevention programs, similar to programs currently funded by NIH;

''(C) programs focused on those populations within the community that are most at risk to use tobacco products or that have been targeted by tobacco advertising or marketing;

''(D) school programs to prevent and reduce tobacco use and addiction, including school programs focused in those regions of the State with high smoking rates and targeted at populations most at risk to start smoking;

''(E) culturally and linguistically appropriate initiatives targeted towards minority and low-income individuals, individuals residing in medically underserved areas, and women of child-bearing age;

''(F) the development and implementation of tobacco-related public health and health promotion campaigns and public policy initiatives;

''(G) assistance to local governmental entities within the State to conduct appropriate anti-tobacco activities.

''(H) strategies to ensure that the State's smoking prevention activities include minority, low-income, and other undeserved populations; and

''(I) programs that target populations whose smoking rate is disproportionately high in comparison to the smoking rate population-wide in the State.

''(2) Planning, administration, and educational activities related to the activities described in paragraph (1).

''(3) The monitoring and evaluation of activities carried out under paragraphs (1) and (2), and reporting and disseminating resulting information to health professionals and the public.

''(4) Targeted pilot programs with evaluation components to encourage innovation and experimentation with new methodologies.

''(c) COORDINATION.—Tobacco use cessation and community-based prevention activities permitted under subsections (b) and (c) may be conducted in conjunction with recipients of other Federally—funded programs within the State, including—

''(1) the special supplemental food program under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

''(2) the Maternal and Child Health Services Block Grant program under title V of the Social Security Act (42 U.S.C. 701 et seq.);

''(3) the State Children's Health Insurance Program of the State under title XXI of the Social Security Act (42 U.S.C. 13397aa et seq.);

''(4) the school lunch program under the National School Lunch Act (42 U.S.C. 1751 et seq.);

''(5) an Indian Health Service Program;

''(6) the community, migrant, and homeless health centers program under section 330 of the Public Health Service Act (42 U.S.C. 254b);

''(7) state-initiated smoking cessation programs that include provisions for reimbursing individuals for medications or therapeutic techniques;

''(8) the substance abuse and mental health services block grant program, and the preventive health services block grant program, under title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.);

''(9) the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); and

''(10) programs administered by the Department of Defense and the Department of Veterans Affairs.

''(d) LIMITATION.—A State may not use amounts paid to the State under section 1981A(c) to—

''(1) make cash payments except with appropriate documentation to intended recipients of tobacco use cessation services;

''(2) fund educational, recreational, or health activities not based on scientific evidence that the activity will prevent smoking or lead to success of cessation efforts

''(3) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

''(4) satisfy any requirement for the expenditure of non-Federal funds as a condition of the receipt of Federal funds; or

''(5) provide financial assistance to any entity other than a public or nonprofit private entity or a private entity consistent with subsection (b)(1)(C).

This subsection shall not apply to the support of targeted pilot programs that use innovative and experimental new methodologies and include an evaluation component.

''(e) ADMINISTRATION.—Not more than 5 percent of the allotment of a State for a fiscal year under this subpart may be used by the State to administer the funds paid to the State under section 1981A(c). The State shall pay from non-Federal sources the remaining costs of administering such funds.

''SEC. 1981D. ADMINISTRATIVE PROVISIONS.

''(a) APPLICATION.—The Secretary may make payments under section 1981A(c) to a State for a fiscal year only if—

''(1) the State submits to the Secretary an application, in such form and by such date as the Secretary may require, for such payments;

''(2) the application contains a State plan prepared in a manner consistent with section 1905(b) and in accordance with tobacco-related guidelines promulgated by the Secretary;

''(3) the application contains a certification that is consistent with the certification required under section 1905(c); and

''(4) the application contains such assurances as the Secretary may require regarding the compliance of the State with the requirements of this subpart (including assurances regarding compliance with the agreements described in subsection (c)).

''(b) STATE PLAN.—A State plan under subsection (a)(2) shall be developed in a manner consistent with the plan developed under section 1905(b) except that such plan—

''(1) with respect to activities described in section 1981C(b)—

''(A) shall provide for tobacco use cessation intervention and treatment consistent with the tobacco use cessation guidelines issued by the Agency for Health Care Policy and Research, or another evidence-based guideline approved by the Secretary, or treatments using drugs, human biological products, or medical devices approved by the Food and Drug Administration, or otherwise legally marketed under the Federal Food, Drug and Cosmetic Act for use as tobacco use cessation therapies or aids;

''(B) may, to encourage innovation and experimentation with new methodologies, provide for or may include a targeted pilot program with an evaluation component;

''(C) shall provide for training in tobacco use cessation intervention methods for health plans and health professionals, including physicians, nurses, dentists, health educators, public health professionals, and other health care providers;

''(D) shall ensure access to tobacco use cessation programs for rural and underserved populations;

''(E) shall recognize that some individuals may require more than one attempt for successful cessation; and

''(F) shall be tailored to the needs of specific populations, including minority populations; and

''(2) with respect to State and community-based prevention activities described in section 1981C(c), shall specify the activities authorized under such section that the State intends to carry out.

''(c) CERTIFICATION.—The certification referred to in subsection (a)(3) shall be consistent with the certification required under section 1905(c), except that

''(1) the State shall agree to expend payments under section 1981A(c) only for the activities authorized in section 1981C;

''(2) paragraphs (9) and (10) of such section shall not apply; and

''(3) the State is encouraged to establish an advisory committee in accordance with section 1981E.

''(d) REPORTS, DATA, AND AUDITS.—The provisions of section 1906 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part, except that the data sets referred to in section 1905(a)(2) shall be developed for uniformly defining levels of youth and adult use of tobacco products, including uniform data for racial and ethnic groups, for use in the reports required under this subpart.

''(e) WITHHOLDING.—The provisions of 1907 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part A.

''(f) NONDISCRIMINATION.—The provisions of 1908 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part A.

''(g) CRIMINAL PENALTIES.—The provisions of 1909 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part A.

''SEC. 1981E. STATE ADVISORY COMMITTEE.

''(a) IN GENERAL.—For purposes of sections 1981D(c)(3), an advisory committee is in accordance with this section if such committee meets the conditions described in this subsection.

''(b) DUTIES.—The recommended duties of the committee are—

''(1) to hold public hearings on the State plans required under sections 1981D; and

''(2) to make recommendations under this subpart regarding the development and implementation of such plans, including recommendations on—

''(A) the conduct of assessments under the plans;

''(B) which of the activities authorized in section 1981C should be carried out in the State;

''(C) the allocation of payments made to the State under section 1981A(c);

''(D) the coordination of activities carried out under such plans with relevant programs of other entities; and

''(E) the collection and reporting of data in accordance with section 1981D.

''(c) COMPOSITION.—

''(1) IN GENERAL.—The recommended composition of the advisory committee is members of the general public, such officials of the health departments of political subdivisions of the State, public health professionals, teenagers, minorities, and such experts in tobacco product research as may be necessary to provide adequate representation of the general public and of such health departments, and that members of the committee shall be subject to the provisions of sections 201, 202, and 203 of title 18, United States Code.

''(2) REPRESENTATIVES.—With respect to compliance with paragraph (1), the membership of the advisory committee may include representatives of community-based organizations (including minority community-based organizations), schools of public health, and entities to which the State involved awards grants or contracts to carry out activities authorized under section 1981C.

''SUBPART II—TOBACCO-FREE COUNTER-ADVERTISING PROGRAMS

''SEC. 1982. FEDERAL-STATE COUNTER-ADVERTISING PROGRAMS.

''(a) NATIONAL CAMPAIGN.—

''(1) IN GENERAL.—The Secretary shall conduct a national campaign to reduce tobacco usage through media-based (such as counter-advertising campaigns) and nonmedia-based education, prevention and cessation campaigns designed to discourage the use of tobacco products by individuals, to encourage those who use such products to quit, and to educate the public about the hazards of exposure to environmental tobacco smoke.

''(2) REQUIREMENTS.—The national campaign under paragraph (1) shall—

''(A) target those populations that have been targeted by tobacco industry advertising using culturally and linguistically appropriate means;

''(B) include a research and evaluation component; and

''(C) be designed in a manner that permits the campaign to be modified for use at the State or local level.

''(b) ESTABLISHMENT OF AN ADVISORY BOARD.—

''(1) IN GENERAL.—The Secretary shall establish a board to be known as the 'National Tobacco Free Education Advisory Board' (referred to in this section as the 'Board') to evaluate and provide long range planning for the development and effective dissemination of public informational and educational campaigns and other activities that are part of the campaign under subsection (a).

''(2) COMPOSITION.—The Board shall be composed of—

''(A) 9 non-Federal members to be appointed by the President, after consultation and agreement with the Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the House of Representatives, of which—

''(i) at least 3 such members shall be individuals who are widely recognized by the general public for cultural, educational, behavioral science or medical achievement;

''(ii) at least 3 of whom shall be individuals who hold positions of leadership in major public health organizations, including minority public health organizations; and

''(iii) at least 3 of whom shall be individuals recognized as experts in the field of advertising and marketing, of which—

''(I) 1 member shall have specific expertise in advertising and marketing to children and teens; and

''(II) 1 member shall have expertise in marketing research and evaluation; and

''(B) the Surgeon General, the Director of the Centers for Disease Control and Prevention, or their designees, shall serve as an ex officio members of the Board.

''(3) TERMS AND VACANCIES.—The members of the Board shall serve for a term of 3 years. Such terms shall be staggered as determined appropriate at the time of appointment by the Secretary. Any vacancy in the Board shall not affect its powers, but shall be filled in the same manner as the original appointment.

''(4) TRAVEL EXPENSES.—The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

''(5) AWARDS.—In carrying out subsection (a), the Secretary may—

''(A) enter into contracts with or award grants to eligible entities to develop messages and campaigns designed to prevent and reduce the use of tobacco products that are based on effective strategies to affect behavioral changes in children and other targeted populations, including minority populations;

''(B) enter into contracts with or award grants to eligible entities to carry out public informational and educational activities designed to reduce the use of tobacco products;

''(6) POWERS AND DUTIES.—The Board may—

''(A) hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out the purposes of this section; and

''(B) secure directly from any Federal department or agency such information as the Board considers necessary to carry out the provisions of this section.

''(c) ELIGIBILITY.—To be eligible to receive funding under this section an entity shall—

''(1) be a—

''(A) public entity or a State health department; or

''(B) private or nonprofit private entity that—

''(i)(I) is not affiliated with a tobacco product manufacturer or importer;

''(II) has a demonstrated record of working effectively to reduce tobacco product use; or

''(III) has expertise in conducting a multimedia communications campaign; and

''(ii) has expertise in developing strategies that affect behavioral changes in children and other targeted populations, including minority populations;

''(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a description of the activities to be conducted using amounts received under the grant or contract;

''(3) provide assurances that amounts received under this section will be used in accordance with subsection (c); and

''(4) meet any other requirements determined appropriate by the Secretary.

''(d) USE OF FUNDS.—An entity that receives funds under this section shall use amounts provided under the grant or contract to conduct multi-media and non-media public educational, informational, marketing and promotional campaigns that are designed to discourage and de-glamorize the use of tobacco products, encourage those using such products to quit, and educate the public about the hazards of exposure to environmental tobacco smoke. Such amounts may be used to design and implement such activities and shall be used to conduct research concerning the effectiveness of such programs.

''(e) NEEDS OF CERTAIN POPULATIONS.—In awarding grants and contracts under this section, the Secretary shall take into consideration the needs of particular populations, including minority populations, and use methods that are culturally and linguistically appropriate.

''(f) COORDINATION.—The Secretary shall ensure that programs and activities under this section are coordinated with programs and activities carried out under this title.

''(g) ALLOCATION OF FUNDS.—Not to exceed—

''(1) 25 percent of the amount made available under subsection (h) for each fiscal year shall be provided to States for State and local media-based and nonmedia-based education, prevention and cessation campaigns;

''(2) no more than 20 percent of the amount made available under subsection (h) for each fiscal year shall be used specifically for the development of new messages and campaigns;

''(3) the remainder shall be used specifically to place media messages and carry out other dissemination activities described in subsection (d); and

''(4) half of 1 percent for administrative costs and expenses.

''(h) TRIGGER.—No expenditures shall be made under this section during any fiscal year in which the annual amount appropriated for the Centers for Disease Control and Prevention is less than the amount so appropriated for the prior fiscal year.''.

''PART E—REDUCING YOUTH SMOKING AND TOBACCO-RELATED DISEASES THROUGH RESEARCH

''SEC. 1991. FUNDING FROM TOBACCO SETTLEMENT TRUST FUND.

No expenditures shall be made under sections 451(b) or (c)—

''(1) for the National Institutes of Health during any fiscal year in which the annual amount appropriated for such Institutes is less than the amount so appropriated for the prior fiscal year;

''(2) for the Centers for Disease Control and Prevention during any fiscal year in which the annual amount appropriated for such Centers is less than the amount so appropriated for the prior fiscal year; or

''(3) for the Agency for Health Care Policy and Research during any fiscal year in which the annual amount appropriated for such Agency is less than the amount so appropriated for the prior fiscal year.

''SEC. 1991A. STUDY BY THE INSTITUTE OF MEDICINE.

''(a) CONTRACT.—Not later than 60 days after the date of enactment of this title, the Secretary shall enter into a contract with the Institute of Medicine for the conduct of a study on the framework for a research agenda and research priorities to be used under this part.

''(b) CONSIDERATIONS.—

''(1) IN GENERAL.—In developing the framework for the research agenda and research priorities under subsection (a) the Institute of Medicine shall focus on increasing knowledge concerning the biological, social, behavioral, public health, and community factors involved in the prevention of tobacco use, reduction of tobacco use, and health consequences of tobacco use.

''(2) SPECIFIC CONSIDERATIONS.—In the study conducted under subsection (a), the Institute of Medicine shall specifically include research on—

''(A) public health and community research relating to tobacco use prevention methods, including public education, media, community strategies;

''(B) behavioral research relating to addiction, tobacco use, and patterns of smoking, including risk factors for tobacco use by children, women, and racial and ethnic minorities;

''(C) health services research relating to tobacco product prevention and cessation treatment methodologies;

''(D) surveillance and epidemiology research relating to tobacco;

''(E) biomedical, including clinical, research relating to prevention and treatment of tobacco-related diseases, including a focus on minorities, including racial and ethnic minorities;

''(F) the effects of tobacco products, ingredients of tobacco products, and tobacco smoke on the human body and methods of reducing any negative effects, including the development of non-addictive, reduced risk tobacco products;

''(G) differentials between brands of tobacco products with respect to health effects or addiction;

''(H) risks associated with environmental exposure to tobacco smoke, including a focus on children and infants;

''(I) effects of tobacco use by pregnant women; and

''(J) other matters determined appropriate by the Institute.

''(c) REPORT.—Not later than 10 months after the date on which the Secretary enters into the contract under subsection (a), the Institute of Medicine shall prepare and submit to the Secretary, the Committee on Labor and Human Resources, and the Committee on Appropriations of the Senate, and the Committee on Commerce of the House of Representatives, a report that shall contain the findings and recommendations of the Institute for the purposes described in subsection (b).

''SEC. 1991B. RESEARCH COORDINATION.

''(a) IN GENERAL.—The Secretary shall foster coordination among Federal research agencies, public health agencies, academic bodies, and community groups that conduct or support tobacco-related biomedical, clinical, behavioral, health services, public health and community, and surveillance and epidemiology research activities.

''(b) REPORT.—The Secretary shall prepare and submit a report on a biennial basis to the Committee on Labor and Human Resources, and the Committee on Appropriations of the Senate, and the Committee on Commerce of the House of Representatives on the current and planned tobacco-related research activities of participating Federal agencies.

''SEC. 1991C. RESEARCH ACTIVITIES OF THE CENTERS FOR DISEASE CONTROL AND PREVENTION.

''(a) DUTIES.—The Director of the Centers for Disease Control and Prevention shall, from amounts provided under section 451(c), and after review of the study of the Institute of Medicine, carry out tobacco-related surveillance and epidemiologic studies and develop tobacco control and prevention strategies; and

''(b) YOUTH SURVEILLANCE SYSTEMS.—From amounts provided under section 451(b), the Director of the Centers for Disease Control and Prevention shall provide for the use of youth surveillance systems to monitor the use of all tobacco products by individuals under the age of 18, including brands-used to enable determinations to be made of company-specific youth market share.

''SEC. 1991D. RESEARCH ACTIVITIES OF THE NATIONAL INSTITUTES OF HEALTH.

''(a) FUNDING.—There are authorized to be appropriated, from amounts in the National Tobacco Settlement Trust Fund established by section 401 of the National Tobacco Policy and Youth Smoking Reduction Act.

''(b) EXPENDITURE OF FUNDS.—The Director of the National Institutes of Health shall provide funds to conduct or support epidemiological, behavioral, biomedical, and social science research, including research related to the prevention and treatment of tobacco addiction, and the prevention and treatment of diseases associated with tobacco use.

''(c) GUARANTEED MINIMUM.—Of the funds made available to the National Institutes of Health under this section, such sums as may be necessary, may be used to support epidemiological, behavioral, and social science research related to the prevention and treatment of tobacco addiction.

''(d) NATURE OF RESEARCH.—Funds made available under subsection (d) may be used to conduct or support research with respect to one or more of the following—

''(1) the epidemiology of tobacco use;

''(2) the etiology of tobacco use;

''(3) risk factors for tobacco use by children;

''(4) prevention of tobacco use by children, including school and community-based programs, and alternative activities;

''(5) the relationship between tobacco use, alcohol abuse and illicit drug abuse;

''(6) behavioral and pharmacological smoking cessation methods and technologies, including relapse prevention;

''(7) the toxicity of tobacco products and their ingredients;

''(8) the relative harmfulness of different tobacco products;

''(9) environmental exposure to tobacco smoke;

''(10) the impact of tobacco use by pregnant women on their fetuses;

''(11) the redesign of tobacco products to reduce risks to public health and safety; and

''(12) other appropriate epidemiological, behavioral, and social science research.

''(e) COORDINATION.—In carrying out tobacco-related research under this section, the Director of the National Institutes of Health shall ensure appropriate coordination with the research of other agencies, and shall avoid duplicative efforts through all appropriate means.

''(h) ADMINISTRATION.—The director of the NIH Office of Behavioral and Social Sciences Research may—

''(1) identify tobacco-related research initiatives that should be conducted or supported by the research institutes, and develop such projects in cooperation with such institutes;

''(2) coordinate tobacco-related research that is conducted or supported by the National Institutes of Health;

''(3) annually recommend to Congress the allocation of anti-tobacco research funds among the national research institutes; and

''(4) establish a clearinghouse for information about tobacco-related research conducted by governmental and non-governmental bodies.

''(f) TRIGGER.—No expenditure shall be made under subsection (a) during any fiscal year in which the annual amount appropriated for the National Institutes of Health is less than the amount so appropriated for the prior fiscal year.

''(g) REPORT.—The Director of the NIH shall every 2 years prepare and submit to the Congress a report ——— research activities, including funding levels, for research made available under subsection (c).

(b) MEDICAID COVERAGE OF OUTPATIENT SMOKING CESSATION AGENTS.—Paragraph (2) of section 1927(d) of the Public Health Service Act (42 U.S.C. 1396r-8(d)) is amended—

(1) by striking subparagraph (E) and redesignating subparagraphs (F) through (J) as subparagraphs (E) through (I); and

(2) by striking ''drugs.'' in subparagraph (F), as redesignated, and inserting ''drugs, except agents, approved by the Food and Drug Administration, when used to promote smoking cessation.''.

''SEC. 1991E. RESEARCH ACTIVITIES OF THE AGENCY FOR HEALTH CARE POLICY AND RESEARCH.

''(a) IN GENERAL.—The Administrator of the Agency for Health Care Policy and Research shall carry out outcomes, effectiveness, cost-effectiveness, and other health services research related to effective interventions for the prevention and cessation of tobacco use and appropriate strategies for implementing those services, the outcomes and delivery of care for diseases related to tobacco use, and the development of quality measures for evaluating the provision of those services.

''(b) ANALYSES AND SPECIAL PROGRAMS.—The Secretary, acting through the Administrator of the Agency for Health Care Policy and Research, shall support—

''(1) and conduct periodic analyses and evaluations of the best scientific information in the area of smoking and other tobacco product use cessation; and

''(2) the development and dissemination of special programs in cessation intervention for health plans and national health professional societies.''.

TITLE III—TOBACCO PRODUCT WARNINGS AND SMOKE CONSTITUENT DISCLOSURE

Subtitle A—Product Warnings, Labeling and Packaging

SEC. 301. CIGARETTE LABEL AND ADVERTISING WARNINGS.

(a) IN GENERAL.—Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

''SEC. 4. LABELING.

''(a) LABEL REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

''WARNING: Cigarettes are addictive''

''WARNING: Tobacco smoke can harm your children''

''WARNING: Cigarettes cause fatal lung disease''

''WARNING: Cigarettes cause cancer''

''WARNING: Cigarettes cause strokes and heart disease''

''WARNING: Smoking during pregnancy can harm your baby''

''WARNING: Smoking can kill you''

''WARNING: Tobacco smoke causes fatal lung disease in non-smokers''

''WARNING: Quitting smoking now greatly reduces serious risks to your health''

''(2) PLACEMENT; TYPOGRAPHY; ETC..—

''(A) IN GENERAL.—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Except as provided in subparagraph (B), each label statement shall comprise at least the top 25 percent of the front and rear panels of the package. The word ''WARNING'' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(4).

''(B) FLIP-TOP BOXES.—For any cigarette brand package manufactured or distributed

before January 1, 2000, which employs a flip-top style (if such packaging was used for that brand in commerce prior to June 21, 1997), the label statement required by paragraph (1) shall be located on the flip-top area of the package, even if such area is less than 25 percent of the area of the front panel. Except as provided in this paragraph, the provisions of this subsection shall apply to such packages.

''(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

''(b) ADVERTISING REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a) of this section.

''(2) TYPOGRAPHY, ETC..—Each label statement required by subsection (a) of this section in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word ''WARNING'' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under paragraph (4) of this subsection. The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital ''W'' of the word ''WARNING'' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that in the case of—

''(A) an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section or the text, format, and type sizes of any required tar, nicotine yield, or other constituent disclosures, or to establish the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et. seq.). The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2) of this subsection. The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(4) MARKETING REQUIREMENTS.—

''(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.''.

(b) REPEAL OF PROHIBITION ON STATE RESTRICTION.—Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334) is amended—

(1) by striking ''(a) ADDITIONAL STATEMENTS.—'' IN SUBSECTION (A); AND

(2) by striking subsection (b).

SEC. 302. AUTHORITY TO REVISE CIGARETTE WARNING LABEL STATEMENTS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 301 of this title, is further amended by adding at the end the following:

''(c) CHANGE IN REQUIRED STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the warning label statements required by subsection (a) of this section, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

SEC. 303. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

''SEC. 3. SMOKELESS TOBACCO WARNING.

''(a) GENERAL RULE.—

''(1) It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

''WARNING: This product can cause mouth cancer''

''WARNING: This product can cause gum disease and tooth loss''

''WARNING: This product is not a safe alternative to cigarettes''

''WARNING: Smokeless tobacco is addictive''

''(2) Each label statement required by paragraph (1) shall be—

''(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 25 percent of each such display panel; and

''(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

''(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

''(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

''(b) REQUIRED LABELS.—

''(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall—

''(A) comprise at least 20 percent of the area of the advertisement, and the warning area shall be delineated by a dividing line of contrasting color from the advertisement; and

''(B) the word ''WARNING'' shall appear in capital letters and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.''.

SEC. 304. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 303 of this title, is further amended by adding at the end the following:

''(d) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the warning label statements required by subsection (a) of this section, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

SEC. 305. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 (a)), as amended by section 301 of this title, is further amended by adding at the end the following:

''(4)(A) The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

''(B) Any differences between the requirements established by the Secretary under subparagraph (A) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

''(C) In addition to the disclosures required by subparagraph (A) of this paragraph, the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).''.

Subtitle B—Testing and Reporting of Tobacco Product Smoke Constituents

SEC. 311. REGULATION REQUIREMENT.

(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 24 months after the date of enactment of this Act, the Secretary, through the Commissioner of the Food and Drug Administration, shall promulgate regulations under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) that meet the requirements of subsection (b) of this section.

(b) CONTENTS OF RULES.—The rules promulgated under subsection (a) of this section shall require the testing, reporting, and disclosure of tobacco product smoke constituents and ingredients that the Secretary determines should be disclosed to the public in order to protect the public health. Such constituents shall include tar, nicotine, carbon monoxide, and such other smoke constituents or ingredients as the Secretary may determine to be appropriate. The rule may require that tobacco product manufacturers, packagers, or importers make such disclosures relating to tar and nicotine through labels or advertising, and make such disclosures regarding other smoke constituents or ingredients as the Secretary determines are necessary to protect the public health.

(c) AUTHORITY.—The Food and Drug Administration shall have authority to conduct or to require the testing, reporting, or disclosure of tobacco product smoke constituents.

TITLE IV—NATIONAL TOBACCO TRUST FUND

SEC. 401. ESTABLISHMENT OF TRUST FUND.

(a) CREATION.—There is established in the Treasury of the United States a trust fund to be known as the ''National Tobacco Trust Fund'', consisting of such amounts as may be appropriated or credited to the trust fund.

(b) TRANSFERS TO NATIONAL TOBACCO TRUST FUND.—There shall be credited to the trust fund the net revenues resulting from the following amounts:

(1) Amounts paid under section 402.

(2) Amounts equal to the fines or penalties paid under section 402, 403, or 405, including interest thereon.

(3) Amounts equal to penalties paid under section 202, including interest thereon.

(c) NET REVENUES.—For purposes of subsection (b), the term ''net revenues'' means the amount estimated by the Secretary of the Treasury based on the excess of—

(1) the amounts received in the Treasury under subsection (b), over

(2) the decrease in the taxes imposed by chapter 1 and chapter 52 of the Internal Revenue Code of 1986, and other offsets, resulting from the amounts received under subsection (b).

(d) EXPENDITURES FROM THE TRUST FUND.—Amounts in the Trust Fund shall be available in each fiscal year, as provided in appropriation Acts. The authority to allocate net revenues as provided in this title and to obligate any amounts so allocated is contingent upon actual receipt of net revenues.

(e) BUDGETARY TREATMENT.—The amount of net receipts in excess of that amount which is required to offset the direct spending in this Act under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902) shall be available exclusively to offset the appropriations required to fund the authorizations of appropriations in this Act (including the amendments made by this Act), and the amount of such appropriations shall not be included in the estimates required under section 251 of that Act (2 U.S.C. 901).

(f) ADMINISTRATIVE PROVISIONS.—Section 9602 of the Internal Revenue Code of 1986 shall apply to the trust fund to the same extent as if it were established by subchapter A of chapter 98 of such Code, except that, for purposes of section 9602(b)(3), any interest or proceeds shall be covered into the Treasury as miscellaneous receipts.

SEC. 402. PAYMENTS BY INDUSTRY.

(a) INITIAL PAYMENT.—

(1) CERTAIN TOBACCO PRODUCT MANUFACTURERS.—The following participating tobacco product manufacturers, subject to the provisions of title XIV, shall deposit into the National Tobacco Trust Fund an aggregate payment of $10,000,000,000, apportioned as follows:

(A) Phillip Morris Incorporated—65.8 percent.

(B) Brown and Williamson Tobacco Corporation—17.3 percent.

(C) Lorillard Tobacco Company—7.1 percent.

(D) R.J. Reynolds Tobacco Company—6.6 percent.

(E) United States Tobacco Company—3.2 percent.

(2) NO CONTRIBUTION FROM OTHER TOBACCO PRODUCT MANUFACTURERS.—No other tobacco product manufacturer shall be required to contribute to the payment required by this subsection.

(3) PAYMENT DATE; INTEREST.—Each tobacco product manufacturer required to make a payment under paragraph (1) of this subsection shall make such payment within 30 days after the date of compliance with this Act and shall owe interest on such payment at the prime rate plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the date of enactment of this Act, for payments made after the required payment date.

(b) ANNUAL PAYMENTS.—Each calendar year beginning after the required payment date under subsection (a)(3) the tobacco product manufacturers shall make total payments into the Fund for each calendar year in the following applicable base amounts, subject to adjustment as provided in section 403:

(1) year 1—$14,400,000,000.

(2) year 2—$15,400,000,000.

(3) year 3—$17,700,000,000.

(4) year 4—$21,400,000,000.

(5) year 5—$23,600,000,000.

(6) year 6 and thereafter—the adjusted applicable base amount under section 403.

(c) PAYMENT SCHEDULE; RECONCILIATION.—

(1) ESTIMATED PAYMENTS.—Deposits toward the annual payment liability for each calendar year under subsection (d)(2) shall be made in 3 equal installments due on March 1st, on June 1st, and on August 1st of each year. Each installment shall be equal to one-third of the estimated annual payment liability for that calendar year. Deposits of installments paid after the due date shall accrue interest at the prime rate plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the payment date.

(2) RECONCILIATION.—If the liability for a calendar year under subsection (d)(2) exceeds the deposits made during that calendar year, the manufacturer shall pay the unpaid liability on March 1st of the succeeding calendar year, along with the first deposit for that succeeding year. If the deposits during a calendar year exceed the liability for the calendar year under subsection (d)(2), the manufacturer shall subtract the amount of the excess deposits from its deposit on March 1st of the succeeding calendar year.

(d) APPORTIONMENT OF ANNUAL PAYMENT.—

(1) IN GENERAL.—Each tobacco product manufacturer is liable for its share of the applicable base amount payment due each year under subsection (b). The annual payment is

the obligation and responsibility of only those tobacco product manufacturers and their affiliates that directly sell tobacco products in the domestic market to wholesalers, retailers, or consumers, their successors and assigns, and any subsequent fraudulent transferee (but only to the extent of the interest or obligation fraudulently transferred).

(2) DETERMINATION OF AMOUNT OF PAYMENT DUE.—Each tobacco product manufacturer is liable for its share of each installment in proportion to its share of tobacco products sold in the domestic market for the calendar year. One month after the end of the calendar year, the Secretary shall make a final determination of each tobacco product manufacturer's applicable base amount payment obligation.

(3) CALCULATION OF TOBACCO PRODUCT MANUFACTURER'S SHARE OF ANNUAL PAYMENT.—The share of the annual payment apportioned to a tobacco product manufacturer shall be equal to that manufacturer's share of adjusted units, taking into account the manufacturer's total production of such units sold in the domestic market. A tobacco product manufacturer's share of adjusted units shall be determined as follows:

(A) UNITS.—A tobacco product manufacturer's number of units shall be determined by counting each—

(i) pack of 20 cigarettes as 1 adjusted unit;

(ii) 1.2 ounces of moist snuff as 0.75 adjusted unit; and

(iii) 3 ounces of other smokeless tobacco product as 0.35 adjusted units.

(B) DETERMINATION OF ADJUSTED UNITS.—Except as provided in subparagraph (C), a smokeless tobacco product manufacturer's number of adjusted units shall be determined under the following table:

For units:	Each unit shall be treated as:
Not exceeding 150 million	70% of a unit
Exceeding 150 million	100% of a unit

(C) ADJUSTED UNITS DETERMINED ON TOTAL DOMESTIC PRODUCTION.—For purposes of determining a manufacturer's number of adjusted units under subparagraph (B), a manufacturer's total production of units, whether intended for domestic consumption or export, shall be taken into account.

(D) SPECIAL RULE FOR LARGE MANUFACTURERS.—If a tobacco product manufacturer has more than 200 million units under subparagraph (A), then that manufacturer's number of adjusted units shall be equal to the total number of units, and not determined under subparagraph (B).

(E) SMOKELESS EQUIVALENCY STUDY.—Not later than January 1, 2003, the Secretary shall submit to the Congress a report detailing the extent to which youths are substituting smokeless tobacco products for cigarettes. If the Secretary determines that significant substitution is occurring, the Secretary shall include in the report recommendations to address substitution, including consideration of modification of the provisions of subparagraph (A).

(e) COMPUTATIONS.—The determinations required by subsection (d) shall be made and certified by the Secretary of Treasury. The parties shall promptly provide the Treasury Department with information sufficient for it to make such determinations.

(f) NONAPPLICATION TO CERTAIN MANUFACTURERS.—

(1) EXEMPTION .—A manufacturer described in paragraph (3) is exempt from the payments required by subsection (b).

(2) LIMITATION.—Paragraph (1) applies only to assessments on cigarettes to the extent that those cigarettes constitute less than 3 percent of all cigarettes manufactured and distributed to consumers in any calendar year.

(3) TOBACCO PRODUCT MANUFACTURERS TO WHICH SUBSECTION APPLIES.—A tobacco product manufacturer is described in this paragraph if it—

(A) resolved tobacco-related civil actions with more than 25 States before January 1, 1998, through written settlement agreements signed by the attorneys general (or the equivalent chief legal officer if there is no office of attorney general) of those States; and

(B) provides to all other States, not later than December 31, 1998, the opportunity to enter into written settlement agreements that—

(i) are substantially similar to the agreements entered into with those 25 States; and

(ii) provide the other States with annual payment terms that are equivalent to the most favorable annual payment terms of its written settlement agreements with those 25 States.

SEC. 403. ADJUSTMENTS.

The applicable base amount under section 402(b) for a given calendar year shall be adjusted as follows in determining the annual payment for that year:

(1) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—Beginning with the sixth calendar year after the date of enactment of this Act, the adjusted applicable base amount under section 402(b)(6) is the amount of the annual payment made for the preceding year increased by the greater of 3 percent or the annual increase in the CPI, adjusted (for calendar year 2002 and later years) by the volume adjustment under paragraph (2).

(B) CPI.—For purposes of subparagraph (A), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(C) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

(2) VOLUME ADJUSTMENT.—Beginning with calendar year 2002, the applicable base amount (as adjusted for inflation under paragraph (1)) shall be adjusted for changes in volume of domestic sales by multiplying the applicable base amount by the ratio of the actual volume for the calendar year to the base volume. For purposes of this paragraph, the term ''base volume'' means 80 percent of the number of units of taxable domestic removals and taxed imports of cigarettes in calendar year 1997, as reported to the Secretary of the Treasury. For purposes of this subsection, the term ''actual volume'' means the number of adjusted unites as defined in section 402(d)(3)(A).

SEC. 404. PAYMENTS TO BE PASSED THROUGH TO CONSUMERS.

Each tobacco product manufacturer shall use its best efforts to adjust the price at which it sells each unit of tobacco products in the domestic market or to an importer for resale in the domestic market by an amount sufficient to pass through to each purchaser on a per-unit basis an equal share of the annual payments to be made by such tobacco product manufacturer under this Act for the year in which the sale occurs.

SEC. 405. TAX TREATMENT OF PAYMENTS.

All payments made under section 402 are ordinary and necessary business expenses for purposes of chapter 1 of the Internal Revenue Code of 1986 for the year in which such payments are made, and no part thereof is either in settlement of an actual or potential liability for a fine or penalty (civil or criminal) or the cost of a tangible or intangible asset or other future benefit.

SEC. 406. ENFORCEMENT FOR NONPAYMENT.

(a) PENALTY.—Any tobacco product manufacturer that fails to make any payment required under section 402 or 404 within 60 days after the date on which such fee is due is liable for a civil penalty computed on the unpaid balance at a rate of prime plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the payment date, during the period the payment remains unmade.

(b) NONCOMPLIANCE PERIOD.—For purposes of this section, the term ''noncompliance period'' means, with respect to any failure to make a payment required under section 402 or 404, the period—

(1) beginning on the due date for such payment; and

(2) ending on the date on which such payment is paid in full.

(c) LIMITATIONS.—

(1) IN GENERAL.—No penalty shall be imposed by subsection (a) on any failure to make a payment under section 402 during any period for which it is established to the satisfaction of the Secretary of the Treasury that none of the persons responsible for such failure knew or, exercising reasonable diligence, should have known, that such failure existed.

(2) CORRECTIONS.—No penalty shall be imposed under subsection (a) on any failure to make a payment under section 402 if—

(A) such failure was due to reasonable cause and not to willful neglect; and

(B) such failure is corrected during the 30-day period beginning on the 1st date that any of the persons responsible for such failure knew or, exercising reasonable diligence, should have known, that such failure existed.

(3) WAIVER.—In the case of any failure to make a payment under section 402 that is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the penalty imposed under subsection (a) to the extent that the Secretary determines that the payment of such penalty would be excessive relative to the failure involved.

Subtitle B—General Spending Provisions

SEC. 451. ALLOCATION ACCOUNTS.

(a) STATE LITIGATION SETTLEMENT ACCOUNT.—

(1) IN GENERAL.—There is established within the Trust Fund a separate account, to be known as the State Litigation Settlement Account. Of the net revenues credited to the Trust Fund under section 401(b)(1) for each fiscal year, 40 percent of the amounts designated for allocation under the settlement payments shall be allocated to this account. Such amounts shall be reduced by the additional estimated Federal expenditures that will be incurred as a result of State expenditures under section 452, which amounts shall be transferred to the miscellaneous receipts of the Treasury. If, after 10 years, the estimated 25-year total amount projected to received in this account will be different than amount than $196,500,000,000, then beginning with the eleventh year the 40 percent share will be adjusted as necessary, to a percentage not in excees of 50 percent and not less than 30 percent, to achieve that 25-year total amount.

(2) APPROPRIATION.—Amounts so calculated are hereby appropriated and available until expended and shall be available to States for grants authorized under this Act.

(3) DISTRIBUTION FORMULA.—The Secretary of the Treasury shall consult with the National Governors Association, the National Association of Attorneys General, and the National Conference of State Legislators on a formula for the distribution of amounts in the State Litigation Settlement Account and report to the Congress within 90 days after the date of enactment of this Act with recommendations for implementing a distribution formula.

(4) USE OF FUNDS.—A State may use amounts received under this subsection as the State determines appropriate, consistent with the other provisions of this Act.

(5) FUNDS NOT AVAILABLE AS MEDICAID REIMBURSEMENT.—Funds in the account shall not be available to the Secretary as reimbursement of Medicaid expenditures or considered as Medicaid overpayments for purposes of recoupment.

(b) PUBLIC HEALTH ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Public Health Account. Twenty-two percent of the net revenues credited to the trust fund under section 401(b)(1) and all the net revenues credited to the trust fund under section 401(b)(3) shall be allocated to this account.

(2) AUTHORIZATION OF APPROPRIATIONS.—Amounts in the Public Health Account shall be available to the extent and only in the amounts provided in advance in appropriations Acts, to remain available until expended, only for the purposes of:

(A) CESSATION AND OTHER TREATMENTS.—Of the total amounts allocated to this account, not less than 25 percent, but not more than 35 percent are to be used to carry out smoking cessation activities under part D of title XIX of the Public Health Service Act, as added by title II of this Act.

(B) INDIAN HEALTH SERVICE.—Of the total amounts allocated to this account, not less than 3 percent, but not more than 7 percent are to be used to carry out activities under section 453.

(C) EDUCATION AND PREVENTION.—Of the total amounts allocated to this account, not less than 50 percent, but not more than 65 percent are to be used to carry out—

(i) counter-advertising activities under section 1982 of the Public Health Service Act as amended by this Act;

(ii) smoking prevention activities under section 223;

(iii) surveys under section 1991C of the Public Health Service Act, as added by this Act (but, in no fiscal year may the amounts used to carry out such surveys be less than 10 percent of the amounts available under this subsection); and

(iv) international activities under section 1132.

(D) ENFORCEMENT.—Of the total amounts allocated to this account, not less than 17.5 percent nor more than 22.5 percent are to be used to carry out the following:

(i) Food and Drug Administration activities.

(I) The Food and Drug Administration shall receive not less than 15 percent of the funds provided in subparagraph (D) in the first fiscal year beginning after the date of enactment of this Act, 35 percent of such funds in the second year beginning after the date of enactment, and 50 percent of such funds for each fiscal year beginning after the date of enactment, as reimbursements for the costs incurred by the Food and Drug Administration in implementing and enforcing requirements relating to tobacco products.

(II) No expenditures shall be made under subparagraph (D) during any fiscal year in which the annual amount appropriated for the Food and Drug Administration is less than the amount so appropriated for the prior fiscal year.

(ii) State retail licensing activities under section 251.

(iii) Anti-Smuggling activities under section 1141.

(c) HEALTH AND HEALTH-RELATED RESEARCH ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Health and Health-Related Research Account. Of the net revenues credited to the trust fund under section 401(b)(1), 22 percent shall be allocated to this account.

(2) AUTHORIZATION OF APPROPRIATIONS.—Amounts in the Health and Health-Related Research Account shall be available to the extent and in the amounts provided in advance in appropriations acts, to remain available until expended, only for the following purposes:

(A) $750,000 shall be made vailable in fiscal year 1999 for the study to be conducted under section 1991 of the Public Health Service Act.

(B) National Institutes of Health Research under section 1991D of the Public Health Service Act, as added by this Act. Of the total amounts allocated to this account, not less than 75 percent, but not more than 87 percent shall be used for this purpose.

(C) Centers for Disease Control under section 1991C of the Public Health Service Act, as added by this Act, and Agency for Health Care Policy and Research under section 1991E of the Public Health Service Act, as added by this Act. authorized under sections 2803 of that Act, as so added. Of the total amounts allocated to this account, not less than 12 percent, but not more than 18 percent shall be used for this purpose.

(D) National Science Foundation Research under section 454. Of the total amounts allocated to this account, not less than 1 percent, but not more than 1 percent shall be used for this purpose.

(E) Cancer Clinical Trials under section 455. Of the total amounts allocated to this account, $750,000,000 shall be used for the first 3 fiscal years for this purpose.

(d) FARMERS ASSISTANCE ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Farmers Assistance Account. Of the net revenues credited to the trust fund under section 401(b)(1) in each fiscal year—

(A) 16 percent shall be allocated to this account for the first 10 years after the date of enactment of this Act; and

(B) 4 percent shall be allocated to this account for each subsequent year until the account has received a total of $28,500,000,000.

(2) APPROPRIATION.—Amounts allocated to this account are hereby appropriated and shall be available until expended for the purposes of section 1012.

(e) MEDICARE PRESERVATION ACCOUNT.—There is established within the trust fund a separate account, to be known as the Medicare Preservation Account. If, in any year, the net amounts credited to the trust fund for payments under section 402(b) are greater than the net revenues originally estimated under section 401(b), the amount of any such excess shall be credited to the Medicare Preservation Account. Beginning in the eleventh year beginning after the date of enactment of this Act, 12 percent of the net revenues credited to the trust fund under seciton 401(b)(1) shall be allocated to this account. Funds credited to this account shall be transferred to the Medicare Hospital Insurance Trust Fund.

SEC. 452. GRANTS TO STATES.

(a) AMOUNTS.—From the amount made available under section 402(a) for each fiscal year, each State shall receive a grant on a quarterly basis according to a formula.

(b) USE OF FUNDS.—

(1) UNRESTRICTED FUNDS.—A State may use funds, not to exceed 50 percent of the amount received under this section in a fiscal year, for any activities determined appropriate by the State.

(2) RESTRICTED FUNDS.—A State shall use not less than 50 percent of the amount received under this section in a fiscal year to carry out additional activities or provide additional services under—

(A) the State program under the maternal and child health services block grant under title V of the Social Security Act (42 U.S.C. 701 et seq.);

(B) funding for child care under section 418 of the Social Security Act, notwithstanding subsection (b)(2) of that section;

(C) federally funded child welfare and abuse programs under title IV-B of the Social Security Act;

(D) programs administered within the State under the authority of the Substance Abuse and Mental Health Services Administration under title XIX, part B of the Public Health Service Act;

(E) Safe and Drug-Free Schools Program under title IV, part A, of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7111 et seq.);

(F) the Department of Education's Dwight D. Eisenhower Professional Development program under title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6601 et seq.); and

(G) The State Children's Health Insurance Program authorized under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.), provided that the amount expended on this program does not exceed 6 percent of the total amount of restricted funds available to the State each fiscal year.

(c) NO SUBSTITUTION OF SPENDING.—Amounts referred to in subsection (b)(2) shall be used to supplement and not supplant other Federal, State, or local funds provided for any of the programs described in subparagraphs (A) through (G) of subsection (b)(2). Restricted funds, except as provided for in subsection (b)(2)(G), shall not be used as State matching funds. Amounts provided to the State under any of the provisions of law referred to in such subparagraph shall not be reduced solely as a result of the availability of funds under this section.

(d) FEDERAL-STATE MATCH RATES.—Current (1998) matching requirements apply to each program listed under subsection (b)(2), except for the program described under subsection (b)(2)(B). For the program described under subsection (b)(2)(B), after an individual State has expended resources sufficient to receive its full Federal amount under section 418(a)(2)(B) of the Social Security Act (subject to the matching requirements in section 418(a)(2)(C) of such Act), the Federal share of expenditures shall be 80 percent.

(e) MAINTENANCE OF EFFORT.—To receive funds under this subsection, States must demonstrate a maintenance of effort. This maintenance of effort is defined as the sum of—

(1) an amount equal to 95 percent of Federal fiscal year 1997 State spending on the programs under subsections (b)(2)(B), (c), and (d); and

(2) an amount equal to the product of the amount described in paragraph (1) and—

(A) for fiscal year 1999, the lower of—

(i) general inflation as measured by the consumer price index for the previous year; or

(ii) the annual growth in the Federal appropriation for the program in the previous fiscal year; and

(B) for subsequent fiscal years, the lower of—

(i) the cumulative general inflation as measured by the consumer price index for the period between 1997 and the previous year; or

(ii) the cumulative growth in the Federal appropriation for the program for the period between fiscal year 1997 and the previous fiscal year.

The 95-percent maintenance-of-effort requirement in paragraph (1), and the adjustments in paragraph (2), apply to each program identified in paragraph (1) on an individual basis.

(f) OPTIONS FOR CHILDREN'S HEALTH OUTREACH.—In addition to the options for the use of grants described in this section, the following are new options to be added to States' choices for conducting children's health outreach:

(1) EXPANSION OF PRESUMPTIVE ELIGIBILITY OPTION FOR CHILDREN.—

(A) IN GENERAL.—Section 1920A(b)(3)(A)(I) of the Social Security Act (42 U.S.C. 1396r-1a(b)(3)(A)(I)) is amended—

(i) by striking ''described in subsection (a) or (II) is authorized'' and inserting ''described in subsection (a), (II) is authorized''; and

(ii) by inserting before the semicolon '', eligibility for benefits under part A of title IV, eligibility of a child to receive benefits under the State plan under this title or title XXI, (III) is a staff member of a public school, child care resource and referral center, or agency administering a plan under part D of title IV, or (IV) is so designated by the State''.

(B) TECHNICAL AMENDMENTS.—Section 1920A of that Act (42 U.S.C. 1396r-1a) is amended—

(i) in subsection (b)(3)(A)(ii), by striking ''paragraph (1)(A)'' and inserting ''paragraph (2)(A)''; and

(ii) in subsection (c)(2), in the matter preceding subparagraph (A), by striking ''subsection (b)(1)(A)'' and inserting ''subsection (b)(2)(A)''.

(2) REMOVAL OF REQUIREMENT THAT CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS BE REDUCED BY COSTS RELATED TO PRESUMPTIVE ELIGIBILITY DETERMINATIONS.—

(A) IN GENERAL.—Section 2104(d) of the Social Security Act (42 U.S.C. 1397dd(d)) is amended by striking ''the sum of—'' and all that follows through the paragraph designation ''(2)'' and merging all that remains of subsection (d) into a single sentence.

(B) EFFECTIVE DATE.—The amendment made by subsection (a) shall be deemed to have taken effect on August 5, 1997.

(3) INCREASED FUNDING FOR ADMINISTRATIVE COSTS RELATED TO OUTREACH AND ELIGIBILITY DETERMINATIONS FOR CHILDREN.—Section 1931(h) of the Social Security Act (42 U.S.C. 1396u-1(h)) is amended—

(A) by striking the subsection caption and inserting ''(h) INCREASED FEDERAL MATCHING RATE FOR ADMINISTRATIVE COSTS RELATED TO OUTREACH AND ELIGIBILITY DETERMINATIONS FOR CHILDREN.—'';

(B) in paragraph (2), by striking ''eligibility determinations'' and all that follows and inserting ''determinations of the eligibility of children for benefits under the State plan under this title or title XXI, outreach to children likely to be eligible for such benefits, and such other outreach- and eligibility-related activities as the Secretary may approve.'';

(C) in paragraph (3), by striking ''and ending with fiscal year 2000 shall not exceed $500,000,000'' and inserting ''shall not exceed $525,000,000''; and

(D) by striking paragraph (4).

(g) PERIODIC REASSESSMENT OF SPENDING OPTIONS.—Spending options under subsection (b)(2) will be reassessed jointly by the States and Federal government every 5 years and be reported to the Secretary.

SEC. 453. INDIAN HEALTH SERVICE.

Amounts available under section 451(b)(2)(B) shall be provided to the Indian Health Service to be used for anti-tobacco-related consumption and cessation activities including—

(1) clinic and facility design, construction, repair, renovation, maintenance and improvement;

(2) provider services and equipment;

(3) domestic and community sanitation associated with clinic and facility construction and improvement; and

(4) other programs and service provided through the Indian Health Service or through tribal contracts, compacts, grants, or cooperative agreements with the Indian Health Service and which are deemed appropriate to raising the health status of Indians.

SEC. 454. RESEARCH AT THE NATIONAL SCIENCE FOUNDATION.

Amounts available under section 451(c)(2)(C) shall be made available for necessary expenses in carry out the National Science Foundation Act of 1950 (U.S.C. 1861-1875), and the Act to establish a National Medal of Science (42 U.S.C. 1880-1881).

SEC. 455. MEDICARE CANCER PATIENT DEMONSTRATION PROJECT; EVALUATION AND REPORT TO CONGRESS.

(a) ESTABLISHMENT.—The Secretary shall establish a 3-year demonstration project which provides for payment under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) of routine patient care costs—

(1) which are provided to an individual diagnosed with cancer and enrolled in the Medicare program under such title as part of the individual's participation in an approved clinical trial program; and

(2) which are not otherwise eligible for payment under such title for individuals who are entitled to benefits under such title.

(b) APPLICATION.—The beneficiary cost sharing provisions under the Medicare program, such as deductibles, coinsurance, and copayment amounts, shall apply to any individual in a demonstration project conducted under this section.

(c) APPROVED CLINICAL TRIAL PROGRAM.—

(1) IN GENERAL.—For purposes of this section, the term ''approved clinical trial program'' means a clinical trial program which is approved by—

(A) the National Institutes of Health;

(B) a National Institutes of Health cooperative group or a National Institutes of Health center; and

(C) the National Cancer Institute,

with respect to programs that oversee and coordinate extramural clinical cancer research, trials sponsored by such Institute and conducted at designated cancer centers, clinical trials, and Institute grants that support clinical investigators.

(2) MODIFICATIONS IN APPROVED TRIALS.—Beginning 1 year after the date of enactment of this Act, the Secretary, in consultation with the Cancer Policy Board of the Institute of Medicine, may modify or add to the requirements of paragraph (1) with respect to an approved clinical trial program.

(d) ROUTINE PATIENT CARE COSTS.—

(1) IN GENERAL.—For purposes of this section, the term ''routine patient care costs'' include the costs associated with the provision of items and services that—

(A) would otherwise be covered under the Medicare program if such items and services were not provided in connection with an approved clinical trial program; and

(B) are furnished according to the design of an approved clinical trial program.

(2) EXCLUSION.—For purposes of this section, the term ''routine patient care costs'' does not include the costs associated with the provision of—

(A) an investigational drug or device, unless the Secretary has authorized the manufacturer of such drug or device to charge for such drug or device; or

(B) any item or service supplied without charge by the sponsor of the approved clinical trial program.

(e) STUDY.—The Secretary shall study the impact on the Medicare program under title XVIII of the Social Security Act of covering routine patient care costs for individuals with a diagnosis of cancer and other diagnoses, who are entitled to benefits under such title and who are enrolled in an approved clinical trial program.

(f) REPORT TO CONGRESS.—Not later than 30 months after the date of enactment of this Act, the Secretary shall submit a report to Congress that contains a detailed description of the results of the study conducted under subsection (e) including recommendations regarding the extension and expansion of the demonstration project conducted under this section.

TITLE V—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

SEC. 501. DEFINITIONS.

In this title:

(1) ASSISTANT SECRETARY.—The term ''Assistant Secretary'' means the Assistant Secretary of the Occupational Safety and Health Administration of the Department of Labor.

(2) PUBLIC FACILITY.—

(A) IN GENERAL.—The term ''public facility'' means any building used for purposes that affect interstate or foreign commerce that is regularly entered by 10 or more individuals at least 1 day per week including any building owned by or leased to an agency, independent establishment, department, or the executive, legislative, or judicial branch of the United States Government.

(B) EXCLUSIONS.—The term ''public facility'' does not include a building or portion thereof which is used for residential purposes or as a restaurant (other than a fast food restaurant), bar, private club, hotel guest room or common area, casino, bingo parlor, tobacconist's shop, or prison.

(C) FAST FOOD RESTAURANT DEFINED.—The term ''fast food restaurant'' means any restaurant or chain of restaurants that primarily distributes food through a customer pick-up (either at a counter or drive-through window). The Assistant Secretary may promulgate regulations to clarify this subparagraph to ensure that the intended inclusion of establishments catering to individuals under 18 years of age is achieved.

(3) RESPONSIBLE ENTITY.—The term ''responsible entity'' means, with respect to any public facility, the owner of such facility except that, in the case of any such facility or portion thereof which is leased, such term means the lessee if the lessee is actively engaged in supervising day-to-day activity in the leased space.

SEC. 502. SMOKE-FREE ENVIRONMENT POLICY.

(a) POLICY REQUIRED.—In order to protect children and adults from cancer, respiratory disease, heart disease, and other adverse health effects from breathing environmental tobacco smoke, the responsible entity for each public facility shall adopt and implement at such facility a smoke-free environment policy which meets the requirements of subsection (b).

(b) ELEMENTS OF POLICY.—

(1) IN GENERAL.—The responsible entity for a public facility shall—

(A) prohibit the smoking of cigarettes, cigars, and pipes, and any other combustion of tobacco within the facility and on facility property within the immediate vicinity of the entrance to the facility; and

(B) post a clear and prominent notice of the smoking prohibition in appropriate and visible locations at the public facility.

(2) EXCEPTION.—The responsible entity for a public facility may provide an exception to the prohibition specified in paragraph (1) for 1 or more specially designated smoking areas within a public facility if such area or areas meet the requirements of subsection (c).

(c) SPECIALLY DESIGNATED SMOKING AREAS.—A specially designated smoking area meets the requirements of this subsection if—

(1) the area is ventilated in accordance with specifications promulgated by the Assistant Secretary that ensure that air from the area is directly exhausted to the outside and does not recirculate or drift to other areas within the public facility;

(2) the area is maintained at negative pressure, as compared to adjoining nonsmoking areas, as determined under regulations promulgated by the Assistant Secretary;

(3) nonsmoking individuals do not have to enter the area for any purpose while smoking is occurring in such area; and

(4) cleaning and maintenance work are conducted in such area only when no smoking is occurring in the area.

SEC. 503. CITIZEN ACTIONS.

(a) IN GENERAL.—An action may be brought to enforce the requirements of this title by any aggrieved person, any State or local government agency, or the Assistant Secretary.

(b) VENUE.—Any action to enforce this title may be brought in any United States district court for the district in which the defendant resides or is doing business to enjoin any violation of this title or to impose a civil penalty for any such violation in the amount of not more than $5,000 per day of violation. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce this title and to impose civil penalties under this title.

(c) NOTICE.—An aggrieved person shall give any alleged violator notice at least 60 days prior to commencing an action under this section. No action may be commenced by an aggrieved person under this section if such alleged violator complies with the requirements of this title within such 60-day period and thereafter.

(d) COSTS.—The court, in issuing any final order in any action brought under this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing plaintiff, whenever the court determines such award is appropriate.

(e) PENALTIES.—The court, in any action under this section to apply civil penalties, shall have discretion to order that such civil penalties be used for projects which further the policies of this title. The court shall obtain the view of the Assistant Secretary in exercising such discretion and selecting any such projects.

(f) APPLICATION WITH OSHA.—Nothing in this section affects enforcement of the Occupational Safety and Health Act of 1970.

SEC. 504. PREEMPTION.

Nothing in this title shall preempt or otherwise affect any other Federal, State, or local law which provides greater protection from health hazards from environmental tobacco smoke.

SEC. 505. REGULATIONS.

The Assistant Secretary is authorized to promulgate such regulations, after consulting with the Administrator of the Environmental Protection Agency, as the Assistant Secretary deems necessary to carry out this title.

SEC. 506. EFFECTIVE DATE.

Except as provided in section 507, the provisions of this title shall take effect on the first day of January next following the next regularly scheduled meeting of the State legislature occurring after the date of enactment of this Act at which, under the procedural rules of that legislature, a measure under section 507 may be considered.

SEC. 507. STATE CHOICE.

Any State or local government may opt out of this title by promulgating a State or local law, subject to certification by the Assistant Secretary that the law is as or more protective of the public's health as this title, based on the best available science. Any State or local government may opt to enforce this title itself, subject to certification by the Assistant Secretary that the enforcement mechanism will effectively protect the public health.

TITLE VI—APPLICATION TO INDIAN TRIBES

SEC. 601. SHORT TITLE.

This title may be cited as the ''Reduction in Tobacco Use and Regulation of Tobacco Products in Indian Country Act of 1998''.

SEC. 602. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that Native Americans have used tobacco products for recreational, ceremonial, and traditional purposes for centuries.

(b) PURPOSE.—It is the purpose of this title to—

(1) provide for the implementation of this Act with respect to the regulation of tobacco products, and other tobacco-related activities on Indian lands;

(2) recognize the historic Native American traditional and ceremonial use of tobacco products, and to preserve and protect the cultural, religious, and ceremonial uses of tobacco by members of Indian tribes;

(3) recognize and respect Indian tribal sovereignty and tribal authority to make and enforce laws regarding the regulation of tobacco distributors and tobacco products on Indian lands; and

(4) ensure that the necessary funding is made available to tribal governments for licensing and enforcement of tobacco distributors and tobacco products on Indian lands.

SEC. 603. APPLICATION OF TITLE TO INDIAN LANDS AND TO NATIVE AMERICANS.

(a) IN GENERAL.—The provisions of this Act shall apply to the manufacture, distribution, and sale of tobacco or tobacco products on Indian lands, including such activities of an Indian tribe or member of such tribe.

(b) TRADITIONAL USE EXCEPTION.—

(1) IN GENERAL.—In recognition of the religious, ceremonial, and traditional uses of tobacco and tobacco products by Indian tribes and the members of such tribes, nothing in this Act shall be construed to permit an infringement upon upon the right of such tribes or members of such tribes to acquire, possess, use, or transfer any tobacco or tobacco product for such purposes, or to infringe upon the ability of minors to participate and use tobacco products for such religious, ceremonial, or traditional purposes.

(2) APPLICATION OF PROVISIONS.—Paragraph (1) shall apply only to those quantities of tobacco or tobacco products necessary to fulfill the religious, ceremonial, or traditional purposes of an Indian tribe or the members of such tribe, and shall not be construed to permit the general manufacture, distribution, sale or use of tobacco or tobacco products in a manner that is not in compliance with this Act or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.)

(c) LIMITATION.—Nothing in this Act shall be construed to permit an Indian tribe or member of such a tribe to acquire, possess, use, or transfer any tobacco or tobacco product in violation of section 2341 of title 18, United States Code, with respect to the transportation of contraband cigarettes.

(d) APPLICATION ON INDIAN LANDS.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Interior, shall promulgate regulations to implement this section as necessary to apply this Act and the Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) with respect to tobacco products manufactured, distributed, or sold on Indian lands.

(2) SCOPE.—This Act and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) shall apply to the manufacture, distribution and sale of tobacco products on Indian lands, including such activities by Indian tribes and members of such tribes.

(3) TRIBAL TOBACCO RETAILER LICENSING PROGRAM.—

(A) IN GENERAL.—The requirements of this Act with respect to the licensing of tobacco retailers shall apply to all retailers that sell tobacco or tobacco products on Indian lands, including Indian tribes, and members thereof.

(B) IMPLEMENTATION.—

(i) IN GENERAL.—An Indian tribe may implement and enforce a tobacco retailer licensing and enforcement program on its Indian lands consistent with the provisions of section 231 if the tribe is eligible under subparagraph (D). For purposes of this clause, section 231 shall be applied to an Indian tribe by substituting ''Indian tribe'' for ''State'' each place it appears, and an Indian tribe shall not be ineligible for grants under that section if the Secretary applies that section to the tribe by modifying it to address tribal population, land base, and jurisdictional factors.

(ii) COOPERATION.—An Indian tribe and State with tobacco retailer licensing programs within adjacent jurisdictions should consult and confer to ensure effective implementation of their respective programs.

(C) ENFORCEMENT.—The Secretary may vest the responsibility for implementation and enforcement of a tobacco retailer licensing program in—

(i) the Indian tribe involved;

(ii) the State within which the lands of the Indian tribe are located pursuant to a voluntary cooperative agreement entered into by the State and the Indian tribe; or

(iii) the Secretary pursuant to subparagraph (F).

(D) ELIGIBILITY.—To be eligible to implement and enforce a tobacco retailer licensing program under section 231, the Secretary, in consultation with the Secretary of Interior, must find that—

(i) the Indian tribe has a governing body that has powers and carries out duties that are similar to the powers and duties of State or local governments;

(ii) the functions to be exercised relate to activities conducted on its Indian lands; and

(iii) the Indian tribe is reasonably expected to be capable of carrying out the functions required by the Secretary.

(E) DETERMINATIONS.—Not later than 90 days after the date on which an Indian tribe submits an application for authority under subparagraph (D), the Secretary shall make a determination concerning the eligibility of such tribe for such authority. Each tribe found eligible under subparagraph (D) shall be eligible to enter into agreements for block grants under section 231, to conduct a licensing and enforcement program pursuant to section 231, and for bonuses under section 232.

(F) IMPLEMENTATION BY THE SECRETARY.—If the Secretary determines that the Indian tribe is not willing or not qualified to administer a retail licensing and enforcement program, the Secretary, in consultation with the Secretary of Interior, shall promulgate regulations for a program for such tribes in the same manner as for States which have not established a tobacco retailer licensing program under section 231(f).

(G) DEFICIENT APPLICATIONS; OPPORTUNITY TO CURE.—

(i) If the Secretary determines under subparagraph (F) that a Indian tribe is not eligible to establish a tobacco retailer licensing program, the Secretary shall—

(I) submit to such tribe, in writing, a statement of the reasons for such determination of ineligibility; and

(II) shall assist such tribe in overcoming any deficiencies that resulted in the determination of ineligibility.

(ii) After an opportunity to review and cure such deficiencies, the tribe may reapply to the Secretary for assistance under this subsection.

(H) SECRETARIAL REVIEW.—The Secretary may periodically review the tribal tobacco retailer licensing program of a tribe approved pursuant to subparagraph (E), including the effectiveness of the program, the tribe's enforcement thereof, and the compatibility of the tribe's program with the program of the State in which the tribe is located. The program shall be subject to all applicable requirements of section 231.

(e) ELIGIBILITY FOR PUBLIC HEATH FUNDS.—

(1) ELIGIBILITY FOR GRANTS.—

(A) For each fiscal year the Secretary may award grants to Indian tribes from the federal Account or other federal funds, except a tribe that is not a participating tobacco product manufacturer (as defined in section 1402(a), for the same purposes as States and local governments are eligible to receive grants from the Federal Account as provided for in this Act. Indian tribes shall have the flexibility to utilize such grants to meet the unique health care needs of their service populations consistent with the goals and purposes of Federal Indian health care law and policy.

(B) In promulgating regulations for the approval and funding of smoking cessation programs under section 221 the Secretary shall ensure that adequate funding is available to address the high rate of smoking among Native Americans.

(2) HEALTH CARE FUNDING.—

(A) INDIAN HEALTH SERVICE.—Each fiscal year the Secretary shall disburse to the Indian Health Service from the National Tobacco Settlement Trust Fund an amount determined by the Secretary in consultation with the Secretary of the Interior equal to the product of—

(i) the ratio of the total Indian health care service population relative to the total population of the United States; and

(ii) the amount allocated to the States each year from the State Litigation Trust Account.

(B) FUNDING.—The trustees of the Trust Fund shall for each fiscal year transfer to the Secretary from the State Litigation Trust Account the amount determined pursuant to paragraph (A).

(C) USE OF HEALTH CARE TRUST FUNDS.—Amounts made available to the Indian Health Service under this paragraph shall be made available to Indian tribes pursuant to the provisions of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b et seq.), shall be used to reduce tobacco consumption, promote smoking cessation, and shall be used to fund health care activities including—

(i) clinic and facility design, construction, repair, renovation, maintenance, and improvement;

(ii) health care provider services and equipment;

(iii) domestic and community sanitation associated with clinic and facility construction and improvement;

(iv) inpatient and outpatient services; and

(v) other programs and services which have as their goal raising the health status of Indians.

(f) PREEMPTION.—

(1) IN GENERAL.—Except as otherwise provided in this section, nothing in this Act shall be construed to prohibit an Indian tribe from imposing requirements, prohibitions, penalties, or other measures to further the purposes of this Act that are in addition to the requirements, prohibitions, or penalties required by this Act.

(2) PUBLIC EXPOSURE TO SMOKE.—Nothing in this title shall be construed to preempt or otherwise affect any Indian tribe rule or practice that provides greater protections from the health hazard of environmental tobacco smoke.

(g) DISCLAIMER.—Nothing in this Act shall be construed to increase or diminish tribal or State jurisdiction on Indian lands with respect to tobacco-related activities.

TITLE VII—TOBACCO CLAIMS

SEC. 701. DEFINITIONS.

In this title:

(1) AFFILIATE.—The term ''affiliate'' means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this definition, ownership means ownership of an equity interest, or the equivalent thereof, of ten percent or more, and person means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(2) CIVIL ACTION.—The term ''civil action'' means any action, lawsuit, or proceeding that is not a criminal action.

(3) COURT.—The term ''court'' means any judicial or agency court, forum, or tribunal within the United States, including without limitation any Federal, State, or tribal court.

(4) FINAL JUDGMENT.—The term ''final judgment'' means a judgment on which all rights of appeal or discretionary review have been exhausted or waived or for which the time to appeal or seek such discretionary review has expired.

(5) FINAL SETTLEMENT.—The term ''final settlement'' means a settlement agreement that is executed and approved as necessary to be fully binding on all relevant parties.

(6) INDIVIDUAL.—The term ''individual'' means a human being and does not include a corporation, partnership, unincorporated association, trust, estate, or any other public or private entity, State or local government, or Indian tribe.

(7) TOBACCO CLAIM.—The term ''tobacco claim'' means a claim directly or indirectly arising out of, based on, or related to the health-related effects of tobacco products, including without limitation a claim arising out of, based on or related to allegations regarding any conduct, statement, or omission respecting the health-related effects of such products.

(8) TOBACCO PRODUCT MANUFACTURER.—The term ''tobacco product manufacturer'' means a person who—

(A) manufactures tobacco products for sale in the United States after the date of enactment of this Act, including tobacco products for sale in the United States through an importer;

(B) is, after the date of enactment of this Act, the first purchaser for resale in the United States of tobacco products manufactured for sale outside of the United States;

(C) engaged in activities described in subparagraph (A) or (B) prior to the date of enactment of this Act, has not engaged in such activities after the date of enactment of this Act, and was not as of June 20, 1997, an affiliate of a tobacco product manufacturer in which the tobacco product manufacturer or its other affiliates owned a 50 percent or greater interest;

(D) is a successor or assign of any of the foregoing;

(E) is an entity to which any of the foregoing directly or indirectly makes, after the date of enactment of this Act, a fraudulent conveyance or a transfer that would otherwise be voidable under part 5 of title 11 of the United States Code, but only to the extent of the interest or obligation transferred; or

(F) is an affiliate of a tobacco product manufacturer.

(9) CASTANO CIVIL ACTIONS.—The term ''Castano Civil Actions'' means the following civil actions: Gloria Wilkinson Lyons et al. v. American Tobacco Co., et al. (USDC Alabama 96-0881-BH; Agnes McGinty, et al. v. American Tobacco Co., et al. (USDC Arkansas LR-C-96-881); Willard R. Brown, et al. v. R.J. Reynolds Co., et al. (San Diego, California-00711400); Gray Davis & James Ellis, et al. R.J. Reynolds Tobacco Co., et al. (San Diego, California-00706458); Chester Lyons, et al. v. Brown & Williamson Tobacco Corp., et al. (Fulton County, Georgia-E-59346); Rosalyn Peterson, et al. v. American Tobacco Co., et al. (USDC Hawaii-97-00233-HG); Jean Clay, et al. v. American Tobacco Co., et al. (USDC Illinois Benton Division-97-4167-JPG); William J. Norton, et al. v. RJR Nabisco Holdings Corp., et al. (Madison County, Indiana 48D01-9605-CP-0271); Alga Emig, et al. v. American Tobacco Co., et al. (USDC Kansas-97-1121-MLB); Gloria Scott, et al. v. American Tobacco Co., et al. (Orleans Parish, Louisiana-97-1178); Vern Masepohl, et al. v. American Tobacco Co., et al. (USDC Minnesota-3-96-CV-888); Matthew Tepper, et al. v. Philip Morris Incorporated, et al. (Bergen County, New Jersey-BER-L-4983-97-E); Carol A. Connor, et al. v. American Tobacco Co., et al. (Bernalillo County, New Mexico-CV96-8464); Edwin Paul Hoskins, et al. v. R.J. Reynolds Tobacco Co., et al.; Josephine Stewart-Lomantz v. Brown & Williamson Tobacco, et al.; Rose Frosina, et al. v. Philip Morris Incorporated, et al.; Catherine Zito, et al. v. American Tobacco Co., et al.; Kevin Mroczkowski, et al. v. Lorillard Tobacco Company, et al. (Supreme Court, New York County, New York-110949 thru 110953); Judith E. Chamberlain, et al. v. American Tobacco Co., et al. (USDC Ohio-1:96CV2005); Brian walls, et al. v. American Tobacco Co., et al. (USDC Oklahoma-97-CV-218-H); Steven R. Arch, et al. v. American Tobacco Co., et al. (USDC Pennsylvania-96-5903-CN); Barreras-Ruiz, et al. v. American Tobacco Co., et al. (USDC Puerto Rico-96-2300-JAF); Joanne Anderson, et al. v. American Tobacco Co., et al. (Know County, Tennessee); Carlis Cole, et al. v. The Tobacco institute, Inc., et al. (USDC Beaumont Texas Division-1:97CV0256); Carrol Jackson, et al. v. Philip Morris Incorporated, et al. (Salt Lake County, Utah-CV No. 98-0901634PI).

SEC. 702. APPLICATION; PREEMPTION.

(a) APPLICATION.—The provisions of this title govern any tobacco claim in any civil action brought in an State, Tribal, or Federal court, including any such claim that has not reached final judgment or final settlement as of the date of enactment of this Act.

(b) PREEMPTION.—This title supersedes State law only to the extent that State law applies to a matter covered by this title. Any matter that is not governed by this title, including any standard of liability applicable to a manufacturer, shall be governed by any applicable State, Tribal, or Federal law.

(c) CRIMINAL LIABILITY UNTOUCHED.—Nothing in this title shall be construed to limit the criminal liability of tobacco product manufacturers, retailers, or distributors, or their officers, directors, employees, successors, or assigns.

SEC. 703. RULES GOVERNING TOBACCO CLAIMS.

(a) GENERAL CAUSATION PRESUMPTION.—In any civil action to which this title applies brought involving a tobacco claim, there shall be an evidentiary presumption that nicotine is addictive and that the diseases

identified as being caused by use of tobacco products in the Center for Disease Control and Prevention Reducing the Health Consequences of Smoking: 25 Years of Progress: A Report of the Surgeon General (United States Public Health Service 1989), The Health Consequences of Smoking: Involuntary Smoking, (USPHS 1986); and The Health Consequences of Using Smokeless Tobacco, (USPHS 1986), are caused in whole or in part by the use of tobacco products, (hereinafter referred to as the ''general causation presumption''), and a jury empaneled to hear a tobacco claim shall be so instructed. In all other respects, the burden of proof as to the issue of whether a plaintiff's specific disease or injury was caused by smoking shall be governed by the law of the State or Tribe in which the tobacco claim was brought. This general causation presumption shall in no way affect the ability of the defendant to introduce evidence or argument which the defendant would otherwise be entitled to present under the law of the State or Tribe in which the tobacco claim was brought to rebut the general causation presumption, or with respect to general causation, specific causation, or alternative causation, or to introduce any other evidence or argument which the defendant would otherwise be entitled to make.

(b) ACTIONS AGAINST PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.—In any civil action brought involving a tobacco claim against participating tobacco product manufacturers, as that term is defined in title XIV, the provisions of title XIV apply in conjunction with the provisions of this title.

TITLE VIII—TOBACCO INDUSTRY ACCOUNTABILITY REQUIREMENTS AND EMPLOYEE PROTECTION FROM REPRISALS

SEC. 801. ACCOUNTABILITY REQUIREMENTS AND OVERSIGHT OF THE TOBACCO INDUSTRY.

(a) ACCOUNTABILITY.—The Secretary, following regular consultation with the Commissioner of Food and Drugs, the Surgeon General, the Director of the Center for Disease Control or the Director's delegate, and the Director of the Health and Human Services Office of Minority Health shall annually issue a report as provided for in subsection (c).

(b) TOBACCO COMPANY PLAN.—Within a year after the date of enactment of this Act, each participating tobacco product manufacturer shall adopt and submit to the Secretary a plan to achieve the required percentage reductions in underage use of tobacco products set forth in section 201, and thereafter shall update its plan no less frequently than annually. The annual report of the Secretary may recommend amendment of any plan to incorporate additional measures to reduce underage tobacco use that are consistent with the provisions of this Act.

(c) ANNUAL REPORT.—The Secretary shall submit a report to the Congress by January 31 of each year, which shall be published in the Federal Register. The report shall—

(1) describe in detail each tobacco product manufacturer's compliance with the provisions of this Act and its plan submitted under subsection (b);

(2) report on whether each tobacco product manufacturer's efforts to reduce underage smoking are likely to result in attainment of smoking reduction targets under section 201;

(3) recommend, where necessary, additional measures individual tobacco companies should undertake to meet those targets; and

(4) include, where applicable, the extent to which prior panel recommendations have been adopted by each tobacco product manufacturer.

SEC. 802. TOBACCO PRODUCT MANUFACTURER EMPLOYEE PROTECTION.

(a) PROHIBITED ACTS.—No tobacco product manufacturer may discharge, demote, or otherwise discriminate against any employee with respect to compensation, terms, conditions, benefits, or privileges of employment because the employee (or any person acting under a request of the employee)—

(1) notified the manufacturer, the Commissioner of Food and Drugs, the Attorney General, or any Federal, State, or local public health or law enforcement authority of an alleged violation of this or any other Act;

(2) refused to engage in any practice made unlawful by such Acts, if the employee has identified the alleged illegality to the manufacturer;

(3) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of such Acts;

(4) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under such Acts, or a proceeding for the administration or enforcement of any requirement imposed under such Acts;

(5) testified or is about to testify in any such proceeding; or

(6) assisted or participated, or is about to assist or participate, in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of such Acts.

(b) EMPLOYEE COMPLAINT.—

(1) Any employee of a tobacco product manufacturer who believes that he or she has been discharged, demoted, or otherwise discriminated against by any person in violation of subsection (a) of this section may, within 180 days after such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary alleging such discharge, demotion, or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of its filing.

(2)(A) Upon receipt of a complaint under paragraph (1) of this subsection, the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days after the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any such person acting in his or her behalf) and the person alleged to have committed such violation of the results of the investigation conducted under this paragraph. Within 90 days after the receipt of such complaint, the Secretary shall (unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation) issue an order either providing the relief prescribed in subparagraph (B) of this paragraph or denying the complaint. An order of the Secretary shall be made on the record after notice and the opportunity for a hearing in accordance with sections 554 and 556 of title 5, United States Code. Upon the conclusion of such a hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B) of this paragraph, but may not order compensatory damages pending a final order. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint under paragraph (1) of this subsection, the Secretary determines that a violation of this paragraph has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his or her former position together with compensation (including back pay), terms, conditions, and privileges of his or her employment. The Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this subparagraph, the Secretary, at the request of the complainant, shall assess the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred (as determined by the Secretary), by the complainant for, or in connection with, the bringing of the complaint upon which the order is issued.

(3)(A) The Secretary shall dismiss a complaint filed under paragraph (1) of this subsection, and shall not conduct the investigation required under paragraph (2) of this subsection, unless the complainant has made a *prima facie* showing that any behavior described in subsection (a) of this section was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) Notwithstanding a finding by the Secretary that the complainant has made the showing required by subparagraph (A) of this paragraph, no investigation required under paragraph (2) of this subsection shall be conducted if the manufacturer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior. Relief may not be ordered under paragraph (1) of this subsection if the manufacturer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior.

(C) The Secretary may determine that a violation of subsection (a) of this section has occurred only if the complainant has demonstrated that any behavior described in subsection (a) of this section was a contributing factor in unfavorable personnel action alleged in the complaint.

(c) JUDICIAL REVIEW.—

(1) Any person adversely affected or aggrieved by an order issued under subsection (a) of this section may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within 60 days after the issuance of the Secretary's order. Judicial review shall be available as provided in chapter 7 of title 5, United States Code. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) of this subsection shall not be subject to judicial review in any criminal or civil proceeding.

(d) NONCOMPLIANCE.—Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary may file a civil action in the United States district court for the district in which the violation occurred to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief, including injunctive relief and compensatory and exemplary damages.

(e) ACTION TO ENSURE COMPLIANCE.—

(1) Any person on whose behalf an order was issued under subsection (b)(2) of this section may commence a civil action to require compliance with such order against the person to whom such order was issued. The appropriate United States district court shall have jurisdiction to enforce such order, without regard to the amount in controversy or the citizenship of the parties.

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) ENFORCEMENT.—Any non-discretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(g) APPLICABILITY TO CERTAIN EMPLOYEES.—Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from the manufacturer (or the agent of the manufacturer) deliberately causes a violation of any requirement of this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq), or any other law or regulation relating to tobacco products.

(h) EFFECT ON OTHER LAWS.—This section shall not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by a tobacco product manufacturer against the employee.

(i) POSTING.—The provisions of this section shall be prominently posted in any place of employment to which this section applies.

TITLE IX—PUBLIC DISCLOSURE OF TOBACCO INDUSTRY DOCUMENTS

SEC. 901. FINDINGS.

The Congress finds that—

(1) the American tobacco industry has made claims of attorney-client privilege, attorney work product, and trade secrets to protect from public disclosure thousands of internal documents sought by civil litigants;

(2) a number of courts have found that these claims of privilege were not made in good faith; and

(3) a prompt and full exposition of tobacco documents will—

(A) promote understanding by the public of the tobacco industry's research and practices; and

(B) further the purposes of this Act.

SEC. 902. APPLICABILITY.

This title applies to all tobacco product manufacturers.

SEC. 903. DOCUMENT DISCLOSURE.

(a) DISCLOSURE TO THE FOOD AND DRUG ADMINISTRATION.—

(1) Within 60 days after the date of enactment of this Act, each tobacco product manufacturer shall submit to the Food and Drug Administration the documents identified in subsection (c), including documents for which trade secret protection is claimed, with the exception of any document for which privilege is claimed, and identified in accordance with subsection (b). Each such manufacturer shall provide the Administration with the privilege and trade secret logs identified under subsection (b).

(2) With respect to documents that are claimed to contain trade secret material, unless and until it is finally determined under this title, either through judicial review or because time for judicial review has expired, that such a document does not constitute or contain trade secret material, the Administration shall treat the document as a trade secret in accordance with section 708 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379) and the regulations promulgated thereunder. Nothing herein shall limit the authority of the Administration to obtain and use, in accordance with any provision of the Federal Food, Drug, and Cosmetic Act and the regulations promulgated thereunder, any document constituting or containing trade secret material. Documents and materials received by the Administration under this provision shall not be obtainable by or releasable to the public through section 552 of title 5, United States Code, or any other provision of law, and the only recourse to obtain these documents shall be through the process established by section 905.

(3) If a document depository is not established under title XIV, the Secretary shall establish by regulation a procedure for making public all documents submitted under paragraph (1) except documents for which trade secret protection has been claimed and for which there has not been a final judicial determination that the document does not contain a trade secret.

(b) SEPARATE SUBMISSION OF DOCUMENTS.—

(1) (1) PRIVILEGED TRADE SECRET DOCUMENTS.—Any document required to be submitted under subsection (c) or (d) that is subject to a claim by a tobacco product manufacturer of attorney-client privilege, attorney work product, or trade secret protection shall be so marked and shall be submitted to the panel under section 904 within 30 days after its appointment. Compliance with this subsection shall not be deemed to be a waiver of any applicable claim of privilege or trade secret protection.

(2) PRIVILEGE AND TRADE SECRET LOGS.—

(A) IN GENERAL.—Within 15 days after submitting documents under paragraph (1), each tobacco product manufacturer shall submit a comprehensive log which identifies on a document-by-document basis all documents produced for which the manufacturer asserts attorney-client privilege, attorney work-product, or trade secrecy. With respect to documents for which the manufacturer previously has asserted one or more of the aforementioned privileges or trade secret protection, the manufacturer shall conduct a good faith *de novo* review of such documents to determine whether such privilege or trade secret protection is appropriate.

(B) ORGANIZATION OF LOG.—The log shall be organized in numerical order based upon the document identifier assigned to each document. For each document, the log shall contain—

(i) a description of the document, including type of document, title of document, name and position or title of each author, addressee, and other recipient who was intended to receive a copy, document date, document purpose, and general subject matter;

(ii) an explanation why the document or a portion of the document is privileged or subject to trade secret protection; and

(iii) a statement whether any previous claim of privilege or trade secret was denied and, if so, in what proceeding.

(C) PUBLIC INSPECTION.—Within 5 days of receipt of such a log, the Depository shall make it available for public inspection and review.

(3) DECLARATION OF COMPLIANCE.—Each tobacco product manufacturer shall submit to the Depository a declaration, in accordance with the requirements of section 1746 of title 28, United States Code, by an individual with responsibility for the *de novo* review of documents, preparation of the privilege log, and knowledge of its contents. The declarant shall attest to the manufacturer's compliance with the requirements of this subsection pertaining to the review of documents and preparation of a privilege log.

(c) DOCUMENT CATEGORIES.—Each tobacco product manufacturer shall submit—

(1) every existing document (including any document subject to a claim of attorney-client privilege, attorney work product, or trade secret protection) in the manufacturer's possession, custody, or control relating, referring, or pertaining to—

(A) any studies, research, or analysis of any possible health or pharmacological effects in humans or animals, including addiction, associated with the use of tobacco products or components of tobacco products;

(B) the engineering, manipulation, or control of nicotine in tobacco products;

(C) the sale or marketing of tobacco products;

(D) any research involving safer or less hazardous tobacco products;

(E) tobacco use by minors; or

(F) the relationship between advertising or promotion and the use of tobacco products;

(2) all documents produced by any tobacco product manufacturer, the Center of Tobacco Research or Tobacco Institute to the Attorney General of any State during discovery in any action brought on behalf of any State and commenced after January 1, 1994;

(3) all documents produced by any tobacco product manufacturer, Center for Tobacco Research or Tobacco Institute to the Federal Trade Commission in connection with its investigation into the ''Joe Camel'' advertising campaign and any underage marketing of tobacco products to minors;

(4) all documents produced by any tobacco product manufacturers, the Center for Tobacco Research or the Tobacco Institute to litigation adversaries during discovery in any private litigation matters;

(5) all documents produced by any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute in any of the following private litigation matters:

(A) Philip Morris v. American Broadcasting Co., Law No. 7609CL94x00181-00 (Cir. Ct. Va. filed Mar. 26, 1994);

(B) Estate of Butler v. R.J. Reynolds Tobacco Co., Civ. A. No. 94-5-53 (Cir. Ct. Miss., filed May 12, 1994);

(C) Haines v. Liggett Group, No. 84-CV-678 (D.N.J., filed Feb. 22, 1984); and

(D) Cipollone v. Liggett Group, No. 83-CV-284 (D.N.J., filed Aug. 1, 1983);

(6) any document produced as evidence or potential evidence or submitted to the Depository by tobacco product manufacturers in any of the actions described in paragraph (5), including briefs and other pleadings, memoranda, interrogatories, transcripts of depositions, and expert witnesses and consultants materials, including correspondence, reports, and testimony;

(7) any additional documents that any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute have agreed or been required by any court to produce to litigation adversaries as part of discovery in any action listed in paragraph (2), (3), (4), or (5) but have not yet completed producing as of the date of enactment of this Act;

(8) all indices of documents relating to tobacco products and health, with any such indices that are maintained in computerized form placed into the depository in both a computerized and hard-copy form;

(9) a privilege log describing each document or portion of a document otherwise subject to production in the actions enumerated in this subsection that any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains, based upon a good faith *de novo* re-review conducted after the date of enactment of this Act is exempt from public disclosure under this title; and

(10) a trade secrecy log describing each document or portion of a document that any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains is exempt from public disclosure under this title.

(d) FUTURE DOCUMENTS.—With respect to documents created after the date of enactment of this Act, the tobacco product manufacturers and their trade associations shall—

(1) place the documents in the depository; and

(2) provide a copy of the documents to the Food and Drug Administration (with the exception of documents subject to a claim of attorney-client privilege or attorney work product).

(1) Every existing document (including any document subject to a claim of attorney-client privilege, attorney work product, or trade secret protection) in the manufacturer's possession, custody, or control relating, referring, or pertaining to—

(A) any studies, research, or analysis of any possible health or pharmacological effects in humans or animals, including addiction, associated with the use of tobacco products or components of tobacco products;

(B) the engineering, manipulation, or control of nicotine in tobacco products;

(C) the sale or marketing of tobacco products;

(D) any research involving safer or less hazardous tobacco products;

(E) tobacco use by minors; or

(F) the relationship between advertising or promotion and the use of tobacco products;

(2) Every existing document (including any document subject to a claim of attorney-client privilege, attorney work product, or trade secret protection) in the manufacturer's possession, custody, or control—

(A) produced, or ordered to be produced, by the tobacco product manufacturer in any health-related civil or criminal proceeding, judicial or administrative; and

(B) that the panel established under section 906 determines is appropriate for submission.

(3) All studies conducted or funded, directly or indirectly, by any tobacco product manufacturer, relating to tobacco product use by minors.

(4) All documents discussing or referring to the relationship, if any, between advertising and promotion and the use of tobacco products by minors.

(5) A privilege log describing each document or each portion of a document otherwise subject to public disclosure under this subsection that any tobacco product manufacturer maintains is exempt from public disclosure under this title.

(6) A trade secrecy log describing each document or each portion of a document otherwise subject to public disclosure under this subsection that any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains is exempt from public disclosure under this Act.

(e) DOCUMENT IDENTIFICATION AND INDEX.—Documents submitted under this section shall be sequentially numbered and marked to identify the tobacco product manufacturer. Within 15 days after submission of documents, each tobacco product manufacturer shall supply the panel with a comprehensive document index which references the applicable document categories contained in subsection (b).

SEC. 904. DOCUMENT REVIEW.

(a) AJUDICATION OF PRIVILEGE CLAIMS.—An claim of attorney-client privilege, trade secret protection, or other claim of privilege with respect to a document required to be submitted by this title shall be heard by a 3-judge panel of the United States District Court for the District of Columbia under section 2284 of title 28, United States Code. The panel may appoint special masters, employ such personnel, and establish such procedures as it deems necessary to carry out its functions under this title.

(b) PRIVILEGE.—The panel shall apply the attorney-client privilege, the attorney work-product doctrine, and the trade secret doctrine in a manner consistent with Federal law.

SEC. 905. RESOLUTION OF DISPUTED PRIVILEGE AND TRADE SECRET CLAIMS.

(a) IN GENERAL.—The panel shall determine whether to uphold or reject disputed claims of attorney client privilege, attorney work product, or trade secret protection with respect to documents submitted. Any person may petition the panel to resolve a claim that a document submitted may not be disclosed to the public. Such a determination shall be made by a majority of the panel, in writing, and shall be subject to judicial review as specified in this title. All such determinations shall be made solely on consideration of the subject document and written submissions from the person claiming that the document is privileged or protected by trade secrecy and from any person seeking disclosure of the document. The panel shall cause notice of the petition and the panel's decision to be published in the Federal Register.

(b) FINAL DECISION.—The panel may uphold a claim of privilege or protection in its entirety or, in its sole discretion, it may redact that portion of a document that it determines is protected from public disclosure under subsection (a). Any decision of the panel shall be final unless judicial review is sought under section 906. In the event that judicial review is so sought, the panel's decision shall be stayed pending a final judicial decision.

SEC. 906. APPEAL OF PANEL DECISION.

(a) PETITION; RIGHT OF APPEAL.—Any person may obtain judicial review of a final decision of the panel by filing a petition for review with the United States Court of Appeals for the Federal Circuit within 60 days after the publication of such decision in the Federal Register. A copy of the petition shall be transmitted by the Clerk of the Court to the panel. The panel shall file in the court the record of the proceedings on which the panel based its decision (including any documents reviewed by the panel in *camera*) as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the panel's decision, except that until the filing of the record the panel may modify or set aside its decision.

(b) ADDITIONAL EVIDENCE AND ARGUMENTS.—If the any party applies to the court for leave to adduce additional evidence respecting the decision being reviewed and shows to the satisfaction of the court that such additional evidence or arguments are material and that there were reasonable grounds for the failure to adduce such evidence or arguments in the proceedings before the panel, the court may order the panel to provide additional opportunity for the presentation of evidence or arguments in such manner and upon such terms as the court deems proper. The panel may modify its findings or make new findings by reason of the additional evidence or arguments and shall file with the court such modified or new findings, and its recommendation, if any, for the modification or setting aside of the decision being reviewed.

(c) STANDARD OF REVIEW; FINALITY OF JUDGMENTS.—The panel's findings of fact, if supported by substantial evidence on the record taken as a whole, shall be conclusive. The court shall review the panel's legal conclusions *de novo*. The judgment of the court affirming or setting aside the panel's decision shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

(d) PUBLIC DISCLOSURE AFTER FINAL DECISION.—Within 30 days after a final decision that a document, as redacted by the panel or in its entirety, is not protected from disclosure by a claim of attorney-client privilege, attorney work product, or trade secret protection, the panel shall direct that the document be made available to the Commissioner of Food and Drugs under section 903(a). No Federal, Tribal, or State court shall have jurisdiction to review a claim of attorney-client privilege, attorney work product, or trade secret protection for a document that has lawfully been made available to the public under this subsection.

(e) EFFECT OF NON-DISCLOSURE DECISION ON JUDICIAL PROCEEDINGS.—The panel's decision that a document is protected by attorney-client privilege, attorney work product, or trade secret protection is binding only for the purpose of protecting the document from disclosure by the Depository. The decision by the panel shall not be construed to prevent a document from being disclosed in a judicial proceeding or interfere with the authority of a court to determine whether a document is admissible or whether its production may be compelled.

SEC. 907. MISCELLANEOUS.

The disclosure process in this title is not intended to affect the Federal Rules of Civil or Criminal Procedure or any Federal law which requires the disclosure of documents or which deals with attorney-client privilege, attorney work product, or trade secret protection.

SEC. 908. PENALTIES.

(a) GOOD FAITH REQUIREMENT.—Each tobacco product manufacturer shall act in good faith in asserting claims of privilege or trade secret protection based on fact and law. If the panel determines that a tobacco product manufacturer has not acted in good faith with full knowledge of the truth of the facts asserted and with a reasonable basis under existing law, the manufacturer shall be assessed costs, which shall include the full administrative costs of handling the claim of privilege, and all attorneys' fees incurred by the panel and any party contesting the privilege. The panel may also impose civil penalties of up to $50,000 per violation if it determines that the manufacturer acted in bad faith in asserting a privilege, or knowingly acted with the intent to delay, frustrate, defraud, or obstruct the panel's determination of privilege, attorney work product, or trade secret protection claims.

(b) FAILURE TO PRODUCE DOCUMENT.—A failure by a tobacco product manufacturer to produce indexes and documents in compliance with the schedule set forth in this title, or with such extension as may be granted by the panel, shall be punished by a civil penalty of up to $50,000 per violation. A separate violation occurs for each document the manufacturer has failed to produce in a timely manner. The maximum penalty under this subsection for a related series of violations is $5,000,000. In determining the amount of any civil penalty, the panel shall consider the number of documents, length of delay, any history of prior violations, the ability to pay, and such other matters as justice requires. Nothing in this title shall replace or supersede any criminal sanction under title 18, United States Code, or any other provision of law.

SEC. 909. DEFINITIONS.

For the purposes of this title—

(1) DOCUMENT.—The term ''document'' includes originals and drafts of any kind of written or graphic matter, regardless of the manner of production or reproduction, of any kind or description, whether sent or received or neither, and all copies thereof that are different in any way from the original (whether by interlineation, receipt stamp, notation, indication of copies sent or received or otherwise) regardless of whether confidential, privileged, or otherwise, including any paper, book, account, photograph,

blueprint, drawing, agreement, contract, memorandum, advertising material, letter, telegram, object, report, record, transcript, study, note, notation, working paper, intra-office communication, intra-department communication, chart, minute, index sheet, routing sheet, computer software, computer data, delivery ticket, flow sheet, price list, quotation, bulletin, circular, manual, summary, recording of telephone or other conversation or of interviews, or of conferences, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, regardless of the manner produced or reproduced. Such term also includes any tape, recording, videotape, computerization, or other electronic recording, whether digital or analog or a combination thereof.

(2) TRADE SECRET.—The term ''trade secret'' means any commercially valuable plan, formula, process, or device that is used for making, compounding, processing, or preparing trade commodities and that can be said to be the end-product of either innovation or substantial effort, for which there is a direct relationship between the plan, formula, process, or device and the productive process.

(3) CERTAIN ACTIONS DEEMED TO BE PROCEEDINGS.—Any action undertaken under this title, including the search, indexing, and production of documents, is deemed to be a ''proceeding'' before the executive branch of the United States.

(4) OTHER TERMS.—Any term used in this title that is defined in section 701 has the meaning given to it by that section.

TITLE X—LONG-TERM ECONOMIC ASSISTANCE FOR FARMERS

SEC. 1001. SHORT TITLE.

This title may be cited as the ''Long-Term Economic Assistance for Farmers Act'' or the ''LEAF Act''.

SEC. 1002. DEFINITIONS.

In this title:

(1) PARTICIPATING TOBACCO PRODUCER.—The term ''participating tobacco producer'' means a quota holder, quota lessee, or quota tenant.

(2) QUOTA HOLDER.—The term ''quota holder'' means an owner of a farm on January 1, 1998, for which a tobacco farm marketing quota or farm acreage allotment was established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.).

(3) QUOTA LESSEE.—The term ''quota lessee'' means—

(A) a producer that owns a farm that produced tobacco pursuant to a lease and transfer to that farm of all or part of a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; or

(B) a producer that rented land from a farm operator to produce tobacco under a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years.

(4) QUOTA TENANT.—The term ''quota tenant'' means a producer that—

(A) is the principal producer, as determined by the Secretary, of tobacco on a farm where tobacco is produced pursuant to a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; and

(B) is not a quota holder or quota lessee.

(5) SECRETARY.—The term ''Secretary'' means—

(A) in subtitles A and B, the Secretary of Agriculture; and

(B) in section 1031, the Secretary of Labor.

(6) TOBACCO PRODUCT IMPORTER.—The term ''tobacco product importer'' has the meaning given the term ''importer'' in section 5702 of the Internal Revenue Code of 1986.

(7) TOBACCO PRODUCT MANUFACTURER.—

(A) IN GENERAL.—The term ''tobacco product manufacturer'' has the meaning given the term ''manufacturer of tobacco products'' in section 5702 of the Internal Revenue Code of 1986.

(B) EXCLUSION.—The term ''tobacco product manufacturer'' does not include a person that manufactures cigars or pipe tobacco.

(8) TOBACCO WAREHOUSE OWNER.—The term ''tobacco warehouse owner'' means a warehouseman that participated in an auction market (as defined in the first section of the Tobacco Inspection Act (7 U.S.C. 511)) during the 1998 marketing year.

(9) FLUE-CURED TOBACCO.—The term ''flue-cured tobacco'' includes type 21 and type 37 tobacco.

Subtitle A—Tobacco Community Revitalization

SEC. 1011. AUTHORIZATION OF APPROPRIATIONS.

There are appropriated and transferred to the Secretary for each fiscal year such amounts from the National Tobacco Trust Fund established by section 401, other than from amounts in the State Litigation Settlement Account, as may be necessary to carry out the provisions of this title.

SEC. 1012. EXPENDITURES.

The Secretary is authorized, subject to appropriations, to make payments under—

(1) section 1021 for payments for lost tobacco quota for each of fiscal years 1999 through 2023, but not to exceed $1,650,000,000 for any fiscal year except to the extent the payments are made in accordance with subsection (d)(12) or (e)(9) of section 1021;

(2) section 1022 for industry payments for all costs of the Department of Agriculture associated with the production of tobacco;

(3) section 1023 for tobacco community economic development grants, but not to exceed—

(A) $375,000,000 for each of fiscal years 1999 through 2008, less any amount required to be paid under section 1022 for the fiscal year; and

(B) $450,000,000 for each of fiscal year 2009 through 2023, less any amount required to be paid under section 1022 during the fiscal year;

(4) section 1031 for assistance provided under the tobacco worker transition program, but not to exceed $25,000,000 for any fiscal year; and

(5) subpart 9 of part A of title IV of the Higher Education Act of 1965 for farmer opportunity grants, but not to exceed—

(A) $42,500,000 for each of the academic years 1999–2000 through 2003–2004;

(B) $50,000,000 for each of the academic years 2004–2005 through 2008–2009;

(C) $57,500,000 for each of the academic years 2009–2010 through 2013–2014;

(D) $65,000,000 for each of the academic years 2014–2015 through 2018–2019; and

(E) $72,500,000 for each of the academic years 2019–2020 through 2023–2024.

SEC. 1013. BUDGETARY TREATMENT.

This subtitle constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide payments to States and eligible persons in accordance with this title.

Subtitle B—Tobacco Market Transition Assistance

SEC. 1021. PAYMENTS FOR LOST TOBACCO QUOTA.

(a) IN GENERAL.—Beginning with the 1999 marketing year, the Secretary shall make payments for lost tobacco quota to eligible quota holders, quota lessees, and quota tenants as reimbursement for lost tobacco quota.

(b) ELIGIBILITY.—To be eligible to receive payments under this section, a quota holder, quota lessee, or quota tenant shall—

(1) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including information sufficient to make the demonstration required under paragraph (2); and

(2) demonstrate to the satisfaction of the Secretary that, with respect to the 1997 marketing year—

(A) the producer was a quota holder and realized income (or would have realized income, as determined by the Secretary, but for a medical hardship or crop disaster during the 1997 marketing year) from the production of tobacco through—

(i) the active production of tobacco;

(ii) the lease and transfer of tobacco quota to another farm;

(iii) the rental of all or part of the farm of the quota holder, including the right to produce tobacco, to another tobacco producer; or

(iv) the hiring of a quota tenant to produce tobacco;

(B) the producer was a quota lessee; or

(C) the producer was a quota tenant.

(c) BASE QUOTA LEVEL.—

(1) IN GENERAL.—The Secretary shall determine, for each quota holder, quota lessee, and quota tenant, the base quota level for the 1995 through 1997 marketing years.

(2) QUOTA HOLDERS.—The base quota level for a quota holder shall be equal to the average tobacco farm marketing quota established for the farm owned by the quota holder for the 1995 through 1997 marketing years.

(3) QUOTA LESSEES.—The base quota level for a quota lessee shall be equal to—

(A) 50 percent of the average number of pounds of tobacco quota established for the farm for the 1995 through 1997 marketing years—

(i) that was leased and transferred to a farm owned by the quota lessee; or

(ii) that was rented to the quota lessee for the right to produce the tobacco; less

(B) 25 percent of the average number of pounds of tobacco quota described in subparagraph (A) for which a quota tenant was the principal producer of the tobacco quota.

(4) QUOTA TENANTS.—The base quota level for a quota tenant shall be equal to the sum of—

(A) 50 percent of the average number of pounds of tobacco quota established for a farm for the 1995 through 1997 marketing years—

(i) that was owned by a quota holder; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm; and

(B) 25 percent of the average number of pounds of tobacco quota for the 1995 through 1997 marketing years—

(i)(I) that was leased and transferred to a farm owned by the quota lessee; or

(II) for which the rights to produce the tobacco were rented to the quota lessee; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm.

(5) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(A) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the base quota level for each quota holder, quota lessee, or quota tenant shall be determined in accordance with this subsection (based on a poundage conversion) by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average yield per acre for the farm for the type of tobacco for the marketing years.

(B) YIELDS NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the base quota for the quota holder, quota lessee, or quota tenant (based on a poundage conversion) by determining the amount equal to the product obtained by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average county yield per acre for the county in which the farm is located for the type of tobacco for the marketing years.

(d) PAYMENTS FOR LOST TOBACCO QUOTA FOR TYPES OF TOBACCO OTHER THAN FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for all types of tobacco other than flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) OPTION TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Each quota holder, for types of tobacco other than flue-cured tobacco, shall be given the option to relinquish the farm marketing quota or farm acreage allotment of the quota holder in exchange for a payment made under paragraph (3).

(B) NOTIFICATION.—A quota holder shall give notification of the intention of the quota holder to exercise the option at such time and in such manner as the Secretary may require, but not later than January 15, 1999.

(3) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS EXERCISING OPTIONS TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Subject to subparagraph (E), for each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost tobacco quota to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under subparagraph (E).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) LIFETIME LIMITATION ON PAYMENTS.—The total amount of payments made under this paragraph to a quota holder shall not exceed the product obtained by multiplying the base quota level for the quota holder by $8 per pound.

(4) REISSUANCE OF QUOTA.—

(A) REALLOCATION TO LESSEE OR TENANT.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), a quota lessee or quota tenant that was the primary producer during the 1997 marketing year of tobacco pursuant to the farm marketing quota or farm acreage allotment, as determined by the Secretary, shall be given the option of having an allotment of the farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant.

(B) CONDITIONS FOR REALLOCATION.—

(i) TIMING.—A quota lessee or quota tenant that is given the option of having an allotment of a farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant under subparagraph (A) shall have 1 year from the date on which a farm marketing quota or farm acreage allotment is relinquished under paragraph (2) to exercise the option.

(ii) LIMITATION ON ACREAGE ALLOTMENT.—In the case of a farm acreage allotment, the acreage allotment determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(iii) LIMITATION ON MARKETING QUOTA.—In the case of a farm marketing quota, the marketing quota determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed an amount determined by multiplying—

(I) the average county farm yield, as determined by the Secretary; and

(II) 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(C) ELIGIBILITY OF LESSEE OR TENANT FOR PAYMENTS.—If a farm marketing quota or farm acreage allotment is reallocated to a quota lessee or quota tenant under subparagraph (A)—

(i) the quota lessee or quota tenant shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reallocation; and

(ii) the base quota level for the quota lessee or quota tenant shall not be increased as a result of the reallocation.

(D) REALLOCATION TO QUOTA HOLDERS WITHIN SAME COUNTY OR STATE.—

(i) IN GENERAL.—Except as provided in clause (ii), if there was no quota lessee or quota tenant for the farm marketing quota or farm acreage allotment for a type of tobacco, or if no quota lessee or quota tenant exercises an option of having an allotment of the farm marketing quota or farm acreage allotment for a type of tobacco reallocated, the Secretary shall reapportion the farm marketing quota or farm acreage allotment among the remaining quota holders for the type of tobacco within the same county.

(ii) CROSS-COUNTY LEASING.—In a State in which cross-county leasing is authorized pursuant to section 319(l) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(*l*)), the Secretary shall reapportion the farm marketing quota among the remaining quota holders for the type of tobacco within the same State.

(iii) ELIGIBILITY OF QUOTA HOLDER FOR PAYMENTS.—If a farm marketing quota is reapportioned to a quota holder under this subparagraph—

(I) the quota holder shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reapportionment; and

(II) the base quota level for the quota holder shall not be increased as a result of the reapportionment.

(E) SPECIAL RULE FOR TENANT OF LEASED TOBACCO.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), the farm marketing quota or farm acreage allotment shall be divided evenly between, and the option of reallocating the farm marketing quota or farm acreage allotment shall be offered in equal portions to, the quota lessee and to the quota tenant, if—

(i) during the 1997 marketing year, the farm marketing quota or farm acreage allotment was leased and transferred to a farm owned by the quota lessee; and

(ii) the quota tenant was the primary producer, as determined by the Secretary, of tobacco pursuant to the farm marketing quota or farm acreage allotment.

(5) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota holder, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b), and has not exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), in an amount that is equal to the product obtained by multiplying—

(i) the number of pounds by which the basic farm marketing quota (or poundage conversion) is less than the base quota level for the quota holder; and

(ii) $4 per pound.

(B) POUNDAGE CONVERSION FOR MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(i) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the poundage conversion for each quota holder during a marketing year shall be determined by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average yield per acre for the farm for the type of tobacco.

(ii) YIELD NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the poundage conversion for each quota holder during a marketing year by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average county yield per acre for the county in which the farm is located for the type of tobacco.

(6) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee and quota tenant, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b) in an amount that is equal to the product obtained by multiplying—

(A) the percentage by which the national marketing quota for the type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years;

(B) the base quota level for the quota lessee or quota tenant; and

(C) $4 per pound.

(7) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(8) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount

payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost tobacco quota are made in accordance with paragraph (12).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraphs (5) and (6) to quota holders, quota lessees, and quota tenants under this subsection to ensure that the total amount of payments for lost tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders that have exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2) by increasing the amount payable to each such holder under paragraph (3).

(9) SUBSEQUENT SALE AND TRANSFER OF QUOTA.—Effective beginning with the 1999 marketing year, on the sale and transfer of a farm marketing quota or farm acreage allotment under section 316(g) or 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(g), 1314e(g))—

(A) the person that sold and transferred the quota or allotment shall have—

(i) the base quota level attributable to the person reduced by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person reduced by the product obtained by multiplying—

(I) the base quota level attributable to the quota; and

(II) $8 per pound; and

(B) if the quota or allotment has never been relinquished by a previous quota holder under paragraph (2), the person that acquired the quota shall have—

(i) the base quota level attributable to the person increased by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person—

(I) increased by the product obtained by multiplying—

(aa) the base quota level attributable to the quota; and

(bb) $8 per pound; but

(II) decreased by any payments under paragraph (5) for lost tobacco quota previously made that are attributable to the quota that is sold and transferred.

(10) SALE OR TRANSFER OF FARM.—On the sale or transfer of ownership of a farm that is owned by a quota holder, the base quota level established under subsection (c), the right to payments under paragraph (5), and the lifetime limitation on payments established under paragraph (7) shall transfer to the new owner of the farm to the same extent and in the same manner as those provisions applied to the previous quota holder.

(11) DEATH OF QUOTA LESSEE OR QUOTA TENANT.—If a quota lessee or quota tenant that is entitled to payments under this subsection dies and is survived by a spouse or 1 or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving dependents in equal shares.

(12) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost tobacco quota as established under paragraphs (5) and (6) to each quota holder, quota lessee, and quota tenant for any affected type of tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for a type of tobacco is less than 50 percent of the national marketing quota or national acreage allotment for the type of tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1); or

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2).

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (7); less

(ii) any payments for lost tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for any type of tobacco that results in the national marketing quota or national acreage allotment not being in effect for the type of tobacco shall not be considered a triggering event under this paragraph.

(13) BAN ON SUBSEQUENT SALE OR LEASING OF FARM MARKETING QUOTA OR FARM ACREAGE ALLOTMENT TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—No quota holder that exercises the option to relinquish a farm marketing quota or farm acreage allotment for any type of tobacco under paragraph (2) shall be eligible to acquire a farm marketing quota or farm acreage allotment for the type of tobacco, or to obtain the lease or transfer of a farm marketing quota or farm acreage allotment for the type of tobacco, for a period of 25 crop years after the date on which the quota or allotment was relinquished.

(e) PAYMENTS FOR LOST TOBACCO QUOTA FOR FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) RELINQUISHMENT OF QUOTA.—

(A) IN GENERAL.—Each quota holder of flue-cured tobacco shall relinquish the farm marketing quota or farm acreage allotment in exchange for a payment made under paragraph (3) due to the transition from farm marketing quotas as provided under section 317 of the Agricultural Adjustment Act of 1938 for flue-cured tobacco to individual tobacco production permits as provided under section 317A of the Agricultural Adjustment Act of 1938 for flue-cured tobacco.

(B) NOTIFICATION.—The Secretary shall notify the quota holders of the relinquishment of their quota or allotment at such time and in such manner as the Secretary may require, but not later than November 15, 1998.

(3) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA HOLDERS THAT RELINQUISH QUOTA.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(4) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE NOT RELINQUISHED PERMITS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for flue-cured tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee or quota tenant that—

(i) is eligible under subsection (b);

(ii) has been issued an individual tobacco production permit under section 317A(b) of the Agricultural Adjustment Act of 1938; and

(iii) has not exercised an option to relinquish the permit.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing year shall be equal to the product obtained by multiplying—

(i) the number of pounds by which the individual marketing limitation established for the permit is less than twice the base quota level for the quota lessee or quota tenant; and

(ii) $2 per pound.

(5) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE RELINQUISHED PERMITS.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco quota to each quota lessee and quota tenant that has relinquished an individual tobacco production permit under section 317A(b)(5) of the Agricultural Adjustment Act of 1938.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing

year shall be equal to 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the individual tobacco production permit is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) PROHIBITION AGAINST PERMIT EXPANSION.—A quota lessee or quota tenant that receives a payment under this paragraph shall be ineligible to receive any new or increased tobacco production permit from the county production pool established under section 317A(b)(8) of the Agricultural Adjustment Act of 1938.

(6) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(7) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost flue-cured tobacco quota are made in accordance with paragraph (9).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraph (4) to quota lessees and quota tenants under this subsection to ensure that the total amount of payments for lost flue-cured tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost flue-cured tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTAS OR PERMITS, OR TO QUOTA LESSEES OR QUOTA TENANTS RELINQUISHING PERMITS.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders by increasing the amount payable to each such holder under paragraphs (3) and (5).

(8) DEATH OF QUOTA HOLDER, QUOTA LESSEE, OR QUOTA TENANT.—If a quota holder, quota lessee or quota tenant that is entitled to payments under paragraph (4) or (5) dies and is survived by a spouse or 1 or more descendants, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving descendants in equal shares.

(9) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost flue-cured tobacco quota as established under paragraphs (3), (4), and (5) to each quota holder, quota lessee, and quota tenant for flue-cured tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for flue-cured tobacco is less than 50 percent of the national marketing quota or national acreage allotment for flue-cured tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1);

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2); or

(VI) section 317A of the Agricultural Adjustment Act of 1938.

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (6); less

(ii) any payments for lost flue-cured tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for flue-cured tobacco that results in the national marketing quota or national acreage allotment not being in effect for flue-cured tobacco shall not be considered a triggering event under this paragraph.

SEC. 1022. INDUSTRY PAYMENTS FOR ALL DEPARTMENT COSTS ASSOCIATED WITH TOBACCO PRODUCTION.

(a) IN GENERAL.—The Secretary shall use such amounts remaining unspent and obligated at the end of each fiscal year to reimburse the Secretary for—

(1) costs associated with the administration of programs established under this title and amendments made by this title;

(2) costs associated with the administration of the tobacco quota and price support programs administered by the Secretary;

(3) costs to the Federal Government of carrying out crop insurance programs for tobacco;

(4) costs associated with all agricultural research, extension, or education activities associated with tobacco;

(5) costs associated with the administration of loan association and cooperative programs for tobacco producers, as approved by the Secretary; and

(6) any other costs incurred by the Department of Agriculture associated with the production of tobacco.

(b) LIMITATIONS.—Amounts made available under subsection (a) may not be used—

(1) to provide direct benefits to quota holders, quota lessees, or quota tenants; or

(2) in a manner that results in a decrease, or an increase relative to other crops, in the amount of the crop insurance premiums assessed to participating tobacco producers under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(c) DETERMINATIONS.—Not later than September 30, 1998, and each fiscal year thereafter, the Secretary shall determine—

(1) the amount of costs described in subsection (a); and

(2) the amount that will be provided under this section as reimbursement for the costs.

SEC. 1023. TOBACCO COMMUNITY ECONOMIC DEVELOPMENT GRANTS.

(a) AUTHORITY.—The Secretary shall make grants to tobacco-growing States in accordance with this section to enable the States to carry out economic development initiatives in tobacco-growing communities.

(b) APPLICATION.—To be eligible to receive payments under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a description of the activities that the State will carry out using amounts received under the grant;

(2) a designation of an appropriate State agency to administer amounts received under the grant; and

(3) a description of the steps to be taken to ensure that the funds are distributed in accordance with subsection (e).

(c) AMOUNT OF GRANT.—

(1) IN GENERAL.—From the amounts available to carry out this section for a fiscal year, the Secretary shall allot to each State an amount that bears the same ratio to the amounts available as the total farm income of the State derived from the production of tobacco during the 1995 through 1997 marketing years (as determined under paragraph (2)) bears to the total farm income of all States derived from the production of tobacco during the 1995 through 1997 marketing years.

(2) TOBACCO INCOME.—For the 1995 through 1997 marketing years, the Secretary shall determine the amount of farm income derived from the production of tobacco in each State and in all States.

(d) PAYMENTS.—

(1) IN GENERAL.—A State that has an application approved by the Secretary under subsection (b) shall be entitled to a payment under this section in an amount that is equal to its allotment under subsection (c).

(2) FORM OF PAYMENTS.—The Secretary may make payments under this section to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(3) REALLOTMENTS.—Any portion of the allotment of a State under subsection (c) that the Secretary determines will not be used to carry out this section in accordance with an approved State application required under subsection (b), shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(e) USE AND DISTRIBUTION OF FUNDS.—

(1) IN GENERAL.—Amounts received by a State under this section shall be used to carry out economic development activities, including—

(A) rural business enterprise activities described in subsections (c) and (e) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932);

(B) down payment loan assistance programs that are similar to the program described in section 310E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1935);

(C) activities designed to help create productive farm or off-farm employment in rural areas to provide a more viable economic base and enhance opportunities for improved incomes, living standards, and contributions by rural individuals to the economic and social development of tobacco communities;

(D) activities that expand existing infrastructure, facilities, and services to capitalize on opportunities to diversify economies

in tobacco communities and that support the development of new industries or commercial ventures;

(E) activities by agricultural organizations that provide assistance directly to participating tobacco producers to assist in developing other agricultural activities that supplement tobacco-producing activities;

(F) initiatives designed to create or expand locally owned value-added processing and marketing operations in tobacco communities;

(G) technical assistance activities by persons to support farmer-owned enterprises, or agriculture-based rural development enterprises, of the type described in section 252 or 253 of the Trade Act of 1974 (19 U.S.C. 2342, 2343); and

(H) initiatives designed to partially compensate tobacco warehouse owners for lost revenues and assist the tobacco warehouse owners in establishing successful business enterprises.

(2) TOBACCO-GROWING COUNTIES.—Assistance may be provided by a State under this section only to assist a county in the State that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years. For purposes of this section, the term ''tobacco-growing county'' includes a political subdivision surrounded within a State by a county that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years.

(3) DISTRIBUTION.—

(A) ECONOMIC DEVELOPMENT ACTIVITIES.—Not less than 20 percent of the amounts received by a State under this section shall be used to carry out—

(i) economic development activities described in subparagraph (E) or (F) of paragraph (1); or

(ii) agriculture-based rural development activities described in paragraph (1)(G).

(B) TECHNICAL ASSISTANCE ACTIVITIES.—Not less than 4 percent of the amounts received by a State under this section shall be used to carry out technical assistance activities described in paragraph (1)(G).

(C) TOBACCO WAREHOUSE OWNER INITIATIVES.—Not less than 6 percent of the amounts received by a State under this section during each of fiscal years 1999 through 2008 shall be used to carry out initiatives described in paragraph (1)(H).

(D) TOBACCO-GROWING COUNTIES.—To be eligible to receive payments under this section, a State shall demonstrate to the Secretary that funding will be provided, during each 5-year period for which funding is provided under this section, for activities in each county in the State that has been determined under paragraph (2) to have in excess of $100,000 in income derived from the production of tobacco, in amounts that are at least equal to the product obtained by multiplying—

(i) the ratio that the tobacco production income in the county determined under paragraph (2) bears to the total tobacco production income for the State determined under subsection (c); and

(ii) 50 percent of the total amounts received by a State under this section during the 5-year period.

(f) PREFERENCES IN HIRING.—A State may require recipients of funds under this section to provide a preference in employment to—

(1) an individual who—

(A) during the 1998 calendar year, was employed in the manufacture, processing, or warehousing of tobacco or tobacco products, or resided, in a county described in subsection (e)(2); and

(B) is eligible for assistance under the tobacco worker transition program established under section 1031; or

(2) an individual who—

(A) during the 1998 marketing year, carried out tobacco quota or relevant tobacco production activities in a county described in subsection (e)(2);

(B) is eligible for a farmer opportunity grant under subpart 9 of part A of title IV of the Higher Education Act of 1965; and

(C) has successfully completed a course of study at an institution of higher education.

(g) MAINTENANCE OF EFFORT.—

(1) IN GENERAL.—Subject to paragraph (2), a State shall provide an assurance to the Secretary that the amount of funds expended by the State and all counties in the State described in subsection (e)(2) for any activities funded under this section for a fiscal year is not less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year.

(2) REDUCTION OF GRANT AMOUNT.—If a State does not provide an assurance described in paragraph (1), the Secretary shall reduce the amount of the grant determined under subsection (c) by an amount equal to the amount by which the amount of funds expended by the State and counties for the activities is less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year, as determined by the Secretary.

(3) FEDERAL FUNDS.—For purposes of this subsection, the amount of funds expended by a State or county shall not include any amounts made available by the Federal Government.

SEC. 1024. FLUE-CURED TOBACCO PRODUCTION PERMITS.

The Agricultural Adjustment Act of 1938 is amended by inserting after section 317 (7 U.S.C. 1314c) the following:

''SEC. 317A. FLUE-CURED TOBACCO PRODUCTION PERMITS.

''(a) DEFINITIONS.—In this section:

''(1) INDIVIDUAL ACREAGE LIMITATION.—The term 'individual acreage limitation' means the number of acres of flue-cured tobacco that may be planted by the holder of a permit during a marketing year, calculated—

''(A) prior to—

''(i) any increase or decrease in the number due to undermarketings or overmarketings; and

''(ii) any reduction under subsection (i); and

''(B) in a manner that ensures that—

''(i) the total of all individual acreage limitations is equal to the national acreage allotment, less the reserve provided under subsection (h); and

''(ii) the individual acreage limitation for a marketing year bears the same ratio to the individual acreage limitation for the previous marketing year as the ratio that the national acreage allotment for the marketing year bears to the national acreage allotment for the previous marketing year, subject to adjustments by the Secretary to account for any reserve provided under subsection (h).

''(2) INDIVIDUAL MARKETING LIMITATION.—The term 'individual marketing limitation' means the number of pounds of flue-cured tobacco that may be marketed by the holder of a permit during a marketing year, calculated—

''(A) prior to—

''(i) any increase or decrease in the number due to undermarketings or overmarketings; and

''(ii) any reduction under subsection (i); and

''(B) in a manner that ensures that—

''(i) the total of all individual marketing limitations is equal to the national marketing quota, less the reserve provided under subsection (h); and

''(ii) the individual marketing limitation for a marketing year is obtained by multiplying the individual acreage limitation by the permit yield, prior to any adjustment for undermarketings or overmarketings.

''(3) INDIVIDUAL TOBACCO PRODUCTION PERMIT.—The term 'individual tobacco production permit' means a permit issued by the Secretary to a person authorizing the production of flue-cured tobacco for any marketing year during which this section is effective.

''(4) NATIONAL ACREAGE ALLOTMENT.—The term 'national acreage allotment' means the quantity determined by dividing—

''(A) the national marketing quota; by

''(B) the national average yield goal.

''(5) NATIONAL AVERAGE YIELD GOAL.—The term 'national average yield goal' means the national average yield for flue-cured tobacco during the 5 marketing years immediately preceding the marketing year for which the determination is being made.

''(6) NATIONAL MARKETING QUOTA.—For the 1999 and each subsequent crop of flue-cured tobacco, the term 'national marketing quota' for a marketing year means the quantity of flue-cured tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

''(A) the aggregate of the quantities of flue-cured tobacco that domestic manufacturers of cigarettes estimate that the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as compiled and determined under section 320A;

''(B) the average annual quantity of flue-cured tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

''(C) the quantity, if any, of flue-cured tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of flue-cured tobacco to establish or maintain the inventory at the reserve stock level for flue-cured tobacco.

''(7) PERMIT YIELD.—The term 'permit yield' means the yield of tobacco per acre for an individual tobacco production permit holder that is—

''(A) based on a preliminary permit yield that is equal to the average yield during the 5 marketing years immediately preceding the marketing year for which the determination is made in the county where the holder of the permit is authorized to plant flue-cured tobacco, as determined by the Secretary, on the basis of actual yields of farms in the county; and

''(B) adjusted by a weighted national yield factor calculated by—

''(i) multiplying each preliminary permit yield by the individual acreage limitation, prior to adjustments for overmarketings, undermarketings, or reductions required under subsection (i); and

''(ii) dividing the sum of the products under clause (i) for all flue-cured individual tobacco production permit holders by the national acreage allotment.

''(b) INITIAL ISSUANCE OF PERMITS.—

''(1) TERMINATION OF FLUE-CURED MARKETING QUOTAS.—On the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, farm marketing quotas as provided under section 317 shall no longer be in effect for flue-cured tobacco.

''(2) ISSUANCE OF PERMITS TO QUOTA HOLDERS THAT WERE PRINCIPAL PRODUCERS.—

''(A) IN GENERAL.—By January 15, 1999, each individual quota holder under section 317 that was a principal producer of flue-cured tobacco during the 1998 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

''(B) NOTIFICATION.—The Secretary shall notify the holder of each permit of the individual acreage limitation and the individual marketing limitation applicable to the holder for each marketing year.

''(C) INDIVIDUAL ACREAGE LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

''(D) INDIVIDUAL MARKETING LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the farm marketing quota that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual marketing limitation for the previous marketing year.

''(3) QUOTA HOLDERS THAT WERE NOT PRINCIPAL PRODUCERS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), on approval through a referendum under subsection (c)—

''(i) each person that was a quota holder under section 317 but that was not a principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall not be eligible to own a permit; and

''(ii) the Secretary shall not issue any permit during the 25-year period beginning on the date of enactment of this Act to any person that was a quota holder and was not the principal producer of flue-cured tobacco during the 1997 marketing year.

''(B) MEDICAL HARDSHIPS AND CROP DISASTERS.—Subparagraph (A) shall not apply to a person that would have been the principal producer of flue-cured tobacco during the 1997 marketing year but for a medical hardship or crop disaster that occurred during the 1997 marketing year.

''(C) ADMINISTRATION.—The Secretary shall issue regulations—

''(i) defining the term 'person' for the purpose of this paragraph; and

''(ii) prescribing such rules as the Secretary determines are necessary to ensure a fair and reasonable application of the prohibition established under this paragraph.

''(4) ISSUANCE OF PERMITS TO PRINCIPAL PRODUCERS OF FLUE-CURED TOBACCO.—

''(A) IN GENERAL.—By January 15, 1999, each individual quota lessee or quota tenant (as defined in section 1002 of the LEAF Act) that was the principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

''(B) INDIVIDUAL ACREAGE LIMITATIONS.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by a quota holder for whom the quota lessee or quota tenant was the principal producer of flue-cured tobacco during the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

''(C) INDIVIDUAL MARKETING LIMITATIONS.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the individual marketing limitation for the previous year for an individual described in this paragraph shall be calculated by multiplying—

''(i) the farm marketing quota that was allotted to a farm owned by a quota holder for whom the quota lessee or quota holder was the principal producer of flue-cured tobacco during the 1997 marketing year, by

''(ii) the ratio that—

''(I) the sum of all flue-cured tobacco farm marketing quotas for the 1997 marketing year prior to adjusting for undermarketing and overmarketing; bears to

''(II) the sum of all flue-cured tobacco farm marketing quotas for the 1998 marketing year, after adjusting for undermarketing and overmarketing.

''(D) SPECIAL RULE FOR TENANT OF LEASED FLUE-CURED TOBACCO.—If the farm marketing quota or farm acreage allotment of a quota holder was produced pursuant to an agreement under which a quota lessee rented land from a quota holder and a quota tenant was the primary producer, as determined by the Secretary, of flue-cured tobacco pursuant to the farm marketing quota or farm acreage allotment, the farm marketing quota or farm acreage allotment shall be divided proportionately between the quota lessee and quota tenant for purposes of issuing individual tobacco production permits under this paragraph.

''(5) OPTION OF QUOTA LESSEE OR QUOTA TENANT TO RELINQUISH PERMIT.—

''(A) IN GENERAL.—Each quota lessee or quota tenant that is issued an individual tobacco production permit under paragraph (4) shall be given the option of relinquishing the permit in exchange for payments made under section 1021(e)(5) of the LEAF Act.

''(B) NOTIFICATION.—A quota lessee or quota tenant that is issued an individual tobacco production permit shall give notification of the intention to exercise the option at such time and in such manner as the Secretary may require, but not later than 45 days after the permit is issued.

''(C) REALLOCATION OF PERMIT.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit relinquished under this paragraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

''(6) ACTIVE PRODUCER REQUIREMENT.—

''(A) REQUIREMENT FOR SHARING RISK.—No individual tobacco production permit shall be issued to, or maintained by, a person that does not fully share in the risk of producing a crop of flue-cured tobacco.

''(B) CRITERIA FOR SHARING RISK.—For purposes of this paragraph, a person shall be considered to have fully shared in the risk of production of a crop if—

''(i) the investment of the person in the production of the crop is not less than 100 percent of the costs of production associated with the crop;

''(ii) the amount of the person's return on the investment is dependent solely on the sale price of the crop; and

''(iii) the person may not receive any of the return before the sale of the crop.

''(C) PERSONS NOT SHARING RISK.—

''(i) FORFEITURE.—Any person that fails to fully share in the risks of production under this paragraph shall forfeit an individual tobacco production permit if, after notice and opportunity for a hearing, the appropriate county committee determines that the conditions for forfeiture exist.

''(ii) REALLOCATION.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit forfeited under this subparagraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

''(D) NOTICE.—Notice of any determination made by a county committee under subparagraph (C) shall be mailed, as soon as practicable, to the person involved.

''(E) REVIEW.—If the person is dissatisfied with the determination, the person may request, not later than 15 days after notice of the determination is received, a review of the determination by a local review committee under the procedures established under section 363 for farm marketing quotas.

''(7) COUNTY OF ORIGIN REQUIREMENT.—For the 1999 and each subsequent crop of flue-cured tobacco, all tobacco produced pursuant to an individual tobacco production permit shall be produced in the same county in which was produced the tobacco produced during the 1997 marketing year pursuant to the farm marketing quota or farm acreage allotment on which the individual tobacco production permit is based.

''(8) COUNTY PRODUCTION POOL.—

''(A) IN GENERAL.—The authority to produce flue-cured tobacco under an individual tobacco production permit that is forfeited, relinquished, or surrendered within a county may be reallocated by the appropriate county committee to tobacco producers located in the same county that apply to the committee to produce flue-cured tobacco under the authority.

''(B) PRIORITY.—In reallocating individual tobacco production permits under this paragraph, a county committee shall provide a priority to—

''(i) an active tobacco producer that controls the authority to produce a quantity of flue-cured tobacco under an individual tobacco production permit that is equal to or less than the average number of pounds of flue-cured tobacco that was produced by the producer during each of the 1995 through 1997 marketing years, as determined by the Secretary; and

''(ii) a new tobacco producer.

''(C) CRITERIA.—Individual tobacco production permits shall be reallocated by the appropriate county committee under this paragraph in a fair and equitable manner after taking into consideration—

''(i) the experience of the producer;

''(ii) the availability of land, labor, and equipment for the production of tobacco;

''(iii) crop rotation practices; and

''(iv) the soil and other physical factors affecting the production of tobacco.

''(D) MEDICAL HARDSHIPS AND CROP DISASTERS.—Notwithstanding any other provision of this Act, the Secretary may issue an individual tobacco production permit under this paragraph to a producer that is otherwise ineligible for the permit due to a medical hardship or crop disaster that occurred during the 1997 marketing year.

''(c) REFERENDUM.—

''(1) ANNOUNCEMENT OF QUOTA AND ALLOTMENT.—Not later than December 15, 1998, the Secretary pursuant to subsection (b) shall determine and announce—

''(A) the quantity of the national marketing quota for flue-cured tobacco for the 1999 marketing year; and

''(B) the national acreage allotment and national average yield goal for the 1999 crop of flue-cured tobacco.

''(2) SPECIAL REFERENDUM.—Not later than 30 days after the announcement of the quantity of the national marketing quota in 2001, the Secretary shall conduct a special referendum of the tobacco production permit holders that were the principal producers of flue-cured tobacco of the 1997 crop to determine whether the producers approve or oppose the continuation of individual tobacco production permits on an acreage-poundage basis as provided in this section for the 2002 through 2004 marketing years.

''(3) APPROVAL OF PERMITS.—If the Secretary determines that more than 66⅔ percent of the producers voting in the special referendum approve the establishment of individual tobacco production permits on an acreage-poundage basis—

''(A) individual tobacco production permits on an acreage-poundage basis as provided in this section shall be in effect for the 2002 through 2004 marketing years; and

''(B) marketing quotas on an acreage-poundage basis shall cease to be in effect for the 2002 through 2004 marketing years.

''(4) DISAPPROVAL OF PERMITS.—If individual tobacco production permits on an acreage-poundage basis are not approved by more than 66⅔ percent of the producers voting in the referendum, no marketing quotas on an acreage-poundage basis shall continue in effect that were proclaimed under section 317 prior to the referendum.

''(5) APPLICABLE MARKETING YEARS.—If individual tobacco production permits have been made effective for flue-cured tobacco on an acreage-poundage basis pursuant to this subsection, the Secretary shall, not later than December 15 of any future marketing year, announce a national marketing quota for that type of tobacco for the next 3 succeeding marketing years if the marketing year is the last year of 3 consecutive years for which individual tobacco production permits previously proclaimed will be in effect.

''(d) ANNUAL ANNOUNCEMENT OF NATIONAL MARKETING QUOTA.—The Secretary shall determine and announce the national marketing quota, national acreage allotment, and national average yield goal for the second and third marketing years of any 3-year period for which individual tobacco production permits are in effect on or before the December 15 immediately preceding the beginning of the marketing year to which the quota, allotment, and goal apply.

''(e) ANNUAL ANNOUNCEMENT OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—If a national marketing quota, national acreage allotment, and national average yield goal are determined and announced, the Secretary shall provide for the determination of individual tobacco production permits, individual acreage limitations, and individual marketing limitations under this section for the crop and marketing year covered by the determinations.

''(f) ASSIGNMENT OF TOBACCO PRODUCTION PERMITS.—

''(1) LIMITATION TO SAME COUNTY.—Each individual tobacco production permit holder shall assign the individual acreage limitation and individual marketing limitation to 1 or more farms located within the county of origin of the individual tobacco production permit.

''(2) FILING WITH COUNTY COMMITTEE.—The assignment of an individual acreage limitation and individual marketing limitation shall not be effective until evidence of the assignment, in such form as required by the Secretary, is filed with and determined by the county committee for the county in which the farm involved is located.

''(3) LIMITATION ON TILLABLE CROPLAND.—The total acreage assigned to any farm under this subsection shall not exceed the acreage of cropland on the farm.

''(g) PROHIBITION ON SALE OR LEASING OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall not permit the sale and transfer, or lease and transfer, of an individual tobacco production permit issued under this section.

''(2) TRANSFER TO DESCENDANTS.—

''(A) DEATH.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section, the permit shall transfer to the surviving spouse of the person or, if there is no surviving spouse, to surviving direct descendants of the person.

''(B) TEMPORARY INABILITY TO FARM.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section and whose descendants are temporarily unable to produce a crop of tobacco, the Secretary may hold the license in the name of the descendants for a period of not more than 18 months.

''(3) VOLUNTARY TRANSFERS.—A person that is eligible to obtain an individual tobacco production permit under this section may at any time transfer all or part of the permit to the person's spouse or direct descendants that are actively engaged in the production of tobacco.

''(h) RESERVE.—

''(1) IN GENERAL.—For each marketing year for which individual tobacco production permits are in effect under this section, the Secretary may establish a reserve from the national marketing quota in a quantity equal to not more than 1 percent of the national marketing quota to be available for—

''(A) making corrections of errors in individual acreage limitations and individual marketing limitations;

''(B) adjusting inequities; and

''(C) establishing individual tobacco production permits for new tobacco producers (except that not less than two-thirds of the reserve shall be for establishing such permits for new tobacco producers).

''(2) ELIGIBLE PERSONS.—To be eligible for a new individual tobacco production permit, a producer must not have been the principal producer of tobacco during the immediately preceding 5 years.

''(3) APPORTIONMENT FOR NEW PRODUCERS.—The part of the reserve held for apportionment to new individual tobacco producers shall be allotted on the basis of—

''(A) land, labor, and equipment available for the production of tobacco;

''(B) crop rotation practices;

''(C) soil and other physical factors affecting the production of tobacco; and

''(D) the past tobacco-producing experience of the producer.

''(4) PERMIT YIELD.—The permit yield for any producer for which a new individual tobacco production permit is established shall be determined on the basis of available productivity data for the land involved and yields for similar farms in the same county.

''(i) PENALTIES.—

''(1) PRODUCTION ON OTHER FARMS.—If any quantity of tobacco is marketed as having been produced under an individual acreage limitation or individual marketing limitation assigned to a farm but was produced on a different farm, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

''(2) FALSE REPORT.—If a person to which an individual tobacco production permit is issued files, or aids or acquiesces in the filing of, a false report with respect to the assignment of an individual acreage limitation or individual marketing limitation for a quantity of tobacco, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

''(j) MARKETING PENALTIES.—

''(1) IN GENERAL.—When individual tobacco production permits under this section are in effect, provisions with respect to penalties for the marketing of excess tobacco and the other provisions contained in section 314 shall apply in the same manner and to the same extent as they would apply under section 317(g) if farm marketing quotas were in effect.

''(2) PRODUCTION ON OTHER FARMS.—If a producer falsely identifies tobacco as having been produced on or marketed from a farm to which an individual acreage limitation or individual marketing limitation has been assigned, future individual acreage limitations and individual marketing limitations shall be forfeited.''.

SEC. 1025. MODIFICATIONS IN FEDERAL TOBACCO PROGRAMS.

(a) PROGRAM REFERENDA.—Section 312(c) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1312(c)) is amended—

(1) by striking ''(c) Within thirty'' and inserting the following:

''(c) REFERENDA ON QUOTAS.—

''(1) IN GENERAL.—Not later than 30''; and

(2) by adding at the end the following:

''(2) REFERENDA ON PROGRAM CHANGES.—

''(A) IN GENERAL.—In the case of any type of tobacco for which marketing quotas are in effect, on the receipt of a petition from more than 5 percent of the producers of that type of tobacco in a State, the Secretary shall conduct a statewide referendum on any proposal related to the lease and transfer of tobacco quota within a State requested by the petition that is authorized under this part.

''(B) APPROVAL OF PROPOSALS.—If a majority of producers of the type of tobacco in the State approve a proposal in a referendum conducted under subparagraph (A), the Secretary shall implement the proposal in a manner that applies to all producers and quota holders of that type of tobacco in the State.''.

(b) PURCHASE REQUIREMENTS.—Section 320B of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h) is amended—

(1) in subsection (c)—

(A) by striking ''(c) The amount'' and inserting ''(c) AMOUNT OF PENALTY.—For the 1998 and subsequent marketing years, the amount''; and

(B) by striking paragraph (1) and inserting the following:

''(1) 105 percent of the average market price for the type of tobacco involved during the preceding marketing year; and''.

(c) ELIMINATION OF TOBACCO MARKETING ASSESSMENT.—

(1) IN GENERAL.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by striking subsection (g).

(2) CONFORMING AMENDMENT.—Section 422(c) of the Uruguay Round Agreements Act (Public Law 103–465; 7 U.S.C. 1445 note) is amended by striking ''section 106(g), 106A, or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445(g), 1445–1, or 1445–2)'' and inserting ''section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2)''.

(d) ADJUSTMENT FOR LAND RENTAL COSTS.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by adding at the end the following:

''(h) ADJUSTMENT FOR LAND RENTAL COSTS.—For each of the 1999 and 2000 marketing years for flue-cured tobacco, after consultation with producers, State farm organizations and cooperative associations, the Secretary shall make an adjustment in the price support level for flue-cured tobacco equal to the annual change in the average cost per pound to flue-cured producers, as determined by the Secretary, under agreements through which producers rent land to produce flue-cured tobacco.''.

(e) FIRE-CURED AND DARK AIR-CURED TOBACCO PROGRAMS.—

(1) LIMITATION ON TRANSFERS.—Section 318(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d(g)) is amended—

(A) by striking ''ten'' and inserting ''30''; and

(B) by inserting ''during any crop year'' after ''transferred to any farm''.

(2) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Section 318 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d) is amended by adding at the end the following:

''(k) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Effective for the 1999 and subsequent marketing years, no acreage allotment or acreage-poundage quota, other than a new marketing quota, shall be established for a farm on which no fire-cured or dark air-cured tobacco was planted or considered planted during at least 2 of the 3 crop years immediately preceding the crop year for which the acreage allotment or acreage-poundage quota would otherwise be established.''.

(f) EXPANSION OF TYPES OF TOBACCO SUBJECT TO NO NET COST ASSESSMENT.—

(1) NO NET COST TOBACCO FUND.—Section 106A(d)(1)(A) of the Agricultural Act of 1949 (7 U.S.C. 1445–1(d)(1)(A)) is amended—

(A) in clause (ii), by inserting after ''Burley quota tobacco'' the following: ''and fire-cured and dark air-cured quota tobacco''; and

(B) in clause (iii)—

(i) in the matter preceding subclause (I), by striking ''Flue-cured or Burley tobacco'' and inserting ''each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,''; and

(ii) by striking subclause (II) and inserting the following:

''(II) the sum of the amount of the per pound producer contribution and purchaser assessment (if any) for the kind of tobacco payable under clauses (i) and (ii); and''.

(2) NO NET COST TOBACCO ACCOUNT.—Section 106B(d)(1) of the Agricultural Act of 1949 (7 U.S.C. 1445–2(d)(1)) is amended—

(A) in subparagraph (B), by inserting after ''Burley quota tobacco'' the following: ''and fire-cured and dark air-cured tobacco''; and

(B) in subparagraph (C), by striking ''Flue-cured and Burley tobacco'' and inserting ''each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,''.

Subtitle C—Farmer and Worker Transition Assistance

SEC. 1031. TOBACCO WORKER TRANSITION PROGRAM.

(a) GROUP ELIGIBILITY REQUIREMENTS.—

(1) CRITERIA.—A group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) shall be certified as eligible to apply for adjustment assistance under this section pursuant to a petition filed under subsection (b) if the Secretary of Labor determines that a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, and—

(A) the sales or production, or both, of the firm or subdivision have decreased absolutely; and

(B) the implementation of the national tobacco settlement contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the firm or subdivision.

(2) DEFINITION OF CONTRIBUTED IMPORTANTLY.—In paragraph (1)(B), the term ''contributed importantly'' means a cause that is important but not necessarily more important than any other cause.

(3) REGULATIONS.—The Secretary shall issue regulations relating to the application of the criteria described in paragraph (1) in making preliminary findings under subsection (b) and determinations under subsection (c).

(b) PRELIMINARY FINDINGS AND BASIC ASSISTANCE.—

(1) FILING OF PETITIONS.—A petition for certification of eligibility to apply for adjustment assistance under this section may be filed by a group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) or by their certified or recognized union or other duly authorized representative with the Governor of the State in which the workers' firm or subdivision thereof is located.

(2) FINDINGS AND ASSISTANCE.—On receipt of a petition under paragraph (1), the Governor shall—

(A) notify the Secretary that the Governor has received the petition;

(B) within 10 days after receiving the petition—

(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1); and

(ii) transmit the petition, together with a statement of the finding under clause (i) and reasons for the finding, to the Secretary for action under subsection (c); and

(C) if the preliminary finding under subparagraph (B)(i) is affirmative, ensure that rapid response and basic readjustment services authorized under other Federal laws are made available to the workers.

(c) REVIEW OF PETITIONS BY SECRETARY; CERTIFICATIONS.—

(1) IN GENERAL.—The Secretary, within 30 days after receiving a petition under subsection (b)(2)(B)(ii), shall determine whether the petition meets the criteria described in subsection (a)(1). On a determination that the petition meets the criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for the assistance described in subsection (d).

(2) DENIAL OF CERTIFICATION.—On the denial of a certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of other applicable assistance programs to determine if the workers may be certified under the other programs.

(d) COMPREHENSIVE ASSISTANCE.—

(1) IN GENERAL.—Workers covered by a certification issued by the Secretary under subsection (c)(1) shall be provided with benefits and services described in paragraph (2) in the same manner and to the same extent as workers covered under a certification under subchapter A of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.), except that the total amount of payments under this section for any fiscal year shall not exceed $25,000,000.

(2) BENEFITS AND SERVICES.—The benefits and services described in this paragraph are the following:

(A) Employment services of the type described in section 235 of the Trade Act of 1974 (19 U.S.C. 2295).

(B) Training described in section 236 of the Trade Act of 1974 (19 U.S.C. 2296), except that notwithstanding the provisions of section 236(a)(2)(A) of that Act, the total amount of payments for training under this section for any fiscal year shall not exceed $12,500,000.

(C) Tobacco worker readjustment allowances, which shall be provided in the same manner as trade readjustment allowances are provided under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2291 et seq.), except that—

(i) the provisions of sections 231(a)(5)(C) and 231(c) of that Act (19 U.S.C. 2291(a)(5)(C), 2291(c)), authorizing the payment of trade readjustment allowances on a finding that it is not feasible or appropriate to approve a training program for a worker, shall not be applicable to payment of allowances under this section; and

(ii) notwithstanding the provisions of section 233(b) of that Act (19 U.S.C. 2293(b)), in order for a worker to qualify for tobacco readjustment allowances under this section, the worker shall be enrolled in a training program approved by the Secretary of the type described in section 236(a) of that Act (19 U.S.C. 2296(a)) by the later of—

(I) the last day of the 16th week of the worker's initial unemployment compensation benefit period; or

(II) the last day of the 6th week after the week in which the Secretary issues a certification covering the worker.

In cases of extenuating circumstances relating to enrollment of a worker in a training program under this section, the Secretary may extend the time for enrollment for a period of not to exceed 30 days.

(D) Job search allowances of the type described in section 237 of the Trade Act of 1974 (19 U.S.C. 2297).

(E) Relocation allowances of the type described in section 238 of the Trade Act of 1974 (19 U.S.C. 2298).

(e) INELIGIBILITY OF INDIVIDUALS RECEIVING PAYMENTS FOR LOST TOBACCO QUOTA.—No benefits or services may be provided under this section to any individual who has received payments for lost tobacco quota under section 1021.

(f) FUNDING.—Of the amounts appropriated to carry out this title, the Secretary may use not to exceed $25,000,000 for each of fiscal years 1999 through 2008 to provide assistance under this section.

(g) EFFECTIVE DATE.—This section shall take effect on the date that is the later of—

(1) October l, 1998; or

(2) the date of enactment of this Act.

(h) TERMINATION DATE.—No assistance, vouchers, allowances, or other payments may be provided under this section after the date that is the earlier of—

(1) the date that is 10 years after the effective date of this section under subsection (g); or

(2) the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by this section becomes effective.

SEC. 1032. FARMER OPPORTUNITY GRANTS.

Part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) is amended by adding at the end the following:

''Subpart 9—Farmer Opportunity Grants

''SEC. 420D. STATEMENT OF PURPOSE.

''It is the purpose of this subpart to assist in making available the benefits of post-secondary education to eligible students (determined in accordance with section 420F) in institutions of higher education by providing farmer opportunity grants to all eligible students.

''SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETERMINATIONS; APPLICATIONS.

''(a) PROGRAM AUTHORITY AND METHOD OF DISTRIBUTION.—

''(1) PROGRAM AUTHORITY.—From amounts made available under section 1011(d)(5) of the LEAF Act, the Secretary, during the period beginning July 1, 1999, and ending September 30, 2024, shall pay to each eligible institution such sums as may be necessary to pay to each eligible student (determined in accordance with section 420F) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a farmer opportunity grant in the amount for which that student is eligible, as determined pursuant to subsection (b). Not less than 85 percent of the sums shall be advanced to eligible institutions prior to the start of each payment period and shall be based on an amount requested by the institution as needed to pay

eligible students, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

''(2) CONSTRUCTION.—Nothing in this section shall be construed to prohibit the Secretary from paying directly to students, in advance of the beginning of the academic term, an amount for which the students are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1).

''(3) DESIGNATION.—Grants made under this subpart shall be known as 'farmer opportunity grants'.

''(b) AMOUNT OF GRANTS.—

''(1) AMOUNTS.—

''(A) IN GENERAL.—The amount of the grant for a student eligible under this subpart shall be—

''(i) $1,700 for each of the academic years 1999–2000 through 2003–2004;

''(ii) $2,000 for each of the academic years 2004–2005 through 2008–2009;

''(iii) $2,300 for each of the academic years 2009–2010 through 2013–2014;

''(iv) $2,600 for each of the academic years 2014–2015 through 2018–2019; and

''(v) $2,900 for each of the academic years 2019–2020 through 2023–2024.

''(B) PART-TIME RULE.—In any case where a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis) during any academic year, the amount of the grant for which that student is eligible shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this subparagraph, computed in accordance with this subpart. The schedule of reductions shall be established by regulation and published in the Federal Register.

''(2) MAXIMUM.—No grant under this subpart shall exceed the cost of attendance (as described in section 472) at the institution at which that student is in attendance. If, with respect to any student, it is determined that the amount of a grant exceeds the cost of attendance for that year, the amount of the grant shall be reduced to an amount equal to the cost of attendance at the institution.

''(3) PROHIBITION.—No grant shall be awarded under this subpart to any individual who is incarcerated in any Federal, State, or local penal institution.

''(c) PERIOD OF ELIGIBILITY FOR GRANTS.—

''(1) IN GENERAL.—The period during which a student may receive grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance, except that any period during which the student is enrolled in a noncredit or remedial course of study as described in paragraph (2) shall not be counted for the purpose of this paragraph.

''(2) CONSTRUCTION.—Nothing in this section shall be construed to—

''(A) exclude from eligibility courses of study that are noncredit or remedial in nature and that are determined by the institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to utilize already existing knowledge, training, or skills; and

''(B) exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.

''(3) PROHIBITION.—No student is entitled to receive farmer opportunity grant payments concurrently from more than 1 institution or from the Secretary and an institution.

''(d) APPLICATIONS FOR GRANTS.—

''(1) IN GENERAL.—The Secretary shall from time to time set dates by which students shall file applications for grants under this subpart. The filing of applications under this subpart shall be coordinated with the filing of applications under section 401(c).

''(2) INFORMATION AND ASSURANCES.—Each student desiring a grant for any year shall file with the Secretary an application for the grant containing such information and assurances as the Secretary may deem necessary to enable the Secretary to carry out the Secretary's functions and responsibilities under this subpart.

''(e) DISTRIBUTION OF GRANTS TO STUDENTS.—Payments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section. Any disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. The student may elect to have the institution provide other such goods and services by crediting the student's account.

''(f) INSUFFICIENT FUNDING.—If, for any fiscal year, the funds made available to carry out this subpart are insufficient to satisfy fully all grants for students determined to be eligible under section 420F, the amount of the grant provided under subsection (b) shall be reduced on a pro rata basis among all eligible students.

''(g) TREATMENT OF INSTITUTIONS AND STUDENTS UNDER OTHER LAWS.—Any institution of higher education that enters into an agreement with the Secretary to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of the agreement, to be a contractor maintaining a system of records to accomplish a function of the Secretary. Recipients of farmer opportunity grants shall not be considered to be individual grantees for purposes of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.).

''SEC. 420F. STUDENT ELIGIBILITY.

''(a) IN GENERAL.—In order to receive any grant under this subpart, a student shall—

''(1) be a member of a tobacco farm family in accordance with subsection (b);

''(2) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which the student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with section 487, and not be enrolled in an elementary or secondary school;

''(3) if the student is presently enrolled at an institution of higher education, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with subsection (c);

''(4) not owe a refund on grants previously received at any institution of higher education under this title, or be in default on any loan from a student loan fund at any institution provided for in part D, or a loan made, insured, or guaranteed by the Secretary under this title for attendance at any institution;

''(5) file with the institution of higher education that the student intends to attend, or is attending, a document, that need not be notarized, but that shall include—

''(A) a statement of educational purpose stating that the money attributable to the grant will be used solely for expenses related to attendance or continued attendance at the institution; and

''(B) the student's social security number; and

''(6) be a citizen of the United States.

''(b) TOBACCO FARM FAMILIES.—

''(1) IN GENERAL.—For the purpose of subsection (a)(1), a student is a member of a tobacco farm family if during calendar year 1998 the student was—

''(A) an individual who—

''(i) is a participating tobacco producer (as defined in section 1002 of the LEAF Act); or

''(ii) is otherwise actively engaged in the production of tobacco;

''(B) a spouse, son, daughter, stepson, or stepdaughter of an individual described in subparagraph (A);

''(C) an individual—

''(i) who was a brother, sister, stepbrother, stepsister, son-in-law, or daughter-in-law of an individual described in subparagraph (A); and

''(ii) whose principal place of residence was the home of the individual described in subparagraph (A); or

''(D) an individual who was a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of an individual described in subparagraph (A).

''(2) ADMINISTRATION.—On request, the Secretary of Agriculture shall provide to the Secretary such information as is necessary to carry out this subsection.

''(c) SATISFACTORY PROGRESS.—

''(1) IN GENERAL.—For the purpose of subsection (a)(3), a student is maintaining satisfactory progress if—

''(A) the institution at which the student is in attendance reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution; and

''(B) the student has at least a cumulative C average or its equivalent, or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

''(2) SPECIAL RULE.—Whenever a student fails to meet the eligibility requirements of subsection (a)(3) as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(3) for a grant under this subpart.

''(3) WAIVER.—Any institution of higher education at which the student is in attendance may waive paragraph (1) or (2) for undue hardship based on—

''(A) the death of a relative of the student;

''(B) the personal injury or illness of the student; or

''(C) special circumstances as determined by the institution.

''(d) STUDENTS WHO ARE NOT SECONDARY SCHOOL GRADUATES.—In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of the certificate, to be eligible for any assistance under this subpart, the student shall meet either 1 of the following standards:

''(1) EXAMINATION.—The student shall take an independently administered examination and shall achieve a score, specified by the Secretary, demonstrating that the student can benefit from the education or training being offered. The examination shall be approved by the Secretary on the basis of compliance with such standards for development, administration, and scoring as the Secretary may prescribe in regulations.

''(2) DETERMINATION.—The student shall be determined as having the ability to benefit from the education or training in accordance with such process as the State shall prescribe. Any such process described or approved by a State for the purposes of this section shall be effective 6 months after the date of submission to the Secretary unless the Secretary disapproves the process. In determining whether to approve or disapprove the process, the Secretary shall take into account the effectiveness of the process in enabling students without secondary school diplomas or the recognized equivalent to benefit from the instruction offered by institutions utilizing the process, and shall also take into account the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions.

''(e) SPECIAL RULE FOR CORRESPONDENCE COURSES.—A student shall not be eligible to receive a grant under this subpart for a correspondence course unless the course is part of a program leading to an associate, bachelor, or graduate degree.

''(f) COURSES OFFERED THROUGH TELECOMMUNICATIONS.—

''(1) RELATION TO CORRESPONDENCE COURSES.—A student enrolled in a course of instruction at an eligible institution of higher education (other than an institute or school that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)(C))) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor, or graduate degree conferred by the institution shall not be considered to be enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at the institution equals or exceeds 50 percent of the courses.

''(2) RESTRICTION OR REDUCTIONS OF FINANCIAL AID.—A student's eligibility to receive a grant under this subpart may be reduced if a financial aid officer determines under the discretionary authority provided in section 479A that telecommunications instruction results in a substantially reduced cost of attendance to the student.

''(3) DEFINITION.—For the purposes of this subsection, the term 'telecommunications' means the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, except that the term does not include a course that is delivered using video cassette or disc recordings at the institution and that is not delivered in person to other students of that institution.

''(g) STUDY ABROAD.—Nothing in this subpart shall be construed to limit or otherwise prohibit access to study abroad programs approved by the home institution at which a student is enrolled. An otherwise eligible student who is engaged in a program of study abroad approved for academic credit by the home institution at which the student is enrolled shall be eligible to receive a grant under this subpart, without regard to whether the study abroad program is required as part of the student's degree program.

''(h) VERIFICATION OF SOCIAL SECURITY NUMBER.—The Secretary, in cooperation with the Commissioner of Social Security, shall verify any social security number provided by a student to an eligible institution under subsection (a)(5)(B) and shall enforce the following conditions:

''(1) PENDING VERIFICATION.—Except as provided in paragraphs (2) and (3), an institution shall not deny, reduce, delay, or terminate a student's eligibility for assistance under this subpart because social security number verification is pending.

''(2) DENIAL OR TERMINATION.—If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, the institution shall deny or terminate the student's eligibility for any grant under this subpart until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct.

''(3) CONSTRUCTION.—Nothing in this subsection shall be construed to permit the Secretary to take any compliance, disallowance, penalty, or other regulatory action against—

''(A) any institution of higher education with respect to any error in a social security number, unless the error was a result of fraud on the part of the institution; or

''(B) any student with respect to any error in a social security number, unless the error was a result of fraud on the part of the student.''.

Subtitle D—Immunity

SEC. 1041. GENERAL IMMUNITY FOR TOBACCO PRODUCERS AND TOBACCO WAREHOUSE OWNERS.

Notwithstanding any other provision of this title, a participating tobacco producer, tobacco-related growers association, or tobacco warehouse owner or employee may not be subject to liability in any Federal or State court for any cause of action resulting from the failure of any tobacco product manufacturer, distributor, or retailer to comply with the National Tobacco Policy and Youth Smoking Reduction Act.

TITLE XI—MISCELLANEOUS PROVISIONS

Subtitle A—International Provisions

SEC. 1101. POLICY.

It shall be the policy of the United States government to pursue bilateral and multilateral agreements that include measures designed to—

(1) restrict or eliminate tobacco advertising and promotion aimed at children;

(2) require effective warning labels on packages and advertisements of tobacco products;

(3) require disclosure of tobacco ingredient information to the public;

(4) limit access to tobacco products by young people;

(5) reduce smuggling of tobacco and tobacco products;

(6) ensure public protection from environmental tobacco smoke; and

(7) promote tobacco product policy and program information sharing between or among the parties to those agreements.

SEC. 1102. TOBACCO CONTROL NEGOTIATIONS.

The President, in consultation with the Secretary of State, the Secretary of Health and Human Services, and the United States Trade Representative, shall—

(1) act as the lead negotiator for the United States in the area of international tobacco control;

(2) coordinate among U.S. foreign policy and trade negotiators in the area of effective international tobacco control policy;

(3) work closely with non-governmental groups, including public health groups; and

(4) report annually to the Congress on the progress of negotiations to achieve effective international tobacco control policy.

SEC. 1103. REPORT TO CONGRESS.

Not later than 150 days after the enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall transmit to the Congress a report identifying the international fora wherein international tobacco control efforts may be negotiated.

SEC. 1104. FUNDING.

There are authorized such sums as are necessary to carry out the provisions of this subtitle.

SEC. 1105. PROHIBITION OF FUNDS TO FACILITATE THE EXPORTATION OR PROMOTION OF TOBACCO.

(a) IN GENERAL.—No officer, employee, department, or agency of the United States may promote the sale or export of tobacco or tobacco products, or seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, unless such restrictions are not applied equally to all tobacco and tobacco products. The United States Trade Representative shall consult with the Secretary regarding inquiries, negotiations, and representations with respect to tobacco and tobacco products, including whether proposed restrictions are reasonable protections of public health.

(b) NOTIFICATION.—Whenever such inquiries, negotiations, or representations are made, the United States Trade Representative shall notify the Congress within 10 days afterwards regarding the nature of the inquiry, negotiation, or representation.

SEC. 1106. HEALTH LABELING OF TOBACCO PRODUCTS FOR EXPORT.

(a) IN GENERAL.—

(1) EXPORTS MUST BE LABELED.—It shall be unlawful for any United States person, directly or through approval or facilitation of a transaction by a foreign person, to make use of the United States mail or of any instrument of interstate commerce to authorize or contribute to the export from the United States any tobacco product unless the tobacco product packaging contains a warning label that—

(A) complies with Federal requirements for labeling of similar tobacco products manufactured, imported, or packaged for sale or distribution in the United States; or

(B) complies with the specific health hazard warning labeling requirements of the foreign country to which the product is exported.

(2) U.S. REQUIREMENTS APPLY IF THE DESTINATION COUNTRY DOES NOT REQUIRE SPECIFIC HEALTH HAZARD WARNING LABELS.—Subparagraph (B) of paragraph (1) does not apply to exports to a foreign country that does not have any specific health hazard warning label requirements for the tobacco product being exported.

(b) UNITED STATES PERSON DEFINED.—For purposes of this section, the term ''United States person'' means—

(1) an individual who is a citizen, national, or resident of the United States; and

(2) a corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States.

(c) REPORT TO CONGRESS ON ENFORCEMENT; FEASIBILITY REGULATIONS.—

(1) THE PRESIDENT.—The President shall—

(A) report to the Congress within 90 days after the date of enactment of this Act—

(i) regarding methods to ensure compliance with subsection (a); and

(ii) listing countries whose health warnings related to tobacco products are substantially similar to those in the United States; and

(B) promulgate regulations within 1 year after the date of enactment of this Act that will ensure compliance with subsection (a).

(2) THE SECRETARY.—The Secretary shall determine through regulation the feasibility and practicability of requiring health warning labeling in the language of the country of destination weighing the health and other benefits and economic and other costs. To the greatest extent practicable, the Secretary should design a system that requires

the language of the country of destination while minimizing the dislocative effects of such a system.

SEC. 1107. INTERNATIONAL TOBACCO CONTROL AWARENESS.

(a) ESTABLISHMENT OF INTERNATIONAL TOBACCO CONTROL AWARENESS.—The Secretary is authorized to establish an international tobacco control awareness effort. The Secretary shall—

(1) promote efforts to share information and provide education internationally about the health, economic, social, and other costs of tobacco use, including scientific and epidemiological data related to tobacco and tobacco use and enhancing countries' capacity to collect, analyze, and disseminating such data;

(2) promote policies and support and coordinate international efforts, including international agreements or arrangements, that seek to enhance the awareness and understanding of the costs associated with tobacco use;

(3) support the development of appropriate governmental control activities in foreign countries, such as assisting countries to design, implement, and evaluate programs and policies used in the United States or other countries; including the training of United States diplomatic and commercial representatives outside the United States;

(4) undertake other activities as appropriate in foreign countries that help achieve a reduction of tobacco use;

(5) permit United States participation in annual meetings of government and non-government representatives concerning international tobacco use and efforts to reduce tobacco use;

(6) promote mass media campaigns, including paid counter-tobacco advertisements to reverse the image appeal of pro-tobacco messages, especially those that glamorize and ''Westernize'' tobacco use to young people; and

(7) create capacity and global commitment to reduce international tobacco use and prevent youth smoking, including the use of models of previous public health efforts to address global health problems.

(b) ACTIVITIES.—

(1) IN GENERAL.—The activities under subsection (a) shall include—

(A) public health and education programs;

(B) technical assistance;

(C) cooperative efforts and support for related activities of multilateral organization and international organizations;

(D) training; and

(E) such other activities that support the objectives of this section as may be appropriate.

(2) GRANTS AND CONTRACTS.—In carrying out this section, the Secretary shall make grants to, enter into and carry out agreements with, and enter into other transactions with any individual, corporation, or other entity, whether within or outside the United States, including governmental and nongovernmental organizations, international organizations, and multilateral organizations.

(3) TRANSFER OF FUNDS TO AGENCIES.—The Secretary may transfer to any agency of the United States any part of any funds appropriated for the purpose of carrying out this section. Funds authorized to be appropriated by this section shall be available for obligation and expenditure in accordance with the provisions of this section or in accordance with the authority governing the activities of the agency to which such funds are transferred.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, from the National Tobacco Trust Fund, to carry out the provisions of this section, including the administrative costs incurred by any agency of the United States in carrying out this section, $350,000,000 for each of the fiscal years 1999 through 2004, and such sums as may be necessary for each fiscal year thereafter. A substantial amount of such funds shall be granted to non-governmental organizations. Any amount appropriated pursuant to this authorization shall remain available without fiscal year limitation until expended.

Subtitle B—Anti-smuggling Provisions

SEC. 1131. DEFINITIONS.

(a) INCORPORATION OF CERTAIN DEFINITIONS.—In this subtitle, the terms ''cigar'', ''cigarette'', ''person'', ''pipe tobacco'', ''roll-your-own tobacco'', ''smokeless tobacco'', ''State'', ''tobacco product'', and ''United States '', shall have the meanings given such terms in sections 5702(a), 5702(b), 7701(a)(1), 5702(o), 5702(n)(1), 5702(p), 3306(j)(1), 5702(c), and 3306(j)(2) respectively of the Internal Revenue Code of 1986.

(b) OTHER DEFINITIONS.—In this subtitle:

(1) AFFILIATE.—The term ''affiliate'' means any one of 2 or more persons if 1 of such persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of other or others of such persons, and any 2 or more of such persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

(2) INTERSTATE OR FOREIGN COMMERCE.—The term ''interstate or foreign commerce'' means any commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(4) PACKAGE.—The term ''package'' means the innermost sealed container irrespective of the material from which such container is made, in which a tobacco product is placed by the manufacturer and in which such tobacco product is offered for sale to a member of the general public.

(5) RETAILER.—The term ''retailer'' means any dealer who sells, or offers for sale, any tobacco product at retail. The term ''retailer'' includes any duty free store that sells, offers for sale, or otherwise distributes at retail in any single transaction 30 or less packages, or it equivalent for other tobacco products.

(6) EXPORTER.—The term ''exporter'' means any person engaged in the business of exporting tobacco products from the United States for purposes of sale or distribution; and the term ''licensed exporter'' means any such person licensed under the provisions of this subtitle. Any duty-free store that sells, offers for sale, or otherwise distributes to any person in any single transaction more than 30 packages of cigarettes, or its equivalent for other tobacco products as the Secretary shall by regulation prescribe, shall be deemed an ''exporter'' under this subtitle.

(7) IMPORTER.—The term ''importer'' means any person engaged in the business of importing tobacco products into the United States for purposes of sale or distribution; and the term ''licensed importer'' means any such person licensed under the provisions of this subtitle.

(8) INTENTIONALLY.—The term ''intentionally'' means doing an act, or omitting to do an act, deliberately, and not due to accident, inadvertence, or mistake. An intentional act does not require that a person knew that his act constituted an offense.

(9) MANUFACTURER.— The term ''manufacturer'' means any person engaged in the business of manufacturing a tobacco product for purposes of sale or distribution, except that such term shall not include a person who manufactures less than 30,000 cigarettes, or its equivalent as determined by regulations, in any twelve month period;; and the term ''licensed manufacturer'' means any such person licensed under the provisions of this subtitle, except that such term shall not include a person who produces cigars, cigarettes, smokeless tobacco, or pipe tobacco solely for his own personal consumption or use.

(10) WHOLESALER.—The term ''wholesaler'' means any person engaged in the business of purchasing tobacco products for resale at wholesale, or any person acting as an agent or broker for any person engaged in the business of purchasing tobacco products for resale at wholesale, and the term ''licensed wholesaler'' means any such person licensed under the provisions of this subtitle.

SEC. 1132. TOBACCO PRODUCT LABELING REQUIREMENTS.

(a) IN GENERAL.—It is unlawful for any person to sell, or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from Customs custody for use, any tobacco product unless such product is packaged and labeled in conformity with this section.

(b) LABELING.—

(1) IDENTIFICATION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations that require each manufacturer or importer of tobacco products to legibly print a unique serial number on all packages of tobacco products manufactured or imported for sale or distribution. The serial number shall be designed to enable the Secretary to identify the manufacturer or importer of the product, and the location and date of manufacture or importation. The Secretary shall determine the size and location of the serial number.

(2) MARKING REQUIREMENTS FOR EXPORTS.—Each package of a tobacco product that is exported shall be marked for export from the United States. The Secretary shall promulgate regulations to determine the size and location of the mark and under what circumstances a waiver of this paragraph shall be granted.

(c) PROHIBITION ON ALTERATION.—It is unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark or label required under this subtitle upon a tobacco product in or affecting commerce, except pursuant to regulations of the Secretary authorizing relabeling for purposes of compliance with the requirements of this section or of State law.

SEC. 1133. TOBACCO PRODUCT LICENSES.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish a program under which tobacco product licenses are issued to manufacturers, importers, exporters, and wholesalers of tobacco products.

(b)(1) ELIGIBILITY.—A person is entitled to a license unless the Secretary finds—

(A) that such person has been previously convicted of a Federal crime relating to tobacco, including the taxation thereof;

(B) that such person has, within 5 years prior to the date of application, been previously convicted of any felony under Federal or State law; or

(C) that such person is, by virtue of his business experience, financial standing, or trade connections, not likely to maintain such operations in conformity with Federal law.

(2) CONDITIONS.—The issuance of a license under this section shall be conditioned upon the compliance with the requirements of this subtitle, all Federal laws relating to the taxation of tobacco products, chapter 114 of title

18, United States Code, and any regulations issued pursuant to such statutes.

(c) REVOCATION, SUSPENSION, AND ANNULMENT.—The program established under subsection (a) shall permit the Secretary to revoke, suspend, or annul a license issued under this section if the Secretary determines that the terms or conditions of the license have not been complied with. Prior to any action under this subsection, the Secretary shall provide the licensee with due notice and the opportunity for a hearing.

(d) RECORDS AND AUDITS.—The Secretary shall, under the program established under subsection (a), require all license holders to keep records concerning the chain of custody of the tobacco products that are the subject of the license and make such records available to the Secretary for inspection and audit.

(e) RETAILERS.—This section does not apply to retailers of tobacco products, except that retailers shall maintain records of receipt, and such records shall be available to the Secretary for inspection and audit. An ordinary commercial record or invoice will satisfy this requirement provided such record shows the date of receipt, from whom such products were received and the quantity of tobacco products received.

SEC. 1134. PROHIBITIONS.

(a) IMPORTATION AND SALE.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(1) to engage in the business of importing tobacco products into the United States; or

(2) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so imported.

(b) MANUFACTURE AND SALE.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(1) to engage in the business of manufacturing, packaging or warehousing tobacco products; or

(2) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so manufactured, packaged, or warehoused.

(c) WHOLESALE.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(1) to engage in the business of purchasing for resale at wholesale tobacco products, or, as a principal or agent, to sell, offer for sale, negotiate for, or hold out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, the purchase for resale at wholesale of tobacco products; or

(2) for any person so engaged to receive or sell, offer or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so purchased.

(d) EXPORTATION.—

(1) IN GENERAL.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(A) to engage in the business of exporting tobacco products from the United States; or

(B) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products received for export.

(2) REPORT.—Prior to exportation of tobacco products from the United States, the exporter shall submit a report in such manner and form as the Secretary may by regulation prescribe to enable the Secretary to identify the shipment and assure that it reaches its intended destination.

(3) AGREEMENTS WITH FOREIGN GOVERNMENTS.—The Secretary is authorized to enter into agreements with foreign governments to exchange or share information contained in reports received from exporters of tobacco products if the Secretary believes that such an agreement will assist in—

(A) insuring compliance with any law or regulation enforced or administered by an agency of the United States; or

(B) preventing or detecting violation of the laws or regulations of a foreign government with which the Secretary has entered into an agreement.

Such information may be exchanged or shared with a foreign government only if the Secretary obtains assurances from such government that the information will be held in confidence and used only for the purpose of preventing or detecting violations of the laws or regulations of such government or the United States and, provided further that no information may be exchanged or shared with any government that has violated such assurances.

(e) UNLAWFUL ACTS.—

(1) UNLICENSED RECEIPT OR DELIVERY.—It is unlawful for any licensed importer, licensed manufacturer, or licensed wholesaler intentionally to ship, transport, deliver or receive any tobacco products from or to any person other than a person licensed under this chapter or a retailer licensed under the provisions of this Act, except a licensed importer may receive foreign tobacco products from a foreign manufacturer or a foreign distributor that have not previously entered the United States.

(2) RECEIPT OF RE-IMPORTED GOODS.—It is unlawful for any person, except a licensed manufacturer or a licensed exporter to receive any tobacco products that have previously been exported and returned to the United States.

(3) DELIVERY BY EXPORTER.—It is unlawful for any licensed exporter intentionally to ship, transport, sell or deliver for sale any tobacco products to any person other than a licensed manufacturer or foreign purchaser.

(4) SHIPMENT OF EXPORT-ONLY GOODS.—It is unlawful for any person other than a licensed exporter intentionally to ship, transport, receive or possess, for purposes of resale, any tobacco product in packages marked ''FOR EXPORT FROM THE UNITED STATES,'' other than for direct return to the manufacturer or exporter for re-packing or for re-exportation.

(5) FALSE STATEMENTS.—It is unlawful for any licensed manufacturer, licensed exporter, licensed importer, or licensed wholesaler to make intentionally any false entry in, to fail willfully to make appropriate entry in, or to fail willfully to maintain properly any record or report that he is required to keep as required by this chapter or the regulations promulgated thereunder.

(h) EFFECTIVE DATE.—The provisions of this section shall become effective on the date that is 365 days after the date of enactment of this Act.

SEC. 1135. LABELING OF PRODUCTS SOLD BY NATIVE AMERICANS.

The Secretary, in consultation with the Secretary of the Interior, shall promulgate regulations that require that each package of a tobacco product that is sold on an Indian reservation (as defined in section 403(9) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3202(9)) be labeled as such. Such regulations shall include requirements for the size and location of the label.

SEC. 1136. LIMITATION ON ACTIVITIES INVOLVING TOBACCO PRODUCTS IN FOREIGN TRADE ZONES.

(a) MANUFACTURE OF TOBACCO PRODUCTS IN FOREIGN TRADE ZONES.—No person shall manufacture a tobacco product in any foreign trade zone, as defined for purposes of the Act of June 18, 1934 (19 U.S.C. 81a et seq.).

(b) EXPORTING OR IMPORTING FROM OR INTO A FOREIGN TRADE ZONE.—Any person exporting or importing tobacco products from or into a foreign trade zone, as defined for purposes of the Act of June 18, 1934 (19 U.S.C. 81a et seq.), shall comply with the requirements provided in this subtitle. In any case where the person operating in a foreign trade zone is acting on behalf of a person licensed under this subtitle, qualification as an importer or exporter will not be required, if such person complies with the requirements set forth in section 1134(d)(2) and (3) of this subtitle.

SEC. 1137. JURISDICTION; PENALTIES; COMPROMISE OF LIABILITY.

(a) JURISDICTION.—The District Courts of the United States, and the United States Court for any Territory, of the District where the offense is committed or of which the offender is an inhabitant or has its principal place of business, are vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent and restrain violations of any of the provisions of this subtitle.

(b) PENALTIES.—Any person violating any of the provisions of this subtitle shall, upon conviction, be fined as provided in section 3571 of title 18, United States Code, imprisoned for not more than 5 years, or both.

(c) CIVIL PENALTIES.—The Secretary may, in lieu of referring violations of this subtitle for criminal prosecution, impose a civil penalty of not more than $10,000 for each offense.

(d) COMPROMISE OF LIABILITY.—The Secretary is authorized, with respect to any violation of this subtitle, to compromise the liability arising with respect to a violation of this subtitle—

(1) upon payment of a sum not in excess of $10,000 for each offense, to be collected by the Secretary and to be paid into the Treasury as miscellaneous receipts; and

(2) in the case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation, that the United States may, on its own motion upon 5 days notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation.

(e) FORFEITURE.—

(1) The Secretary may seize and forfeit any conveyance, tobacco products, or monetary instrument (as defined in section 5312 of title 31, United States Code) involved in a violation of this subtitle, or any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of this chapter. For purposes of this paragraph, the provisions of subsections (a)(2), (b)(2), and (c) through (j) of section 981 of title 18, United States Code, apply to seizures and forfeitures under this paragraph insofar as they are applicable and not inconsistent with the provisions of this subtitle.

(2) The court, in imposing sentence upon a person convicted of an offense under this subtitle, shall order that the person forfeit to the United States any property described in paragraph (1). The seizure and forfeiture of such property shall be governed by subsections (b), (c), and (e) through (p) of section 853 of title 21, United States Code, insofar as they are applicable and not inconsistent with the provisions of this subtitle.

SEC. 1138. AMENDMENTS TO THE CONTRABAND CIGARETTE TRAFFICKING ACT.

(a) DEFINITIONS.—Section 2341 of title 18, United States Code, is amended—

(1) by striking ''60,000'' and inserting ''30,000'' in paragraph (2);

(2) by inserting after ''payment of cigarette taxes,'' in paragraph (2) the following: ''or in the case of a State that does not require any such indication of tax payment, if

the person in possession of the cigarettes is unable to provide any evidence that the cigarettes are moving legally in interstate commerce,'';

(3) by striking ''and'' at the end of paragraph (4);

(4) by striking ''Treasury.'' in paragraph (5) and inserting ''Treasury;''; and

(5) by adding at the end thereof the following:

''(6) the term 'tobacco product' means cigars, cigarettes, smokeless tobacco, roll your own and pipe tobacco (as such terms are defined in section 5701 of the Internal Revenue Code of 1986); and

''(7) the term 'contraband tobacco product' means—

''(A) a quantity in excess of 30,000 of any tobacco product that is manufactured, sold, shipped, delivered, transferred, or possessed in violation of Federal laws relating to the distribution of tobacco products; and

''(B) a quantity of tobacco product that is equivalent to an excess of 30,000 cigarettes, as determined by regulation, which bears no evidence of the payment of applicable State tobacco taxes in the State where such tobacco products are found, if such State requires a stamp, impression, or other indication to be placed on packages or other containers of product to evidence payment of tobacco taxes, or in the case of a State that does not require any such indication of tax payment, if the person in possession of the tobacco product is unable to provide any evidence that the tobacco products are moving legally in interstate commerce and which are in the possession of any person other than a person defined in paragraph (2) of this section.''.

(b) UNLAWFUL ACTS.—Section 2342 of title 18, United States Code, is amended—

(1) by inserting ''or contraband tobacco products'' before the period in subsection (a); and

(2) by adding at the end thereof the following:

''(c) It is unlawful for any person—

''(1) knowingly to make any false statement or representation with respect to the information required by this chapter to be kept in the records or reports of any person who ships, sells, or distributes any quantity of cigarettes in excess of 30,000 in a single transaction, or tobacco products in such equivalent quantities as shall be determined by regulation; or

''(2) knowingly to fail or knowingly to fail to maintain distribution records or reports, alter or obliterate required markings, or interfere with any inspection as required with respect to such quantity of cigarettes or other tobacco products.

''(d) It shall be unlawful for any person knowingly to transport cigarettes or other tobacco products under a false bill of lading or without any bill of lading.''.

(d) RECORDKEEPING.—Section 2343 of title 18, United States Code, is amended—

(1) by striking ''60,000'' in subsection (a) and inserting ''30,000'';

(2) by inserting after ''transaction'' in subsection (a) the following: ''or, in the case of other tobacco products an equivalent quantity as determined by regulation,'' ;

(3) by striking the last sentence of subsection (a) and inserting the following:

''Except as provided in subsection (c) of this section, nothing contained herein shall authorize the Secretary to require reporting under this section.'';

(4) by striking ''60,000'' in subsection (b) and inserting ''30,000'';

(5) by inserting after ''transaction'' in subsection (b) the following: ''or, in the case of other tobacco products an equivalent quantity as determined by regulation,''; and

(6) by adding at the end thereof the following:

''(c)(1) Any person who ships, sells, or distributes for resale tobacco products in interstate commerce, whereby such tobacco products are shipped into a State taxing the sale or use of such tobacco products or who advertises or offers tobacco products for such sale or transfer and shipment shall—

''(A) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated, a statement setting for the persons name, and trade name (if any), and the address of the persons principal place of business and of any other place of business; and

''(B) not later than the 10th day of each month, file with the tobacco tax administrator of the State into which such shipment is made a memorandum or a copy of the invoice covering each and every shipment of tobacco products made during the previous month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

''(2) The fact that any person ships or delivers for shipment any tobacco products shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under paragraph (1)(A) of this subsection, be presumptive evidence that such tobacco products were sold, shipped, or distributed for resale by such person.

''(3) For purposes of this subsection—

''(A) the term 'use' includes consumption, storage, handling, or disposal of tobacco products; and

''(B) the term 'tobacco tax administrator' means the State official authorized to administer tobacco tax laws of the State.''.

(e) PENALTIES.—Section 2344 of title 18, United States Code, is amended—

(1) by inserting ''or (c)'' in subsection (b) after ''section 2344(b)'';

(2) by inserting ''or contraband tobacco products'' after ''cigarettes'' in subsection (c); and

(3) by adding at the end thereof the following:

''(d) Any proceeds from the unlawful distribution of tobacco shall be subject to seizure and forfeiture under section 981(a)(1)(C).''.

(f) REPEAL OF FEDERAL LAW RELATING TO COLLECTION OF STATE CIGARETTE TAXES.—The Act of October 19, 1949, (63 Stat. 884; 15 U.S.C. 375-378) is hereby repealed.

SEC. 1139. FUNDING.

(a) LICENSE FEES.—The Secretary may, in the Secretary's sole discretion, set the fees for licenses required by this chapter, in such amounts as are necessary to recover the costs of administering the provisions of this chapter, including preventing trafficking in contraband tobacco products.

(b) DISPOSITION OF FEES.—Fees collected by the Secretary under this chapter shall be deposited in an account with the Treasury of the United States that is specially designated for paying the costs associated with the administration or enforcement of this chapter or any other Federal law relating to the unlawful trafficking of tobacco products. The Secretary is authorized and directed to pay out of any funds available in such account any expenses incurred by the Federal Government in administering and enforcing this chapter or any other Federal law relating to the unlawful trafficking in tobacco products (including expenses incurred for the salaries and expenses of individuals employed to provide such services). None of the funds deposited into such account shall be available for any purpose other than making payments authorized under the preceding sentence.

SEC. 1140. RULES AND REGULATIONS.

The Secretary shall prescribe all needful rules and regulations for the enforcement of this chapter, including all rules and regulations that are necessary to ensure the lawful distribution of tobacco products in interstate or foreign commerce.

Subtitle C—Other Provisions

SEC. 1161. IMPROVING CHILD CARE AND EARLY CHILDHOOD DEVELOPMENT.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary from the National Tobacco Trust Fund such sums as may be necessary for each fiscal year to be used by the Secretary for the following purposes:

(1) Improving the affordability of child care through increased appropriations for child care under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.).

(2) Enhancing the quality of child care and early childhood development through the provision of grants to States under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.).

(3) Expanding the availability and quality of school-age care through the provision of grants to States under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.).

(4) Assisting young children by providing grants to local collaboratives under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.) for the purpose of improving parent education and supportive services, strengthening the quality of child care, improving health services, and improving services for children with disabilities.

(b) SUPPLEMENT NOT SUPPLANT.—Amounts made available to a State under this section shall be used to supplement and not supplant other Federal, State, and local funds provided for programs that serve the health and developmental needs of children. Amounts provided to the State under any of the provisions of law referred to in this section shall not be reduced solely as a result of the availability of funds under this section.

SEC. 1162. BAN OF SALE OF TOBACCO PRODUCTS THROUGH THE USE OF VENDING MACHINES.

(a) BAN OF SALE OF TOBACCO PRODUCTS THROUGH THE USE OF VENDING MACHINES.—Effective 12 months after the date of enactment of this Act, it shall be unlawful to sell tobacco products through the use of a vending machine.

(b) COMPENSATION FOR BANNED VENDING MACHINES.—

(1) IN GENERAL.—The owners and operators of tobacco vending machines shall be reimbursed, subject to the availability of appropriations under subsection (d), for the fair market value of their tobacco vending machines.

(2) TOBACCO VENDING REIMBURMENT CORPORATION.—

(A) CORPORATION.—Reimbursment shall be directed through a private, nonprofit corporation established in the District of Columbia, known as the Tobacco Vending Reimburment Corporation (in this section referred to as the ''Corporation''). Except as otherwise provided in this section, the Corporation is subject to, and has all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code section 29-501 et seq.).

(B) DUTIES.—The Corporation shall—

(i) disburse compensation funds to vending companies under this section;

(ii) verify operational machines; and

(iii) maintain complete records of machine verification and accountings of disbursements and administration of the compensation fund established under paragraph (4).

(3) MANAGEMENT OF CORPORATION.—

(A) BOARD OF DIRECTORS.—The Corporation shall be managed by a Board of Directors that—

(i) consists of distinguished Americans with experience in finance, public policy, or fund management;

(ii) includes at least 1 member of the United States tobacco vending machine industry;

(iii) shall be paid an annual salary in an amount determined by the President of the Corporation not to exceed $40,000 individually, out of amounts transferred to the Corporation under paragraph (4)(A);

(iv) shall appoint a President to manage the day-to-day activities of the Corporation;

(v) shall develop guidelines by which the President shall direct the Corporation;

(vi) shall retain a national accounting firm to verify the distribution of funds and audit the compensation fund established under paragraph (4);

(vii) shall retain such legal, management, or consulting assistance as is necessary and reasonable; and

(viii) shall periodically report to Congress regarding the activities of the Corporation.

(B) DUTIES OF THE PRESIDENT OF THE CORPORATION.—The President of the Corporation shall—

(i) hire appropriate staff;

(ii) prepare the report of the Board of Directors of the Corporation required under subparagraph (A)(viii); and

(iii) oversee Corporation functions, including verification of machines, administration and disbursement of funds, maintenance of complete records, operation of appeals procedures, and other directed functions.

(4) COMPENSATION FUND.—

(A) RULES FOR DISBURSEMENT OF FUNDS.—

(i) PAYMENTS TO OWNERS AND OPERATORS.—The Corporation shall disburse funds to compensate the owners and operators of tobacco vending machines in accordance with the following:

(I) The fair market value of each tobacco vending machine verified by the Corporation President in accordance with subparagraph (C), and proven to have been in operation before August 10, 1995, shall be disbursed to the owner of the machine seeking compensation.

(II) No compensation shall be made for a spiral glass front vending machine.

(ii) OTHER PAYMENTS.—Funds appropriated to the Corporation under subsection (d) may be used to pay the administrative costs of the Corporation that are necessary and proper or required by law. The total amount paid by the Corporation for administrative and overhead costs, including accounting fees, legal fees, consultant fees, and associated administrative costs shall not exceed 1 percent of the total amount appropriated to the Corporation under subsection (d).

(B) VERIFICATION OF VENDING MACHINES.—Verification of vending machines shall be based on copies of official State vending licenses, company computerized or handwritten sales records, or physical inspection by the Corporation President or by an inspection agent designated by the President. The Corporation President and the Board of Directors of the Corporation shall work vigorously to prevent and prosecute any fraudulent claims submitted for compensation.

(C) RETURN OF ACCOUNT FUNDS NOT DISTRIBUTED TO VENDORS.—The Corporation shall be dissolved on the date that is 4 years after the date of enactment of this Act. Any funds not dispersed or allocated to claims pending as of that date shall be transferred to a public anti-smoking trust, or used for such other purposes as Congress may designate.

(c) SETTLEMENT OF LEGAL CLAIMS PENDING AGAINST THE UNITED STATES.—Acceptance of a compensation payment from the Corporation by a vending machine owner or operator shall settle all pending and future claims of the owner or operator against the United States that are based on, or related to, the ban of the use of tobacco vending machines imposed under this section and any other laws or regulations that limit the use of tobacco vending machines.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Corporation from funds not otherwise obligated in the Treasury or out of the National Tobacco Trust Fund, such sums as may be necessary to carry out this section.

SEC. 1163. AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following new section:

"SEC. 713. REQUIRED COVERAGE FOR MINIMUM HOSPITAL STAY FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER AND COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES.

''(a) INPATIENT CARE.—

''(1) IN GENERAL.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits shall ensure that inpatient coverage with respect to the surgical treatment of breast cancer (including a mastectomy, lumpectomy, or lymph node dissection for the treatment of breast cancer) is provided for a period of time as is determined by the attending physician, in his or her professional judgment consistent with generally accepted medical standards, in consultation with the patient, and subject to subsection (d), to be medically appropriate.

''(2) EXCEPTION.—Nothing in this section shall be construed as requiring the provision of inpatient coverage if the attending physician in consultation with the patient determine that a shorter period of hospital stay is medically appropriate.

''(b) RECONSTRUCTIVE SURGERY.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits with respect to a mastectomy shall ensure that, in a case in which a mastectomy patient elects breast reconstruction, coverage is provided for—

''(1) all stages of reconstruction of the breast on which the mastectomy has been performed;

''(2) surgery and reconstruction of the other breast to produce a symmetrical appearance; and

''(3) the costs of prostheses and complications of mastectomy including lymphedemas;

in the manner determined by the attending physician and the patient to be appropriate. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the plan or coverage. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter.

''(c) NOTICE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section in accordance with regulations promulgated by the Secretary. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan or issuer and shall be transmitted—

''(1) in the next mailing made by the plan or issuer to the participant or beneficiary;

''(2) as part of any yearly informational packet sent to the participant or beneficiary; or

''(3) not later than January 1, 1998;

whichever is earlier.

''(d) NO AUTHORIZATION REQUIRED.—

''(1) IN GENERAL.—An attending physician shall not be required to obtain authorization from the plan or issuer for prescribing any length of stay in connection with a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.

''(2) PRENOTIFICATION.—Nothing in this section shall be construed as preventing a group health plan from requiring prenotification of an inpatient stay referred to in this section if such requirement is consistent with terms and conditions applicable to other inpatient benefits under the plan, except that the provision of such inpatient stay benefits shall not be contingent upon such notification.

''(e) PROHIBITIONS.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

''(1) deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

''(2) provide monetary payments or rebates to individuals to encourage such individuals to accept less than the minimum protections available under this section;

''(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

''(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; and

''(5) subject to subsection (f)(3), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

''(f) RULES OF CONSTRUCTION.—

''(1) IN GENERAL.—Nothing in this section shall be construed to require a patient who is a participant or beneficiary—

''(A) to undergo a mastectomy or lymph node dissection in a hospital; or

''(B) to stay in the hospital for a fixed period of time following a mastectomy or lymph node dissection.

''(2) LIMITATION.—This section shall not apply with respect to any group health plan, or any group health insurance coverage offered by a health insurance issuer, which does not provide benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer.

''(3) COST SHARING.—Nothing in this section shall be construed as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer under the plan (or under health insurance coverage offered in connection with a group health plan), except that such coinsurance or other cost-sharing

for any portion of a period within a hospital length of stay required under subsection (a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

''(4) LEVEL AND TYPE OF REIMBURSEMENTS.—Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

''(g) PREEMPTION, RELATION TO STATE LAWS.—

''(1) IN GENERAL.—Nothing in this section shall be construed to preempt any State law in effect on the date of enactment of this section with respect to health insurance coverage that—

''(A) such State law requiressuch coverage to provide for at least a 48-hour hospital length of stay following a mastectomy performed for treatment of breast cancer and at least a 24-hour hospital length of stay following a lymph node dissection of breast cancer;

''(B) requires coverage of at least the coverage of reconstructive breast surgery otherwise required under this section; or

''(C) requires coverage for breast cancer treatments (including breast reconstruction) in accordance with scientific evidence-based practices or guidelines recommended by established medical associations.

''(2) APPLICATION OF SECTION.—With respect to a State law—

''(A) described in paragraph (1)(A), the provisions of this section relating to breast reconstruction shall apply in such State; and

''(B) described in paragraph (1)(B), the provisions of this section relating to length of stays for surgical breast treatment shall apply in such State.

''(3) ERISA.—Nothing in this section shall be construed to affect or modify the provisions of section 514 with respect to group health plans.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 note) is amended by inserting after the item relating to section 712 the following new item:

''Sec. 713. Required coverage for minimum hospital stay for mastectomies and lymph node dissections for the treatment of breast cancer and coverage for reconstructive surgery following mastectomies.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to plan years beginning on or after the date of enactment of this Act.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

TITLE XII—ASBESTOS-RELATED TOBACCO CLAIMS

SEC. 1201. NATIONAL TOBACCO TRUST FUNDS AVAILABLE UNDER FUTURE LEGISLATION.

If the Congress enacts qualifying legislation after the date of enactment of this Act to provide for the payment of asbestos claims, then amounts in the National Tobacco Trust Fund established by title IV of this Act set aside for public health expenditures shall be available, as provided by appropriation Acts, to make those payments. For purposes of this section, the term ''qualifying legislation'' means a public law that amends this Act and changes the suballocations of funds set aside for public health expenditures under title IV of this Act to provide for the payment of those claims.

TITLE XIII—VETERANS' BENEFITS

SEC. 1301. RECOVERY BY SECRETARY OF VETERANS AFFAIRS.

Title 38, United States Code, is amended by adding after part VI the following:

''PART VII—RECOVERY OF COSTS FOR TOBACCO-RELATED DISABILITY OR DEATH

''CHAPTER 91—TORT LIABILITY FOR DISABILITY, INJURY, DISEASE, OR DEATH DUE TO TOBACCO USE

''Sec.
''9101. Recovery by Secretary of Veterans Affairs
''9102. Regulations
''9103. Limitation or repeal of other provisions for recovery of compensation
''9104. Exemption from annual limitation on damages

''§ 9101. Recovery by Secretary of Veterans Affairs

''(a) CONDITIONS; EXCEPTIONS; PERSONS LIABLE; AMOUNT OF RECOVERY; SUBROGATION.—In any case in which the Secretary is authorized or required by law to provide compensation and medical care services under this title for disability or death from injury or disease attributable in whole or in part to the use of tobacco products by a veteran during the veterans active military, naval, or air service under circumstances creating a tort liability upon a tobacco product manufacturer (other than or in addition to the United States) to pay damages therefor, the Secretary shall have a right to recover (independent of the rights of the injured or diseased veteran) from said tobacco product manufacturer the cost of the compensation paid or to be paid and the costs of medical care services provided, and shall, as to this right, be subrogated to any right or claim that the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors has against such third person to the extent of the cost of the compensation paid or to be paid and the costs of medical services provided.

''(b) ENFORCEMENT PROCEDURE; INTERVENTION; JOINDER OF PARTIES; STATE OR FEDERAL COURT PROCEEDINGS.—The Secretary may, to enforce such right under subsection (a) of this section—

''(1) intervene or join in any action or proceeding brought by the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors, against the tobacco product manufacturer who is liable for the injury or disease; or

''(2) if such action or proceeding is not commenced within 6 months after the first day on which compensation is paid, or the medical care services are provided, by the Secretary in connection with the injury or disease involved, institute and prosecute legal proceedings against the tobacco product manufacturer who is liable for the injury or disease, in a State or Federal court, either alone (in its own name or in the name of the injured veteran, his or her guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors.

''(c) CREDITS TO APPROPRIATIONS.—Any amount recovered or collected under this section for compensation paid, and medical care services provided, by the Secretary shall be credited to a revolving fund established in the Treasury of the United States known as the Department of Veterans Affairs Tobacco Recovery Fund (hereafter called the Fund). The Fund shall be available to the Secretary without fiscal year limitation for purposes of veterans programs, including administrative costs. The Secretary may transfer such funds as deemed necessary to the various Department of Veterans Affairs appropriations, which shall remain available until expended.

''§ 9102. Regulations

''(a) DETERMINATION AND ESTABLISHMENT OF PRESENT VALUE OF COMPENSATION AND MEDICAL CARE SERVICES TO BE PAID.—The Secretary may prescribe regulations to carry out this chapter, including regulations with respect to the determination and establishment of the present value of compensation to be paid to an injured or diseased veteran or his or her surviving spouse, child, or parent, and medical care services provided to a veteran.

''(b) SETTLEMENT, RELEASE AND WAIVER OF CLAIMS.—To the extent prescribed by regulations under subsection (a) of this section, the Secretary may—

''(1) compromise, or settle and execute a release of, any claim which the Secretary has by virtue of the right established by section 9101 of this title; or

''(2) waive any such claim, in whole or in part, for the convenience of the Government, or if he or she determines that collection would result in undue hardship upon the veteran who suffered the injury or disease or his or her surviving spouse, child or parent resulting in payment of compensation, or receipt of medical care services.

''(c) DAMAGES RECOVERABLE FOR PERSONAL INJURY UNAFFECTED.—No action taken by the Secretary in connection with the rights afforded under this chapter shall operate to deny to the injured veteran or his or her surviving spouse, child or parent the recovery for that portion of his or her damage not covered hereunder.

''§ 9103. Limitation or repeal of other provisions for recovery of compensation and medical care services

''This chapter does not limit or repeal any other provision of law providing for recovery by the Secretary of the cost of compensation and medical care services described in section 9101 of this title.

''§ 9104. Exemption from annual limitation on damages

''Any amount recovered under section 9101 of this title for compensation paid or to be paid, and the cost of medical care services provided, by the Secretary for disability or death from injury or disease attributable in whole or in part to the use of tobacco products by a veteran during the veterans active military, naval, or air service shall not be subject to the limitation on the annual amount of damages for which the tobacco product manufacturers may be found liable as provided in the National Tobacco Policy and Youth Smoking Reduction Act and shall not be counted in computing the annual amount of damages for purposes of that section.''.

TITLE XIV—EXCHANGE OF BENEFITS FOR AGREEMENT TO TAKE ADDITIONAL MEASURES TO REDUCE YOUTH SMOKING

SEC. 1401. CONFERRAL OF BENEFITS ON PARTICIPATING TOBACCO PRODUCT MANUFACTURERS IN RETURN FOR THEIR ASSUMPTION OF SPECIFIC OBLIGATIONS.

Participating tobacco product manufacturers shall receive the benefits, and assume the obligations, set forth in this title.

SEC. 1402. PARTICIPATING TOBACCO PRODUCT MANUFACTURER.

(a) IN GENERAL.—Except as provided in subsection (b), a tobacco product manufacturer that—

(1) executes a protocol with the Secretary of Health and Human Services that meets the requirements of sections 1403, 1404, and 1405; and

(2) makes the payment required under section 402(a)(1),

is, for purposes of this title, a participating tobacco products manufacturer.

(b) DISQUALIFICATION.—

(1) INELIGIBILITY.—Notwithstanding subsection (a), a tobacco product manufacturer may not become a participating tobacco products manufacturer if—

(A) the tobacco product manufacturer or any of its principal officers (acting in that official's corporate capacity), is convicted of—

(i) manufacturing or distributing misbranded tobacco products in violation of the criminal prohibitions on such misbranding established under section 301 or 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331 or 333);

(ii) violating reporting requirements established under section 5762(a)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 5762(a)(4));

(iii) violating, or aiding and abetting the violation of chapter 114 of title 18, United States Code; or

(iv) violating Federal prohibitions on mail fraud, wire fraud, or the making of false statements to Federal officials in the course of making reports or disclosures required by this Act; or

(B) the tobacco product manufacturer, at the end of the 1-year period beginning on the date on which such manufacturer fails to make a required assessment payment under title IV of this Act, has not fully made such payment.

(2) DISQUALIFICATION.—A tobacco product manufacturer that has become a participating tobacco product manufacturer shall cease to be treated as a participating tobacco product manufacturer if—

(A) it, or any of its principal officers (acting in that official's corporate capacity) is convicted of an offense described in paragraph (1)(A); or

(B) it fails to make such a payment within the time period described in paragraph (1)(B).

(c) NON-PARTICIPATING TOBACCO MANUFACTURERS.—Any tobacco product manufacturer that—

(1) does not execute a protocol in accordance with subsection (a);

(2) fails to make the payment required by section 402(a)(1) (if applicable to that manufacturer);

(3) is not eligible, under subsection (b)(1), to become a participating tobacco product manufacturer; or

(4) ceases to be treated as a participating tobacco product manufacturer under subsection (b)(2),

is, for purposes of this title, a non-participating tobacco product manufacturer.

SEC. 1403. GENERAL PROVISIONS OF PROTOCOL.

(a) IN GENERAL.—For purposes of section 1402, a protocol meets the requirements of this section if it—

(1) contains the provisions described in subsection (b); and

(2) is enforceable at law.

(b) REQUIRED PROVISIONS.—The protocol shall include the following provisions:

(1) The tobacco product manufacturer executing the protocol will not engage in any conduct that was, either on the date of enactment of this Act, or at any time after the date of enactment of this Act—

(A) prohibited by this Act;

(B) prohibited by any regulation promulgated by the Food and Drug Administration that applies to tobacco products; or

(C) prohibited by any other statute.

(2) The tobacco product manufacturer executing the protocol will contract with only such distributors and retailers who have operated in compliance with the applicable provisions of Federal, State, or local law regarding the marketing and sale of tobacco products and who agree to comply with advertising and marketing provisions in paragraph (3).

(3) The tobacco product manufacturer executing the protocol will be bound in marketing tobacco products by the following provisions, whether or not these provisions have legal force and effect against manufacturers who are not signatories to the protocol—

(A) the advertising and marketing provisions of part 897 of title 21, Code of Federal Regulations, that were published in the Federal Register on August 28, 1996, and which shall be adopted and incorporated as independent terms of the protocol;

(B) the requirements of section 1404; and

(C) the requirements of section 1405.

(4) The tobacco product manufacturer executing the protocol will make any payments to the National Tobacco Trust Fund in title IV that are required to be made under that title or in any other title of this Act.

(5) The tobacco product manufacturer executing the protocol will be bound by the provisions of title IV, and any other title of this Act with respect to payments required under title IV, without regard to whether those provisions have legal force and effect against manufacturers who have not become signatories.

(6) The tobacco product manufacturer executing the protocol will make the industry-wide and manufacturer-specific look-back assessment payments that may be required under title II.

(7) The tobacco product manufacturer executing the protocol will be bound by the provisions of title II that require a manufacturer to make look-back assessments, and any other title of this Act with respect to such assessments, without regard to whether such terms have legal force and effect against manufacturers who have not become signatories.

(8) The tobacco product manufacturer executing the protocol will, within 180 days after the date of enactment of this Act and in conjunction with other participating tobacco product manufacturers, establish a National Tobacco Document Depository in the Washington, D.C. area—

(A) that is not affiliated with, or controlled by, any tobacco product manufacturer;

(B) the establishment and operational costs of which are allocated among participating tobacco product manufacturers; and

(C) that will make any document submitted to it under title IX of this Act and finally determined not to be subject to attorney-client privilege, attorney work product, or trade secret exclusions, available to the public using the Internet or other means within 30 days after receiving the document.

(c) PROVISIONS APPLICABLE TO DOCUMENTS.—The provisions of section 2116(a) and (b) of title 44, United States Code, apply to records and documents submitted to the Depository (or, to the alternative depository, if any, established by the Secretary by regulation under title IX of this Act) in the same manner and to the same extent as if they were records submitted to the National Archives of the United States required by statute to be retained indefinitely.

SEC. 1404. TOBACCO PRODUCT LABELING AND ADVERTISING REQUIREMENTS OF PROTOCOL.

(a) IN GENERAL.—For purposes of section 1402, a protocol meets the requirements of this section if it requires that—

(1) no tobacco product will be sold or distributed in the United States unless its advertising and labeling (including the package)—

(A) contain no human image, animal image, or cartoon character;

(B) are not outdoor advertising, including advertising in enclosed stadia and on mass transit vehicles, and advertising from within a retail establishment that is directed toward or visible from the outside of the establishment;

(C) at the time the advertising or labeling is first used are submitted to the Secretary so that the Secretary may conduct regular review of the advertising and labeling;

(D) comply with any applicable requirement of the Federal Food, Drug, and Cosmetic Act, the Federal Cigarette Labeling and Advertising Act, and any regulation promulgated under either of those Acts;

(E) do not appear on the international computer network of both Federal and non-Federal interoperable packet switches data networks (the ''Internet''), unless such advertising is designed to be inaccessible in or from the United States to all individuals under the age of 18 years;

(F) use only black text on white background, other than—

(i) those locations other than retail stores where no person under the age of 18 is permitted or present at any time, if the advertising is not visible from outside the establishment and is affixed to a wall or fixture in the establishment; and

(ii) advertisements appearing in any publication which the tobacco product manufacturer, distributor, or retailer demonstrates to the Secretary is a newspaper, magazine, periodical, or other publication whose readers under the age of 18 years constitute 15 percent or less of the total readership as measured by competent and reliable survey evidence, and that is read by less than 2 million persons under the age of 18 years as measured by competent and reliable survey evidence;

(G) for video formats, use only static black text on a white background, and any accompanying audio uses only words without music or sound effects;

(8) for audio formats, use only words without music or sound effects;

(2) if a logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of brand-name product identification of the tobacco product is contained in a movie, program, or video game for which a direct or indirect payment has been made to ensure its placement;

(3) if a direct or indirect payment has been made by any tobacco product manufacturer, distributor, or retailer to any entity for the purpose of promoting use of the tobacco product through print or film media that appeals to individuals under the age of 18 years or through a live performance by an entertainment artist that appeals to such individuals;

(4) if a logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia or product identification identical to, similar to, or identifiable with the tobacco product is used for any item (other than a tobacco product) or service marketed, licensed, distributed or sold or caused to be marketed, licensed, distributed, or sold by the tobacco product manufacturer or distributor of the tobacco product; and

(5)(A) except as provided in subparagraph (B), if advertising or labeling for such product that is otherwise in accordance with the requirements of this section bears a tobacco product brand name (alone or in conjunction with any other word) or any other indicia of tobacco product identification and is disseminated in a medium other than newspapers, magazines, periodicals or other publications (whether periodic or limited distribution), nonpoint-of-sale promotional material (including direct mail), point-of-sale promotional material, or audio or video formats delivered at a point-of-sale; but

(B) notwithstanding subparagraph (A), advertising or labeling for cigarettes or smokeless tobacco may be disseminated in a medium that is not specified in paragraph (1) if the tobacco product manufacturer, distributor, or retailer notifies the Secretary not later than 30 days prior to the use of such medium, and the notice describes the medium and the extent to which the advertising or labeling may be seen by persons under the age of 18 years.

(b) COLOR PRINT ADS ON MAGAZINES.—The protocol shall also provide that no tobacco product may be sold or distributed in the United States if any advertising for that product on the outside back cover of a magazine appears in any color or combination of colors.

SEC. 1405. POINT-OF-SALE REQUIREMENTS.

(a) IN GENERAL.—For purposes of section 1402, a protocol meets the requirements of this section if it provides that, except as provided in subsection (b), point-of-sale advertising of any tobacco product in any retail establishment is prohibited.

(b) PERMITTED POS LOCATIONS.—

(1) PLACEMENT.—One point-of-sale advertisement may be placed in or at each retail establishment for its brand or the contracted house retailer or private label brand of its wholesaler.

(2) SIZE.—The display area of any such point-of-sale advertisement (either individually or in the aggregate) shall not be larger than 576 square inches and shall consist of black letters on white background or another recognized typography.

(3) PROXIMITY TO CANDY.—Any such point-of-sale advertisement shall not be attached to or located within 2 feet of any display fixture on which candy is displayed for sale.

(c) AUDIO OR VIDEO.—Any audio or video format permitted under regulations promulgated by the Secretary may be played or shown in, but not distributed, at any location where tobacco products are offered for sale.

(d) NO RESTRICTIVE COVENANTS.—No tobacco product manufacturer or distributor of tobacco products may enter into any arrangement with a retailer that limits the retailer's ability to display any form of advertising or promotional material originating with another supplier and permitted by law to be displayed in a retail establishment.

(e) DEFINITIONS.—As used in this section, the terms ''point-of-sale advertisement'' and ''point-of-sale advertising'' mean all printed or graphical materials (other than a pack, box, carton, or container of any kind in which cigarettes or smokeless tobacco is offered for sale, sold, or otherwise distributed to consumers) bearing the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco, which, when used for its intended purpose, can reasonably be anticipated to be seen by customers at a location where tobacco products are offered for sale.

SEC. 1406. APPLICATION OF TITLE.

(a) IN GENERAL.—The provisions of this title apply to any civil action involving a tobacco claim brought pursuant to title VII of this Act, including any such claim that has not reached final judgment or final settlement as of the date of enactment of this Act, only if such claim is brought or maintained against—

(1) a participating tobacco product manufacturer or its predecessors;

(2) an importer, distributor, wholesaler, or retailer of tobacco products—

(A) that, after the date of enactment of this Act, does not import, distribute, or sell tobacco products made or sold by a non-participating tobacco manufacturer;

(B) whose business practices with respect to sales or operations occurring within the United States, conform to the applicable requirements of the protocol; and

(C) that is not itself a non-participating tobacco product manufacturer;

(3) a supplier of component or constituent parts of tobacco products—

(A) whose business practices with respect to sales or operations occurring within the United States, conform to the applicable requirements of the protocol; and

(B) that is not itself a non-participating tobacco product manufacturer;

(4) a grower of tobacco products, unless such person is itself a non-participating tobacco product manufacturer; or

(5) an insurer of any person described in paragraph (1), (2), (3), or (4) based on, arising out of, or related to tobacco products manufactured, imported, distributed, or sold (or tobacco grown) by such person (other than an action brought by the insured person), unless such insurer is itself a non-participating tobacco product manufacturer.

(b) EXCEPTIONS.—The provisions of this title shall not apply to any tobacco claim—

(1) brought against any person other than those described in subsection (a) or to any tobacco claim that reached final judgment or final settlement prior to the date of enactment of this Act;

(2) against an employer under valid workers' compensation laws;

(3) arising under the securities laws of a State or the United State;

(4) brought by the United States;

(5) brought under this title by a State or a participating tobacco product manufacturer to enforce this Act;

(6) asserting damage to the environment from exposures other than environmental smoke or second-hand smoke; or

(7) brought against a supplier of a component or constituent part of a tobacco product, if the component or constituent part was sold after the date of enactment of this Act, and the supplier knew that the tobacco product giving rise to the claim would be manufactured in the United States by a non-participating tobacco product manufacturer.

SEC. 1407. GOVERNMENTAL CLAIMS.

(a) IN GENERAL.—Except as provided in subsection (b) and (c), no State, political subdivision of a State, municipal corporation, governmental entity or corporation, Indian tribe, or agency or subdivision thereof, or other entity acting in *parens patriae*, may file or maintain any civil action involving a tobacco claim against a participating tobacco product manufacturer.

(b) EFFECT ON EXISTING STATE SUITS OF SETTLEMENT AGREEMENT OR CONSENT DECREE.—Within 30 days after the date of enactment of this Act, any State that has filed a civil action involving a tobacco claim against a participating tobacco product manufacturer may elect to settle such action against said tobacco product manufacturer. If a State makes such an election to enter into a settlement or a consent decree, it may maintain a civil action involving a tobacco claim only to the extent necessary to permit continuing court jurisdiction over the settlement or consent decree. Nothing herein shall preclude any State from bringing suit or seeking a court order to enforce the terms of such settlement or decree.

(c) STATE OPTION FOR ONE-TIME OPT OUT.—Any State that does not make the election described in subsection (b) may continue its lawsuit, notwithstanding subsection (a) of this section. A State that does not make such an election shall not be eligible to receive payments from the trust fund in title IV.

(d) 30-DAY DELAY.—No settlement or consent decree entered into under subsection (b) may take effect until 30 days after the date of enactment of this Act.

(f) PRESERVATION OF INSURANCE CLAIMS.—

(1) IN GENERAL.—If all participating tobacco product manufacturers fail to make the payments required by title IV for any calendar year, then—

(A) beginning on the first day of the next calendar year, subsection (a) does not apply to any insurance claim (including a direct action claim) that is a tobacco claim, regardless of when that claim arose;

(B) any statute of limitations or doctrine of laches under applicable law shall be tolled for the period—

(i) beginning on the date of enactment of this Act; and

(ii) ending on the last day of that calendar year; and

(C) an insurance claim (including a direct action claim) that is a tobacco claim and that is pending on the date of enactment of this Act shall be preserved.

(2) APPLICATION OF TITLE 11, UNITED STATES CODE.—For purposes of this subsection, nothing in this Act shall be construed to modify, suspend, or otherwise affect the application of title 11, United States Code, to participating tobacco manufacturers that fail to make such payments.

(3) STATE LAW NOT AFFECTED.—Nothing in this subsection shall be construed to expand or abridge State law.

SEC. 1408. ADDICTION AND DEPENDENCY CLAIMS; CASTANO CIVIL ACTIONS.

(a) ADDICTION AND DEPENDENCE CLAIMS BARRED.—In any civil action to which this title applies, no addiction claim or dependence claim may be filed or maintained against a participating tobacco product manufacturer.

(b) CASTANO CIVIL ACTIONS.—

(1) The rights and benefits afforded in this Act, and the various research activities envisioned by this Act, are provided in settlement of, and shall constitute the exclusive remedy for the purpose of determining civil liability as to those claims asserted in the Castano Civil Actions, and all bases for any such claim under the laws of any State are preempted (including State substantive, procedural, remedial, and evidentiary provisions) and settled. The Castano Civil Actions shall be dismissed with full reservation of the rights of individual class members to pursue claims not based on addiction or dependency in civil actions, as defined in section 1417(2), in accordance with this Act. For purposes of determining application of statutes of limitation or repose, individual actions filed within one year after the effective date of this Act by those who were included within a Castano Civil Action shall be considered to have been filed as of the date of the Castano Civil Action applicable to said individual.

(2) For purposes of awarding attorneys fees and expenses for those actions subject to this subsection, the matter at issue shall be submitted to arbitration before one panel of arbitrators. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the attorneys of

the Castano Plaintiffs' Litigation Committee who were signatories to the Memorandum of Understanding dated June 20, 1997, by and between tobacco product manufacturers, the Attorneys General, and private attorneys, one of whom shall be chosen by the participating tobacco product manufacturers, and one of whom shall be chosen jointly by those 2 arbitrators.

(3) The participating tobacco product manufacturers shall pay the arbitration award.

SEC. 1409. SUBSTANTIAL NON-ATTAINMENT OF REQUIRED REDUCTIONS.

(a) ACTION BY SECRETARY.—If the Secretary determines under title II that the non-attainment percentage for any year is greater than 20 percentage points for cigarettes or smokeless tobacco, then the Secretary shall determine, on a brand-by-brand basis, using data that reflects a 1999 baseline, which tobacco product manufacturers are responsible within the 2 categories of tobacco products for the excess. The Secretary may commence an action under this section against the tobacco product manufacturer or manufacturers of the brand or brands of cigarettes or smokeless tobacco products for which the non-attainment percentage exceeded 20 percentage points.

(b) PROCEDURES.—Any action under this section shall be commenced by the Secretary in the United States District Court for the District of Columbia within 90 days after publication in the Federal Register of the determination that the non-attainment percentage for the tobacco product in question is greater than 20 percentage points. Any such action shall be heard and determined by a 3-judge court under section 2284 of title 28, United States Code.

(c) DETERMINATION BY COURT.—In any action under this section, the court shall determine whether a tobacco product manufacturer has shown, by a preponderance of the evidence that it—

(1) has complied substantially with the provisions of this Act regarding underage tobacco use, of any rules or regulations promulgated thereunder, or of any Federal or State laws regarding underage tobacco use;

(2) has not taken any material action to undermine the achievement of the required percentage reduction for the tobacco product in question; and

(3) has used its best efforts to reduce underage tobacco use to a degree at least equal to the required percentage reductions.

(d) REMOVAL OF ANNUAL AGGREGATE PAYMENT LIMITATION.—Except as provided in subsections (e) and (g), if the court determines that a tobacco product manufacturer has failed to make the showing described in subsection (c) then sections 1411 and 1412 of this Act do not apply to the enforcement against, or the payment by, such tobacco product manufacturer of any judgment or settlement that becomes final after that determination is made.

(e) DEFENSE.—An action under this section shall be dismissed, and subsection (d) shall not apply, if the court finds that the Secretary's determination under subsection (a) was unlawful under subparagraph (A), (B), (C), or (D) of section 706(2) of title 5, United States Code. Any judgments paid under section 1412 of this Act prior to a final judgment determining that the Secretary's determination was erroneous shall be fully credited, with interest, under section 1412 of this Act.

(f) REVIEW.—Decisions of the court under this section are reviewable only by the Supreme Court by writ of certiorari granted upon the petition of any party. The applicability of subsection (d) shall be stayed during the pendency of any such petition or review.

(g) CONTINUING EFFECT.—Subsection (d) shall cease to apply to a tobacco product manufacturer found to have engaged in conduct described in subsection (c) upon the later of—

(1) a determination by the Secretary under section 201 after the commencement of action under subsection (a) that the non-attainment percentage for the tobacco product in question is 20 or fewer percentage points; or

(2) a finding by the court in an action filed against the Secretary by the manufacturer, not earlier than 2 years after the determination described in subsection (c) becomes final, that the manufacturer has shown by a preponderance of the evidence that, in the period since that determination, the manufacturer—

(A) has complied with the provisions of this Act regarding underage tobacco use, of any rules or regulations promulgated thereunder, and of any other applicable Federal, State, or local laws, rules, or regulations;

(B) has not taken any action to undermine the achievement of the required percentage reduction for the tobacco product in question; and

(C) has used its best efforts to attain the required percentage reduction for the tobacco product in question.

A judgment or settlement against the tobacco product manufacturer that becomes final after a determination or finding described in paragraph (1) or (2) of this subsection is not subject to subsection (d). An action under paragraph (2) of this subsection shall be commenced in the United States District Court for the District of Columbia, and shall be heard and determined by a 3-judge court under section 2284 of title 28, United States Code. A decision by the court under paragraph (2) of this subsection is reviewable only by the Supreme Court by writ of certiorari granted upon the petition of any party, and the decision shall be stayed during the pendency of the petition or review. A determination or finding described in paragraph (1) or (2) of this subsection does not limit the Secretary's authority to bring a subsequent action under this section against any tobacco product manufacturer or the applicability of subsection (d) with respect to any such subsequent action.

SEC. 1410. PUBLIC HEALTH EMERGENCY.

If the Secretary, in consultation with the Commissioner of Food and Drugs, the Surgeon General, the Director of the Center for Disease Control or the Director's delegate, and the Director of the Health and Human Services Office of Minority Health determines at any time that a tobacco product manufacturer's actions or inactions with respect to its compliance with the Act are of such a nature as to create a clear and present danger that the manufacturer will not attain the targets for underage smoking reduction, the Secretary may bring an action under section 1409 seeking the immediate suspension of the tobacco product manufacturer's annual limitation cap on civil judgments. If the court determines that the Secretary has proved by clear and convincing evidence that the subject manufacturer's actions or inactions are of such a nature that they present a clear and present danger that the manufacturer will not attain the targets for underage smoking reduction, the court may suspend the subject manufacturer's annual limitation cap on civil judgments.

SEC. 1411. TOBACCO CLAIMS BROUGHT AGAINST PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.

(a) PERMISSIBLE DEFENDANTS.—In any civil action to which this title applies, tobacco claims may be filed or maintained only against—

(1) a participating tobacco product manufacturer; or

(2) a surviving entity established by a participating tobacco product manufacturer.

(b) ACTIONS INVOLVING PARTICIPATING AND NON-PARTICIPATING MANUFACTURERS.—In any civil action involving both a tobacco claim against a participating tobacco product manufacturer based in whole or in part upon conduct occurring prior to the date of enactment of this Act and a claim against 1 or more non-participating tobacco product manufacturers, the court, upon application of a participating tobacco product manufacturer, shall require the jury to or shall itself apportion liability as between the participating tobacco product manufacturer and non-participating tobacco product manufacturers.

SEC. 1412. PAYMENT OF TOBACCO CLAIM SETTLEMENTS AND JUDGMENTS.

(a) IN GENERAL.—Except as provided in this section, any judgment or settlement in any civil action to which this subtitle applies shall be subject to the process for payment of judgments and settlements set forth in this section. No participating tobacco product manufacturer shall be obligated to pay a judgment or settlement on a tobacco claim in any civil action to which this title applies except in accordance with this section. This section shall not apply to the portion, if any, of a judgment that imposes punitive damages based on any conduct that—

(1) occurs after the date of enactment of this Act; and

(2) is other than the manufacture, development, advertising, marketing, or sale of tobacco products in compliance with this Act and any agreement incident thereto.

(b) REGISTRATION WITH THE SECRETARY OF THE TREASURY.—

(1) The Secretary shall maintain a record of settlements, judgments, and payments in civil actions to which this title applies.

(2) Any party claiming entitlement to a monetary payment under a final judgment or final settlement on a tobacco claim shall register such claim with the Secretary by filing a true and correct copy of the final judgment or final settlement agreement with the Secretary and providing a copy of such filing to all other parties to the judgment or settlement.

(3) Any participating tobacco product manufacturer making a payment on any final judgment or final settlement to which this section applies shall certify such payment to the Secretary by filing a true and correct copy of the proof of payment and a statement of the remaining unpaid portion, if any, of such final judgment or final settlement with the Secretary and shall provide a copy of such filing to all other parties to the judgment or settlement.

(c) LIABILITY CAP.—

(1) IN GENERAL.—The aggregate payments made by all participating tobacco product manufacturers in any calendar year may not exceed $8,000,000,000.

(2) IMPLEMENTATION.—The Secretary shall initiate a rulemaking within 30 days after the date of enactment of this Act to establish a mechanism for implementing this subsection in such a way to ensure the fair and equitable payment of final judgments or final settlements on tobacco claims under this title. Amounts not payable because of the application of this subsection, shall be carried forward and paid in the next year, subject to the provisions of this subsection.

(3) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—The amount in paragraph (1) shall be increased annually, beginning with the second calendar year beginning after the date of enactment of this Act, by the greater of 3 percent or the annual increase in the CPI.

(B) CPI.—For purposes of subparagraph (A), the CPI for any calendar year is the average of the Consumer Price Index for all-

urban consumers published by the Department of Labor.

(C) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

(d) INJUNCTIVE RELIEF.—A participating tobacco product manufacturer may commence an action to enjoin any State court proceeding to enforce or execute any judgment or settlement where payment has not been authorized under this section. Such an action shall arise under the laws of the United States and may be commenced in the district court of the United States for the district in which the State court proceeding is pending.

(e) JOINT AND SEVERAL LIABILITY.—All participating tobacco product manufacturers shall be jointly and severally liable for, and shall enter into an agreement to apportion among them, any amounts payable under judgments and settlements governed by this section arising in whole or in part from conduct occurring prior to the date of enactment of this Act.

(f) BANKRUPTCY OF PARTICIPATING MANUFACTURER.—No participating tobacco product manufacturer shall cease operations without establishing a surviving entity against which a tobacco claim may be brought. Any obligation , interest, or debt of a participating, tobacco product manufacturer arising under such liability apportionment agreement shall be given priority and shall not be rejected, avoided, discharged, or otherwise modified or diminished in a proceeding, under title 11, United States Code, or in any liquidation, reorganization, receivership, or other insolvency proceeding under State law. A trustee or receiver in any proceeding under title 11, United States Code, or in liquidation, reorganization, receivership, or other insolvency proceeding under State law, may avoid any transfer of an interest of the participating tobacco product manufacturer, or any obligation incurred by such manufacturer, that was made or incurred on or within 2 years before the date of the filing of a bankruptcy petition, if such manufacturer made such transfer or incurred such obligation to hinder or defeat in any fashion the payment of any obligation, interest, or debt of the manufacturer arising under the liability apportionment agreement. Any property vesting in the participating tobacco product manufacturer following such a proceeding shall be subject to all claims and interest of creditors arising under the liability apportionment agreement.

(f) LIMITATION ON STATE COURTS.—No court of any State, Tribe, or political subdivision of a State may take any action to inhibit the effective operation of subsection (c).

SEC. 1413. ATTORNEYS' FEES AND EXPENSES.

(a) ARBITRATION PANEL.—

(1) RIGHT TO ESTABLISH .—For the purpose of awarding of attorneys' fees and expenses relating to litigation affected by, or legal services that, in whole or in part, resulted in or created a model for programs in, this Act, and with respect to which litigation or services the attorney involved is unable to agree with the plaintiff who employed that attorney with respect to any dispute that may arise between them regarding the fee agreement, the matter at issue shall be submitted to arbitration. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the plaintiff, one of whom shall be chosen by the attorney, and one of whom shall be chosen jointly by those 2 arbitrators.

(2) OPERATION.—Not later than 30 days after the date on which all members of an arbitration panel are appointed under paragraph (1), the panel shall establish the procedures under which the panel will operate which shall include—

(A) a requirement that any finding by the arbitration panel must be in writing and supported by written reasons;

(B) procedures for the exchanging of exhibits and witness lists by the various claimants for awards;

(C) to the maximum extent practicable, requirements that proceedings before the panel be based on affidavits rather than live testimony; and

(D) a requirement that all claims be submitted to an arbitration panel not later than 3 months after the date of this Act and a determination made by the panel with respect to such claims not later than 7 months after such date of enactment.

(3) RIGHT TO PETITION.—Any individual attorney or group of attorneys involved in litigation affected by this Act shall have the right to petition an arbitration panel for attorneys' fees and expenses.

(4) CRITERIA.—In making any award under this section, an arbitration panel shall consider the following criteria:

(A) The time and labor required by the claimant.

(B) The novelty and difficulty of the questions involved in the action for which the claimant is making a claim.

(C) The skill requisite to perform the legal service involved properly.

(D) The preclusion of other employment by the attorney due to acceptance of the action involved.

(E) Whether the fee is fixed or a percentage.

(F) Time limitations imposed by the client or the circumstances.

(G) The amount involved and the results obtained.

(H) The experience, reputation, and ability of the attorneys involved.

(I) The undesirability of the action.

(J) Such other factors as justice may require.

(5) APPEAL AND ENFORCEMENT.—The findings of an arbitration panel shall be final, binding, nonappealable, and payable within 30 days after the date on which the finding is made public, except that if an award is to be paid in installments, the first installment shall be payable within such 30 day period and succeeding installments shall be paid annually thereafter.

(b) VALIDITY AND ENFORCEABILITY OF PRIVATE AGREEMENTS.—Notwithstanding any other provision of this Act, nothing in this section shall be construed to abrogate or restrict in any way the rights of any parties to mediate, negotiate, or settle any fee or expense disputes or issues to which this section applies, or to enter into private agreements with respect to the allocation or division of fees among the attorneys party to any such agreement.

(c) OFFSET FOR AMOUNTS ALREADY PAID.—In making a determination under this section with regard to a dispute between a State that pursued independent civil action against tobacco product manufacturers and its attorney, the arbitration panel shall take into account any amounts already paid by the State under the agreement in dispute.

SEC. 1414. EFFECT OF COURT DECISIONS.

(a) SEVERABILITY.—If any provision of titles I through XIII, or the application thereof to any person, manufacturer or circumstance, is held invalid, the remainder of the provisions of those titles, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(b) NONSEVERABILITY.—If a court of competent jurisdiction enters a final decision substantially limiting or impairing the essential elements of title XIV, specifically the requirements of sections 1404 and 1405, then the provisions of section 1412 are null and void and of no effect.

SEC. 1415. CRIMINAL LAWS NOT AFFECTED.

Nothing in this title shall be construed to limit the criminal liability of tobacco product manufacturers, retailers, or distributors or their directors, officers, employees, successors, or assigns.

SEC. 1416. CONGRESS RESERVES THE RIGHT TO ENACT LAWS IN THE FUTURE.

The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress in accordance with the provisions of Article I of the Constitution of the United States and more than 200 years of history.

SEC. 1417. DEFINITIONS.

In this title:

(1) TERMS DEFINED IN TITLE VII.—Any term used in this title that is defined in title VII has the meaning given to it in title VII.

(2) ADDITIONAL DEFINITIONS.—

(A) ADDICTION CLAIM; DEPENDENCE CLAIM.—The term ''addiction claim'' or ''dependence claim'' refers only to any cause of action to the extent that the prayer for relief seeks a cessation program, or other public health program that is to be available to members of the general public and is designed to reduce or eliminate the users' addiction to, or dependence on, tobacco products, and as used herein is brought by those who claim the need for nicotine reduction assistance. Neither addiction or dependence claims include claims related to or involving manifestation of illness or tobacco-related diseases.

(B) COMPENSATORY DAMAGES.—The term ''compensatory damages'' refers to those damages necessary to reimburse an injured party, and includes actual, general, and special damages.

(C) PROTOCOL.—The term ''protocol'' means the agreement to be entered into by the Secretary of Health and Human Services with a participating tobacco product manufacturers under this title.

(D) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages in addition to compensatory damages having the character of punishment or penalty.

(E) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury, except where the context otherwise requires.

CRAIG AMENDMENT NO. 2685

(Ordered to lie on the table.)

Mr. CRAIG submitted an amendment intended to be proposed by him to the bill, S. 1415, supra; as follows:

Beginning on page 192, strike line 8 and all that follows through line 2 on page 193, and insert the following:

(1) AMOUNTS.—

(A) IN GENERAL.—There is established within the Trust Fund a separate account, to be known as the State Litigation Settlement Account. Of the net revenues credited to the Trust Fund under section 401(b)(1) for each fiscal year, at least 62 percent of the amounts designated for allocation under the settlement payments shall be allocated to this account. If, after 10 years, the estimated 25-year total amount projected to received in this account will be different than amount than $334,800,000,000, then beginning with the eleventh year the 62 percent share will be adjusted as necessary to achieve that 25-year total amount. Notwithstanding section 452(b) or any other provision of this Act, amounts received by a State under this subsection may be used as the State determines appropriate.

(B) STATE LOSS OF REVENUE ADJUSTMENTS.—

(i) IN GENERAL.—Amounts provided to a State under this subsection for a fiscal year shall take into account the decrease in the amount of revenue that the State received

during the previous fiscal year as a result of a decrease in the demand for tobacco products in the State based on the enactment of this Act.

(ii) DETERMINATIONS.—The Joint Committee on Taxation established under section 8001 of the Internal Revenue Code of 1986 shall make determinations under clause (i) relating to the amount by which the revenues of a State have decreased during a fiscal year as a result of the enactment of this Act.

GRAMM (AND OTHERS) AMENDMENT NO. 2686

Mr. GRAMM (for himself, Mr. DOMENICI, Mr. ROTH, Mr. FAIRCLOTH, and Mr. BOND) proposed an amendment to amendment No. 2437 proposed by Mr. DURBIN to the bill, S. 1415, supra; as follows:

At the end of the amendment, insert:

SEC. ___. ELIMINATION OF MARRIAGE PENALTY.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 222 as section 223 and by inserting after section 221 the following new section:

"SEC. 222. DEDUCTION FOR MARRIED COUPLES TO ELIMINATE THE MARRIAGE PENALTY.

''(a) IN GENERAL.—In the case of a joint return under section 6013 for the taxable year, there shall be allowed as a deduction an amount equal to the applicable percentage of the excess (if any) of—

''(1) the sum of the amounts determined under subparagraphs (B) and (C) of section 63(c)(2) for such taxable year (relating to the basic standard deduction for a head of a household and a single individual, respectively), over

''(2) the amount determined under section 63(c)(2)(A) for such taxable year (relating to the basic standard deduction for a joint return).

''(b) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(1) IN GENERAL.—No deduction shall be allowed under subsection (a) if the modified adjusted gross income of the taxpayer for the taxable year exceeds $50,000.

''(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term 'modified adjusted gross income' means adjusted gross income determined—

''(A) after application of sections 86, 219, and 469, and

''(B) without regard to sections 135, 137, and 911 or the deduction allowable under this section.

''(3) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2007, the $50,000 amount under paragraph (1) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that subparagraph (B) thereof shall be applied by substituting 'calendar year 2008' for 'calendar year 1992'. If any amount as adjusted under this paragraph is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, the applicable percentage shall be—

''(1) 25 percent in the case of taxable years beginning in 1999,

''(2) 30 percent in the case of taxable years beginning in 2000, 2001, and 2002,

''(3) 40 percent in the case of taxable years beginning in 2003, 2004, and 2005,

''(4) 50 percent in the case of taxable years beginning in 2006,

''(5) 60 percent in the case of taxable years beginning in 2007, and

''(6) 100 percent in the case of taxable years beginning in 2008 and thereafter.''

(b) DEDUCTION TO BE ABOVE-THE-LINE.—Section 62(a) of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by adding after paragraph (17) the following new paragraph:

''(18) DEDUCTION FOR MARRIED COUPLES.—The deduction allowed by section 222.''

(c) EARNED INCOME CREDIT PHASEOUT TO REFLECT DEDUCTION.—Section 32(c)(2) of the Internal Revenue Code of 1986 (defining earned income) is amended by adding at the end the following new subparagraph:

''(C) MARRIAGE PENALTY REDUCTION.—Solely for purposes of applying subsection (a)(2)(B), earned income for any taxable year shall be reduced by an amount equal to the amount of the deduction allowed to the taxpayer for such taxable year under section 222.''

(d) FULL DEDUCTION FOR HEALTH INSURANCE FOR SELF-EMPLOYEDS.—The table contained in section 162(l)(1)(B) is amended—

(1) by striking ''and 1999'',

(2) by striking the items relating to years 1998 through 2006, and

(3) by striking ''2007 and thereafter'' and inserting ''1999 and thereafter''.

(e) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 222 and inserting the following new items:

''Sec. 222. Deduction for married couples to eliminate the marriage penalty.

''Sec. 223. Cross reference.''

(f) REDUCTION IN TRANSFERS TO NATIONAL TOBACCO TRUST FUND.—

(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of this Act, the amount credited to the National Tobacco Trust Fund under section 401(b) of this Act for any fiscal year shall be reduced by the amount of the decrease in Federal revenues for such fiscal year which the Secretary of the Treasury estimates will result from the amendments made by this title. The Secretary shall increase or decrease the amount of any reduction under this section to reflect any incorrect estimate for any preceding fiscal year.

(2) LIMITATION ON REDUCTION AFTER FISCAL YEAR 2007.—

(A) IN GENERAL.—Except as provided in subparagraph (B), with respect to any fiscal year after fiscal year 2007, the reduction determined under paragraph (1) shall not exceed 33 percent of the total amount credited to the National Tobacco Trust Fund for such fiscal year.

(B) SPECIAL RULE.—If in any fiscal year the youth smoking reduction goals under section 203 are attained, subparagraph (A) shall be applied by substituting ''50 percent'' for ''33 percent''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

WELLSTONE AMENDMENT NO. 2687

(Ordered to lie on the table.)

Mr. WELLSTONE submitted an amendment intended to be proposed by him to amendment No. 2512 proposed by Mr. ROTH to the bill, S. 1415, supra; as follows:

Beginning on page 4, strike line 14 and all that follows through page 6, line 6 and insert in lieu thereof the following:

(ii) the aggregate payments which are due to be received by such State for such calendar year under the settlement, judgement, or other agreement.

(B) REALLOCATION OF AMOUNT FOR OTHER STATES.—If the amount determined under subparagraph (A)(ii) exceeds the amount determined under subparagraph (A)(i) for one or more States for any calendar year, the amount of the payments under paragraph (3)(A) to all States to which subparagraph (A) does not apply shall be ratably reduced by the aggregate amount of such excess for all 4 States.

(5) SET-OFF PAYMENTS FROM LITIGATION.—

(A) IN GENERAL.—For any State which has entered into a settlement agreement prior to the date of enactment of this Act, that resolves litigation by the State against a tobacco manufacturer or a group of tobacco manufacturers for expenditures of the State for tobacco related diseases or conditions, to be eligible to receive any funds from the State Litigation Settlement Account, the amount of any payment due in any year under the settlement agreement must first be received by the State after which the amount actually received will be set-off against any amount which the State is entitled to receive from the State Litigation Settlement Account. The failure of a State to receive any payment due under the settlement agreement will not prohibit the State from receiving any amount which the State is entitled to receive from the State Litigation Settlement Account.

(B) REDISTRIBUTION OF SET-OFF PAYMENTS.—Any payments out of the State Litigation Settlement Account which would otherwise have been made to such State but for the set-off in paragraph (A) shall be reallocated to all other States receiving such payments for such calendar year in the same proportion as the payments received by any State bear to all such payments.

DASCHLE AMENDMENT NO. 2688

Mr. DASCHLE proposed an amendment to amendment No. 2437 proposed by Mr. DURBIN to the bill, S. 1415, supra; as follows:

At the end of the amendment add the following:

The provisions of Senate Amendment No. 2686 are null and void.

TITLE ___—TAX BENEFITS FOR MARRIED COUPLES AND SELF-EMPLOYED INDIVIDUALS

SEC. ___01. DEDUCTION FOR TWO-EARNER MARRIED COUPLES.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 222 as section 223 and by inserting after section 221 the following new section:

"SEC. 222. DEDUCTION FOR MARRIED COUPLES TO ELIMINATE THE MARRIAGE PENALTY.

''(a) IN GENERAL.—In the case of a joint return under section 6013 for the taxable year, there shall be allowed as a deduction an amount equal to the applicable percentage of the qualified earned income of the spouse with the lower qualified earned income for the taxable year.

''(b) APPLICABLE PERCENTAGE.—For purposes of this section—

''(1) IN GENERAL.—The term 'applicable percentage' means 20 percent, reduced by 2 percentage points for each $1,000 (or fraction thereof) by which the taxpayer's modified adjusted gross income for the taxable year exceeds $50,000.

''(2) TRANSITION RULE FOR 1999 AND 2000.—In the case of taxable years beginning in 1999

and 2000, paragraph (1) shall be applied by substituting '10 percent' for '20 percent' and '1 percentage point' for '2 percentage points'.

''(3) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term 'modified adjusted gross income' means adjusted gross income determined—

''(A) after application of sections 86, 219, and 469, and

''(B) without regard to sections 135, 137, and 911 or the deduction allowable under this section.

''(4) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2002, the $50,000 amount under paragraph (1) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that subparagraph (B) thereof shall be applied by substituting 'calendar year 2002' for 'calendar year 1992'. If any amount as adjusted under this paragraph is not a multiple of $2,000, such amount shall be rounded to the next lowest multiple of $2,000.

''(c) QUALIFIED EARNED INCOME DEFINED.—

''(1) IN GENERAL.—For purposes of this section, the term 'qualified earned income' means an amount equal to the excess of—

''(A) the earned income of the spouse for the taxable year, over

''(B) an amount equal to the sum of the deductions described in paragraphs (1), (2), (7), and (15) of section 62 to the extent such deductions are properly allocable to or chargeable against earned income described in subparagraph (A).

The amount of qualified earned income shall be determined without regard to any community property laws.''

''(2) EARNED INCOME.—For purposes of paragraph (1), the term 'earned income' means income which is earned income within the meaning of section 911(d)(2) or 401(c)(2)(C), except that—

''(A) such term shall not include any amount—

''(i) not includible in gross income,

''(ii) received as a pension or annuity,

''(iii) paid or distributed out of an individual retirement plan (within the meaning of section 7701(a)(37)),

''(iv) received as deferred compensation, or

''(v) received for services performed by an individual in the employ of his spouse (within the meaning of section 3121(b)(3)(A)), and

''(B) section 911(d)(2)(B) shall be applied without regard to the phrase 'not in excess of 30 percent of his share of net profits of such trade or business'.''

(b) DEDUCTION TO BE ABOVE-THE-LINE.—Section 62(a) of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by adding after paragraph (17) the following new paragraph:

''(18) DEDUCTION FOR TWO-EARNER MARRIED COUPLES.—The deduction allowed by section 222.''

(c) EARNED INCOME CREDIT PHASEOUT TO REFLECT DEDUCTION.—Section 32(c)(2) of the Internal Revenue Code of 1986 (defining earned income) is amended by adding at the end the following new subparagraph:

''(C) MARRIAGE PENALTY REDUCTION.—Solely for purposes of applying subsection (a)(2)(B), earned income for any taxable year shall be reduced by an amount equal to the amount of the deduction allowed to the taxpayer for such taxable year under section 222.''

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 222 and inserting the following new items:

''Sec. 222. Deduction for married couples to eliminate the marriage penalty.

''Sec. 223. Cross reference.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. ___02. DEDUCTION FOR HEALTH INSURANCE COSTS FOR SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (1) of section 162(l) of the Internal Revenue Code of 1986 is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 100 percent (75 percent in the case of taxable years beginning in 1999 and 2000) of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. ___03. REDUCTION IN TRANSFERS TO NATIONAL TOBACCO TRUST FUND.

Notwithstanding any other provision of this Act—

(1) the amount credited to the National Tobacco Trust Fund under section 401(b) of this Act for any fiscal year shall be reduced by the amount of the decrease in Federal revenues for such fiscal year which the Secretary of the Treasury estimates will result from the amendments made by this title, and

(2) for purposes of allocating amounts to accounts under section 451 of this Act, the reduction under paragraph (1) shall be treated as having been made proportionately from the amounts described in paragraphs (1), (2), and (3) of section 401(b) of this Act.

The Secretary shall increase or decrease the amount of any reduction under this section to reflect any incorrect estimate for any preceding fiscal year.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to meet during the session of the Senate on Wednesday, June 10, 1998, at 2 P.M. in SR–328A. The purpose of this meeting will be to examine livestock issues.

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

COMMITTEE ON INDIAN AFFAIRS

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Senate Committee on Indian Affairs be authorized to meet during the session of the Senate on Wednesday, June 10, 1998 at 9:30 a.m. to conduct an oversight hearing on Bureau of Indian Affairs School Construction. The hearing will be held in room 106 of the Dirksen Senate Office Building.

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

SELECT COMMITTEE ON INTELLIGENCE

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, June 10, 1998 at 2:30 p.m. to hold an open hearing on Intelligence Matters.

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

SUBCOMMITTEE ON COMMUNICATIONS

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Communications Subcommittee of the Senate Committee on Commerce, Science, and Transportation be authorized to meet on June 10, 1998, at 9:30 a.m. on FCC reauthorization.

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

SUBCOMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Subcommittee on East Asian and Pacific Affairs be authorized to meet during the session of the Senate on Wednesday, June 10, 1998 at 2:00 p.m. to hold a hearing.

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

SUBCOMMITTEE ON FINANCIAL SERVICES AND TECHNOLOGY

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Subcommittee on Financial Services and Technology of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, June 10, 1998, to conduct a hearing on ''Disclosing Year 2000 Readiness: Are the Companies You Invest in Ready for the Year 2000? Will You Know if They're Not?''

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

SUBCOMMITTEE ON TECHNOLOGY, TERRORISM, AND GOVERNMENT INFORMATION

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Subcommittee on Technology, Terrorism, and Government Information, of the Senate Judiciary Committee be authorized to hold a hearing during the session of the Senate on Wednesday, June 10, 1998 at 2:15 p.m. in room 226, Senate Dirksen Office Building, on: ''Critical Infrastructure Protection: 'Eligible Receiver' and the New PDD.''

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

ADDITIONAL STATEMENTS

TRIBUTE TO CAPTAIN MICHAEL J. LANDERS

• Mr. D'AMATO. Mr. President, I rise today to recognize and honor Captain Michael J. Landers, United States Navy, as he retires upon completion of over 30 years of honorable and faithful service to our Nation.

A native of Utica, NY, Captain Landers was enlisted into the Regular Navy in November 1968 as a Seaman Recruit. After 5 years of enlisted submarine service, he was commissioned an Ensign upon graduation from the University of Missouri in December 1973.

Captain Landers, a Submarine Warfare Officer, has performed in a consistently outstanding manner under the

most challenging of circumstances. From 1973 to 1985 Captain Landers served with the surface and submarine fleets of the Atlantic and pacific Oceans. He gained extensive experience aboard *USS ALEXANDER HAMILTON* (SSBN) 617) *USS VON STEUBEN* (SSBN 632), and *USS PIGEON* (ASR 21). After serving on the staff of the Director of Strategic Systems Programs, Washington, DC, Captain Landers commanded the *USS ORTOLAN* (ASR 22) from 1987 to 1990. He subsequently became the Executive Assistant to the Deputy Chief of Naval Personnel. Captain Landers left the Navy Annex in 1994 and reported for duty at the Industrial College of the Armed Forces at Fort McNair where he received a Master of Science Degree in National Resource Strategy.

From 1995 to 1997, Captain Landers commanded the naval Submarine Base, Bangor, WA. He returned to the Pentagon in November 1997, where he served as the Deputy Chief of Legislative Affairs. In this capacity he has been a major asset to the Navy, Marine Corps and Congress. He is considered a valued advisor to the very top echelons of the Navy and Congress. His consummate leadership, energy and integrity ensured that the morale and effectiveness of the Navy-Marine Corps team reached heights otherwise thought to be impossible to achieve in such an austere budget climate. During a period of significant change and restructuring of naval forces, Captain Landers helped to obtain Congressional support for a strong and balanced navy and marine Corps. Through his brilliant insight, he has directly contributed to their future readiness and success.

Captain Landers' distinguished awards include the legion of Merit with three gold stars, the meritorious Service medal with one gold star, the navy Commendation Medal with two gold stars and the navy Achievement Medal with one gold star.

The Department of the navy, the Congress, and the American people have been defended and well served by this dedicated naval officer for over 30 years. Captain Mike Landers will long be remembered for his leadership, service and dedication. He will be missed. We wish Mike, and his lovely wife Kris, our very best as they begin a new chapter in their life together.●

VERMONT'S SMALL BUSINESS PERSON OF THE YEAR

● Mr. LEAHY. Mr. President, today I rise to recognize two very special Vermont business people. Tom and Sally Fegley are the owners and founders of Tom and Sally's Handmade Chocolates of Brattleboro, Vermont. For the past two years I have been pleased to nominate Tom and Sally for the U.S. Small Business Administration's Small Business Person of the Year award for the state of Vermont. This year, I am proud to announce that Tom and Sally Fegley are the recipients of this prestigious award.

Eight and a half years ago, the Fegleys had the courage to move to Vermont and risk their lives' savings to undertake their start-up business in chocolates, a field in which neither of them had any previous experience. With hard work and intense dedication they have built this business to more than $1 million in gross sales in 1997. Their products are sold in all fifty states and they are exported all over the world, including Canada, Great Britain, France, Germany, South Africa and the Netherlands. Tom and Sally's entrepreneurial savvy has helped to spread the distinctive high quality of Vermont specialty foods across the globe.

The Fegley's chocolates are so unique they have received five federal trademarks for their chocolates ranging from ''Vermont Pasture Patties'' to ''Cowlicks.'' In addition, their products have won eight national awards and have received media coverage ranging from ''Good Morning, America'' and ''The Today Show'' to such magazines as Bon Appetit, Fine Cooking, and Mademoiselle, as well as newspapers including The New York Times, The Wall Street Journal, and The Washington Post.

I remember the first time that Marcelle and I visited Tom and Sally's shop in 1992. We were especially impressed with its old-fashioned atmosphere and Vermont country charm. A few years ago, Tom and Sally decided to combine the sale of their handmade chocolates and candies with the sale of Vermont folkart. This gallery displays the handicrafts of Vermonters as the Fegleys display the fruits of their own handicraft. This innovative combination makes visiting Tom and Sally's a unique and charming experience while promoting Vermont's distinct character.

Not only have Tom and Sally made an imprint on Vermont's specialty food industry, but they have made an even larger contribution to their community. Perhaps the Fegleys should be recognized more for what they do for others than for their business success. From donating chocolates to local charities, to helping a local apple orchard after vandals destroyed the apple trees, Tom and Sally's involvement and contributions have expanded beyond the business industry and have made them important members of Vermont's communities.

I am pleased that the Fegleys have been named 1998 Vermont Small Business Persons of the Year. I believe that they embody what Vermont is all about—a fine tradition of quality products with a strong sense of community.●

REMARKS BY SENATOR BILL FRIST TO THE ASSOCIATION OF AMERICAN UNIVERSITIES

● Mr. FRIST. Mr. President, on Tuesday, June 2nd, I addressed the Association of American Universities regarding the importance of federal support for university-based research. I ask that my remarks be printed in the RECORD.

The remarks follow:

FEDERAL SUPPORT FOR UNIVERSITY-BASED RESEARCH HAS PRODUCED A WEALTH OF BENEFITS FOR ALL AMERICANS

As a medical scientist, a researcher, a former university faculty member, a current university Trustee, and a life-long explorer in the quest for new knowledge, I believe, as you do, that America's strategy of federally-supported university-based research has produced a wealth of benefits for all Americans.

It's not only expanded our scientific and academic national base, but increased the economic vitality of our Nation, raised the standard of living all Americans enjoy, and produced a highly-educated workforce that has made us a leader in today's global economy. In fact, in economic terms alone, the return on our federal investment has been huge. As much as one half of all U.S. growth is a result of the technical progress we've achieved through research.

According to the Office of Science and Technology Policy (OSTP), technology is the single most important factor in long-term economic growth. Not only is the performance of U.S. businesses and their contributions to economic growth directly linked to their use of technology, but as cited in a study conducted by the US Department of Commerce, manufacturing businesses that used eight or more advanced technologies grew 14.4 percent more than plants that used none—and production wages were more than 14 percent higher.

For any of you who may encounter doubters in other Congressional offices let me give you just two quick examples from the President of MIT, who testified before my committee, of how the federal investment in university research has produced phenomenal returns.

Over the last three decades, the Department of Defense has funded $5 billion in university in information technology. Those programs alone created one-third to one-half of all major breakthroughs in the computer and communications industries. Today, those businesses account for $500 billion of GDP—a return on our investment of 3,000 percent!

In fact, studies of just that one university along—MIT—found that, in Massachusetts, MIT grads and faculty founded over 600 companies that produced 300,000 jobs and $40 billion in sales. In Silicon Valley, MIT grads founded 225 companies which produced 150,000 jobs and more than $22 billion in sales.

In one industry alone—biotechnology—government's $43 million annual investment has not only produced the human capital of the biotech industry—scientists, engineers, managers—and new knowledge that's led to an understanding of the molecular basis of disease, but it's also produced new companies and new wealth.

To again use MIT as an example, in Massachusetts alone, MIT-related companies have produced 10,000 new jobs, $3 billion in annual revenues, and 100 new biotech patents licensed the U.S. companies that have induced investment of $650 million. Those companies now produce nine of the 10 FDA-approved biotech drugs that stop heart attacks and treat cancer, cystic fibrosis and diabetes—and we've only just begun to tap the potential returns of this rapidly advancing new field.

And I'm sure every one of the universities you represent could cite statistics that are equally impressive.

But, as you well know, universities are not just the fountainhead of innovation. They

are the wellsprings that provide the intellectual underpinning of future progress, because they train the people who will translate tomorrow's discoveries into even more exciting products and processes and industries. And when you consider what today's students are already capable of, the potential is truly breathtaking.

Jennifer Mills, for example, is a physics undergraduate from Portland, Oregon who wrote much of the computer code responsible for the astounding images sent back to Earth by the Hubble telescope.

James McLurkin, an undergrad engineer, created a tiny robot that may well revolutionize certain kinds of surgery, enabling surgeons to operate inside the body without ever touching the patient! Just imagine what tomorrow's students to do!

AMERICA'S INVESTMENT IN SCIENCE AND TECHNOLOGY MUST CONTINUE

Clearly, America's investment in science and technology must continue. The two central questions that Congress must ask and answer, however, are: (1) Will science and technology continue to be as great a Congressional priority in the future as it has been in the past; and (2) Will the kind of financial investment necessary to sustain future progress even be possible in light of our other growing financial commitments?

The history of the last five decades has shown us that there is a federal role in the creation and nurturing of science and technology, and that even in times of fiscal austerity that commitment has been relatively consistent. However, the last three decades have also shown us something else: fiscal reality. The simple truth is there's just not enough money to do everything we'd like to do. It took some time for us to realize that, and by the time we did, we found ourselves in a fiscal situation that is only now being addressed. And, budget surpluses notwithstanding, discretionary spending is, and will continue to be, under immense fiscal pressure.

One only has to look back over the last 30 years to confirm this trend. In 1965, mandatory federal spending on entitlements and interest on the debt accounted for 30 percent of the federal budget. Fully 70 percent went toward discretionary programs—research, education, roads, bridges, national parks, and national defense.

Today, just 30 years later, that ratio has been almost completely reversed: 67 percent of the budget is spent on mandatory programs and interest on the debt; only 33 percent is left for absolutely everything else, including research.

In fact, total R&D spending today as a percentage of GDP is just .75 percent—as compared to 2.2 percent in the mid-1960s when superpower rivalry and the race to space fueled a national commitment to science and technology. And as the Baby Boom generation begins to retire and the discretionary portion of the budget shrinks even further, this situation will only grow worse.

Thus, we have both a long-term problem: addressing the ever-increasing level of mandatory spending; and a near-term challenge: apportioning the ever-dwindling amount of discretionary funding.

The confluence of this increased dependency on technology and decreased fiscal flexibility has created a problem too obvious to ignore: not all deserving programs can be funded; not all authorized programs can be fully implemented. In other words, the luxury of fully funding science and technology programs across the board has long since passed. We must set priorities.

VISION FOR THE FUTURE: HOW WE ENSURE FEDERAL SUPPORT FOR SCIENCE AND TECHNOLOGY

With the introduction of S.1305, the Federal Research Investment Act, * * * a debate on funding for science and technology that is long overdue, and I commend them for it.

I firmly believe that Congress must reaffirm our national commitment to science and technology, and redouble its efforts to ensure that funding is not only maintained but increased. However, I also believe that funding levels alone are not the answer.

What we really need is a strategy for the future, a vision that not only provides adequate levels of funding, but ensures that that funding is both responsible and sustainable over the long term.

I believe we do that by establishing and applying a set of first or guiding principles that will enable Congress to (1) consistently ask the right questions about each competing technology program; (2) focus on that program's effectiveness and appropriateness for Federal funding, and most importantly, (3) make the hard choices about which programs deserve to be funded and which do not. Only then can we be assured that Congress has invested wisely and well.

What are these first principles? There are four.

(1) Federal R&D programs must be good science. They must be focused, not duplicative, and peer-reviewed. Because there is strength in diversity, they must support both knowledge-driven science—which broadens our base of knowledge and advances the frontiers of science; and mission-driven science requirements—which push the state-of-the-art in specific technology fields.

(2) Program must be fiscally accountable. Especially in today's fiscal environment, wasteful administrative habits can't be tolerated.

(3) They must have measurable results. Programs must achieve their aims. Their effectiveness must be evaluated, not on the basis of individual projects which can have varying rates of success, but on basis of the entire program.

(4) They must employ a consistent approach. Federal policy must be applied consistently across the entire spectrum of Federal research agencies. High quality, productive research programs must be encouraged regardless of where they are located.

Accompanying the four first principles, are four corollaries:

(1) *Flow of Technology*.—The process of creating technology involves many steps. However, the current federal structure clearly reinforces increasingly artificial distinctions across the spectrum of research and development activities. The result is a set of programs which each support a narrow phase of research and development, but are not coordinated with one another.

Government must maximize its investment by encouraging the progression of a technology from the earliest stages of research up to commercialization, through funding agencies and vehicles appropriate for each stage. This creates a flow of technology, subject to merit at each stage, so that promising technology is not lost in a bureaucratic maze.

(2 *Excellence in the American Research Infrastructure*.—We must foster a close relationship between research and education. Our investment at the university level creates more than simply world class research. It creates would class researchers as well. We must continue this strong research infrastructure, and find ways to extend the excellence of our university system to primary and secondary educational institutions.

(3) *Commitment to a Board Range of Research Initiatives*.—Revolutionary innovation is taking place at the overlap of research disciplines. We must continue to encourage this by providing opportunities for interdisciplinary projects and fostering collaboration across fields of research.

(4) *Partnerships among Industry, Universities, and Federal Labs*.—Each of these has special talents and abilities that complement the other. Our federal dollars are wisely spent by facilitating the creation of partnerships, in effect creating a whole that is greater than the sum of its parts.

These first principles and their four corollaries provide a framework that will not only guide the creation of new, federally-funded research and development programs, but validate existing ones. Taken together, they create a powerful method for elevating the debate by increasing Congress' ability to focus on the important issues; decreasing the likelihood that it will get sidetracked on politically-charged technicalities; and ensuring that federal R&D programs are consistent and effective. They will also help us establish a both consistent set of national goals, and a vision for the future.

S. 1305: A GOOD FIRST STEP, BUT A MORE COMPREHENSIVE APPROACH IS NEEDED

S. 1305 has put funding for science and technology at the forefront of the 105th Congress. It is an important first step in the creation of a long-term federal research and development strategy, and I wholeheartedly support its general concept and thrust. However, I believe it falls short in many of the areas I have just outlined.

In S. 1305, funding levels are dramatically increased within the first five years regardless of economic conditions—making funding targets unrealistic and unsustainable, particularly when those funding levels jeopardize discretionary programs necessary to the maintenance and operation of the nation.

The bipartisan bill I will propose with Senator Rockefeller will also substantially increase funding but more gradually. Rather than achieve a doubling of funds in 10 years as S. 1305 proposes, the First bill will achieve the same goal in 12 years.

My bill also requires the President to provide, as part of his annual budget, a detailed summary of the total level of federal funding for all civilian research agencies, as well as a focused strategy that reflects the funding projections of Congress for each future fiscal year until 2010.

S. 1305 provides Congress with no mechanism to identify or target those programs that are either marginal or ineffective. In keeping with the third principle that all federal R&D programs must be fiscally accountable, my bill will include a mechanism that requires OMB to indicate those programs that fail to meet a minimally acceptable criteria as defined by a National Academy of Science study.

Finally, S. 1305 effects only civilian research and development programs, and provides no support for highly successful defense science and technologies efforts such as those under DARPA. And, as I demonstrated in my earlier example, defense-related research has produced remarkable spinoffs in the private sector, the Internet being the most obvious example. Thus, in a companion bill, I will propose a similar strategy for increasing funding for defense-related R&D.

Even with its imperfections, S. 1305 is already a success—because it has commenced a debate on science and technology investment that is long overdue. And it is a debate I am committed to furthering.

LEGISLATIVE UPDATE

Accordingly, I commenced a process, which continues daily, through which I hope to examine all relevant approaches, and collect and compile the input of all federal research agencies, the scientific community, my distinguished colleagues in Congress and government, and all other relevant parties in an effort to construct a comprehensive, feasible

and effective strategy for future federal funding of science and technology.

On April 28th, the Science, Technology, and Space Subcommittee which I chair, held a hearing to further explore the whole issue of federal funding, and three of the original cosponsors of S. 1305—Senators GRAMM, LIEBERMAN, and BINGAMAN—participated. Senator DOMENICI, who was unable to attend, submitted testimony for the RECORD.

At my direction, my personal chief of staff, and my Commerce Committee staff, have met extensively with professional societies, private industry, and university representatives, some of whom are here today, to get a clear sense of your reality, your vision of where research and development ought to be headed, and your reaction to both S. 1305 and a First alternative.

They've also been meeting with the senior legislative staffs of other Members to develop a strategy everyone is comfortable with, and that addresses everyone's primary concerns. And we've been meeting with House staff and coordinating our goals with those of the House Policy Study. The response has been very positive.

After comprehensive discussions my Senate colleagues have agreed to support a First alternative in which funding would rise from $34 billion to $68 billion. And all other parties seem to like the idea of a long-term vision, a concrete strategy to take us there (vs. rhetoric that is subject to change), and realistic numbers that stand a good chance of being achieved.

Your input into this process has been particularly important. Every time we meet, my staff and I gain a better understanding of the complexity of these issues as they relate to universities. And I hope you'll continue to work with us in the days ahead.

In the very near future, probably within a week or two, a Frist/Rockefeller bill, officially called the Federal Research Investment Act of 1998, will be dropped. It is a bill that represents—not a roadblock to increased federal funding for research—but a carefully-crafted compromise, agreed to by all, and representing the best efforts of all.

CHALLENGE OF THE FUTURE

Today, in every known field of exploration, man has answered questions once considered unanswerable, and questions impossible to even conceive just a short time ago. Yet so many mysteries remain. And so we must continue to seek, to define, to know.

Yet science today is not only about the esoteric, it's about the practical. It's about the simple as well as the deep. It is both a luxury and a necessity. Science helps us feed our families. It helps keep our loved ones healthy. By continually creating new goods and services, new jobs and new capital, it raises our standard of living. And it produces the technologies that protect our troops and project our resolve around the world. In other words, science has helped keep us prosperous, and science has helped keep us free.

Without a doubt, science is an integral part of our present. But because we live in a world now dependent upon science and technology excellence, a world driven by a science and technology economy, science is even more important to our future.

To a large extent, universities hold the key to that future because universities guide America's youth and inspire them to seek out the deep truths of life, to lift the veil from its fascinating secrets, to seek, to define, to know. It is the University that fosters a love for the mysteries of God and nature, and propels the next generation forward to explore and improve our world. And that makes you a vital link between the present and the future.

We are—and we should be—justly proud of our scientific accomplishments thus far. But if there is one thing science has taught us, it is that man's challenges only increase with every new level of knowledge we achieve. Which is why continued research and development is so important.

Expanding scientific knowledge is a responsibility that extends well beyond the classrooms and universities of our Nation. It is the responsibility of us all. As John F. Kennedy said, ''Every educated citizen has the special obligation to encourage the pursuit of learning, to promote exploration of the unknown, to preserve the freedom of inquiry, [and to] to support the advancement of research . . .''

I take his words seriously. I know you do as well. Working together, I believe we can ensure that American commitment to research and scientific inquiry continues unabated in the years ahead.●

HONORING THE RETIREMENT OF COLONEL MARY TRIPP

● Ms. MOSELEY-BRAUN. Mr. President, it is my privilege to say a few words in honor of a native Illinoisan, Colonel Mary Tripp, who retired from the United States Air Force on June 1, 1998 after 23 years of proud service to our nation.

Colonel Tripp's final assignment in the Air Force was director of the program honoring the 50th anniversary of the service. The project was a blend of motivational and historic information, which under Colonel Tripp's direction both informed the general public and energized her fellow airmen. From the national recognition at the Tournament of Roses Parade to the Pentagon Cake Cutting Ceremony with President Clinton, the hard work and dedication of Colonel Tripp shined in every event. The distinguished history of the United States Air Force is a story every American should know. Under Colonel Tripp's direction, this story was told. Through the example Colonel Tripp set as an officer duirng her career, the Air Force's proud legacy will continue to grow.

As Colonel Tripp returns to private life in West Chicago, Illinois, I ask my colleagues to join me in commending her outstanding service to our nation, and wish her good luck and Godspeed in all of her future endeavors.●

RECOGNITION OF ''FATHER'S MONTH''

● Mr. BOND. Mr. President, I rise today to recognize the new tradition of ''Father's Month'' in St. Louis, Missouri founded by Mayor Clarence Harmon. Being a father myself, I know the important role that a father's nurturing can make in a child's life. A father's influence can help a child grow into a healthy, happy, well-adjusted adult.

The purpose of ''Father's Month'' will be to encourage the community to actively work toward a common goal of fathers who take a larger role in the development of their children. I agree with Mayor Harmon that merely providing financial support is not enough. With the continuing efforts of St. Louis to promote events that teach positive family values and family togetherness, there is no telling how much the community can achieve. I offer Mayor Harmon and the community of St. Louis support and gratitude during ''Father's Month.'' ●

REMEMBERING THE LIFE AND COMMITMENT OF ROBERT F. KENNEDY ON THE 30TH ANNIVERSARY OF HIS DEATH

● Mr. CLELAND. Mr. President, I rise today to honor the memory of one of our Nation's most compassionate and visionary leaders, Robert F. Kennedy, who was assassinated 30 years ago. He served our nation as Attorney General and United States Senator, but his impact on our nation's history cannot be measured by mere titles or the offices he held.

Although his life was cut short thirty years ago, his legacy will live on forever. Many of today's leaders were inspired by Bobby Kennedy—he inspired me to become involved in politics more than three decades ago. I had the privilege to meet Bobby Kennedy in the summer of 1965 at Stetson University. Shaking his hand forever changed my life. Now today in the Senate my desk is very close to his old desk on the Senate floor—close enough to always remind me of why I first got involved in politics.

Bobby Kennedy's philosophy was truly admirable. Bobby Kennedy was committed to equal opportunity for all. He displayed ceaseless devotion to the impoverished members of the American community, and pushed for decent wages and adequate healthcare for all. He knew the importance of protecting the well-being of our youth, and he fought to improve their education. Throughout his life, he worked toward a more just society.

His tragic death shocked and saddened the hearts of America. I was recovering from my injuries from Vietnam in Walter Reed Hospital the day I heard of his tragic death. I am sure many others have a similarly clear recollection of that day. We had lost a committed, warmhearted leader who we would never forget or replace.

Mr. President, I ask that you and my colleagues join me in remembering this admirable and courageous leader, who forever changed the history of this nation. Thirty years later, his memory and legacy live on. We continue to remember Robert F. Kennedy for his passion, courage and devotion, and will always do so.●

TRIBUTE TO AARON LOPEZ: NEW HAMPSHIRE'S 1998 STATE YOUTH OF THE YEAR 1998

● Mr. SMITH of New Hampshire. Mr. President, I rise today to congratulate Aaron Lopez of Nashua, NH. Aaron was recently named the New Hampshire State Youth of the Year by the Boys and Girls Clubs of America.

The Youth of the Year program, in its 51st year, recognizes outstanding

contributions to a member's family, school, community, and Boys and Girls Club, as well as personal challenges and obstacles overcome.

At the Club, Aaron has served as president of the Toastmasters, treasurer of the Keystone Club, a teen leadership group, and peer leader of Smart Moves, a drug and sex prevention program. Aaron, a senior at Nashua High School, is also active in his community. He participated in the Teen Institute, a leadership seminar to educate teens about drug and alcohol abuse, violence, teen pregnancy, and family and community issues. He is also organizing a program for Parents and Children Together (P.A.C.T.) to help families resolve conflicts.

For the first time, winners of the 1998 State Youth of the Year honors will receive scholarships for post-secondary education from popular television personality Oprah Winfrey. A nationwide fund drive, known as ''Oprah's Angel Network,'' was announced by Oprah on her nationally-syndicated television program last fall.

Boys and Girls Clubs of America comprises a national network of close to 2,000 neighborhood-based facilities annually serving some three million young people, primarily from disadvantaged circumstances. Known as ''The Positive Place for Kids,'' the Clubs provide guidance-oriented character development programs on a daily basis for children 6–18 years old, conducted by a full-time professional staff. Key Boys and Girls Club programs, such as Youth of the Year, emphasize character and leadership development, education and career enhancement, health and life skills, the arts, sports, fitness and recreation.

Aaron and other extraordinary young people from the Boys and Girls Clubs of America continue to keep alive the virtue of community service and inspire others to do the same. Their personal initiatives, dedicated service, and hard work have impacted the lives of many. In a time when young people seem to be less involved in their communities, these young Americans continue to defend and keep the spirit of community alive. I want to congratulate Aaron Lopez for his outstanding work and I am proud to represent him in the United States Senate.●

GENEROSITY OF ENTREPRENEURS LEADS WAY FOR SCHOOL CHOICE

● Mr. BROWNBACK. Mr. President, due to the generosity of two entrepreneurs, the children of Kansas City, Kansas have become eligible for a new privately funded scholarship program to provide low-income children the choice of private, parochial or public school.

Last October, Ted Forstmann and John Walton each contributed $3 million to create a fund for scholarships in Washington, D.C. Their programs were in such high demand—50,000 applications for 3,000 scholarships—that the two businessmen have decided to greatly expand the scope of their scholarship programs.

Yesterday, Mr. Forstmann and Mr. Walton joined together to announce the Children's Scholarship Fund, a foundation to award $200 million in scholarships to low-income children around the country, including Kansas. The Children's Scholarship Fund will partner with local entities in an effort to provide children the choice of private, parochial or public education.

I applaud the generosity of these two entrepreneurs, as well as urge corporate America to follow their lead and aid this effort in their own cities. I also hope that the eligible cities will do all they can to work with the Children's Scholarship Fund, which next year will send at least 50,000 low-income children to the schools of their choice.●

AUTHORIZATION THE TAKING OF A PHOTOGRAPH IN THE SENATE CHAMBER

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 246 submitted earlier today by Senators LOTT and DASCHLE.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A resolution (S. Res. 246) authorizing the taking of a photograph in the Chamber of the United States Senate.

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

Ms. COLLINS. I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 246) was agreed to, as follows:

S. RES. 246

Resolved, That paragraph 1 of Rule IV of the Rules for the Regulation of the Senate Wing of the United States Capitol (prohibiting the taking of pictures in the Senate Chamber) be temporarily suspended for the sole and specific purpose of permitting an official photograph to be taken off the United States Senate in actual session on a date and time to be announced by the Majority Leader after consultation with the Democratic Leader.

SEC. 2. The Sergeant of Arms of the Senate is authorized and directed to make the necessary arrangements therefor, which arrangements shall provide for a minimum of disruption to Senate proceedings.

ACKNOWLEDGING 1998 AS THE INTERNATIONAL YEAR OF THE OCEAN

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 405, House Concurrent Resolution 131.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A concurrent resolution (H. Con. Res. 131) acknowledging 1998 as the International Year of the Ocean and expressing the sense of the Congress regarding the ocean.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution, which had been reported from the Committee on Commerce, Science, and Transportation with an amendment.

Ms. COLLINS. Mr. President, I ask unanimous consent that the committee substitute be agreed to, the resolution be agreed to, the amendment to the preamble be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution appear in the RECORD.

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

The concurrent resolution (H. Con. Res. 131), as amended, was agreed to.

The preamble, as amended, was agreed to.

The concurrent resolution (H. Con. Res. 131), as amended, together with its preamble, as amended, is as follows:

Resolved, That the resolution from the House of Representatives (H. Con. Res. 131) entitled ''Concurrent resolution acknowledging 1998 as the International Year of the Ocean and expressing the sense of the Congress regarding the ocean.'', do pass with the following amendments:

Strike out all after the resolving clause and insert:

That it is the sense of the Congress that—

(1) the ocean is of paramount importance to the economic future, environmental quality, and national security of the United States;

(2) the United States has a responsibility to exercise and promote comprehensive stewardship of the ocean and the living marine resources it contains; and

(3) Federal agencies are encouraged to take advantage of the International Year of the Ocean in 1998, to—

(A) review United States oceanography and marine resource management policies and programs;

(B) identify opportunities to streamline, better direct, and increase interagency cooperation in oceanographic research and marine resource management policies and programs;

(C) identify opportunities to further cooperation between the United States and other nations to enhance oceanographic research and exploration, and to strengthen international marine resource conservation policies and programs;

(D) in cooperation with academic institutions, nongovernmental organizations, and industry, develop scientific, educational, and resource management programs which will advance the exploration of the ocean, the conservation of marine habitats and species, and the sustainable use of ocean resources; and

(E) encourage participation in State, local, and private initiatives and programs that use education and the arts to increase public awareness of the ocean and the many benefits that it provides, and to foster understanding of the need to conserve and sustainably manage ocean resources.

Strike out the preamble and insert:

Whereas the ocean, which comprises nearly three quarters of the Earth's surface, sustains a large part of the Earth's biodiversity, provides an important source of food, and interacts with and affects global weather and climate;

Whereas the ocean is critical to national security, is the common means of transportation

among coastal nations, and carries 95 percent of the United States foreign trade;

Whereas the ocean and sea floor contain vast energy and mineral resources that are critical to the economy of the United States and the world;

Whereas ocean resources are limited and susceptible to change as a direct and indirect result of human activities, and such changes can impact the ability of the ocean to provide the benefits upon which the Nation depends;

Whereas the vast majority of the deep ocean is unexplored and unknown, and the ocean is truly the last frontier on Earth for science and civilization;

Whereas there exists significant promise for the development of new ocean technologies for stewardship of ocean resources that will contribute to the economy through business and manufacturing innovations and the creation of new jobs;

Whereas any nation's use or misuse of ocean resources has effects far beyond that nation's borders;

Whereas it has been 30 years since the Commission on Marine Science, Engineering, and Resources (popularly known as the Stratton Commission) met to examine the state of United States ocean policy and issued recommendations that led to the present Federal structure for oceanography and marine resources management;

Whereas recent public opinion polls indicate that a large majority of Americans consider the condition of the oceans to be important, and that a large majority rate the overall health of the oceans negatively; and

Whereas the United Nations has declared 1998 to be the International Year of the Ocean, and in order to observe this occasion, the National Oceanic and Atmospheric Administration and other Federal agencies, in cooperation with organizations concerned with ocean science and marine resources, have resolved to promote exploration, utilization, conservation, and public awareness of the ocean: Now, therefore, be it

FEDERAL REPORTS ELIMINATION ACT OF 1998

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 363, S. 1364.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 1364) to eliminate unnecessary and wasteful Federal reports.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 1364

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Reports Elimination Act of **[**1997**]** 1998''.

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

Sec. 1. Short title and table of contents.

TITLE I—DEPARTMENT OF AGRICULTURE

Sec. 101. Reports eliminated.

TITLE II—DEPARTMENT OF DEFENSE

Sec. 201. Reports eliminated.

TITLE III—EDUCATION

Sec. 301. Report eliminated.

TITLE IV—DEPARTMENT OF ENERGY

Sec. 401. Reports eliminated.
Sec. 402. Reports modified.

TITLE V—ENVIRONMENTAL PROTECTION AGENCY

Sec. 501. Reports eliminated.
Sec. **[**502.**]** Reports modified.

TITLE VI—DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sec. 601. Reports eliminated.
Sec. 602. Reports modified.

TITLE VII—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec. 701. Reports eliminated.

TITLE VIII—INDIAN AFFAIRS

Sec. 801. Reports eliminated.

TITLE IX—DEPARTMENT OF THE INTERIOR

Sec. 901. Reports eliminated.
Sec. **[**901.**]** 902. Reports modified.

TITLE X—DEPARTMENT OF JUSTICE

Sec. 1001. Reports eliminated.

TITLE XI—NASA

Sec. 1101. Reports eliminated.

TITLE XII—NUCLEAR REGULATORY COMMISSION

Sec. 1201. Reports eliminated.
Sec. 1202. Reports modified.

TITLE XIII—OMB, OPM, AND GSA

Sec. 1301. OMB.
Sec. 1302. OPM.
Sec. 1303. GSA.

TITLE XIV—TRADE

Sec. 1401. Reports eliminated.

TITLE XV—DEPARTMENT OF TRANSPORTATION

Sec. 1501. Reports eliminated.
Sec. 1502. Reports modified.

TITLE XVI—NOAA

Sec. 1601. Reports eliminated.

TITLE I—DEPARTMENT OF AGRICULTURE

SEC. 101. REPORTS ELIMINATED.

(a) SECONDARY MARKET OPERATIONS.—Section 338(b) of the Consolidated Farm and Rural Development Act (as redesignated by section 749(a)(2) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1988(b))) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraph (5) as paragraph (4).

(b) PILOT PROGRAMS TO TEST MEASUREMENT OF NUTRITIONAL STATUS OF LOW-INCOME HOUSEHOLDS.—Section 17 of the Food Stamp Act of 1977 (7 U.S.C. 2026) is amended by striking subsection (c).

(c) ESTIMATE OF SECOND PRECEDING MONTH'S EXPENDITURES UNDER FOOD STAMP PROGRAM.—Section 18(a)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2027(a)(1)) is amended by striking the third and fourth sentences.

(d) ADVISORY COMMITTEES.—Section 1804 of the Food and Agriculture Act of 1977 (7 U.S.C. 2284) is repealed.

(e) FARMER-TO-CONSUMER DIRECT MARKETING ACT OF 1976.—

(1) IN GENERAL.—Section 6 of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3005) is repealed.

(2) CONFORMING AMENDMENT.—Section 7(a) of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3006(a)) is amended by striking ''the provisions of sections 4 and 6'' and inserting ''section 4''.

(f) AGRICULTURAL RESEARCH AT LAND-GRANT COLLEGES.—Section 1445(g) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3222(g)) is amended by striking paragraph (4).

(g) FOREIGN OWNERSHIP OF AGRICULTURAL LAND.—Section 5 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504) is repealed.

(h) SUGAR PRICE INCREASES.—Section 6 of Public Law 96–236 (7 U.S.C. 3606) is repealed.

(i) HOUSING PRESERVATION GRANT PROGRAM.—Section 533 of the Housing Act of 1949 (42 U.S.C. 1490m) is amended by striking subsection (j).

(j) NATIONAL ADVISORY COUNCIL ON MATERNAL, INFANT, AND FETAL NUTRITION.—Section 17(k) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(k)) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

TITLE II—DEPARTMENT OF DEFENSE

SEC. 201. REPORTS ELIMINATED.

(a) NOTIFICATIONS OF CONVERSION OF HEATING FACILITIES AT INSTALLATIONS IN EUROPE.—Section 2690(b) of title 10, United States Code, is amended by striking out ''unless the Secretary—'' and all that follows through the end of the subsection and inserting in lieu thereof ''unless the Secretary determines that the conversion—

''(1) is required by the government of the country in which the facility is located; or

''(2) is cost effective over the life cycle of the facility.''.

(b) NOTIFICATIONS OF DISAGREEMENTS REGARDING AVAILABILITY OF ALTERNATIVE HOUSING.—Section 2823 of title 10, United States Code, is amended—

(1) by striking out subsection (b); and

(2) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

TITLE III—EDUCATION

SEC. 301. REPORT ELIMINATED.

Section 1411 of the Higher Education Amendments of 1992 is repealed.

TITLE IV—DEPARTMENT OF ENERGY

SEC. 401. REPORTS ELIMINATED.

(a) NUCLEAR TEST BAN READINESS REPORT.—Section 1436 of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100–456; 42 U.S.C. 2121 note), is amended by striking subsection (e).

(b) REPORT ON RESUMPTION OF PLUTONIUM OPERATIONS AT ROCKY FLATS.—Section 3133 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (105 Stat. 1574) is amended—

(1) by striking subsections (c) and (d); and

(2) by redesignating subsection (e) as subsection (c).

(c) REPORT ON POTENTIAL FOR HYDROPOWER DEVELOPMENT, UTILIZING TIDAL CURRENTS.—The first section of the Act of August 30, 1935 (49 Stat. 1028, chapter 831), as amended by section 2409 of the Energy Policy Act of 1992 (106 Stat. 3101), is amended by striking ''The Secretary shall undertake a demonstration project to evaluate the potential for hydropower development, utilizing tidal currents;''.

(d) ELECTRIC UTILITY PARTICIPATION STUDY.—Section 625 of the Energy Policy Act of 1992 (42 U.S.C. 13295) is repealed.

(e) REPORT ON STEEL AND ALUMINUM RESEARCH AND DEVELOPMENT ACTIVITIES.—The Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988 is amended—

(1) by striking section 8 (15 U.S.C. 5107); and

(2) by redesignating sections 9, 10, and 11 (15 U.S.C. 5108, 5109, and 5110) as sections 8, 9, and 10, respectively.

(f) REPORT ON METAL CASTING RESEARCH AND DEVELOPMENT ACTIVITIES.—Section 10 of the Department of Energy Metal Casting

Competitiveness Research Act of 1990 (15 U.S.C. 5309) is repealed.

(g) BIENNIAL UPDATE TO THE NATIONAL ADVANCED MATERIALS INITIATIVE 5-YEAR PROGRAM PLAN.—Section 2201(b) of the Energy Policy Act of 1992 (42 U.S.C. 13501(b)) is amended by striking the second sentence.

(h) REPORT ON VIBRATION REDUCTION TECHNOLOGIES.—Section 173(c) of the Energy Policy Act of 1992 (Public Law 102–486; 42 U.S.C. 13451 note) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(i) REPORT ON PROCESS-ORIENTED INDUSTRIAL ENERGY EFFICIENCY.—Section 132 of the Energy Policy Act of 1992 (42 U.S.C. 6349) is amended—

(1) by striking subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

(j) REPORT ON INDUSTRIAL INSULATION AND AUDIT GUIDELINES.—Section 133 of the Energy Policy Act of 1992 (42 U.S.C. 6350) is amended by striking subsection (c).

(k) REPORT EVALUATION OF OPPORTUNITIES FOR ENERGY EFFICIENT POLLUTION PREVENTION.—Section 2108 of the Energy Policy Act of 1992 (42 U.S.C. 13457) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(l) REPORT ON CONTINENTAL SCIENTIFIC DRILLING PROGRAM.—Section 4 of the Continental Scientific Drilling and Exploration Act (Public Law 100–441; 43 U.S.C. 31 note) is amended—

(1) by adding ''and'' at the end of paragraph (4);

(2) by striking ''; and'' at the end of paragraph (5) and inserting a period; and

(3) by striking paragraph (6).

(m) REPORT ON COAL RESEARCH, DEVELOPMENT, DEMONSTRATION, AND COMMERCIALIZATION PROJECTS.—Section 1301 of the Energy Policy Act of 1992 (42 U.S.C. 13331) is amended—

(1) by striking subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

(n) REPORT ON THE USE OF ENERGY FUTURES FOR FUEL PURCHASES.—Section 3014 of the Energy Policy Act of 1992 (42 U.S.C. 13552) is amended—

(1) by striking subsection (b); and

(2) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(o) REPORT ON IMPLEMENTATION OF THE ALASKA FEDERAL CIVILIAN ENERGY EFFICIENCY SWAP ACT OF 1980.—Section 6 of the Alaska Federal Civilian Energy Efficiency Swap Act of 1980 (40 U.S.C. 795d) is repealed.

(p) REPORT ON MAJOR NATIONAL SECURITY PROGRAMS.—Section 3143 of the National Defense Authorization Act, fiscal years 1990 and 1991 (42 U.S.C. 7271a) is repealed.

SEC. 402. REPORTS MODIFIED.

[(a) REPORT ON MAJOR NATIONAL SECURITY PROGRAMS.—Section 3143 of the National Defense Authorization Act, Fiscal Years 1990 and 1991 (42 U.S.C. 7271a) is amended by striking subsections (b), (c), and (d) and inserting the following:

[''(b) INFORMATION TO BE INCLUDED IN THE PRESIDENT'S ANNUAL BUDGET REQUEST.—With respect to each major Department of Energy national security program, the President shall include in each annual budget request under section 1105 of title 31, United States Code—

[''(1) a description of the program, the purpose of the program, and the relationship of the program to the mission of the national security program of the Department of Energy;

[''(2) the program schedule, including estimated annual costs; and

[''(3) a comparison of the then-current schedule and cost estimates with previous schedules and cost estimates and an explanation of the changes.''.

[(b)] (a) Report on Plan for Electric Motor Vehicles.—Section 2025(b) of the Energy Policy Act of 1992 (42 U.S.C. 13435(b)) is amended—

(1) in the second sentence of paragraph (1), by striking ''annually'' and inserting ''biennially''; and

(2) in the second sentence of paragraph (4), by striking ''Annual'' and inserting ''Biennial''.

(c) *(b)* Coke Oven Production Technology Study.—Section 112(n)(2)(C) of the Clean Air Act (42 U.S.C. 7412(n)(2)(C)) is amended by striking ''The Secretary shall prepare annual reports to Congress on the status of the research program and at the completion of the study'' and inserting ''On completion of the study, the Secretary shall submit to Congress a report on the results of the study and''.

TITLE V—ENVIRONMENTAL PROTECTION AGENCY

SEC. 501. REPORTS ELIMINATED.

(a) REPORT ON CONDITIONAL REGISTRATION OF PESTICIDES.—

(1) IN GENERAL.—The Federal Insecticide, Fungicide, and Rodenticide Act is amended—

(A) by striking section 29 (7 U.S.C. 136w–4); and

(B) by redesignating sections 30 and 31 (7 U.S.C. 136x and 136y) as sections 29 and 30, respectively.

(2) CONFORMING AMENDMENTS.—The table of contents in section 1(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. prec. 121) is amended—

(A) by striking the item relating to section 29; and

(B) by redesignating the items relating to sections 30 and 31 as the items relating to sections 29 and 30, respectively.

(b) REPORT ON IMPLEMENTATION OF TOXIC SUBSTANCES CONTROL ACT.—

(1) IN GENERAL.—The Toxic Substances Control Act is amended—

(A) by striking section 30 (15 U.S.C. 2629); and

(B) by redesignating section 31 (Public Law 94–469; 15 U.S.C. 2601 note) as section 30.

(2) CONFORMING AMENDMENTS.—

(A) The table of contents in section 1 of the Toxic Substances Control Act (15 U.S.C. prec. 2601) is amended—

(i) by striking the item relating to section 30; and

(ii) by redesignating the item relating to section 31 as the item relating to section 30.

(B) The second sentence of section 9(d) of the Toxic Substances Control Act (15 U.S.C. 2608(d)) is amended by striking '', in the report required by section 30,''.

(c) REPORT ON EFFECT OF POLLUTION ON ESTUARIES AND ESTUARINE ZONES.—

(1) IN GENERAL.—Section 104(n) of the Federal Water Pollution Control Act (33 U.S.C. 1254(n)) is amended—

(A) by striking paragraph (3); and

(B) by redesignating paragraph (4) as paragraph (3).

(2) CONFORMING AMENDMENT.—Section 320(k) of the Federal Water Pollution Control Act (33 U.S.C. 1330(k)) is amended by striking ''section 104(n)(4)'' and inserting ''section 104(n)(3)''.

(d) CLEAN LAKES REPORT.—Section 314(a) of the Federal Water Pollution Control Act (33 U.S.C. 1324(a)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

(e) REPORT ON NONPOINT SOURCE MANAGEMENT PROGRAMS.—Section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1329) is amended—

(1) in subsection (i), by striking paragraph (4);

(2) by striking subsection (m); and

(3) by redesignating subsection (n) as subsection (m).

(f) REPORT ON MEASURES TAKEN TO MEET OBJECTIVES OF FEDERAL WATER POLLUTION CONTROL ACT.—

(1) IN GENERAL.—Section 516 of the Federal Water Pollution Control Act (33 U.S.C. 1375) is amended—

(A) by striking subsections (a), (b)(2), (c), (d), and (e);

(B) by striking ''(b)(1)''; and

(C) by redesignating subparagraphs (A) through (D) as paragraphs (1) through (4), respectively.

(2) CONFORMING AMENDMENTS.—

(A) Section 104 of the Federal Water Pollution Control Act (33 U.S.C. 1254) is amended—

(i) in subsection (a)(5), by striking ''in the report required under subsection (a) of section 516'' and inserting ''not later than 90 days after the date of convening of each session of Congress''; and

(ii) in the first sentence of subsection (o)(2), by striking ''in the report required under subsection (a) of section 516'' and inserting ''not later than 90 days after the date of convening of each session of Congress''.

(B) The fourth sentence of section 116(b) of the Federal Water Pollution Control Act (33 U.S.C. 1266(b)) is amended by striking ''section 616(b) of this Act'' and inserting ''section 516''.

(C) The last sentence of section 205(a) of the Federal Water Pollution Control Act (33 U.S.C. 1285(a)) is amended by striking ''section 516(b)'' and inserting ''section 516''.

(D) The second sentence of section 210 of the Federal Water Pollution Control Act (33 U.S.C. 1290) is amended by striking ''shall be included in the report required under section 516(a) of this Act'' and inserting ''shall be reported to Congress not later than 90 days after the date of convening of each session of Congress''.

(g) REPORT ON SAFE DRINKING WATER ACT COSTS OF COMPLIANCE.—Section 1442(a)(3) of the Public Health Service Act (42 U.S.C. 300j–1(a)(3)) is amended—

(1) in subparagraph (A), by striking ''(A)''; and

(2) by striking subparagraph (B).

(h) ANALYSIS OF ALTERNATIVE MOTOR VEHICLE FUELS USE ON ENVIRONMENT.—Section 400EE of the Energy Policy and Conservation Act (42 U.S.C. 6374d) is repealed.

(i) COMPREHENSIVE REPORT ON ACTIVITIES OF OFFICE OF SOLID WASTE.—

(1) IN GENERAL.—The Solid Waste Disposal Act is amended—

(A) by striking section 2006 (42 U.S.C. 6915); and

(B) by redesignating section 2008 (42 U.S.C. 6917) as section 2006 and moving the section to appear after section 2005.

(2) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended—

(A) by striking the item relating to section 2006; and

(B) by redesignating the item relating to section 2008 as the item relating to section 2006 and moving the item to appear after the item relating to section 2005.

(j) STUDY OF ENVIRONMENTAL PROBLEMS ASSOCIATED WITH IMPROPER DISPOSAL OR REUSE OF OIL.—Section 9 of the Used Oil Recycling Act of 1980 (Public Law 96–463; 94 Stat. 2058) is repealed.

(k) REPORT ON STATE AND LOCAL TRAINING NEEDS AND OBSTACLES TO EMPLOYMENT IN SOLID WASTE MANAGEMENT AND RESOURCE RECOVERY.—Section 7007 of the Solid Waste Disposal Act (42 U.S.C. 6977) is amended by striking subsection (c).

(l) INTERIM REPORT OF NATIONAL ADVISORY COMMISSION ON RESOURCE CONSERVATION AND RECOVERY.—Section 33(a) of the Solid Waste Disposal Act Amendments of 1980 (Public Law 96–482, 94 Stat. 2356; 42 U.S.C. 6981 note) is amended—

(1) by striking paragraph (7); and

(2) by redesignating paragraph (8) as paragraph (7).

(m) FINAL REPORT ON MEDICAL WASTE MANAGEMENT.—

(1) IN GENERAL.—The Solid Waste Disposal Act is amended—

(A) by striking section 11008 (42 U.S.C. 6992g); and

(B) by redesignating sections 11009 through 11012 (42 U.S.C. 6992h through 6992k) as sections 11008 through 11011, respectively.

(2) CONFORMING AMENDMENTS.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended—

(A) by striking the item relating to section 11008; and

(B) by redesignating the items relating to sections 11009 through 11012 as the items relating to sections 11008 through 11011, respectively.

(n) REPORT ON STATUS OF DEMONSTRATION PROGRAM TO TEST METHODS AND TECHNOLOGIES OF REDUCING OR ELIMINATING RADON GAS.—Section 118(k)(2) of the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99–499; 42 U.S.C. 7401 note) is amended—

(1) by striking subparagraph (B); and

(2) by redesignating subparagraph (C) as subparagraph (B).

(o) REPORT ON CANADIAN ACID RAIN CONTROL PROGRAM.—Section 408 of the Act entitled ''An Act to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes'', approved November 15, 1990 (commonly known as the ''Clean Air Act Amendments of 1990'') (Public Law 101–549; 42 U.S.C. 7651 note), is repealed.

(p) BIENNIAL POLLUTION PREVENTION REPORT.—The Pollution Prevention Act of 1990 is amended—

(1) by striking section 6608 (42 U.S.C. 13107); and

(2) by redesignating sections 6609 and 6610 (42 U.S.C. 13108 and 13109) as sections 6608 and 6609, respectively.

[SEC. 502. REPORTS MODIFIED.

[The first sentence of section 112(m)(5) of the Clean Air Act (42 U.S.C. 7412(m)) is amended by striking ''Within 3 years of the date of enactment of the Clean Air Act Amendments of 1990 and biennially thereafter,'' and inserting ''Not later than November 15, 1997, and every 4 years thereafter,''.]

TITLE VI—DEPARTMENT OF HEALTH AND HUMAN SERVICES

SEC. 601. REPORTS ELIMINATED.

(a) REPEALS.—

(1) PUBLIC HEALTH SERVICE ACT.—The following provisions of the Public Health Service Act (42 U.S.C. 201 et seq.) are repealed:

(A) Section 376 (42 U.S.C. 274d) relating to the biennial report on the scientific and clinical status of organ transplantation.

(B) Section 403 (42 U.S.C. 283) relating to the biennial report of the Director of the National Institutes of Health.

(C) Paragraph (4) of section 408(a) (42 U.S.C. 284c(a)(4)) relating to the annual report of the National Institutes of Health on administrative expenses.

(D) Subsection (c) of section 429 (42 U.S.C. 285c–3(c)) relating to the annual report of the Diabetes Mellitus Interagency Coordinating Committee, the Digestive Diseases Interagency Coordinating Committee, and National Kidney and Urologic Diseases Interagency Coordinating Committee.

(E) Subsection (j) of section 430 (42 U.S.C. 285c–4(j)) relating to the annual reports of the National Diabetes Advisory Board, the National Digestive Diseases Advisory Board, and the National Kidney and Urologic Diseases Advisory Board.

(F) Subsection (c) of section 439 (42 U.S.C. 285d–4(c)) relating to the annual report by the Arthritis and Musculoskeletal and Skin Diseases Interagency Coordinating Committee.

(G) Subsection (j) of section 442 (42 U.S.C. 285d–7(j)) relating to the annual report by the Arthritis and Musculoskeletal and Skin Diseases Advisory Board.

(H) Subsection (b) of section 494A (42 U.S.C. 289c–1(b)) relating to the report on health services research.

(I) Paragraph (3) of section 501(e) (42 U.S.C. 290aa(e)(2)) relating to the report of the Substance Abuse and Mental Health Services Administration.

(J) Subsection (b) of section 503 (42 U.S.C. 290aa–2(b)) relating to the triennial report on drug abuse.

(K) Section 1009 (42 U.S.C. 300a–6a) relating to the family planning and population research report.

(L) Section 1122 (42 U.S.C. 300c–12) relating to the sudden infant death syndrome research report.

(M) Section 2104 (42 U.S.C. 300aa–4) relating to the National Vaccine Program report.

(2) OTHER ACTS.—The following provisions are repealed:

(A) Section 540 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360qq) relating to the annual report on the administration of the Radiation Control for Health and Safety program.

(B) Section 304 of the Home Health Care and Alzheimer's Disease Amendments of 1990 (42 U.S.C. 242q–3) relating to the report of the Task Force on Aging Research.

(C) Section 1901 of the NIH Revitalization Act of 1993 (42 U.S.C. 285f–1 note) relating to the report of the research activities concerning chronic fatigue syndrome.

(D) Paragraph (7) of section 1881(f) of the Social Security Act (42 U.S.C. 1395rr(c)(7)) relating to the report on end-stage renal disease.

(E) Section 402 of the Indian Health Care Improvement Act (42 U.S.C. 1395qq note) relating to the tribal organization demonstration program for direct billing of medicare, medicaid, and other third party payors.

(F) Section 1200 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (42 U.S.C. 3509) relating to the report of the Public Health Service.

(G) Subsection (d) of section 719 of the Indian Health Care Amendments of 1988 (Public Law 100–713; 102 Stat. 4838) relating to the impact of the final rule relating to eligibility for health care services of the Indian Health Service.

(b) SOCIAL SECURITY ACT AND RELATED PROVISIONS.—

(1) Section 8403(b) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647; 102 Stat. 3799) is repealed.

(2) Section 4207(c)(2)(B) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–120) (42 U.S.C. 1395x note) is repealed.

(3) Section 9601(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272; 100 Stat. 222) (42 U.S.C. 1395b note) is repealed.

(4) Section 6003(i) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239; 103 Stat. 2158) (42 U.S.C. 1395ww note) is repealed.

(5) Section 6102(d)(4) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239; 103 Stat. 2185) (42 U.S.C. 1395w–4 note) is repealed.

(6) Section 1882(l)(6) of the Social Security Act (42 U.S.C. 1395ss(l)(6)) is repealed.

[(7) Section 4801(e)(17)(B) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–218) (42 U.S.C. 1396r note) is amended by striking ''January 1, 1992'' and inserting ''January 1, 1999''.

[(8) Section 4360(f) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–140) (42 U.S.C. 1395b–4) is amended by striking ''Not later than 180 days after [the date of the enactment of this section'' and inserting ''Beginning with 1992''.]

(7) [(9)] Section 4056(d) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203; 101 Stat. 1330–99) (42 U.S.C. 1395l note) (as redesignated by section 411(f)(14) of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100–360; 102 Stat. 781)) is repealed.

[(c) Amendment.—]

SEC. 602. REPORTS MODIFIED.

(a) INDIAN HEALTH.—Subsection (e) of section 513 of the Indian Health Care Improvement Act (25 U.S.C. 1660c(e)) is amended by striking ''two years'' and inserting ''5 years''.

(b) SOCIAL SECURITY ACT.—

(1) Section 4801(e)(17)(B) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–218) (42 U.S.C. 1396r note) is amended by striking ''January 1, 1992'' and inserting ''January 1, 1999''.

(2) Section 4360(f) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–140) (42 U.S.C. 1395b–4) is amended by striking ''Not later than 180 days after the date of the enactment of this section'' and inserting ''Beginning with 1992''.

TITLE VII—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 701. REPORTS ELIMINATED.

[(a) NOTIFICATION OF PROPOSED GRANT CONTRACT OR COOPERATIVE AGREEMENT RELATING TO DISCRIMINATORY HOUSING PRACTICES.—Section 561(e) of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note) is amended by striking the subsection designation and all that follows through ''(2) The Secretary'' and inserting the following:

[''(b) QUARTERLY REPORTS.—The Secretary''.

[(b)] *(a)* FEDERAL ACTIVITIES UNDER SOLAR HEATING AND COOLING DEMONSTRATION ACT OF 1974.—Section 12 of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5510) is amended by striking subsection (d).

[(c)] *(b)* FUNDING RELATING TO EVALUATING AND MONITORING PROGRAMS.—Section [7] 7(r) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(r)) is amended—

(1) by striking paragraph (5); and

(2) by redesignating paragraph (6) as paragraph (5).

[(d)] *(c)* STATE AND LOCAL STRATEGIES FOR REMOVAL OF BARRIERS TO AFFORDABLE HOUSING.—Section 1207 of the Housing and Community Development Act of 1992 (42 U.S.C. 12705a note) is repealed.

[(e)] (d) COMPREHENSIVE REVIEW AND EVALUATION OF HOMELESS ASSISTANCE PROGRAMS.—Section 1409 of the Housing and Community Development Act of 1992 (42 U.S.C. 11361 note) is amended—

(1) by striking ''(a) IN GENERAL.—''; and

(2) by striking subsection (b).

[(f)] (e) NEIGHBORHOOD REDEVELOPMENT PROGRAM.—Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

[(g)] *(f)* HOMEOWNERSHIP DEMONSTRATION PROGRAM.—Section 132 of the Housing and

Community Development Act of 1992 (Public Law 102–550; 106 Stat. 3712) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

[(h)] (g) RURAL RENTAL REHABILITATION DEMONSTRATION.—Section 311 of the Housing and Community Development Act of 1987 (42 U.S.C. 1490m note) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

[(i) COMMUNITY DEVELOPMENT PROGRAM.—Section 113 of the Housing and Community Development Act of 1974 (42 U.S.C. 5313) is repealed.

[(j)] *(h)* SUMMARY OF ACTIVITIES UNDER NEW TOWN DEMONSTRATION.—Section 1108 of the Housing and Community Development Act of 1992 (42 U.S.C. 5318 note) is amended by striking ''the following'' and all that follows before the period at the end of the section and inserting the following: ''a copy of the new town plan of the governing board, upon the approval of that plan under section 1102(d)''.

TITLE VIII—INDIAN AFFAIRS

SEC. 801. REPORTS ELIMINATED.

(a) INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION REPORT.—Section 412 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3211) is repealed.

(b) REPORTS UNDER THE INDIAN FINANCING ACT OF 1974.—

(1) ADJUSTMENT OR CANCELLATION OF OBLIGATIONS RELATED TO THE INDIAN REVOLVING LOAN FUND.—Section 105 of the Indian Financing Act of 1974 (25 U.S.C. 1465) is repealed.

(2) INDIAN LOAN GUARANTY AND INSURANCE FUND DEFICIENCIES.—Section 217 of the Indian Financing Act of 1974 (25 U.S.C. 1497) is amended by striking subsection (f).

(c) EDUCATION AMENDMENTS OF 1978.—

(1) REPORT ON DEMONSTRATION PROJECTS.—Section 1121(h) of the Education Amendments of 1978 (25 U.S.C. 2001(h)) is amended—

(A) by striking paragraph (4); and

(B) by redesignating paragraph (5) as paragraph (4).

(2) NATIONAL CRITERIA FOR DORMITORY SITUATIONS.—Section 1122(d) of the Education Amendments of 1978 (25 U.S.C. 2002(d)) is amended by striking paragraph (3).

(3) POSITIONS CONTRACTED UNDER GRANTS OF POST-DIFFERENTIAL AUTHORITY IN THE BIA SCHOOLS.—Section 1132(h)(3)(B) of the Education Amendments of 1978 (25 U.S.C. 2012(h)(3)(B)) is amended by striking clause (iii).

(4) REPORT.—Section 1137 of the Education Amendments of 1978 (25 U.S.C. 2017) is amended—

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

''SEC. 1137. BIENNIAL REPORT.'';

and

(B) in the first sentence of subsection (a)—

(i) by striking ''annual report'' and inserting ''biennial report''; and

(ii) by striking ''during the year'' and inserting ''during the 2-year period covered by the report''.

(5) REGULATIONS.—Section 1139 of the Education Amendments of 1978 (25 U.S.C. 2019) is repealed.

(6) TECHNICAL CORRECTION.—Section 605(b)(2) of the School-to-Work Opportunity Act of 1994 (20 U.S.C. 6235(b)(2)) is amended by striking ''(as defined in section 1139(3) of the Education Amendments of 1978 (25 U.S.C. 2019(3))'' and inserting ''(as defined in section 1146(3) of the Education Amendments of 1978 (25 U.S.C. 2026(3))''.

(d) TRIBALLY CONTROLLED SCHOOLS ACT OF 1988.—Section 5026 of the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2505) is amended by striking subsection (g).

(e) PUBLIC LAW 96–135.—Section 2 of Public Law 96–135 (25 U.S.C. 472a) is amended—

(1) by striking subsection (d);

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively; and

(3) in subsection (d), as so redesignated—

(A) by striking paragraph (2); and

(B) by striking ''(1) The Office'' and inserting ''The Office''.

(f) NATIVE AMERICANS EDUCATIONAL ASSISTANCE ACT.—Section 4 of the Native Americans Educational Assistance Act (25 U.S.C. 2001 note) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(g) INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.—Section 106 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j–1) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsections (d) through (o) as subsections (c) through (m), respectively.

TITLE IX—DEPARTMENT OF THE INTERIOR

SEC. 901. REPORTS ELIMINATED.

(a) PACIFIC YEW ACT.—The Pacific Yew Act (16 U.S.C. 4801 et seq.) is repealed.

(b) SIZE AND CONDITION OF THE TULE ELK HERD IN CALIFORNIA.—

(1) REPEAL.—Section 3 of Public Law 94–389 (16 U.S.C. 673f) is repealed.

(2) REDESIGNATION.—Section 4 of Public Law 94–389 (16 U.S.C. 673g) is redesignated as section 3.

(c) REVIEWS AND EXTENSIONS OF WITHDRAWALS OF LANDS.—Section 204(f) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714(f)) is amended by striking the second sentence.

(d) STATUS OF THE WILD FREE-ROAMING HORSE AND BURRO PROGRAM.—Section 11 of Public Law 92–195 (16 U.S.C. 1340) is amended by striking the first undesignated paragraph.

(e) STATUS OF THE WILDERNESS SYSTEM.—Section 7 of the Wilderness Act (16 U.S.C. 1136) is repealed.

(f) WATER QUALITY OF THE SACRAMENTO-SAN JOAQUIN DELTA AND SAN FRANCISCO BAY ESTUARINE SYSTEMS.—Section 4 of Public Law 96–375 (94 Stat. 1506) is amended by striking the second sentence.

(g) COLORADO RIVER FLOODWAY MAPS.—Section 5(b) of the Colorado River Floodway Protection Act (43 U.S.C. 1600c(b)) is amended—

(1) by striking ''(b)(1)'' and inserting ''(b)'';

(2) by striking paragraphs (2) and (3); and

(3) by redesignating clauses (i) and (ii) as paragraphs (1) and (2), respectively.

(h) CERTIFICATION OF ADEQUATE SOIL SURVEY OF LAND CLASSIFICATION.—

(1) The first section of title I of the Interior Department Appropriation Act, 1953, is amended in the matter under the heading ''CONSTRUCTION AND REHABILITATION'' UNDER THE HEADING ''BUREAU OF RECLAMATION'' (66 Stat. 451) by striking '': *Provided further,* That no part of this or any other appropriation'' and all that follows through ''means of irrigation''.

(2) The first section of title I of the Interior Department Appropriation Act, 1954'' (43 U.S.C. 390a; 67 Stat. 266) is amended—

(A) in the matter under the heading ''CONSTRUCTION AND REHABILITATION'' under the heading ''Bureau of Reclamation'', by striking '': *Provided further,* That no part of this or any other appropriation'' and all that follows through ''demonstrated in practice''; and

(B) by striking ''Such surveys shall include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows.'' (as added by section 10 of the Garrison Diversion Unit Reformulation Act of 1986 (100 Stat. 426)).

(i) CLAIMS SUBMITTED FROM THE TETON DAM FAILURE.—Section 8 of Public Law 94–400 (90 Stat. 1213) is repealed.

(j) STUDY OF THE FEASIBILITY AND SUITABILITY OF ESTABLISHING NIOBRARA-BUFFALO PRAIRIE NATIONAL PARK.—

(1) REPEAL.—Section 8 of the Niobrara Scenic River Designation Act of 1991 (Public Law 102–50; 16 U.S.C. 1a–5 note) is repealed.

(2) REDESIGNATION.—Section 9 of the Act (Public Law 102–50; 105 Stat. 258) is redesignated as section 8.

(k) STUDY OF ROUTE 66.—The Route 66 Study Act of 1990 (Public Law 101–400; 104 Stat. 861) is repealed.

(l) REPORT ON ANTHRACITE MINE WATER CONTROL AND MINE SEALING AND FILLING PROGRAM.—The Act entitled ''An Act to provide for the conservation of anthracite coal resources through measures of flood control and anthracite mine drainage, and for other purposes'', approved July 15, 1955, is amended—

(1) by striking section 5 (30 U.S.C. 575); and

(2) by redesignating section 6 (30 U.S.C. 576) as section 5.

(m) AUDIT OF FEDERAL ROYALTY MANAGEMENT SYSTEM.—

(1) IN GENERAL.—Section 302 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1752) is amended—

(A) in subsection (a), by striking ''(a)''; and

(B) by striking subsection (b).

(2) CONFORMING AMENDMENT.—Section 304(c) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1753(c)) is amended by striking ''Except as expressly provided in subsection 302(b), nothing'' and inserting ''Nothing''.

(n) REPORT ON BIDDING OPTIONS FOR OIL AND GAS LEASES ON OUTER CONTINENTAL SHELF LAND.—Section 8(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(a)) is amended by striking paragraph (9).

(o) REPORTS ON OUTER CONTINENTAL SHELF LEASING AND PRODUCTION PROGRAM AND PROMOTION OF COMPETITION IN LEASING.—

(1) IN GENERAL.—Section 15 of the Outer Continental Shelf Lands Act (43 U.S.C. 1343) is repealed.

(2) CONFORMING AMENDMENT.—Section 22 of the Outer Continental Shelf Lands Act (43 U.S.C. 1348) is amended by striking subsection (g).

(p) AUDIT OF FINANCIAL REPORT OF GOVERNOR OF GUAM.—The sixth undesignated paragraph of section 6 of the Organic Act of Guam (48 U.S.C. 1422) is amended by striking the third and fifth sentences.

(q) AUDIT OF FINANCIAL REPORT OF GOVERNOR OF THE VIRGIN ISLANDS.—The fourth undesignated paragraph of section 11 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1591) is amended by striking the third and fifth sentences.

(r) AUDIT OF FINANCIAL REPORT OF GOVERNOR OF AMERICAN SAMOA.—Section 501(a) of Public Law 96–205 (48 U.S.C. 1668(a)) is amended by striking the third and fifth sentences.

(s) AUDIT OF FINANCIAL REPORT OF CHIEF EXECUTIVES OF CERTAIN TERRITORIES.—Section 5 of Public Law 92–257 (48 U.S.C. 1692) is amended by striking the third and fifth sentences.

(t) REPORT ON ACTIVITIES UNDER HELIUM ACT.—Section 16 of the Helium Act (50 U.S.C. 167n) is repealed.

(u) REPORT ON CONTRACT AWARDS MADE TO FACILITATE NATIONAL DEFENSE.—

(1) IN GENERAL.—Public Law 85–804 is amended—

(A) by striking section 4 (50 U.S.C. 1434); and

(B) by redesignating section 5 (50 U.S.C. 1435) as section 4.

(2) CONFORMING AMENDMENT.—Section 501(a)(6) of the National Emergencies Act (50 U.S.C. 1651(a)(6)) is amended by striking ''1431–1435'' and inserting ''1431 et seq.''.

SEC. 902. REPORTS MODIFIED.

(a) RECOMMENDATIONS ON PROSPECTIVE TIMBER SALES.—The first sentence of section 318(h) of Public Law 101–121 (103 Stat. 750) is amended by striking ''a monthly basis'' and inserting ''an annual basis''.

(b) REPORT ON NATIONWIDE GEOLOGIC MAPPING PROGRAM.—Section 8 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31g) is amended—

(1) in the section heading, by striking ''ANNUAL'' and inserting ''BIENNIAL''; and

(2) in the first sentence—

(A) by striking ''each fiscal year, submit an annual report'' and inserting ''each second fiscal year, submit a biennial report''; and

(B) by striking ''preceding fiscal year'' and inserting ''2 preceding fiscal years''.

TITLE X—DEPARTMENT OF JUSTICE

SEC. 1001. REPORTS ELIMINATED.

(a) EMERGENCY LAW ENFORCEMENT ASSISTANCE REPORT.—Section 609U of the Justice Assistance Act of 1984 (42 U.S.C. 10509) is repealed.

(b) IMMIGRATION AND NATIONALITY ACT.—The Immigration and Nationality Act is amended—

(1) in section 103 (8 U.S.C. 1103(d)), by striking subsection (d);

(2) in section 214(c) (8 U.S.C. 1184(c)), by striking paragraph (8);

(3) in section 286 (8 U.S.C. 1356)—

(A) by striking subsection (l) and inserting the following:

''*(l)* [Reserved].'';

(B) in subsection (q)—

(i) by striking paragraph (4); and

(ii) by redesignating paragraph (5) as paragraph (4); and

(C) in subsection (r)—

(i) by striking paragraph (5); and

(ii) by redesignating paragraph (6) as paragraph (5); and

(4) in section 344(f) (8 U.S.C. 1455(f))—

(A) by striking ''(f)(1) The Attorney General'' and inserting ''(f) The Attorney General''; and

(B) by striking paragraph (2).

(c) IMMIGRATION AND NATURALIZATION DOCUMENT SECURITY REPORT.—Section 5 of the Immigration Nursing Relief Act of 1989 (8 U.S.C. 1324a note) is amended by striking subsection (d) and inserting the following:

''(d) [Reserved].''.

(d) DIVERSION CONTROL FEE ACCOUNT REPORT.—Section 111(b) of the Departments of Commerce, Justice, and State, and the Judiciary, and Related Agencies Appropriations Act, 1993 (21 U.S.C. 886a(b)) is amended by striking paragraph (5).

(e) ASSET FORFEITURE REPORT.—Section 524(c) of title 28, United States Code, is amended—

(1) by striking paragraph (6); and

(2) by redesignating paragraphs (7) through (12) as paragraphs (6) through (11), respectively.

(f) CIVIL FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT REPORT.—Section 918 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833) is repealed.

(g) DAMAGE SETTLEMENT REPORT.—Section 3724 of title 31, United States Code, is amended—

(1) by striking subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

(h) BANKING LAW OFFENSE REPORT.—Section 8(u) of the Federal Deposit Insurance Act (12 U.S.C. 1818(u)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraphs (4) through (8) as paragraphs (3) through (7), respectively.

(i) BANKING LAW OFFENSE REWARDS REPORT.—Section 2571 of the Crime Control Act of 1990 (12 U.S.C. 4211) is repealed.

(j) BANKING INSTITUTIONS SOUNDNESS REPORT.—Section 1542 of the Housing and Community Development Act of 1992 (12 U.S.C. 1831m–1) is repealed.

TITLE XI—NASA

SEC. 1101. REPORTS ELIMINATED.

(a) CONTINGENT LIABILITY.—Section 6 of the National Aeronautics and Space Administration Authorization Act, 1978 (42 U.S.C. 2463) is repealed.

(b) ACTIVITIES OF THE NATIONAL SPACE GRANT AND FELLOWSHIP PROGRAM.—Section 212 of the Land Remote-Sensing Commercialization Amendments of 1987 (42 U.S.C. 2486j) is repealed.

(c) NOTIFICATION OF PROCUREMENT OF LONG-LEAD MATERIALS FOR SOLID ROCKET MONITORS ON OTHER THAN COOPERATIVE BASIS.—Section 121 of the National Aeronautics and Space Administration Authorization Act of 1988 (101 Stat. 869) is amended by striking subsection (d).

(d) CONTRACTS TO FACILITATE THE NATIONAL DEFENSE.—

(1) IN GENERAL.—Section 1434 of title 50, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 29 of title 50, United States Code, is amended by striking the item relating to section 1434.

(e) CAPITAL DEVELOPMENT PLAN FOR SPACE STATION PROGRAM.—Section 107 of the National Aeronautics and Space Administration Authorization Act of 1988 (101 Stat. 864) is repealed.

(f) CERTIFICATION RELATING TO PAYLOADS.—Section 112 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991 (42 U.S.C. 2465a) is amended by striking subsections (c) and (d).

(g) NOTICE OF MODIFICATION OF NASA.—

(1) 1985 ACT.—Section 103 of the National Aeronautics and Space Administration Authorization Act, 1985 (98 Stat. 424) is repealed.

(2) 1986 ACT.—Section 103 of the National Aeronautics and Space Administration Authorization Act of 1986 (99 Stat. 1014) is repealed.

(h) EXPENDITURES EXCEEDING ASTRONOMY PROGRAM.—Section 104 of the National Aeronautics and Space Administration Authorization Act, 1984 (97 Stat. 284) is repealed.

(i) LAUNCH VOUCHER DEMONSTRATION PROJECT.—Section 504 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (15 U.S.C. 5803) is repealed.

(j) SPACE SETTLEMENTS.—Section 217 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (42 U.S.C. 2451 note) is repealed.

(k) PROPOSED DECISION OR POLICY CONCERNING COMMERCIALIZATION.—Section 110 of the National Aeronautics and Space Administration Authorization Act, 1984 (42 U.S.C. 2465) is repealed.

(l) JOINT FORMER SOVIET UNION STUDIES IN BIOMEDICAL RESEARCH.—Section 605 of the National Aeronautics and Space Administration Act, Fiscal Year 1993 (42 U.S.C. 2487d) is repealed.

TITLE XII—NUCLEAR REGULATORY COMMISSION

SEC. 1201. REPORTS ELIMINATED.

(a) REPORT OF ADVISORY COMMITTEE ON REACTOR SAFEGUARDS.—Section 29 of the Atomic Energy Act of 1954 (42 U.S.C. 2039) is amended by striking the sixth and seventh sentences.

(b) REPORT ON THE PRICE-ANDERSON ACT.—Section 170 p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended—

(1) by striking ''(1)''; and

(2) by striking paragraph (2).

SEC. 1202. REPORTS MODIFIED.

Section 1701(b)(1) of the Atomic Energy Act of 1954 (42 U.S.C. 2297f(b)(1)) is amended—

(1) by striking ''The Nuclear'' and inserting ''Not later than the date on which a certificate of compliance is issued under subsection (c), the Nuclear''; and

(2) by striking ''at least annually''.

TITLE XIII—OMB, OPM, AND GSA

SEC. 1301. OMB.

[(a) AGENCY DEBT COLLECTION ACTIVITIES.—Section 12 of the Debt Collection Act of 1982 (Public Law 97–365; 96 Stat. 1756) is amended—

[(1) by striking ''(a)'' after ''SEC. 12.''; AND

[(2) by striking subsection (b).]

(a) FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT OF 1990.—The Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410; 28 U.S.C. 2461 note) is amended by—

(1) striking section 6; and

(2) redesignating section 7 as section 6.

(b) VOLUNTARY CONTRIBUTIONS BY THE UNITED STATES TO INTERNATIONAL ORGANIZATIONS.—Section 306 of the Foreign Assistance Act of 1961 (22 U.S.C. 2226) is amended by striking subsection (b).

(c) PROMPT PAYMENT ACT.—

(1) IN GENERAL.—Section 3906 of title 31, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 39 of title 31, United States Code, is amended by striking the item relating to section 3906.

(d) FEDERAL ACQUISITION REGULATORY COUNCIL.—Section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421(g)) is amended by striking subsection (g).

(e) TITLE 5.—Section 552a(u) of title 5, United States Code, is amended by—

(1) striking paragraph (6); and

(2) redesignating paragraph (7) as paragraph (6) and in that redesignated paragraph striking ''paragraphs (3)(D) and (6)'' and inserting ''paragraph (3)(D)''.

SEC. 1302. OPM.

(a) ADMINISTRATIVE LAW JUDGES.—Section 1305 of title 5, United States Code, is amended by striking ''require reports by agencies, issue reports, including an annual report to Congress,''.

(b) FEDERAL EMPLOYEE RETIREMENT AND BENEFITS.—

(1) IN GENERAL.—Section 1308 of title 5, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The title of sections for chapter 13 of title 5, United States Code, is amended by striking the item relating to section 1308.

(c) CIVIL SERVICE RETIREMENT AND DISABILITY FUND.—Section 8348(g) of title 5, United States Code, is amended by striking the third sentence.

(d) PLACEMENT OF NON-INDIAN EMPLOYEES.—Section 2(e) of the Act of December 5, 1979 (25 U.S.C. 472a(e); Public Law 96–135; 93 Stat. 1058) is amended—

(1) by striking ''(1)'' after ''(e)''; and

(2) by striking paragraph (2).

SEC. 1303. GSA.

Section 203(e)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(e)(6)) is repealed.

TITLE XIV—TRADE

SEC. 1401. REPORTS ELIMINATED.

(a) COFFEE TRADE.—

(1) Section 5 of the International Coffee Agreement Act of 1980 (19 U.S.C. 1356n) is repealed.

(2) Section 4 of the International Coffee Agreement Act of 1980 (19 U.S.C. 1356m) is repealed.

(b) TRADE ACT OF 1974.—

(1) Subsection (c) of section 126 of the Trade Act of 1974 (19 U.S.C. 2136(c)) is repealed.

(2) Section 411 of the Trade Act of 1974 (19 U.S.C. 2441) is repealed.

(c) URUGUAY ROUND AGREEMENTS ACT.—Section 424 of the Uruguay Round Agreements Act (19 U.S.C. 3622) is repealed.

(d) RESTRICTIONS ON EXPENDITURES.—Subparagraph (C) of section 109(c)(3) of Public Law 100–202 (101 Stat. 1329–435) (40 U.S.C. 601 note) is repealed.

TITLE XV—DEPARTMENT OF TRANSPORTATION

SEC. 1501. REPORTS ELIMINATED.

(a) COAST GUARD REPORT ON ENVIRONMENTAL COMPLIANCE.—Section 693 of title 14, United States Code, is repealed.

(b) ANNUAL REPORT ON COAST GUARD USER FEES.—Section 664 of title 14, United States Code, is amended by striking subsection (c).

(c) REPORTS ABOUT GOVERNMENT PENSION PLANS.—Section 9503 of title 31, United States Code, is amended by striking subsection (a).

[(d) COAST GUARD REPORT ON MAJOR ACQUISITION PROJECTS.—Section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (106 Stat. 1551) is amended—

[(1) by striking ''quarterly'' and inserting ''biannual''; and

[(2) in the last proviso, by striking ''preceding quarter'' and inserting ''preceding 6-month period''.

[(e)] (d) BIENNIAL REPORT OF THE INTERAGENCY COORDINATING COMMITTEE ON OIL POLLUTION RESEARCH.—Section 7001 of the Oil Pollution Act of 1990 (33 U.S.C. 2761) is amended—

(1) by striking subsection (e); and

(2) by redesignating subsection (f) as subsection (e).

[(f)] *(e)* FEDERAL HIGHWAY ADMINISTRATION REPORT.—Section 307(e) of title 23, United States Code, is amended—

(1) by striking paragraph (11); and

(2) by redesignating paragraphs (12) and (13) as paragraphs (11) and (12), respectively.

[(g)] *(f)* ANNUAL REPORT ON HIGHWAY HAZARD ELIMINATION PROGRAM.—Section 152 of title 23, United States Code, is amended—

(1) by striking subsection (g); and

(2) by redesignating subsection (h) as subsection (g).

[(h)] *(g)* TRANSPORTATION AIR QUALITY REPORT.—Section 108(f) of the Clean Air Act (42 U.S.C. 7408(f)) is amended by striking paragraphs (3) and (4).

[(i)] *(h)* INDIAN RESERVATION ROADS STUDY.—Section 1042 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1993) is repealed.

[(j)] *(i)* STUDY OF IMPACT OF CLIMATIC CONDITIONS.—Section 1101–1102 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2027) is repealed.

[(k)] *(j)* FATAL AND INJURY ACCIDENT RATES ON PUBLIC ROADS IN THE UNITED STATES.—Section 207 of the Highway Improvement Act of 1982 (96 Stat. 2139, 23 United States Code 401 note) is repealed.

[(l) HIGHWAY REPORT.—Section 307(h) of title 23, United States Code is amended by striking ''and in January of every second year thereafter'' and inserting '', in January of every second year thereafter through 1997, and in March of every second year thereafter''.

[(m) AVIATION SECURITY REPORT.—Section 44938 of title 49, United States Code, is amended by striking ''annually'' and inserting ''biennially''.

[(n)] *(k)* BIENNIAL REPORTS ON NATURAL GAS AND HAZARDOUS LIQUID PIPELINE SAFETY.—

(1) IN GENERAL.—Section 60124 of title 49, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 601 of title 49, United States Code, is amended by striking the item relating to section 60124.

[(o)] *(l)* MOTOR VEHICLE SAFETY.—

(1) IN GENERAL.—Section 30169 of title 49, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 301 of title 49, United States Code, is amended by striking the item relating to section 30169.

[(p)] *(m)* BUMPER STANDARDS.—

(1) IN GENERAL.—Section 32510 of title 49, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 325 of title 49, United States Code, is amended by striking the item relating to section 32510.

[(q)] *(n)* HIGHWAY SAFETY.—Section 202 of the Highway Safety Act of 1966 (80 Stat. 736; 23 U.S.C. 401 note) is repealed.

[(r)] *(o)* MARITIME CONSTRUCTION COSTS.—Section 213 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1123) is amended by striking subsection (c).

[(s)] *(p)* FEDERAL TRANSIT ADMINISTRATION.—Section 5335 of title 49, United States Code, is amended by striking subsection (b).

[(t)] *(q)* PROJECT REVIEW.—Section 5328(b) of title 49, United States Code, is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

[(u)] *(r)* SUSPENDED LIGHT RAIL SYSTEM TECHNOLOGY.—Section 5320 of title 49, United States Code, is amended by striking subsection (k).

[(v) REPORT ON PUBLIC TRANSPORTATION.—Section 308(e)(1) of title 49, United States Code, is amended by striking ''in January of each even-numbered year'' and inserting ''in January of each even-numbered year through 1996, and in March of each odd-numbered year thereafter''.

[(w)] *(s)* NEEDS SURVEY; TRANSFERABILITY REPORT.—Section 5335 of title 49, United States Code, as amended by this section, is further amended by striking subsections (c) and (d).

SEC. 1502. REPORTS MODIFIED.

(a) COAST GUARD REPORT ON MAJOR ACQUISITION PROJECTS.—Section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (106 Stat. 1551) is amended—

(1) by striking ''quarterly'' and inserting ''biannual''; and

(2) in the last proviso, by striking ''preceding quarter'' and inserting ''preceding 6-month period''.

(b) HIGHWAY REPORT.—Section 307(h) of title 23, United States Code, is amended by striking ''January 1983, and in January of every second year thereafter'' and inserting ''March 1998, and in March of every second year thereafter''.

(c) AVIATION SECURITY REPORT.—Section 44938 of title 49, United States Code, is amended by striking ''annually'' and inserting ''biennially''.

(d) REPORT ON PUBLIC TRANSPORTATION.—Section 308(e)(1) of title 49, United States Code, is amended by striking ''in January of each even-numbered year'' and inserting ''in March 1998, and in March of each even-numbered year thereafter''.

(e) NATIONAL BALLAST INFORMATION CLEARINGHOUSE.—Section 1102(f)(2) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4712(f)(2)) is amended by striking ''biannual'' and inserting ''biennial''.

TITLE XVI—NOAA

SEC. 1601. REPORTS ELIMINATED.

(a) REPORT CONCERNING PRICES FOR NAUTICAL AND AERONAUTICAL PRODUCTS.—Section 1307(a)(2)(A) of title 44, United States Code, is amended by striking the last sentence.

(b) REPORT ON NATIONAL SHELLFISH RESEARCH PROGRAM.—Section 308 of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (33 U.S.C. 1251 note) is amended—

(1) by striking subsection (d); and

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(c) GEOSTATIONARY OPERATIONAL ENVIRONMENTAL SATELLITES CERTIFICATION AND REPORT REGARDING TECHNICAL PERFORMANCE SPECIFICATIONS.—Subsection (d) of section 105 of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (Public Law 102–567; 106 Stat. 4273) is amended—

(1) in paragraph (1), by striking ''(1) Except as provided in paragraph (2), there'' and inserting ''There''; and

(2) by striking paragraph (2).

(d) NEXT GENERATION WEATHER RADAR SYSTEM CERTIFICATION AND REPORT REGARDING TECHNICAL PERFORMANCE SPECIFICATIONS.—Section 102(b) of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (Public Law 102–567; 106 Stat. 4271) is amended—

(1) in paragraph (1), by striking ''(1) Except as provided in paragraph (2), there'' and inserting ''There''; and

(2) by striking paragraph (2).

(e) REPORT ON ENFORCEMENT OF VIOLATIONS CONCERNING THE USE OF UNENHANCED DATA FOR COMMERCIAL PURPOSES.—Section 508(d) of the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5658(d)) is amended by striking '', and shall report annually to the Congress on instances of such violations''.

(f) REPORT ON THE NATIONAL CLIMATE PROGRAM ACTIVITIES.—Section 7 of the National Climate Program Act (15 U.S.C. 2906) is repealed.

AMENDMENT NO. 2570

(Purpose: To add additional reports)

Ms. COLLINS. Senators LEVIN and MCCAIN have a substitute amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Maine [Ms. COLLINS], for Mr. LEVIN, for himself and Mr. MCCAIN, proposes an amendment numbered 2570.

Ms. COLLINS. I ask unanimous consent the amendment be considered as read and agreed to.

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

The amendment is as follows:

At the end of section 601 add the following:

(d) NIH.—

(1) ANNUAL REPORT ON DISEASE PREVENTION.—Section 402(f) of the Public Health Service Act (42 U.S.C. 282(f)) is amended—

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

(B) in paragraph (2), by striking ''; and'' and inserting a period; and

(C) by striking paragraph (3).

(2) REPORT OF NICHD ASSOCIATE DIRECTOR FOR PREVENTION.—Section 451 of the Public Health Service Act (42 U.S.C. 285g-3) is amended—

(A) in subsection (a), by striking ''(a) There'' and inserting ''There''; and

(B) by striking subsection (b).

(3) REPORT OF COUNCIL ON ALZHEIMER'S DISEASE.—The Alzheimer's Disease Research, Training, and Education Amendments of 1992 is amended by striking sections 911 and 912 (42 U.S.C. 11211 and 11212).

(4) INTERNATIONAL HEALTH RESEARCH.—The International Health Research Act of 1960 (Public Law 86-610) is amended by striking section 5(h).

The amendment (No. 2570) was agreed to.

Ms. COLLINS. Mr. President, I ask unanimous consent the bill be considered read a third time and passed, as amended, the motion to reconsider be laid upon the table, and any statements relating to the bill appear in the RECORD.

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

The bill was considered read the third time and passed, as follows:

S. 1364

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Reports Elimination Act of 1998''.

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

Sec. 1. Short title and table of contents.

TITLE I—DEPARTMENT OF AGRICULTURE

Sec. 101. Reports eliminated.

TITLE II—DEPARTMENT OF DEFENSE

Sec. 201. Reports eliminated.

TITLE III—EDUCATION

Sec. 301. Report eliminated.

TITLE IV—DEPARTMENT OF ENERGY

Sec. 401. Reports eliminated.
Sec. 402. Reports modified.

TITLE V—ENVIRONMENTAL PROTECTION AGENCY

Sec. 501. Reports eliminated.

TITLE VI—DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sec. 601. Reports eliminated.
Sec. 602. Reports modified.

TITLE VII—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec. 701. Reports eliminated.

TITLE VIII—INDIAN AFFAIRS

Sec. 801. Reports eliminated.

TITLE IX—DEPARTMENT OF THE INTERIOR

Sec. 901. Reports eliminated.
Sec. 902. Reports modified.

TITLE X—DEPARTMENT OF JUSTICE

Sec. 1001. Reports eliminated.

TITLE XI—NASA

Sec. 1101. Reports eliminated.

TITLE XII—NUCLEAR REGULATORY COMMISSION

Sec. 1201. Reports eliminated.
Sec. 1202. Reports modified.

TITLE XIII—OMB, OPM, AND GSA

Sec. 1301. OMB.
Sec. 1302. OPM.
Sec. 1303. GSA.

TITLE XIV—TRADE

Sec. 1401. Reports eliminated.

TITLE XV—DEPARTMENT OF TRANSPORTATION

Sec. 1501. Reports eliminated.
Sec. 1502. Reports modified.

TITLE XVI—NOAA

Sec. 1601. Reports eliminated.

TITLE I—DEPARTMENT OF AGRICULTURE

SEC. 101. REPORTS ELIMINATED.

(a) SECONDARY MARKET OPERATIONS.—Section 338(b) of the Consolidated Farm and Rural Development Act (as redesignated by section 749(a)(2) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1988(b))) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraph (5) as paragraph (4).

(b) PILOT PROGRAMS TO TEST MEASUREMENT OF NUTRITIONAL STATUS OF LOW-INCOME HOUSEHOLDS.—Section 17 of the Food Stamp Act of 1977 (7 U.S.C. 2026) is amended by striking subsection (c).

(c) ESTIMATE OF SECOND PRECEDING MONTH'S EXPENDITURES UNDER FOOD STAMP PROGRAM.—Section 18(a)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2027(a)(1)) is amended by striking the third and fourth sentences.

(d) ADVISORY COMMITTEES.—Section 1804 of the Food and Agriculture Act of 1977 (7 U.S.C. 2284) is repealed.

(e) FARMER-TO-CONSUMER DIRECT MARKETING ACT OF 1976.—

(1) IN GENERAL.—Section 6 of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3005) is repealed.

(2) CONFORMING AMENDMENT.—Section 7(a) of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3006(a)) is amended by striking ''the provisions of sections 4 and 6'' and inserting ''section 4''.

(f) AGRICULTURAL RESEARCH AT LAND-GRANT COLLEGES.—Section 1445(g) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3222(g)) is amended by striking paragraph (4).

(g) FOREIGN OWNERSHIP OF AGRICULTURAL LAND.—Section 5 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504) is repealed.

(h) SUGAR PRICE INCREASES.—Section 6 of Public Law 96–236 (7 U.S.C. 3606) is repealed.

(i) HOUSING PRESERVATION GRANT PROGRAM.—Section 533 of the Housing Act of 1949 (42 U.S.C. 1490m) is amended by striking subsection (j).

(j) NATIONAL ADVISORY COUNCIL ON MATERNAL, INFANT, AND FETAL NUTRITION.—Section 17(k) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(k)) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

TITLE II—DEPARTMENT OF DEFENSE

SEC. 201. REPORTS ELIMINATED.

(a) NOTIFICATIONS OF CONVERSION OF HEATING FACILITIES AT INSTALLATIONS IN EUROPE.—Section 2690(b) of title 10, United States Code, is amended by striking out ''unless the Secretary—'' and all that follows through the end of the subsection and inserting in lieu thereof ''unless the Secretary determines that the conversion—

''(1) is required by the government of the country in which the facility is located; or

''(2) is cost effective over the life cycle of the facility.''.

(b) NOTIFICATIONS OF DISAGREEMENTS REGARDING AVAILABILITY OF ALTERNATIVE HOUSING.—Section 2823 of title 10, United States Code, is amended—

(1) by striking out subsection (b); and

(2) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

TITLE III—EDUCATION

SEC. 301. REPORT ELIMINATED.

Section 1411 of the Higher Education Amendments of 1992 is repealed.

TITLE IV—DEPARTMENT OF ENERGY

SEC. 401. REPORTS ELIMINATED.

(a) NUCLEAR TEST BAN READINESS REPORT.—Section 1436 of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100–456; 42 U.S.C. 2121 note), is amended by striking subsection (e).

(b) REPORT ON RESUMPTION OF PLUTONIUM OPERATIONS AT ROCKY FLATS.—Section 3133 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (105 Stat. 1574) is amended—

(1) by striking subsections (c) and (d); and

(2) by redesignating subsection (e) as subsection (c).

(c) REPORT ON POTENTIAL FOR HYDROPOWER DEVELOPMENT, UTILIZING TIDAL CURRENTS.—The first section of the Act of August 30, 1935 (49 Stat. 1028, chapter 831), as amended by section 2409 of the Energy Policy Act of 1992 (106 Stat. 3101), is amended by striking ''The Secretary shall undertake a demonstration project to evaluate the potential for hydropower development, utilizing tidal currents;''.

(d) ELECTRIC UTILITY PARTICIPATION STUDY.—Section 625 of the Energy Policy Act of 1992 (42 U.S.C. 13295) is repealed.

(e) REPORT ON STEEL AND ALUMINUM RESEARCH AND DEVELOPMENT ACTIVITIES.—The Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988 is amended—

(1) by striking section 8 (15 U.S.C. 5107); and

(2) by redesignating sections 9, 10, and 11 (15 U.S.C. 5108, 5109, and 5110) as sections 8, 9, and 10, respectively.

(f) REPORT ON METAL CASTING RESEARCH AND DEVELOPMENT ACTIVITIES.—Section 10 of the Department of Energy Metal Casting Competitiveness Research Act of 1990 (15 U.S.C. 5309) is repealed.

(g) BIENNIAL UPDATE TO THE NATIONAL ADVANCED MATERIALS INITIATIVE 5-YEAR PROGRAM PLAN.—Section 2201(b) of the Energy Policy Act of 1992 (42 U.S.C. 13501(b)) is amended by striking the second sentence.

(h) REPORT ON VIBRATION REDUCTION TECHNOLOGIES.—Section 173(c) of the Energy Policy Act of 1992 (Public Law 102–486; 42 U.S.C. 13451 note) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(i) REPORT ON PROCESS-ORIENTED INDUSTRIAL ENERGY EFFICIENCY.—Section 132 of the Energy Policy Act of 1992 (42 U.S.C. 6349) is amended—

(1) by striking subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

(j) REPORT ON INDUSTRIAL INSULATION AND AUDIT GUIDELINES.—Section 133 of the Energy Policy Act of 1992 (42 U.S.C. 6350) is amended by striking subsection (c).

(k) REPORT EVALUATION OF OPPORTUNITIES FOR ENERGY EFFICIENT POLLUTION PREVENTION.—Section 2108 of the Energy Policy Act of 1992 (42 U.S.C. 13457) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(l) REPORT ON CONTINENTAL SCIENTIFIC DRILLING PROGRAM.—Section 4 of the Continental Scientific Drilling and Exploration Act (Public Law 100–441; 43 U.S.C. 31 note) is amended—

(1) by adding ''and'' at the end of paragraph (4);

(2) by striking ''; and'' at the end of paragraph (5) and inserting a period; and

(3) by striking paragraph (6).

(m) REPORT ON COAL RESEARCH, DEVELOPMENT, DEMONSTRATION, AND COMMERCIALIZATION PROJECTS.—Section 1301 of the Energy Policy Act of 1992 (42 U.S.C. 13331) is amended—

(1) by striking subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

(n) REPORT ON THE USE OF ENERGY FUTURES FOR FUEL PURCHASES.—Section 3014 of the Energy Policy Act of 1992 (42 U.S.C. 13552) is amended—

(1) by striking subsection (b); and

(2) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(o) REPORT ON IMPLEMENTATION OF THE ALASKA FEDERAL CIVILIAN ENERGY EFFICIENCY SWAP ACT OF 1980.—Section 6 of the

Alaska Federal Civilian Energy Efficiency Swap Act of 1980 (40 U.S.C. 795d) is repealed.

(p) REPORT ON MAJOR NATIONAL SECURITY PROGRAMS.—Section 3143 of the National Defense Authorization Act, fiscal years 1990 and 1991 (42 U.S.C. 7271a) is repealed.

SEC. 402. REPORTS MODIFIED.

(a) REPORT ON PLAN FOR ELECTRIC MOTOR VEHICLES.—Section 2025(b) of the Energy Policy Act of 1992 (42 U.S.C. 13435(b)) is amended—

(1) in the second sentence of paragraph (1), by striking ''annually'' and inserting ''biennially''; and

(2) in the second sentence of paragraph (4), by striking ''Annual'' and inserting ''Biennial''.

(b) COKE OVEN PRODUCTION TECHNOLOGY STUDY.—Section 112(n)(2)(C) of the Clean Air Act (42 U.S.C. 7412(n)(2)(C)) is amended by striking ''The Secretary shall prepare annual reports to Congress on the status of the research program and at the completion of the study'' and inserting ''On completion of the study, the Secretary shall submit to Congress a report on the results of the study and''.

TITLE V—ENVIRONMENTAL PROTECTION AGENCY

SEC. 501. REPORTS ELIMINATED.

(a) REPORT ON CONDITIONAL REGISTRATION OF PESTICIDES.—

(1) IN GENERAL.—The Federal Insecticide, Fungicide, and Rodenticide Act is amended—

(A) by striking section 29 (7 U.S.C. 136w–4); and

(B) by redesignating sections 30 and 31 (7 U.S.C. 136x and 136y) as sections 29 and 30, respectively.

(2) CONFORMING AMENDMENTS.—The table of contents in section 1(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. prec. 121) is amended—

(A) by striking the item relating to section 29; and

(B) by redesignating the items relating to sections 30 and 31 as the items relating to sections 29 and 30, respectively.

(b) REPORT ON IMPLEMENTATION OF TOXIC SUBSTANCES CONTROL ACT.—

(1) IN GENERAL.—The Toxic Substances Control Act is amended—

(A) by striking section 30 (15 U.S.C. 2629); and

(B) by redesignating section 31 (Public Law 94–469; 15 U.S.C. 2601 note) as section 30.

(2) CONFORMING AMENDMENTS.—

(A) The table of contents in section 1 of the Toxic Substances Control Act (15 U.S.C. prec. 2601) is amended—

(i) by striking the item relating to section 30; and

(ii) by redesignating the item relating to section 31 as the item relating to section 30.

(B) The second sentence of section 9(d) of the Toxic Substances Control Act (15 U.S.C. 2608(d)) is amended by striking '', in the report required by section 30,''.

(c) REPORT ON EFFECT OF POLLUTION ON ESTUARIES AND ESTUARINE ZONES.—

(1) IN GENERAL.—Section 104(n) of the Federal Water Pollution Control Act (33 U.S.C. 1254(n)) is amended—

(A) by striking paragraph (3); and

(B) by redesignating paragraph (4) as paragraph (3).

(2) CONFORMING AMENDMENT.—Section 320(k) of the Federal Water Pollution Control Act (33 U.S.C. 1330(k)) is amended by striking ''section 104(n)(4)'' and inserting ''section 104(n)(3)''.

(d) CLEAN LAKES REPORT.—Section 314(a) of the Federal Water Pollution Control Act (33 U.S.C. 1324(a)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

(e) REPORT ON NONPOINT SOURCE MANAGEMENT PROGRAMS.—Section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1329) is amended—

(1) in subsection (i), by striking paragraph (4);

(2) by striking subsection (m); and

(3) by redesignating subsection (n) as subsection (m).

(f) REPORT ON MEASURES TAKEN TO MEET OBJECTIVES OF FEDERAL WATER POLLUTION CONTROL ACT.—

(1) IN GENERAL.—Section 516 of the Federal Water Pollution Control Act (33 U.S.C. 1375) is amended—

(A) by striking subsections (a), (b)(2), (c), (d), and (e);

(B) by striking ''(b)(1)''; and

(C) by redesignating subparagraphs (A) through (D) as paragraphs (1) through (4), respectively.

(2) CONFORMING AMENDMENTS.—

(A) Section 104 of the Federal Water Pollution Control Act (33 U.S.C. 1254) is amended—

(i) in subsection (a)(5), by striking ''in the report required under subsection (a) of section 516'' and inserting ''not later than 90 days after the date of convening of each session of Congress''; and

(ii) in the first sentence of subsection (o)(2), by striking ''in the report required under subsection (a) of section 516'' and inserting ''not later than 90 days after the date of convening of each session of Congress''.

(B) The fourth sentence of section 116(b) of the Federal Water Pollution Control Act (33 U.S.C. 1266(b)) is amended by striking ''section 616(b) of this Act'' and inserting ''section 516''.

(C) The last sentence of section 205(a) of the Federal Water Pollution Control Act (33 U.S.C. 1285(a)) is amended by striking ''section 516(b)'' and inserting ''section 516''.

(D) The second sentence of section 210 of the Federal Water Pollution Control Act (33 U.S.C. 1290) is amended by striking ''shall be included in the report required under section 516(a) of this Act'' and inserting ''shall be reported to Congress not later than 90 days after the date of convening of each session of Congress''.

(g) REPORT ON SAFE DRINKING WATER ACT COSTS OF COMPLIANCE.—Section 1442(a)(3) of the Public Health Service Act (42 U.S.C. 300j–1(a)(3)) is amended—

(1) in subparagraph (A), by striking ''(A)''; and

(2) by striking subparagraph (B).

(h) ANALYSIS OF ALTERNATIVE MOTOR VEHICLE FUELS USE ON ENVIRONMENT.—Section 400EE of the Energy Policy and Conservation Act (42 U.S.C. 6374d) is repealed.

(i) COMPREHENSIVE REPORT ON ACTIVITIES OF OFFICE OF SOLID WASTE.—

(1) IN GENERAL.—The Solid Waste Disposal Act is amended—

(A) by striking section 2006 (42 U.S.C. 6915); and

(B) by redesignating section 2008 (42 U.S.C. 6917) as section 2006 and moving the section to appear after section 2005.

(2) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended—

(A) by striking the item relating to section 2006; and

(B) by redesignating the item relating to section 2008 as the item relating to section 2006 and moving the item to appear after the item relating to section 2005.

(j) STUDY OF ENVIRONMENTAL PROBLEMS ASSOCIATED WITH IMPROPER DISPOSAL OR REUSE OF OIL.—Section 9 of the Used Oil Recycling Act of 1980 (Public Law 96–463; 94 Stat. 2058) is repealed.

(k) REPORT ON STATE AND LOCAL TRAINING NEEDS AND OBSTACLES TO EMPLOYMENT IN SOLID WASTE MANAGEMENT AND RESOURCE RECOVERY.—Section 7007 of the Solid Waste Disposal Act (42 U.S.C. 6977) is amended by striking subsection (c).

(l) INTERIM REPORT OF NATIONAL ADVISORY COMMISSION ON RESOURCE CONSERVATION AND RECOVERY.—Section 33(a) of the Solid Waste Disposal Act Amendments of 1980 (Public Law 96–482, 94 Stat. 2356; 42 U.S.C. 6981 note) is amended—

(1) by striking paragraph (7); and

(2) by redesignating paragraph (8) as paragraph (7).

(m) FINAL REPORT ON MEDICAL WASTE MANAGEMENT.—

(1) IN GENERAL.—The Solid Waste Disposal Act is amended—

(A) by striking section 11008 (42 U.S.C. 6992g); and

(B) by redesignating sections 11009 through 11012 (42 U.S.C. 6992h through 6992k) as sections 11008 through 11011, respectively.

(2) CONFORMING AMENDMENTS.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended—

(A) by striking the item relating to section 11008; and

(B) by redesignating the items relating to sections 11009 through 11012 as the items relating to sections 11008 through 11011, respectively.

(n) REPORT ON STATUS OF DEMONSTRATION PROGRAM TO TEST METHODS AND TECHNOLOGIES OF REDUCING OR ELIMINATING RADON GAS.—Section 118(k)(2) of the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99–499; 42 U.S.C. 7401 note) is amended—

(1) by striking subparagraph (B); and

(2) by redesignating subparagraph (C) as subparagraph (B).

(o) REPORT ON CANADIAN ACID RAIN CONTROL PROGRAM.—Section 408 of the Act entitled ''An Act to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes'', approved November 15, 1990 (commonly known as the ''Clean Air Act Amendments of 1990'') (Public Law 101–549; 42 U.S.C. 7651 note), is repealed.

(p) BIENNIAL POLLUTION PREVENTION REPORT.—The Pollution Prevention Act of 1990 is amended—

(1) by striking section 6608 (42 U.S.C. 13107); and

(2) by redesignating sections 6609 and 6610 (42 U.S.C. 13108 and 13109) as sections 6608 and 6609, respectively.

TITLE VI—DEPARTMENT OF HEALTH AND HUMAN SERVICES

SEC. 601. REPORTS ELIMINATED.

(a) REPEALS.—

(1) PUBLIC HEALTH SERVICE ACT.—The following provisions of the Public Health Service Act (42 U.S.C. 201 et seq.) are repealed:

(A) Section 376 (42 U.S.C. 274d) relating to the biennial report on the scientific and clinical status of organ transplantation.

(B) Section 403 (42 U.S.C. 283) relating to the biennial report of the Director of the National Institutes of Health.

(C) Paragraph (4) of section 408(a) (42 U.S.C. 284c(a)(4)) relating to the annual report of the National Institutes of Health on administrative expenses.

(D) Subsection (c) of section 429 (42 U.S.C. 285c–3(c)) relating to the annual report of the Diabetes Mellitus Interagency Coordinating Committee, the Digestive Diseases Interagency Coordinating Committee, and National Kidney and Urologic Diseases Interagency Coordinating Committee.

(E) Subsection (j) of section 430 (42 U.S.C. 285c–4(j)) relating to the annual reports of the National Diabetes Advisory Board, the

National Digestive Diseases Advisory Board, and the National Kidney and Urologic Diseases Advisory Board.

(F) Subsection (c) of section 439 (42 U.S.C. 285d–4(c)) relating to the annual report by the Arthritis and Musculoskeletal and Skin Diseases Interagency Coordinating Committee.

(G) Subsection (j) of section 442 (42 U.S.C. 285d–7(j)) relating to the annual report by the Arthritis and Musculoskeletal and Skin Diseases Advisory Board.

(H) Subsection (b) of section 494A (42 U.S.C. 289c–1(b)) relating to the report on health services research.

(I) Paragraph (3) of section 501(e) (42 U.S.C. 290aa(e)(2)) relating to the report of the Substance Abuse and Mental Health Services Administration.

(J) Subsection (b) of section 503 (42 U.S.C. 290aa–2(b)) relating to the triennial report on drug abuse.

(K) Section 1009 (42 U.S.C. 300a–6a) relating to the family planning and population research report.

(L) Section 1122 (42 U.S.C. 300c–12) relating to the sudden infant death syndrome research report.

(M) Section 2104 (42 U.S.C. 300aa–4) relating to the National Vaccine Program report.

(2) OTHER ACTS.—The following provisions are repealed:

(A) Section 540 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360qq) relating to the annual report on the administration of the Radiation Control for Health and Safety program.

(B) Section 304 of the Home Health Care and Alzheimer's Disease Amendments of 1990 (42 U.S.C. 242q–3) relating to the report of the Task Force on Aging Research.

(C) Section 1901 of the NIH Revitalization Act of 1993 (42 U.S.C. 285f–1 note) relating to the report of the research activities concerning chronic fatigue syndrome.

(D) Paragraph (7) of section 1881(f) of the Social Security Act (42 U.S.C. 1395rr(c)(7)) relating to the report on end-stage renal disease.

(E) Section 402 of the Indian Health Care Improvement Act (42 U.S.C. 1395qq note) relating to the tribal organization demonstration program for direct billing of medicare, medicaid, and other third party payors.

(F) Section 1200 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (42 U.S.C. 3509) relating to the report of the Public Health Service.

(G) Subsection (d) of section 719 of the Indian Health Care Amendments of 1988 (Public Law 100–713; 102 Stat. 4838) relating to the impact of the final rule relating to eligibility for health care services of the Indian Health Service.

(b) SOCIAL SECURITY ACT AND RELATED PROVISIONS.—

(1) Section 8403(b) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647; 102 Stat. 3799) is repealed.

(2) Section 4207(c)(2)(B) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–120) (42 U.S.C. 1395x note) is repealed.

(3) Section 9601(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272; 100 Stat. 222) (42 U.S.C. 1395b note) is repealed.

(4) Section 6003(i) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239; 103 Stat. 2158) (42 U.S.C. 1395ww note) is repealed.

(5) Section 6102(d)(4) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239; 103 Stat. 2185) (42 U.S.C. 1395w–4 note) is repealed.

(6) Section 1882(l)(6) of the Social Security Act (42 U.S.C. 1395ss(l)(6)) is repealed.

(7) Section 4056(d) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203; 101 Stat. 1330–99) (42 U.S.C. 1395l note) (as redesignated by section 411(f)(14) of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100–360; 102 Stat. 781)) is repealed.

(c) NIH.—

(1) ANNUAL REPORT ON DISEASE PREVENTION.—Section 402(f) of the Public Health Service Act (42 U.S.C. 282(f)) is amended—

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

(B) in paragraph (2), by striking ''; and'' and inserting a period; and

(C) by striking paragraph (3).

(2) REPORT OF NICHD ASSOCIATE DIRECTOR FOR PREVENTION.—Section 451 of the Public Health Service Act (42 U.S.C. 285g–3) is amended—

(A) in subsection (a), by striking ''(a) There'' and inserting ''There''; and

(B) by striking subsection (b).

(3) REPORT OF COUNCIL ON ALZHEIMER'S DISEASE.—The Alzheimer's Disease Research, Training, and Education Amendments of 1992 is amended by striking sections 911 and 912 (42 U.S.C. 11211 and 11212).

(4) INTERNATIONAL HEALTH RESEARCH.—The International Health Research Act of 1960 (Public Law 86–610) is amended by striking section 5(h).

SEC. 602. REPORTS MODIFIED.

(a) INDIAN HEALTH.—Subsection (e) of section 513 of the Indian Health Care Improvement Act (25 U.S.C. 1660c(e)) is amended by striking ''two years'' and inserting ''5 years''.

(b) SOCIAL SECURITY ACT.—

(1) Section 4801(e)(17)(B) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–218) (42 U.S.C. 1396r note) is amended by striking ''January 1, 1992'' and inserting ''January 1, 1999''.

(2) Section 4360(f) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388–140) (42 U.S.C. 1395b–4) is amended by striking ''Not later than 180 days after the date of the enactment of this section'' and inserting ''Beginning with 1992''.

TITLE VII—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 701. REPORTS ELIMINATED.

(a) FEDERAL ACTIVITIES UNDER SOLAR HEATING AND COOLING DEMONSTRATION ACT OF 1974.—Section 12 of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5510) is amended by striking subsection (d).

(b) FUNDING RELATING TO EVALUATING AND MONITORING PROGRAMS.—Section 7(r) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(r)) is amended—

(1) by striking paragraph (5); and

(2) by redesignating paragraph (6) as paragraph (5).

(c) STATE AND LOCAL STRATEGIES FOR REMOVAL OF BARRIERS TO AFFORDABLE HOUSING.—Section 1207 of the Housing and Community Development Act of 1992 (42 U.S.C. 12705a note) is repealed.

(d) COMPREHENSIVE REVIEW AND EVALUATION OF HOMELESS ASSISTANCE PROGRAMS.—Section 1409 of the Housing and Community Development Act of 1992 (42 U.S.C. 11361 note) is amended—

(1) by striking ''(a) IN GENERAL.—''; and

(2) by striking subsection (b).

(e) NEIGHBORHOOD REDEVELOPMENT PROGRAM.—Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

(f) HOMEOWNERSHIP DEMONSTRATION PROGRAM.—Section 132 of the Housing and Community Development Act of 1992 (Public Law 102–550; 106 Stat. 3712) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

(g) RURAL RENTAL REHABILITATION DEMONSTRATION.—Section 311 of the Housing and Community Development Act of 1987 (42 U.S.C. 1490m note) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(h) SUMMARY OF ACTIVITIES UNDER NEW TOWN DEMONSTRATION.—Section 1108 of the Housing and Community Development Act of 1992 (42 U.S.C. 5318 note) is amended by striking ''the following'' and all that follows before the period at the end of the section and inserting the following: ''a copy of the new town plan of the governing board, upon the approval of that plan under section 1102(d)''.

TITLE VIII—INDIAN AFFAIRS

SEC. 801. REPORTS ELIMINATED.

(a) INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION REPORT.—Section 412 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3211) is repealed.

(b) REPORTS UNDER THE INDIAN FINANCING ACT OF 1974.—

(1) ADJUSTMENT OR CANCELLATION OF OBLIGATIONS RELATED TO THE INDIAN REVOLVING LOAN FUND.—Section 105 of the Indian Financing Act of 1974 (25 U.S.C. 1465) is repealed.

(2) INDIAN LOAN GUARANTY AND INSURANCE FUND DEFICIENCIES.—Section 217 of the Indian Financing Act of 1974 (25 U.S.C. 1497) is amended by striking subsection (f).

(c) EDUCATION AMENDMENTS OF 1978.—

(1) REPORT ON DEMONSTRATION PROJECTS.—Section 1121(h) of the Education Amendments of 1978 (25 U.S.C. 2001(h)) is amended—

(A) by striking paragraph (4); and

(B) by redesignating paragraph (5) as paragraph (4).

(2) NATIONAL CRITERIA FOR DORMITORY SITUATIONS.—Section 1122(d) of the Education Amendments of 1978 (25 U.S.C. 2002(d)) is amended by striking paragraph (3).

(3) POSITIONS CONTRACTED UNDER GRANTS OF POST-DIFFERENTIAL AUTHORITY IN THE BIA SCHOOLS.—Section 1132(h)(3)(B) of the Education Amendments of 1978 (25 U.S.C. 2012(h)(3)(B)) is amended by striking clause (iii).

(4) REPORT.—Section 1137 of the Education Amendments of 1978 (25 U.S.C. 2017) is amended—

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

"SEC. 1137. BIENNIAL REPORT.";

and

(B) in the first sentence of subsection (a)—

(i) by striking ''annual report'' and inserting ''biennial report''; and

(ii) by striking ''during the year'' and inserting ''during the 2-year period covered by the report''.

(5) REGULATIONS.—Section 1139 of the Education Amendments of 1978 (25 U.S.C. 2019) is repealed.

(6) TECHNICAL CORRECTION.—Section 605(b)(2) of the School-to-Work Opportunity Act of 1994 (20 U.S.C. 6235(b)(2)) is amended by striking ''(as defined in section 1139(3) of the Education Amendments of 1978 (25 U.S.C. 2019(3))'' and inserting ''(as defined in section 1146(3) of the Education Amendments of 1978 (25 U.S.C. 2026(3))''.

(d) TRIBALLY CONTROLLED SCHOOLS ACT OF 1988.—Section 5026 of the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2505) is amended by striking subsection (g).

(e) PUBLIC LAW 96–135.—Section 2 of Public Law 96–135 (25 U.S.C. 472a) is amended—

(1) by striking subsection (d);

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively; and

(3) in subsection (d), as so redesignated—

(A) by striking paragraph (2); and

(B) by striking ''(1) The Office'' and inserting ''The Office''.

(f) NATIVE AMERICANS EDUCATIONAL ASSISTANCE ACT.—Section 4 of the Native Americans Educational Assistance Act (25 U.S.C. 2001 note) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(g) INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.—Section 106 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j–1) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsections (d) through (o) as subsections (c) through (m), respectively.

TITLE IX—DEPARTMENT OF THE INTERIOR

SEC. 901. REPORTS ELIMINATED.

(a) PACIFIC YEW ACT.—The Pacific Yew Act (16 U.S.C. 4801 et seq.) is repealed.

(b) SIZE AND CONDITION OF THE TULE ELK HERD IN CALIFORNIA.—

(1) REPEAL.—Section 3 of Public Law 94–389 (16 U.S.C. 673f) is repealed.

(2) REDESIGNATION.—Section 4 of Public Law 94–389 (16 U.S.C. 673g) is redesignated as section 3.

(c) REVIEWS AND EXTENSIONS OF WITHDRAWALS OF LANDS.—Section 204(f) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714(f)) is amended by striking the second sentence.

(d) STATUS OF THE WILD FREE-ROAMING HORSE AND BURRO PROGRAM.—Section 11 of Public Law 92–195 (16 U.S.C. 1340) is amended by striking the first undesignated paragraph.

(e) STATUS OF THE WILDERNESS SYSTEM.—Section 7 of the Wilderness Act (16 U.S.C. 1136) is repealed.

(f) WATER QUALITY OF THE SACRAMENTO-SAN JOAQUIN DELTA AND SAN FRANCISCO BAY ESTUARINE SYSTEMS.—Section 4 of Public Law 96–375 (94 Stat. 1506) is amended by striking the second sentence.

(g) COLORADO RIVER FLOODWAY MAPS.—Section 5(b) of the Colorado River Floodway Protection Act (43 U.S.C. 1600c(b)) is amended—

(1) by striking ''(b)(1)'' and inserting ''(b)'';

(2) by striking paragraphs (2) and (3); and

(3) by redesignating clauses (i) and (ii) as paragraphs (1) and (2), respectively.

(h) CERTIFICATION OF ADEQUATE SOIL SURVEY OF LAND CLASSIFICATION.—

(1) The first section of title I of the Interior Department Appropriation Act, 1953, is amended in the matter under the heading ''CONSTRUCTION AND REHABILITATION'' under the heading ''BUREAU OF RECLAMATION'' (66 Stat. 451) by striking ''*: Provided further,* That no part of this or any other appropriation'' and all that follows through ''means of irrigation''.

(2) The first section of title I of the Interior Department Appropriation Act, 1954'' (43 U.S.C. 390a; 67 Stat. 266) is amended—

(A) in the matter under the heading ''CONSTRUCTION AND REHABILITATION'' under the heading ''BUREAU OF RECLAMATION'', by striking ''*: Provided further,* That no part of this or any other appropriation'' and all that follows through ''demonstrated in practice''; and

(B) by striking ''Such surveys shall include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows.'' (as added by section 10 of the Garrison Diversion Unit Reformulation Act of 1986 (100 Stat. 426)).

(i) CLAIMS SUBMITTED FROM THE TETON DAM FAILURE.—Section 8 of Public Law 94–400 (90 Stat. 1213) is repealed.

(j) STUDY OF THE FEASIBILITY AND SUITABILITY OF ESTABLISHING NIOBRARA-BUFFALO PRAIRIE NATIONAL PARK.—

(1) REPEAL.—Section 8 of the Niobrara Scenic River Designation Act of 1991 (Public Law 102–50; 16 U.S.C. 1a–5 note) is repealed.

(2) REDESIGNATION.—Section 9 of the Act (Public Law 102–50; 105 Stat. 258) is redesignated as section 8.

(k) STUDY OF ROUTE 66.—The Route 66 Study Act of 1990 (Public Law 101–400; 104 Stat. 861) is repealed.

(l) REPORT ON ANTHRACITE MINE WATER CONTROL AND MINE SEALING AND FILLING PROGRAM.—The Act entitled ''An Act to provide for the conservation of anthracite coal resources through measures of flood control and anthracite mine drainage, and for other purposes'', approved July 15, 1955, is amended—

(1) by striking section 5 (30 U.S.C. 575); and

(2) by redesignating section 6 (30 U.S.C. 576) as section 5.

(m) AUDIT OF FEDERAL ROYALTY MANAGEMENT SYSTEM.—

(1) IN GENERAL.—Section 302 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1752) is amended—

(A) in subsection (a), by striking ''(a)''; and

(B) by striking subsection (b).

(2) CONFORMING AMENDMENT.—Section 304(c) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1753(c)) is amended by striking ''Except as expressly provided in subsection 302(b), nothing'' and inserting ''Nothing''.

(n) REPORT ON BIDDING OPTIONS FOR OIL AND GAS LEASES ON OUTER CONTINENTAL SHELF LAND.—Section 8(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(a)) is amended by striking paragraph (9).

(o) REPORTS ON OUTER CONTINENTAL SHELF LEASING AND PRODUCTION PROGRAM AND PROMOTION OF COMPETITION IN LEASING.—

(1) IN GENERAL.—Section 15 of the Outer Continental Shelf Lands Act (43 U.S.C. 1343) is repealed.

(2) CONFORMING AMENDMENT.—Section 22 of the Outer Continental Shelf Lands Act (43 U.S.C. 1348) is amended by striking subsection (g).

(p) AUDIT OF FINANCIAL REPORT OF GOVERNOR OF GUAM.—The sixth undesignated paragraph of section 6 of the Organic Act of Guam (48 U.S.C. 1422) is amended by striking the third and fifth sentences.

(q) AUDIT OF FINANCIAL REPORT OF GOVERNOR OF THE VIRGIN ISLANDS.—The fourth undesignated paragraph of section 11 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1591) is amended by striking the third and fifth sentences.

(r) AUDIT OF FINANCIAL REPORT OF GOVERNOR OF AMERICAN SAMOA.—Section 501(a) of Public Law 96–205 (48 U.S.C. 1668(a)) is amended by striking the third and fifth sentences.

(s) AUDIT OF FINANCIAL REPORT OF CHIEF EXECUTIVES OF CERTAIN TERRITORIES.—Section 5 of Public Law 92–257 (48 U.S.C. 1692) is amended by striking the third and fifth sentences.

(t) REPORT ON ACTIVITIES UNDER HELIUM ACT.—Section 16 of the Helium Act (50 U.S.C. 167n) is repealed.

(u) REPORT ON CONTRACT AWARDS MADE TO FACILITATE NATIONAL DEFENSE.—

(1) IN GENERAL.—Public Law 85–804 is amended—

(A) by striking section 4 (50 U.S.C. 1434); and

(B) by redesignating section 5 (50 U.S.C. 1435) as section 4.

(2) CONFORMING AMENDMENT.—Section 501(a)(6) of the National Emergencies Act (50 U.S.C. 1651(a)(6)) is amended by striking ''1431–1435'' and inserting ''1431 et seq.''.

SEC. 902. REPORTS MODIFIED.

(a) RECOMMENDATIONS ON PROSPECTIVE TIMBER SALES.—The first sentence of section 318(h) of Public Law 101–121 (103 Stat. 750) is amended by striking ''a monthly basis'' and inserting ''an annual basis''.

(b) REPORT ON NATIONWIDE GEOLOGIC MAPPING PROGRAM.—Section 8 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31g) is amended—

(1) in the section heading, by striking ''annual'' and inserting ''biennial''; and

(2) in the first sentence—

(A) by striking ''each fiscal year, submit an annual report'' and inserting ''each second fiscal year, submit a biennial report''; and

(B) by striking ''preceding fiscal year'' and inserting ''2 preceding fiscal years''.

TITLE X—DEPARTMENT OF JUSTICE

SEC. 1001. REPORTS ELIMINATED.

(a) EMERGENCY LAW ENFORCEMENT ASSISTANCE REPORT.—Section 609U of the Justice Assistance Act of 1984 (42 U.S.C. 10509) is repealed.

(b) IMMIGRATION AND NATIONALITY ACT.—The Immigration and Nationality Act is amended—

(1) in section 103 (8 U.S.C. 1103(d)), by striking subsection (d);

(2) in section 214(c) (8 U.S.C. 1184(c)), by striking paragraph (8);

(3) in section 286 (8 U.S.C. 1356)—

(A) by striking subsection (l) and inserting the following:

''(l) [Reserved].'';

(B) in subsection (q)—

(i) by striking paragraph (4); and

(ii) by redesignating paragraph (5) as paragraph (4); and

(C) in subsection (r)—

(i) by striking paragraph (5); and

(ii) by redesignating paragraph (6) as paragraph (5); and

(4) in section 344(f) (8 U.S.C. 1455(f))—

(A) by striking ''(f)(1) The Attorney General'' and inserting ''(f) The Attorney General''; and

(B) by striking paragraph (2).

(c) IMMIGRATION AND NATURALIZATION DOCUMENT SECURITY REPORT.—Section 5 of the Immigration Nursing Relief Act of 1989 (8 U.S.C. 1324a note) is amended by striking subsection (d) and inserting the following:

''(d) [Reserved].''.

(d) DIVERSION CONTROL FEE ACCOUNT REPORT.—Section 111(b) of the Departments of Commerce, Justice, and State, and the Judiciary, and Related Agencies Appropriations Act, 1993 (21 U.S.C. 886a(b)) is amended by striking paragraph (5).

(e) ASSET FORFEITURE REPORT.—Section 524(c) of title 28, United States Code, is amended—

(1) by striking paragraph (6); and

(2) by redesignating paragraphs (7) through (12) as paragraphs (6) through (11), respectively.

(f) CIVIL FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT REPORT.—Section 918 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833) is repealed.

(g) DAMAGE SETTLEMENT REPORT.—Section 3724 of title 31, United States Code, is amended—

(1) by striking subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

(h) BANKING LAW OFFENSE REPORT.—Section 8(u) of the Federal Deposit Insurance Act (12 U.S.C. 1818(u)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraphs (4) through (8) as paragraphs (3) through (7), respectively.

(i) BANKING LAW OFFENSE REWARDS REPORT.—Section 2571 of the Crime Control Act of 1990 (12 U.S.C. 4211) is repealed.

(j) BANKING INSTITUTIONS SOUNDNESS REPORT.—Section 1542 of the Housing and Community Development Act of 1992 (12 U.S.C. 1831m–1) is repealed.

TITLE XI—NASA

SEC. 1101. REPORTS ELIMINATED.

(a) CONTINGENT LIABILITY.—Section 6 of the National Aeronautics and Space Administration Authorization Act, 1978 (42 U.S.C. 2463) is repealed.

(b) ACTIVITIES OF THE NATIONAL SPACE GRANT AND FELLOWSHIP PROGRAM.—Section 212 of the Land Remote-Sensing Commercialization Amendments of 1987 (42 U.S.C. 2486j) is repealed.

(c) NOTIFICATION OF PROCUREMENT OF LONG-LEAD MATERIALS FOR SOLID ROCKET MONITORS ON OTHER THAN COOPERATIVE BASIS.—Section 121 of the National Aeronautics and Space Administration Authorization Act of 1988 (101 Stat. 869) is amended by striking subsection (d).

(d) CONTRACTS TO FACILITATE THE NATIONAL DEFENSE.—

(1) IN GENERAL.—Section 1434 of title 50, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 29 of title 50, United States Code, is amended by striking the item relating to section 1434.

(e) CAPITAL DEVELOPMENT PLAN FOR SPACE STATION PROGRAM.—Section 107 of the National Aeronautics and Space Administration Authorization Act of 1988 (101 Stat. 864) is repealed.

(f) CERTIFICATION RELATING TO PAYLOADS.—Section 112 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991 (42 U.S.C. 2465a) is amended by striking subsections (c) and (d).

(g) NOTICE OF MODIFICATION OF NASA.—

(1) 1985 ACT.—Section 103 of the National Aeronautics and Space Administration Authorization Act, 1985 (98 Stat. 424) is repealed.

(2) 1986 ACT.—Section 103 of the National Aeronautics and Space Administration Authorization Act of 1986 (99 Stat. 1014) is repealed.

(h) EXPENDITURES EXCEEDING ASTRONOMY PROGRAM.—Section 104 of the National Aeronautics and Space Administration Authorization Act, 1984 (97 Stat. 284) is repealed.

(i) LAUNCH VOUCHER DEMONSTRATION PROJECT.—Section 504 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (15 U.S.C. 5803) is repealed.

(j) SPACE SETTLEMENTS.—Section 217 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (42 U.S.C. 2451 note) is repealed.

(k) PROPOSED DECISION OR POLICY CONCERNING COMMERCIALIZATION.—Section 110 of the National Aeronautics and Space Administration Authorization Act, 1984 (42 U.S.C. 2465) is repealed.

(l) JOINT FORMER SOVIET UNION STUDIES IN BIOMEDICAL RESEARCH.—Section 605 of the National Aeronautics and Space Administration Act, Fiscal Year 1993 (42 U.S.C. 2487d) is repealed.

TITLE XII—NUCLEAR REGULATORY COMMISSION

SEC. 1201. REPORTS ELIMINATED.

(a) REPORT OF ADVISORY COMMITTEE ON REACTOR SAFEGUARDS.—Section 29 of the Atomic Energy Act of 1954 (42 U.S.C. 2039) is amended by striking the sixth and seventh sentences.

(b) REPORT ON THE PRICE-ANDERSON ACT.—Section 170 p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended—

(1) by striking ''(1)''; and

(2) by striking paragraph (2).

SEC. 1202. REPORTS MODIFIED.

Section 1701(b)(1) of the Atomic Energy Act of 1954 (42 U.S.C. 2297f(b)(1)) is amended—

(1) by striking ''The Nuclear'' and inserting ''Not later than the date on which a certificate of compliance is issued under subsection (c), the Nuclear''; and

(2) by striking ''at least annually''.

TITLE XIII—OMB, OPM, AND GSA

SEC. 1301. OMB.

(a) FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT OF 1990.—The Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410; 28 U.S.C. 2461 note) is amended by—

(1) striking section 6; and

(2) redesignating section 7 as section 6.

(b) VOLUNTARY CONTRIBUTIONS BY THE UNITED STATES TO INTERNATIONAL ORGANIZATIONS.—Section 306 of the Foreign Assistance Act of 1961 (22 U.S.C. 2226) is amended by striking subsection (b).

(c) PROMPT PAYMENT ACT.—

(1) IN GENERAL.—Section 3906 of title 31, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 39 of title 31, United States Code, is amended by striking the item relating to section 3906.

(d) FEDERAL ACQUISITION REGULATORY COUNCIL.—Section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421(g)) is amended by striking subsection (g).

(e) TITLE 5.—Section 552a(u) of title 5, United States Code, is amended by—

(1) striking paragraph (6); and

(2) redesignating paragraph (7) as paragraph (6) and in that redesignated paragraph striking ''paragraphs (3)(D) and (6)'' and inserting ''paragraph (3)(D)''.

SEC. 1302. OPM.

(a) ADMINISTRATIVE LAW JUDGES.—Section 1305 of title 5, United States Code, is amended by striking ''require reports by agencies, issue reports, including an annual report to Congress,''.

(b) FEDERAL EMPLOYEE RETIREMENT AND BENEFITS.—

(1) IN GENERAL.—Section 1308 of title 5, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The title of sections for chapter 13 of title 5, United States Code, is amended by striking the item relating to section 1308.

(c) CIVIL SERVICE RETIREMENT AND DISABILITY FUND.—Section 8348(g) of title 5, United States Code, is amended by striking the third sentence.

(d) PLACEMENT OF NON-INDIAN EMPLOYEES.—Section 2(e) of the Act of December 5, 1979 (25 U.S.C. 472a(e); Public Law 96–135; 93 Stat. 1058) is amended—

(1) by striking ''(1)'' after ''(e)''; and

(2) by striking paragraph (2).

SEC. 1303. GSA.

Section 203(e)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(e)(6)) is repealed.

TITLE XIV—TRADE

SEC. 1401. REPORTS ELIMINATED.

(a) COFFEE TRADE.—

(1) Section 5 of the International Coffee Agreement Act of 1980 (19 U.S.C. 1356n) is repealed.

(2) Section 4 of the International Coffee Agreement Act of 1980 (19 U.S.C. 1356m) is repealed.

(b) TRADE ACT OF 1974.—

(1) Subsection (c) of section 126 of the Trade Act of 1974 (19 U.S.C. 2136(c)) is repealed.

(2) Section 411 of the Trade Act of 1974 (19 U.S.C. 2441) is repealed.

(c) URUGUAY ROUND AGREEMENTS ACT.—Section 424 of the Uruguay Round Agreements Act (19 U.S.C. 3622) is repealed.

(d) RESTRICTIONS ON EXPENDITURES.—Subparagraph (C) of section 109(c)(3) of Public Law 100–202 (101 Stat. 1329–435) (40 U.S.C. 601 note) is repealed.

TITLE XV—DEPARTMENT OF TRANSPORTATION

SEC. 1501. REPORTS ELIMINATED.

(a) COAST GUARD REPORT ON ENVIRONMENTAL COMPLIANCE.—Section 693 of title 14, United States Code, is repealed.

(b) ANNUAL REPORT ON COAST GUARD USER FEES.—Section 664 of title 14, United States Code, is amended by striking subsection (c).

(c) REPORTS ABOUT GOVERNMENT PENSION PLANS.—Section 9503 of title 31, United States Code, is amended by striking subsection (a).

(d) BIENNIAL REPORT OF THE INTERAGENCY COORDINATING COMMITTEE ON OIL POLLUTION RESEARCH.—Section 7001 of the Oil Pollution Act of 1990 (33 U.S.C. 2761) is amended—

(1) by striking subsection (e); and

(2) by redesignating subsection (f) as subsection (e).

(e) FEDERAL HIGHWAY ADMINISTRATION REPORT.—Section 307(e) of title 23, United States Code, is amended—

(1) by striking paragraph (11); and

(2) by redesignating paragraphs (12) and (13) as paragraphs (11) and (12), respectively.

(f) ANNUAL REPORT ON HIGHWAY HAZARD ELIMINATION PROGRAM.—Section 152 of title 23, United States Code, is amended—

(1) by striking subsection (g); and

(2) by redesignating subsection (h) as subsection (g).

(g) TRANSPORTATION AIR QUALITY REPORT.—Section 108(f) of the Clean Air Act (42 U.S.C. 7408(f)) is amended by striking paragraphs (3) and (4).

(h) INDIAN RESERVATION ROADS STUDY.—Section 1042 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1993) is repealed.

(i) STUDY OF IMPACT OF CLIMATIC CONDITIONS.—Section 1101–1102 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2027) is repealed.

(j) FATAL AND INJURY ACCIDENT RATES ON PUBLIC ROADS IN THE UNITED STATES.—Section 207 of the Highway Improvement Act of 1982 (96 Stat. 2139, 23 United States Code 401 note) is repealed.

(k) BIENNIAL REPORTS ON NATURAL GAS AND HAZARDOUS LIQUID PIPELINE SAFETY.—

(1) IN GENERAL.—Section 60124 of title 49, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 601 of title 49, United States Code, is amended by striking the item relating to section 60124.

(l) MOTOR VEHICLE SAFETY.—

(1) IN GENERAL.—Section 30169 of title 49, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 301 of title 49, United States Code, is amended by striking the item relating to section 30169.

(m) BUMPER STANDARDS.—

(1) IN GENERAL.—Section 32510 of title 49, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 325 of title 49, United States Code, is amended by striking the item relating to section 32510.

(n) HIGHWAY SAFETY.—Section 202 of the Highway Safety Act of 1966 (80 Stat. 736; 23 U.S.C. 401 note) is repealed.

(o) MARITIME CONSTRUCTION COSTS.—Section 213 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1123) is amended by striking subsection (c).

(p) FEDERAL TRANSIT ADMINISTRATION.—Section 5335 of title 49, United States Code, is amended by striking subsection (b).

(q) PROJECT REVIEW.—Section 5328(b) of title 49, United States Code, is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

(r) SUSPENDED LIGHT RAIL SYSTEM TECHNOLOGY.—Section 5320 of title 49, United

States Code, is amended by striking subsection (k).

(s) NEEDS SURVEY; TRANSFERABILITY REPORT.—Section 5335 of title 49, United States Code, as amended by this section, is further amended by striking subsections (c) and (d).

SEC. 1502. REPORTS MODIFIED.

(a) COAST GUARD REPORT ON MAJOR ACQUISITION PROJECTS.—Section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (106 Stat. 1551) is amended—

(1) by striking ''quarterly'' and inserting ''biannual''; and

(2) in the last proviso, by striking ''preceding quarter'' and inserting ''preceding 6-month period''.

(b) HIGHWAY REPORT.—Section 307(h) of title 23, United States Code, is amended by striking ''January 1983, and in January of every second year thereafter'' and inserting ''March 1998, and in March of every second year thereafter''.

(c) AVIATION SECURITY REPORT.—Section 44938 of title 49, United States Code, is amended by striking ''annually'' and inserting ''biennially''.

(d) REPORT ON PUBLIC TRANSPORTATION.—Section 308(e)(1) of title 49, United States Code, is amended by striking ''in January of each even-numbered year'' and inserting ''in March 1998, and in March of each even-numbered year thereafter''.

(e) NATIONAL BALLAST INFORMATION CLEARINGHOUSE.—Section 1102(f)(2) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4712(f)(2)) is amended by striking ''biannual'' and inserting ''biennial''.

TITLE XVI—NOAA

SEC. 1601. REPORTS ELIMINATED.

(a) REPORT CONCERNING PRICES FOR NAUTICAL AND AERONAUTICAL PRODUCTS.—Section 1307(a)(2)(A) of title 44, United States Code, is amended by striking the last sentence.

(b) REPORT ON NATIONAL SHELLFISH RESEARCH PROGRAM.—Section 308 of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (33 U.S.C. 1251 note) is amended—

(1) by striking subsection (d); and

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(c) GEOSTATIONARY OPERATIONAL ENVIRONMENTAL SATELLITES CERTIFICATION AND REPORT REGARDING TECHNICAL PERFORMANCE SPECIFICATIONS.—Subsection (d) of section 105 of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (Public Law 102–567; 106 Stat. 4273) is amended—

(1) in paragraph (1), by striking ''(1) Except as provided in paragraph (2), there'' and inserting ''There''; and

(2) by striking paragraph (2).

(d) NEXT GENERATION WEATHER RADAR SYSTEM CERTIFICATION AND REPORT REGARDING TECHNICAL PERFORMANCE SPECIFICATIONS.—Section 102(b) of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (Public Law 102–567; 106 Stat. 4271) is amended—

(1) in paragraph (1), by striking ''(1) Except as provided in paragraph (2), there'' and inserting ''There''; and

(2) by striking paragraph (2).

(e) REPORT ON ENFORCEMENT OF VIOLATIONS CONCERNING THE USE OF UNENHANCED DATA FOR COMMERCIAL PURPOSES.—Section 508(d) of the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5658(d)) is amended by striking '', and shall report annually to the Congress on instances of such violations''.

(f) REPORT ON THE NATIONAL CLIMATE PROGRAM ACTIVITIES.—Section 7 of the National Climate Program Act (15 U.S.C. 2906) is repealed.

FORT BERTHOLD INDIAN RESERVATION

Ms. COLLINS. Mr. President, I now ask unanimous consent that the Senate proceed to the consideration of Calendar No. 400, S. 2069.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 2069) to permit the leasing of mineral rights in any case in which the Indian owners of an allotment that is located within the boundaries of the Fort Berthold Indian Reservation and held in trust by the United States have executed leases to more than 50 percent of the mineral estate of that allotment.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Indian Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. LEASES OF ALLOTTED LANDS OF THE FORT BERTHOLD INDIAN RESERVATION.

(a) IN GENERAL.—

(1) DEFINITIONS.—In this section:

(A) INDIAN LAND.—The term ''Indian land'' means an undivided interest in a single parcel of land that—

(i) is located within the Fort Berthold Indian Reservation in North Dakota; and

(ii) is held in trust or restricted status by the United States.

(B) INDIVIDUALLY OWNED INDIAN LAND.—The term ''individually owned Indian land'' means Indian land that is owned by 1 or more individuals.

(C) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(2) EFFECT OF APPROVAL BY SECRETARY OF THE INTERIOR.—

(A) IN GENERAL.—The Secretary may approve any mineral lease or agreement that affects individually owned Indian land, if—

(i) the owners of a majority of the undivided interest in the Indian land that is the subject of the mineral lease or agreement (including any interest covered by a lease or agreement executed by the Secretary under paragraph (3)) consent to the lease or agreement; and

(ii) the Secretary determines that approving the lease or agreement is in the best interest of the Indian owners of the Indian land.

(B) EFFECT OF APPROVAL.—Upon the approval by the Secretary under subparagraph (A), the lease or agreement shall be binding, to the same extent as if all of the Indian owners of the Indian land involved had consented to the lease or agreement, upon—

(i) all owners of the undivided interest in the Indian land subject to the lease or agreement (including any interest owned by an Indian tribe); and

(ii) all other parties to the lease or agreement.

(C) DISTRIBUTION OF PROCEEDS.—The proceeds derived from a lease or agreement that is approved by the Secretary under subparagraph (A) shall be distributed to all owners of the Indian land that is subject to the lease or agreement in accordance with the interest owned by each such owner.

(3) EXECUTION OF LEASE OR AGREEMENT BY SECRETARY.—The Secretary may execute a mineral lease or agreement that affects individually owned Indian land on behalf of an Indian owner if—

(A) that owner is deceased and the heirs to, or devisees of, the interest of the deceased owner have not been determined; or

(B) the heirs or devisees referred to in subparagraph (A) have been determined, but 1 or more of the heirs or devisees cannot be located.

(4) PUBLIC AUCTION OR ADVERTISED SALE NOT REQUIRED.—It shall not be a requirement for the approval or execution of a lease or agreement under this subsection that the lease or agreement be offered for sale through a public auction or advertised sale.

(b) RULE OF CONSTRUCTION.—This Act supersedes the Act of March 3, 1909 (35 Stat. 783, chapter 263; 25 U.S.C. 396) only to the extent provided in subsection (a).

Ms. COLLINS. Mr. President, I ask unanimous consent the committee amendment be agreed to, the bill as amended be read a third time, passed, and the motion to reconsider be laid upon the table, that the title amendment be agreed to, and that any statements related to the bill appear in the RECORD with the above occurring without intervening action or debate.

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

The committee amendment was agreed to.

The bill (S. 2069), as amended, was read the third time and passed.

The title was amended so as to read:

A bill to permit the mineral leasing of Indian land located within the Fort Berthold Indian Reservation in any case in which there is consent from a majority interest in the parcel of land under consideration.

U.S. HOLOCAUST ASSETS COMMISSION ACT OF 1998

Ms. COLLINS. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 1900) to establish a commission to examine issues pertaining to the disposition of Holocaust-era assets in the United States before, during, and after World War II, and to make recommendations to the President on further action, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1900) entitled ''An Act to establish a commission to examine issues pertaining to the disposition of Holocaust-era assets in the United States before, during, and after World War II, and to make recommendations to the President on further action, and for other purposes'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''U.S. Holocaust Assets Commission Act of 1998''.

SEC. 2. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a Presidential Commission, to be known as the ''Presidential Advisory Commission on Holocaust Assets in the United States'' (hereafter in this Act referred to as the ''Commission'').

(b) MEMBERSHIP.—

(1) NUMBER.—The Commission shall be composed of 21 members, appointed in accordance with paragraph (2).

(2) APPOINTMENTS.—Of the 21 members of the Commission—

(A) eight shall be private citizens, appointed by the President;

(B) four shall be representatives of the Department of State, the Department of Justice,

the Department of the Army, and the Department of the Treasury (one representative of each such Department), appointed by the President;

(C) two shall be Members of the House of Representatives, appointed by the Speaker of the House of Representatives;

(D) two shall be Members of the House of Representatives, appointed by the minority leader of the House of Representatives;

(E) two shall be Members of the Senate, appointed by the majority leader of the Senate;

(F) two shall be Members of the Senate, appointed by the minority leader of the Senate; and

(G) one shall be the Chairperson of the United States Holocaust Memorial Council.

(3) CRITERIA FOR MEMBERSHIP.—Each private citizen appointed to the Commission shall be an individual who has a record of demonstrated leadership on issues relating to the Holocaust or in the fields of commerce, culture, or education that would assist the Commission in analyzing the disposition of the assets of Holocaust victims.

(4) ADVISORY PANELS.—The Chairperson of the Commission may, in the discretion of the Chairperson, establish advisory panels to the Commission, including State or local officials, representatives of organizations having an interest in the work of the Commission, or others having expertise that is relevant to the purposes of the Commission.

(5) DATE.—The appointments of the members of the Commission shall be made not later than 90 days after the date of enactment of this Act.

(c) CHAIRPERSON.—The Chairperson of the Commission shall be selected by the President from among the members of the Commission appointed under subparagraph (A) or (B) of subsection (b)(2).

(d) PERIOD OF APPOINTMENT.—Members of the Commission shall be appointed for the life of the Commission.

(e) VACANCIES.—Any vacancy in the membership of the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(f) MEETINGS.—The Commission shall meet at the call of the Chairperson at any time after the date of appointment of the Chairperson.

(g) QUORUM.—11 members of the Commission shall constitute a quorum, but a lesser number of members may hold meetings.

SEC. 3. DUTIES OF THE COMMISSION.

(a) ORIGINAL RESEARCH.—

(1) IN GENERAL.—Except as otherwise provided in paragraph (3), the Commission shall conduct a thorough study and develop a historical record of the collection and disposition of the assets described in paragraph (2), if such assets came into the possession or control of the Federal Government, including the Board of Governors of the Federal Reserve System and any Federal reserve bank, at any time after January 30, 1933—

(A) after having been obtained from victims of the Holocaust by, on behalf of, or under authority of a government referred to in subsection (c);

(B) because such assets were left unclaimed as the result of actions taken by, on behalf of, or under authority of a government referred to in subsection (c); or

(C) in the case of assets consisting of gold bullion, monetary gold, or similar assets, after such assets had been obtained by the Nazi government of Germany from governmental institutions in any area occupied by the military forces of the Nazi government of Germany.

(2) TYPES OF ASSETS.—Assets described in this paragraph include—

(A) gold, including gold bullion, monetary gold, or similar assets in the possession of or under the control of the Board of Governors of the Federal Reserve System or any Federal reserve bank;

(B) gems, jewelry, and nongold precious metals;

(C) accounts in banks in the United States;

(D) domestic financial instruments purchased before May 8, 1945, by individual victims of the Holocaust, whether recorded in the name of the victim or in the name of a nominee;

(E) insurance policies and proceeds thereof;

(F) real estate situated in the United States;

(G) works of art; and

(H) books, manuscripts, and religious objects.

(3) COORDINATION OF ACTIVITIES.—In carrying out its duties under paragraph (1), the Commission shall, to the maximum extent practicable, coordinate its activities with, and not duplicate similar activities already being undertaken by, private individuals, private entities, or government entities, whether domestic or foreign.

(4) INSURANCE POLICIES.—

(A) IN GENERAL.—In carrying out its duties under this Act, the Commission shall take note of the work of the National Association of Insurance Commissioners with regard to Holocaust-era insurance issues and shall encourage the National Association of Insurance Commissioners to prepare a report on the Holocaust-related claims practices of all insurance companies, both domestic and foreign, doing business in the United States at any time after January 30, 1933, that issued any individual life, health, or property-casualty insurance policy to any individual on any list of Holocaust victims, including the following lists:

(i) The list maintained by the United States Holocaust Memorial Museum in Washington, D.C., of Jewish Holocaust survivors.

(ii) The list maintained by the Yad Vashem Holocaust Memorial Authority in its Hall of Names of individuals who died in the Holocaust.

(B) INFORMATION TO BE INCLUDED.—The report on insurance companies prepared pursuant to subparagraph (A) should include the following, to the degree the information is available:

(i) The number of policies issued by each company to individuals described in such subparagraph.

(ii) The value of each policy at the time of issue.

(iii) The total number of policies, and the dollar amount, that have been paid out.

(iv) The total present-day value of assets in the United States of each company.

(C) COORDINATION.—The Commission shall coordinate its work on insurance issues with that of the international Washington Conference on Holocaust-Era Assets, to be convened by the Department of State and the United States Holocaust Memorial Council.

(b) COMPREHENSIVE REVIEW OF OTHER RESEARCH.—Upon receiving permission from any relevant individuals or entities, the Commission shall review comprehensively any research by private individuals, private entities, and non-Federal government entities, whether domestic or foreign, into the collection and disposition of the assets described in subsection (a)(2), to the extent that such research focuses on assets that came into the possession or control of private individuals, private entities, or non-Federal government entities within the United States at any time after January 30, 1933, either—

(1) after having been obtained from victims of the Holocaust by, on behalf of, or under authority of a government referred to in subsection (c); or

(2) because such assets were left unclaimed as the result of actions taken by, on behalf of, or under authority of a government referred to in subsection (c).

(c) GOVERNMENTS INCLUDED.—A government referred to in this subsection includes, as in existence during the period beginning on March 23, 1933, and ending on May 8, 1945—

(1) the Nazi government of Germany;

(2) any government in any area occupied by the military forces of the Nazi government of Germany;

(3) any government established with the assistance or cooperation of the Nazi government of Germany; and

(4) any government which was an ally of the Nazi government of Germany.

(d) REPORTS.—

(1) SUBMISSION TO THE PRESIDENT.—Not later than December 31, 1999, the Commission shall submit a final report to the President that shall contain any recommendations for such legislative, administrative, or other action as it deems necessary or appropriate. The Commission may submit interim reports to the President as it deems appropriate.

(2) SUBMISSION TO THE CONGRESS.—After receipt of the final report under paragraph (1), the President shall submit to the Congress any recommendations for legislative, administrative, or other action that the President considers necessary or appropriate.

SEC. 4. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairperson of the Commission, the head of any such department or agency shall furnish such information to the Commission as expeditiously as possible.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(e) ADMINISTRATIVE SERVICES.—For the purposes of obtaining administrative services necessary to carry out the purposes of this Act, including the leasing of real property for use by the Commission as an office, the Commission shall have the power to—

(1) enter into contracts and modify, or consent to the modification of, any contract or agreement to which the Commission is a party; and

(2) acquire, hold, lease, maintain, or dispose of real and personal property.

SEC. 5. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION.—No member of the Commission who is a private citizen shall be compensated for service on the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) EXECUTIVE DIRECTOR, DEPUTY EXECUTIVE DIRECTOR, GENERAL COUNSEL, AND OTHER STAFF.—

(1) IN GENERAL.—Not later than 90 days after the selection of the Chairperson of the Commission under section 2, the Chairperson shall, without regard to the civil service laws and regulations, appoint an executive director, a deputy executive director, and a general counsel of the Commission, and such other additional personnel as may be necessary to enable the Commission to perform its duties under this Act.

(2) QUALIFICATIONS.—The executive director, deputy executive director, and general counsel of the Commission shall be appointed without regard to political affiliation, and shall possess all necessary security clearances for such positions.

(3) DUTIES OF EXECUTIVE DIRECTOR.—The executive director of the Commission shall—

(A) serve as principal liaison between the Commission and other Government entities;

(B) be responsible for the administration and coordination of the review of records by the Commission; and

(C) be responsible for coordinating all official activities of the Commission.

(4) COMPENSATION.—The Chairperson of the Commission may fix the compensation of the executive director, deputy executive director, general counsel, and other personnel employed by the Commission, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that—

(A) the rate of pay for the executive director of the Commission may not exceed the rate payable for level III of the Executive Schedule under section 5314 of title 5, United States Code; and

(B) the rate of pay for the deputy executive director, the general counsel of the Commission, and other Commission personnel may not exceed the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(5) EMPLOYEE BENEFITS.—

(A) IN GENERAL.—An employee of the Commission shall be an employee for purposes of chapters 83, 84, 85, 87, and 89 of title 5, United States Code, and service as an employee of the Commission shall be service for purposes of such chapters.

(B) NONAPPLICATION TO MEMBERS.—This paragraph shall not apply to a member of the Commission.

(6) OFFICE OF PERSONNEL MANAGEMENT.—The Office of Personnel Management—

(A) may promulgate regulations to apply the provisions referred to under subsection (a) to employees of the Commission; and

(B) shall provide support services, on a reimbursable basis, relating to—

(i) the initial employment of employees of the Commission; and

(ii) other personnel needs of the Commission.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement to the agency of that employee, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(f) STAFF QUALIFICATIONS.—Any person appointed to the staff of or employed by the Commission shall be an individual of integrity and impartiality.

(g) CONDITIONAL EMPLOYMENT.—

(1) IN GENERAL.—The Commission may offer employment on a conditional basis to a prospective employee pending the completion of any necessary security clearance background investigation. During the pendency of any such investigation, the Commission shall ensure that such conditional employee is not given and does not have access to or responsibility involving classified or otherwise restricted material.

(2) TERMINATION.—If a person hired on a conditional basis as described in paragraph (1) is denied or otherwise does not qualify for all security clearances necessary for the fulfillment of the responsibilities of that person as an employee of the Commission, the Commission shall immediately terminate the employment of that person with the Commission.

(h) EXPEDITED SECURITY CLEARANCE PROCEDURES.—A candidate for executive director or deputy executive director of the Commission and any potential employee of the Commission shall, to the maximum extent possible, be investigated or otherwise evaluated for and granted, if applicable, any necessary security clearances on an expedited basis.

SEC. 6. ADMINISTRATIVE SUPPORT SERVICES.

Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this Act.

SEC. 7. TERMINATION OF THE COMMISSION.

The Commission shall terminate 90 days after the date on which the Commission submits its final report under section 3.

SEC. 8. MISCELLANEOUS PROVISIONS.

(a) INAPPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Commission.

(b) PUBLIC ATTENDANCE.—To the maximum extent practicable, each meeting of the Commission shall be open to members of the public.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated not more than $3,500,000, in total, for the interagency funding of activities of the Commission under this Act for fiscal years 1998, 1999, and 2000, of which, notwithstanding section 1346 of title 31, United States Code, and section 611 of the Treasury and General Government Appropriations Act, 1998, $537,000 shall be made available in equal amounts from funds made available for fiscal year 1998 to the Departments of Justice, State, and the Army that are otherwise unobligated. Funds made available to the Commission pursuant to this section shall remain available for obligation until December 31, 1999.

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senate agree to the amendment of the House.

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

ORDERS FOR THURSDAY, JUNE 11, 1998

Ms. COLLINS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:45 a.m. on Thursday, June 11. I further ask that on Thursday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate then begin a period of morning business until 11:15 a.m., with Senators permitted to speak for up to 5 minutes each, with the following exceptions: Senator ROCKEFELLER, 10 minutes; Senator TORRICELLI, 15 minutes; Senator BAUCUS, 30 minutes; Senator COLLINS, 15 minutes; Senator KERRY, 15 minutes; and Senator SMITH of Oregon, 5 minutes.

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

Ms. COLLINS. I further ask consent that following morning business the Senate resume consideration of S. 1415, the tobacco bill. Further, that at noon the Senate proceed to vote on the motion to invoke cloture on the modified committee substitute and the mandatory quorum under rule XXII be waived.

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

PROGRAM

Ms. COLLINS. Mr. President, for the information of all Senators, the Senate will reconvene tomorrow at 9:45 a.m. and begin a period of morning business until 11:15 a.m. Following morning business, the Senate will resume consideration of the tobacco bill. At 12 noon, the Senate will proceed to vote on the motion to invoke cloture on the modified tobacco committee substitute. Assuming cloture fails, the Senate will continue debate on the tobacco bill. It is hoped that Members will come to the floor to offer and debate remaining amendments to the bill throughout Thursday's session. The Senate may also consider any other legislative or Executive Calendar item that may be cleared for action. Therefore, rollcall votes are possible throughout Thursday's session of the Senate.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Ms. COLLINS. Mr. President, if there is no further business to come before the Senate, I now ask the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:44 p.m., adjourned until Thursday, June 11, 1998, at 9:45 a.m.

EXTENSIONS OF REMARKS

THE FEDERAL PROTECTIVE SERVICE REFORM ACT

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. TRAFICANT. Mr. Speaker, today I am introducing the Federal Protective Service Reform Act of 1998. This legislation makes much needed reforms to the Federal Protective Service (FPS). These reforms will allow FPS to better meet the growing threat posed by terrorism to federal buildings and the people who work in and visit federal buildings.

On April 19, 1995, a truck bomb destroyed the Alfred P. Murrah federal building in Oklahoma City, Oklahoma. The tragic and despicable act killed 168 people and wounded hundreds of others. The Oklahoma City bombing served as a sober reminder that the United States is not immune to acts of terror. The bombing also revealed that we were woefully unprepared for such an act.

I was deeply disturbed to learn that there was only one contract security guard on duty in Oklahoma City on April 19, 1995. That contract guard was responsible for providing security at the Murrah building and two other federal buildings in Oklahoma City. There is evidence that those responsible for bombing the Murrah building cased the building in the days and weeks leading up to the bombing. The fact that the Murrah building was, for the most part, unprotected, could have played a role in the decision of the terrorists to bomb that building.

In the wake of the Oklahoma City bombing, the Public Building Service (PBS) of the General Services Administration (GSA) has made great strides in improving the physical security of the 8,300 federal buildings under its control. But, as a recent hearing by the Transportation and Infrastructure Subcommittee on Public Buildings and Economic Development revealed, the security upgrade program initiated in the wake of the Oklahoma City bombing has been hindered by mismanagement and a reduction in staffing. In addition, structural and personnel problems within the Federal Protective Service are also hindering GSA's ability to upgrade and improve security.

At the present time the FPS is a unit within PBS. The head of FPS reports to the PBS commissioner. The PBS commissioner does not have a law enforcement background and his main responsibility is real estate management—not law enforcement. While we do have a very able and talented PBS commissioner, I did not believe that security is best served by having FPS as a sub-entity within PBS.

While I recognize that the use of contract guards is necessary, I am concerned that the use of contract guards may not be appropriate at certain federal buildings. I am also concerned over the fact that contract guards do not undergo the same type of background checks as FPS officers. All FPS officers undergo a full and detailed background investigation, including a review by the Federal Bureau of Investigation. Contract guards, on the other hand, only undergo a cursory background check. At the present time there are only 648 full-time FPS officers, as opposed to more than 5,000 contract guards. The best deterrent to a terrorist bombing or attack on a federal building is a highly trained, professional and fully staffed FPS.

I have great admiration for the men and women who serve so ably on the FPS. That's why I am deeply troubled that FPS officers are paid significantly less than other federal law enforcement officers that perform the same function. This is not fair. Equally as disturbing, the low level of compensation combined with poor communication between management and the rank and file is causing a morale and turnover problem that could further compromise security. Morale plays a key role in the effectiveness of any law enforcement agency. The Federal Protective Service Reform Act will make the changes needed to boost morale, improve management and make FPS better able to respond to terrorist threats to federal buildings.

Quite simply, Mr. Speaker, the goal of my legislation is to remake the FPS into an elite federal law enforcement agency with a well trained, professionally led, highly motivated and appropriately compensated cadre of officers. Another goal is to ensure that decisions to how best to ensure the security of federal buildings are based on sound law enforcement and intelligence analysis—not on budgetary considerations. The main features of the Federal Protective Service Reform Act will:

Establish, by statute, the Federal Protective Service as a freestanding service within GSA, with the responsibility of serving as the principal law enforcement and security agency in the United States with respect to the protection of federal officers and employees in buildings and areas under GSA's control (under the Public Buildings Act, the GSA Administrator has the authority to appoint special police officers and investigators, but the Act does not require GSA to establish an FPS).

Make FPS a service within GSA, separate from PBS. Under the bill, the FPS would have its own commissioner who will report directly to the GSA Administrator (currently the head of FPS has the title of Assistant Commissioner within the Public Building Service).

Clarify the responsibilities and authority of FPS officers, including giving them the ability to carry firearms to and from work, providing officers with a ''buffer zone'' of responsibility extending as far as 500 feet from a federal building, and clearly delineating the circumstances under which FPS officers can make arrests.

Establish a pay scale and benefit package for FPS officers similar to that of the Uniformed Division of the Secret Service.

Require GSA to hire at least 730 full-time FPS officers within one year of enactment of the bill into law, and bar GSA from reducing the number of full-time FPS officers unless specifically authorized by Congress (the PBS commissioner recently stated that GSA's long-term goal is to have 724 full-time FPS officers).

Require contract guards to undergo the same background checks as FPS officers, and require GSA to prescribe adequate training standards for contract guards.

Direct a General Accounting Office study of the feasibility of merging all federal building security services under FPS.

Require that the FPS Commissioner be a career civil servant with extensive law enforcement experience.

Direct FPS to work closely with other federal agencies in gathering and analyzing intelligence.

Direct the FPS commissioner to provide assistance, upon request, to other federal, state and local law enforcement agencies.

Mr. Speaker, the Federal Protective Service Reform Act of 1998 is an urgently needed piece of legislation that will allow this country to better protect itself from a terrorist attack. This legislation should be an integral part of our counter-terrorism strategy. I urge all Members to support this bill.

TRIBUTE TO BRIAN STOWE

HON. JOHN F. TIERNEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. TIERNEY. Mr. Speaker, I rise to salute Mr. Brian Stowe of Lynn, Massachusetts who has received an award from the Lynn Hispanic Scholarship Fund, Inc. for academic excellence.

I hope Brian appreciates and is proud of his accomplishments. At a young age, he has realized the value of helping those less fortunate than himself by volunteering in his community. A particular passion of Brian's has been his involvement with My Brother's Table, a food pantry which services the needy. A native of Lynn, Brian will leave home for the first time in the fall as he begins his college career at Fairfield University in Connecticut. I trust that he understands the value of continuing his education, and I am certain that he will enjoy many new challenges. His dedication and commitment are to be commended. I have no doubt that he will be successful in his future endeavors.

Indeed, Mr. Stowe has worked hard to achieve his goals. Mr. Speaker, I am proud to stand here to recognize the accomplishments of Brian Stowe, and I hope my colleagues will join with me today in wishing Mr. Stowe the very best as he continues his education.

SEXUAL HARASSMENT

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday,

May 27, 1998 into the CONGRESSIONAL RECORD.

SEXUAL HARASSMENT

When I came to Congress in the 1960s, women were beginning to define the feminist movement and to provide their own answers to the question, ''What do women want?'' Women have since advanced in all areas of American life, from Little Leagues including girls, to the military academies admitting women, to women serving in greater numbers in the highest ranks of government and business. Women have also helped shape public policy on a number of fronts, including workplace laws barring sex discrimination and promoting equal pay as well as laws providing for family and medical leave and gender equity in education.

Recent events, including the Paula Jones suit, the Clarence Thomas-Anita Hill hearings, and the sex scandals in the military, are focusing public interest on sexual harassment in the workplace. Sexual harassment claims have increased as more women have entered the workforce and the issue has gained greater attention. The number of sexual harassment complaints filed with the Equal Employment Opportunity Commission (EEOC), the federal agency responsible for enforcing discrimination law, increased from 6,800 in 1990 to nearly 16,000 cases in 1997.

What precisely constitutes sexual harassment, however, continues to be a vexing question. There are few established guidelines for employers and employees in this area, and the relevant federal laws do not even include the words ''sexual harassment.'' The vague nature of current law and the increase in cases before the courts have added pressure on the legislative and judicial branches to clarify the law in this area.

Overview: The Civil Rights Act of 1964 is the primary law addressing sexual harassment. Title VII of this law does not specifically mention sexual harassment, but makes it unlawful for employers with 15 or more employees to discriminate against any applicant or employee on the basis of sex. The law implies that when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor discriminates on the basis of sex.

The EEOC will generally enforce Title VII claims in the following manner: Upon receiving a complaint from an employee, the EEOC investigates the case and renders a decision on whether there is reasonable cause to believe that discrimination has occurred. If the EEOC substantiates the charge but is unable to reach an acceptable conciliation agreement between the employer and employee, then the EEOC will issue a right to sue letter on behalf of the employee. If an employee chooses to file a private lawsuit under Title VII, the employee must begin with filing a charge with the EEOC.

Sexual harassment cases are generally divided into two basic categories, ''quid pro quo'' and ''hostile working environment'' harassment. Traditional quid pro quo harassment takes place when an employee suffers tangible harm—the loss of a job, promotion, income or benefits—because the employee has resisted sexual advances. Recently, the legal definition of sexual harassment has been expanded to include hostile working environment harassment. Hostile working environment harassment is defined as an ''intimidating, hostile, or offensive environment'' or an environment which unreasonably interferes with an individual's work performance.

Unresolved Areas: The federal courts are now wrestling with a range of issues in this area of the law.

Defining quid pro quo: The Supreme Court is considering whether a worker has a legitimate quid pro quo case if the employee neither submitted to the employer nor suffered any tangible detriment for saying no. The employee in the pending case alleges her supervisor made sexually lewd comments throughout her employment, including specific remarks implying her job was on the line if she did not comply with his advances, but the employee never suffered adverse consequences for not complying. The Supreme Court's decision on this case could potentially lower the threshold for what constitutes legitimate quid pro quo harassment, and could directly impact cases pending in federal court, most notably the Jones case.

Defining hostile work environment: In moving a hostile work environment claim, the employee is required to show that the supervisor's conduct was so severe or pervasive that it created a hostile work environment. Federal courts have split on the question of whether an employee must prove not only that the conduct complained of would have offended a reasonable victim, but also that she suffered serious psychological injury as a result of the conduct. The Supreme Court attempted to clarify the matter in 1993, concluding that a victim of sexual harassment need not experience a ''nervous breakdown'' for the law to come into play. But as the Jones case demonstrated, the issue continues to be hotly debated.

Employer liability: A third issue is whether and when employers are liable for the actions of their employees. Most courts usually hold employers responsible for quid pro quo sexual harassment by supervisors, but employers are not automatically liable for a hostile environment created by supervisors or co-employees. In a hostile environment case, the employee must show that the employer's knew or should have known about the harassment.

Same-sex harassment: A fourth issue is whether sexual harassment can occur between an employer and employee of the same sex. The Supreme Court ruled this year that the law does allow for same-sex claims.

Conclusion: What impresses me about this issue is how much difficulty we have had sorting out relations between men and women in the workplace, how much confusion exists between the genders, and how vague and imprecise the law is in this area, even after three decades of evolution. It will not be easy for Congress or the courts to solve this age-old problem. We must, of course, keep trying for better laws and equal treatment, but men's and women's relationships have always been—and will remain—extremely complicated and filled with ambiguities.

The confusion and uncertainties of the sexual harassment laws create wasteful litigation and disruption in the workplace. Employers and employees may not know what is legal and what is not. A vague law makes justice depend on which judge or jury is deciding any particular case. It is time for Congress or the Supreme Court to clarify the law. With current cases pending, it is more likely the Court will speak first.

IN HONOR OF THE CONGREGATION OF GEORGIAN JEWS' 16 YEAR ANNIVERSARY CELEBRATION

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. SCHUMER. Mr. Speaker, throughout the past twenty-six centuries the Georgian Jews have carried the torch of the Jewish faith, preserving the traditions, customs and practices of their age-old religion. This special unified community boasts riches of traditions and a unique history and interface with the world's Jewry.

The roots of the Georgian Jewish community extend as far back as the sixth century BCE, where upon expulsion by the Assyrians, as well as the fall of Jerusalem and the destruction of the First Temple, a group of Israelites settled in the Caucasus Region, presently known as the Republic of Georgia. Archaeological discoveries of a number of Jewish settlements from the period of the destruction of the Second Temple, clearly establishes the continuing connection between the Georgian Jews and Jerusalem. Neither Ashkenazi or Sephardi in their affiliation, Georgian Jews represent an independent string to the Twelve Tribes of Israel; a string that has played an integral role in the development and maintenance of the Jewish identity and nationality.

The Georgian Jews' undying devotion to the Jewish faith and patriotism for the Biblical Homeland continues to flourish in this century as well. The Georgian Jews managed to make themselves heard and recognized even from behind the Iron Gates of the Soviet Union in 1969, in the form of a letter sent to the United Nations, which demanded the right to emmigrate to the State of Israel. This unprecedented call for freedom caused the first crack of the Iron Curtain that marked the beginning of the ''Aliyah,'' the migration to Israel, of the oppressed Soviet Jewry to their beloved Homeland.

Today, the Georgian Jews are mostly settled in the United States and Israel and continue to follow in the footsteps of their ancestors, perpetuating the religious and spiritual traditions of their heritage. The Synagogue has always played an integral role in the communities of the Georgian Jews, serving as the center of religious life and the spiritual source of nourishment which feeds the souls of Georgian Jews around the world, from Israel to Georgia to the United States.

The Congregation of Georgian Jews in Forest Hills, New York, the main synagogue, represents the strength of Georgian Jews and is a beacon for their communities throughout the world. The synagogue is a symbol of the survival of the Georgian Jewry, and their dedication to their faith, culture and heritage.

I want to recognize the devotion and determination of the Georgian Jewry that they have continually exhibited towards their religion and communities. The Georgian Jews are truly inspirational. I am confident that their communities will continue to grow and flourish, and that with the future of their children, the light of the past will continue to shine.

LEARN TO FLY MONTH

HON. JOHN J. DUNCAN, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. DUNCAN. Mr. Speaker, the General Aviation Industry is one of the most important industries in our Nation. Since the Wright Brothers' first flight in Kitty Hawk, North Carolina, aviation has played a crucial rule in the livelihood of our Nation.

In the United States, business aviation and U.S. air carriers are experiencing record growth and are expected to carry over 1 billion passengers a year early in the next decade.

Aviation is an essential ingredient in the economic success of our Nation. The role of aviation can be seen each and every day at over 13,000 airports and landing facilities here in the United States. It is here that the men and women of the aviation industry strive to make the United States the world's leader in aviation.

The month of June has been designated as "Learn To Fly Month". I hope that more people will take an interest in aviation. In order to maintain our position as the world's leader in aviation, the United States must recognize the importance of highly qualified and well-trained pilots.

These pilots are a key ingredient in the success of the United States Aviation Industry and help to maintain the best aviation infrastructure in the world.

I place the following proclamation by Transportation Secretary Rodney Slater proclaiming June as Learn To Fly Month, in the RECORD and call it to the attention of my colleagues.

THE SECRETARY OF TRANSPORTATION,
Washington, DC, June 9, 1998.

Whereas aviation is a vital link of our nation's transportation system and economy;

Whereas the growth, safety, and efficiency of aviation requires highly qualified pilots;

Whereas in 1996, fewer people undertook flight training than anytime since the Korean War, and the overall U.S. pilot population declined to the lowest number in over 20 years;

Whereas the United States Military is training fewer pilots than anytime in recent history;

Whereas the United States airlines and business aviation are experiencing record growth and are expected to carryover 1 billion passengers a year early in the next decade;

Whereas the General Aviation Revitalization Act of 1994 has stimulated the rebirth of light general aviation aircraft manufacturing in the United States;

Whereas general aviation is playing an increasingly important role in the nation's air transportation system serving over 13,000 airports and landing facilities;

Whereas the experience of flight offers the opportunity for personal challenge and self fulfillment in professional and personal endeavors;

Whereas GA Team 2000 has been formed by over 120 companies and associations representing all facets of the civil aviation industry with the specific purpose of stimulating more student pilots;

Whereas over 1600 flight training institutions and schools are participating in this national effort;

Therefore in special recognition of rebuilding America's pilot population, I Rodney Slater, Secretary of Transportation, do hereby proclaim June 1998 as Learn to Fly Month with the recognition that highly qualified and well trained pilots are an essential ingredient of our nation's aviation infrastructure.

RODNEY E. SLATER.

TRIBUTE TO PATRICIA FRANCIS

HON. JOHN F. TIERNEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. TIERNEY. Mr. Speaker, I rise to salute Ms. Patricia Francis of Lynn, Massachusetts who has received an award from the Lynn Hispanic Scholarship Fund, Inc. for academic excellence.

I hope Patricia appreciates and is proud of her accomplishments. She has challenged herself by transitioning from bilingual classes to English only classes after only one year in the bilingual program. She has also successfully balanced several extracurricular activities with her academic responsibilities. Serving in her role as a mentor for elementary school children, Patricia has undoubtedly made an impression upon them about the importance of making a commitment to education. Her dedication is to be commended. I have no doubt that she will be successful in her future endeavors as she pursues her career goals in journalism starting at Salem State College.

Indeed, Ms. Francis has worked hard to achieve her goals. Mr. Speaker, I am proud to stand here to recognize the accomplishments of Patricia Francis, and I hope my colleagues will join with me today in wishing Ms. Francis the very best as she continues her education.

THE BUDGET

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, June 10, 1998 into the CONGRESSIONAL RECORD.

THE BUDGET SURPLUS

One of the most striking economic developments this year has been the return of the federal budget surpluses. For the first time since the Johnson Administration the federal government will spend less than it receives in revenue. The deficits reached a record $290 billion in 1992 under President Bush, and for many years they have dominated the policy debate in Washington. Turning this around has been a major accomplishment. Now Congress is faced with the quite different question of what to do with the surpluses.

LATEST PROJECTIONS

The latest projections are that the federal budget will run a surplus of around $50–60 billion this year. The projections are even better after that, as the combined surpluses over the next ten years could exceed $1.5 trillion. These surpluses reverse the trend of the past three decades in which the federal government built up most of the national debt, which now stands at $3.8 trillion.

REASONS FOR SURPLUS

Part of the credit for the surplus goes to Congress, especially for passing the 1993 deficit reduction package. That helped to slow the growth of government spending and built greater spending restraint into the budget law. Major factors in holding down spending have been the shift toward managed care in Medicare and defense downsizing after the end of the Cold War.

But even more important than the spending restraint has been the growth in revenues coming into the Treasury because of the strong showing of the U.S. economy. More people have been working and hence paying taxes; the stock market has been booming, generating a sharp increase in capital gains taxes; and corporate profits have been high. Tax revenues during the month of April were some 14% higher than a year ago, and, because of the strong economy, tax receipts as a share of the economy have risen to 21.5%, a postwar record.

NEED FOR CAUTION

Yet that dependence of the budget surplus on the economy's remarkable performance means we must be particularly cautious. Our economy will at some point slow down. The current economic expansion is the second longest since World War II, and the business cycle hasn't been repealed. When the economy slows, incoming revenues will drop and the surplus could be reduced or eliminated altogether. Even an average-sized recession could mean a $100 billion budgetary shortfall for a year or two.

There's a second reason to be careful with these surpluses. Long-range forecasts can be quite unreliable. The forecast of a surplus five or ten years from now is not much better than an educated guess. Early last year, for example, the Administration was forecasting a $121 billion deficit for 1998; now they are forecasting a sizable surplus. If we cut taxes or increase expenditures now, that will be very hard to reverse if the forecasts are wrong.

A third reason to be cautious is that the surpluses are to some degree an illusion. They occur because the tallying of federal spending and receipts includes the surpluses in Social Security. If the Social Security accounts are removed, the remaining tax payments fall tens of billions of dollars short of covering the full cost of providing government services.

The fourth reason for caution about the surpluses is a longer-term one. When the baby-boom generation begins to retire in about ten years, the whole demographic structure of our population changes. Between now and the year 2030 the number of people aged 65 or older will double, but the number of people ages 20 to 64 will increase by only about 15%. As the baby-boomers become eligible for Social Security, Medicare, and Medicaid, that will put an enormous strain on federal spending. The biggest chunk of federal spending, by far, currently goes for programs for older Americans, and that will only increase in the years ahead.

POLICY OPTIONS

The surpluses put us into an altogether new policy field, and there are many proposals in Washington today to cut taxes or increase spending. Yet I think a very strong case can be made for using the emerging surpluses to pay down the federal debt.

Despite the bright projections for the budget, the short-term uncertainties and the future imbalances due to the baby-boomers' retirement are cause for major concern. A key issue before Congress and the President is how to begin to prepare for the budgetary shortfalls that will surely arise. I find it helpful to think about this problem of the immediate surpluses in terms of ourselves and our children and grandchildren. If we cut taxes or increase spending now we can certainly provide benefits for ourselves. On the other hand, if we keep the surpluses to pay down the country's debt, that will boost the supply of private savings and investment and provide higher incomes for the next generations. Passing on a huge debt burden, which today requires interest payments of almost $250 billion each year, is quite unfair to our

children and grandchildren and it is a poor way to prepare for the next century.

We cannot count on the favorable trends continuing; the wise thing to do is to wait and see what happens. We should also wait until Congress takes steps to shore up Social Security. We should not be spending the surpluses until the government's revenue and spending excluding Social Security are in balance and Social Security's long-term fiscal imbalance has been addressed. It is certainly premature to talk about spending a surplus when we have huge entitlement costs looming before us in the near future. We shouldn't spend money we may not have. Moreover, I don't see the American people crying out for government action, either on the spending side or the revenue side. And, with the economy performing quite well, I see little reason for changing the government's fiscal approach at the present time. So I think we should resist the proposals calling for new tax cuts or increased government spending. I believe we will get a higher economic return from future surpluses by using them to whittle down the $3.8 trillion in federal debt held by the public.

I understand that it is possible to use the surplus to carefully craft tax cuts or new spending programs that deepen the nation's long-term capital base and encourage economic growth. But I am not at all sure that those sound proposals would emerge from the legislative process. On balance debt reduction probably makes more sense.

CONCLUSION

So my preference is to leave the budget surplus alone, and if sizeable surpluses do in fact arrive they should be committed to our future, not to the present. It seems clear to me that those who want to reduce the surpluses, whether by tax cuts or spending increases, will be impairing the incomes of our children and grandchildren. They are making a clear choice, preferring our generation to future generations.

A TRIBUTE TO THE ISRAELI MIA'S

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. SCHUMER. Mr. Speaker, I rise today to commemorate the capture of several Israeli soldiers who were taken prisoner by the Syrians in the 1982 Israeli war with Lebanon.

On June 11, 1982, an Israeli unit battled with a Syrian armored unit in Lebanon's Bekaa Valley. The Syrians succeeded in capturing Sgt. Zachary Baumel, 1st Sgt. Zvi Feldman and Cpt. Yehudah Katz. Upon arrival in Damascus, the identified tank and crew were paraded through the streets draped in Syrian and Palestinian flags.

Since that terrible day in 1982, the Israeli and the United States Governments have been working to obtain any possible information about the fate of these missing soldiers, joining forces with the offices of the International Committee of the Red Cross, the United Nations and other international bodies. According to the Geneva convention, the area in Lebanon where the soldiers first disappeared was continually controlled by Syria, therefore deeming her responsible for the treatment of the captured soldiers. To this day, despite the promises made by the Syrian Government and by the PLO, very little information has been forthcoming about the condition of Zachary Baumel, Zvi Feldman, and Yehudah Katz.

June 11 marks the anniversary of the day that these soldiers were reported missing in action. Sixteen pain-filled years have already passed since the families of the MIA's have last seen their sons, and yet President Assad has still not revealed their whereabouts.

One of these missing soldiers, Zachary Baumel, is an American citizen from my district in Brooklyn, NY. A dedicated basketball fan, Zachary began his studies at the Hebrew School in Boro Park. In 1979, he moved to Israel with other family members, and continued his education at Yeshivat Hesder, where religious studies are integrated with army service. When the war with Lebanon began, Zachary was completing his military service and was looking forward to attending Hebrew University, where he had been accepted to study psychology. But fate had unfortunately decreed otherwise and on June 11, 1982 he vanished.

Zachary's parents, Yonah and Miriam Baumel have been relentless in their pursuit of information about Zachary and his compatriots. I have worked closely with the Baumels, as well as the Union of Orthodox Jewish Congregations of America, the American Coalition for Missing Israeli Soldiers, and the MIA Task Force of the conference of Presidents of major American Jewish organizations. The Stella K. Abraham High School for Girls forged a project that has increased awareness and support for the MIAs plight for freedom. These groups have been at the forefront of this pursuit of justice. I want to recognize their devoted efforts and ask my colleagues to join me in commending their efforts. These families have been without their children for sixteen years. Answers must be found.

THE 25TH ANNIVERSARY OF THE MARYLAND REHABILITATION CENTER

HON. BENJAMIN L. CARDIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. CARDIN. Mr. Speaker, I rise today to pay special tribute to the Maryland Rehabilitation Center, which is celebrating its 25th Anniversary on June 19, 1998. Since opening its doors in 1973, the Center has gained international recognition as a provider of quality comprehensive rehabilitation services. At the Center, more than 50,000 individuals with disabilities have received the services they need to help them reach employment goals and achieve greater independence.

Located on 14 acres in northeast Baltimore, Maryland, the Maryland Rehabilitation Center is operated by the Maryland State Department of Education, Division of Rehabilitation Services. It is one of only nine comprehensive vocational rehabilitation centers in the United States, and has earned an international reputation for its innovative approach to helping individuals circumvent or compensate for their disabilities.

In carrying out its mission, the Center offers a wide variety of services, including evaluations, therapies, and training programs. In helping those with disabilities become as independent as possible, the Center helps identify suitable vocational goals and therapy needs.

Occupational training is offered in 12 areas, including office technology, computer programming, automotive repair and cosmetology. The Center often works with employers to hire qualified individuals who have the skills to do the job. In addition, the Center also offers remedial education, counseling, driver's education and specialized services for individuals who are deaf and/or blind.

I hope that my colleagues will join me in saluting the Maryland Rehabilitation Center for its dedication and commitment to helping those with disabilities achieve their goals for employment and independence. The Center's pioneering work has given thousands of individuals an opportunity to achieve success.

TRIBUTE TO SAMUEL SPINA

HON. BILL PASCRELL, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. PASCRELL. Mr. Speaker, I would like to take this opportunity to introduce you to a remarkable man, Samuel Spina, the Mayor of the Township of West Orange, New Jersey. Sam and I have worked together for many years. His colleagues and I agree that he has always been considered to be one of the most dedicated and conscientious public servants in our great state.

Born and raised in West Orange, Sam attended local schools and received his degree from Seton Hall University. Following graduation, Sam served our country in the United States Marine Corps. After completing his service commitment, he returned to marry his high school sweetheart, the former Joan Coen. Settling in West Orange, they raised seven children, and have more recently been blessed with six grandchildren.

Mayor Spina began his distinguished career in public service in 1970 when he was elected to the West Orange Township Council, receiving more votes than any other candidate in that open election. In May 1978, Sam was elected Mayor for the first time. In 1982, Sam became the first candidate for Mayor to run unopposed in the history of West Orange. Clearly his talents and keen insight into public policy were not lost on the electorate. After being elected to an unprecedented fifth term in 1994, he continues to serve in that position to this day.

The citizens' appreciation of Sam's service and the recognition from his peers have been unparalleled. He was elected to serve as the President of the New Jersey Conference of Mayors in April 1988. Mayor Spina took the office to which he was elected seriously, making a concerted effort to educate the people of the Garden State on the fundamentals of local government. In 1991, he was elected Chairman of the Essex County Conference of Mayors.

In addition to his respected political career, Sam has been extremely active in the West Orange community. Known throughout Essex County as a man who gives freely of his time, he frequently can be seen at Our Lady of Lourdes Church. He is also dedicated to recognizing and promoting the interests of our seniors and disabled citizens, often organizing

activities devoted expressly to them. Mayor Spina is also a valued member of the World Wildlife Fund, Common Cause, the West Orange Animal Welfare League, and GASP.

Mr. Speaker, I ask that you join me, our colleagues, the citizens of West Orange, and Sam's friends and family as we recognize Mayor Samuel Spina's valuable contribution to the community.

TIME TO PAY OUR U.N. DUES

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. HAMILTON. Mr. Speaker, it is time to pay the arrears that we owe to the United Nations.

I include for printing in the RECORD a letter form the Honorable John Whitehead, Deputy Secretary of State in the Reagan Administration, and Chair of the United Nations Association. Mr. Whitehead eloquently outlines the reasons we should pay our arrears, and the costs to United States interests if we do not. He further refutes effectively the argument some have made that we do not actually owe this money to the United Nations.

I urge my colleagues to read this letter, and call on the Congress to take action to pay what we owe.

UNITED NATIONS ASSOCIATION OF THE UNITED STATES OF AMERICA,

June 1, 1998.

DEAR MEMBER OF CONGRESS: The United Nations Association of the USA, representing millions of Americans through its nationwide chapters and affiliated organizations, regrets the continuing impasse over payment of US arrears to the United Nations. We urge you to consider the following points during the weeks ahead as Congress grapples with the problem of meeting longstanding financial obligations to the United Nations.

The United States, first of all, faces the loss of its vote in the UN General Assembly at the end of this year under Article 19 of the UN Charter. This penalty is automatically applied if a member state's arrears at the year exceed the previous two years' assessments. With the world's largest economy by far, the US historically has been the largest contributor to the UN system. But, the US is now responsible for some 60 percent of the debt of all member states—arrearages more than double the UN's annual regular budget, which are crippling UN capabilities and paralyzing peacekeeping. Although various contingencies could avoid America's loss of vote at the start of 1999, the mere possibility that the world's leader may be placed in such a position does not befit our great nation.

On another issue of evident priority to American policymakers, the US now has a limited window of opportunity to negotiate a lowering of its United Nations assessment—from its present rate of 25 percent of the UN's regular budget to 22 percent. UN member states have indicated a willingness to reopen negotiations on the assessment level if a substantial amount of US arrears are paid. One might note that the Reagan Administration—in which I served as Deputy Secretary of State—had opposed such a reduction, fearing diminished influence would follow; other countries oppose it on grounds of equity: A member state's assessment is based primarily on ''capacity to pay,'' largely measured by each member's share of world income—over 26 percent for the United States. The US already pays less than this amount. In contrast, for example the 15 member states of the European Union which account for 30.8 percent of world income, are assessed 36.2 percent of UN costs. The assessment on the Japanese, even with their ailing economy, will rise to just above 20 percent in the year 2000.

Those calling for a lowering of the US rate of assessment argue that this country makes appreciable contributions to the maintenance of international peace and security in other ways, particularly through its defense commitments and refugee and other emergency relief programs. They argue that the United Nations does not reimburse the US for these contributions. When the United States Government decides to launch such operations on its own, under its own control—even if blessed by authorizing United Nations Security Council resolutions—other countries have no say in the mission (and indeed, may see it as susceptible to manipulation for US advantage). We would rightly object to paying through the UN for Russian troops under Russian command in Georgia, or for Nigerian troops under Nigerian command in Sierra Leone—so we cannot claim that the rest of the world owes us money for US operations. The Italians, who led a mission in Albania with very close Security Council oversight, acknowledge they have no claim to reimbursement from other UN members for the costs of that operation. With UN control goes UN financial responsibility—and with national control goes national financial responsibility. If a country asserts exclusive control over its deployments, it volunteers to pay the costs on its own.

Most of the United States' debt to the United Nations actually is owed to past peacekeeping activities, particularly in the former Yugoslavia, which the US voted to create. This means that many countries are owed significant sums for their previous contributions of troops and equipment to peacekeeping operations, and countries are increasingly reluctant to offer troops to the UN when there is no reimbursement. There is no doubt that UN peacekeeping is a cost-effective investment in stability—but if UN peacekeeping is to survive, the United States must pay its share of those expenses.

For all the furious debate over US financial contributions to the agencies and activities of the UN system, the US annually spends only about 0.1 percent of our federal budget—or $7 per American—on all voluntary as well as assessed contributions. These limited amounts provide support to combat malnutrition, contain the spread of infectious diseases, minimize the devastating impact of refugee flows, harmonize actions on global environmental initiative, provide economic assistance to developing countries and provide for a neutral intervener to keep the peace in potentially volatile political situations.

The American people do not want the United States to accept the costs of single-handedly being the world's policemen or to address on its own a host of worldwide social, economic and environmental challenges. It serves the national interest to promote consensus-building and burdensharing at the international level and to strengthen the notion of the rule of law on which international stability rests. Opinion research consistently finds that an overwhelming majority of Americans believe in strengthening the United Nations to meet the challenges before us. In a world characterized by a growing web of global connections, the United Nations and its system of agencies and programs offer unique and essential avenues for the United States to exercise leadership in support of its values and its vision for the future.

Sincerely,

JOHN C. WHITEHEAD,

Chairman.

TRIBUTE TO GISSELLE RUIZ

HON. JOHN F. TIERNEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. TIERNEY. Mr. Speaker, I rise to salute Ms. Gisselle Ruiz of Lynn, Massachusetts who has received an award from the Lynn Hispanic Scholarship Fund, Inc. for academic excellence.

I hope Gisselle appreciates and is proud of her accomplishments. She is most deserving of the many awards which have been bestowed upon her. Her leadership potential and her willingness to give back to her community are evident by the extracurricular activities she has chosen. She is a role model for her peers and an inspiration to her family, being the first to graduate from high school and go on to college. I trust that she understands the value of continuing her education and hope that she will continue her hard work. Her dedication and commitment are to be commended. I have no doubt that she will be successful in her future endeavors.

Indeed, Ms. Ruiz has worked hard to achieve her goals. Mr. Speaker, I am proud to stand here to recognize the accomplishments of Gisselle Ruiz and I hope my colleagues will join me today in wishing Ms. Ruiz the very best as she continues her education.

THE U.S. ARMY SCHOOL OF THE AMERICAS: LEADING THE FIGHT TO KEEP DRUGS FROM REACHING U.S. BORDERS, WHILE PROMOTING DEMOCRACY AND HUMAN RIGHTS IN LATIN AMERICA AND THE CARIBBEAN

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. BEREUTER. Mr. Speaker, as many of my colleagues are aware, there has been a concerted effort on many fronts to close the U.S. Army School of the Americas (SOA). The opponents of the school have often used distorted or false information that only serves one purpose—to mislead the American public. Opponents of the U.S. Army School of the Americas are correct to point out that several of the school's graduates have been implicated in crimes, corruption, and human rights violations. Press reports have accurately noted that former Panamanian dictator Manuel Noriega was a former student, as was one of the Salvadoran officers responsible for the 1989 assassination of six Jesuit priests. However, my colleagues should be aware that more than 60,000 young Latin American officers have graduated from the SOA since its creation in 1946, the vast majority of whom have served their nations honorably and responsibly. Graduates of the SOA are personally responsible for the return of democracy in Latin American

nations such as Bolivia and Argentina. Also, many of the school's graduates have lost their lives while combating the Narco-guerrillas and drug lords in Colombia and Peru.

These counterdrug operations are of vital interest to the safety and security of our Nation as the efforts of these brave Latin American soldiers are aimed at reducing the flow of drugs into the United States of America. This Member feels it would be a disservice to brand all the school's graduates as criminals because of the misdeeds of a very few.

The School of the Americas was established to heighten the professionalism of military establishments throughout Latin America. While the early focus of the institution during the Cold War was on combating Soviet-backed insurgencies, in recent years the school's emphasis has primarily shifted towards counterdrug operations to combat drug trafficking. The SOA curriculum also provides training in medical assistance, humanitarian and civil assistance, demining operations, peacekeeping operations, and most importantly human rights training.

One very positive result of the recent exposure of the school has been a much greater emphasis on human rights. They now expose every student at the school to a rigorous formal and informal training program on basic human rights. Specific classes and case studies are used to enhance the training and to make U.S. concerns unambiguously clear. The roles and rights of civilians, clergy, human rights observers, and U.N. personnel are integrated into the training program.

While the SOA has subsequently increased its emphasis on human rights, this Member believes that there is a basic value in encouraging young Latin-American military officers to study and train in the United States. An institution such as the SOA, which annually hosts 1,300 students from almost 20 countries, provides a level of professional training that is not otherwise available. Moreover, exposure to the U.S. lifestyle, values, and ideals offers important lessons for the future military leaders of Latin America.

There have been many false allegations in the past regarding the School of the Americas, such as the alleged existence of SOA torture manuals. This Member can assure my colleagues that there are no such manuals. This Member has contacted the Department of the Army, and the Department confirmed that such manuals do not exist. The SOA does not in any way engage in or endorse such heinous activities. Regarding the allegations that the SOA trains death squads and assassins, this Member can assure my colleagues that this is not true. The SOA is run by Officers of the United States Army that must operate the school in accordance with the governing regulations of the U.S. Army, the Department of Defense, and U.S. Public Law. Therefore, this Member can readily assure my colleagues that the SOA is not operating a training camp for death squads and assassins. The curriculum of the SOA is based on U.S. Military doctrine and practices, and uses the same materials from courses presented to U.S. military personnel. It is really outrageous that some people would tell such lies and sad that any Americans would believe such lies.

In April, a member of my staff traveled to Ft. Benning, Georgia, with a staff delegation from the House Committee on National Security on a fact finding tour of the SOA. The staff delegation received a briefing on the entire curriculum currently being taught at the school. My staff member, with the aid of a translator, was able to engage in dialogue with a group of Latin American enlisted soldiers and asked questions about the type of training they were receiving from the SOA. The soldiers were from various countries such as El Salvador, Ecuador, Peru, Argentina, Columbia, Venezuela, and Mexico. My staff member noted that all of the soldiers were proud to have been chosen to represent their respective countries at the SOA. Many of these soldiers will return to their home and train other soldiers that could not attend the SOA in the proper application of U.S. military doctrine, human rights, and democracy. In addition, my staff member observed no improprieties in the training being given to students during the staff delegation visit. In fact, the School of the Americas readily welcomes both its proponents and opponents to visit the school to gain a better understanding of the type of programs being taught at the school.

While, this Member cannot guarantee that no graduate of the SOA will ever abuse human rights or undermine civilian government. What this Member, can guarantee is that every effort will continue to be made to fully indoctrinate the students on respect for human rights and democracy at the U.S. Army School of the Americas. The training at this school undoubtedly does far, far more good to encourage appropriate human rights practices than any possible harm that could come from even a perversion of such an educational program some student might practice. This Member feels that it is really time for the congressional and religious opponents of the SOA to abandon this misguided attack on the SOA that misleads so many well-intentioned Americans who write their Senators and Congressmen.

IN HONOR OF OSCAR VIDAL BENITEZ

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. MENENDEZ. Mr. Speaker, I rise today to honor Oscar Vidal Benitez, a true Cuban American hero and outstanding International Lions Club member.

In 1950, Mr. Benitez joined the Lion's Club in Bayamo, Cuba. Once in the club he set out to be a driving force in Lionism. By 1958 he was President of the local club and eventually he became Governor of an entire region of clubs in Cuba. He became well known for his work for the blind by becoming Director of the Rehabilitation for the Blind Program.

Like so many Cubans, he was forced to flee his homeland and settled in the New York/New Jersey metropolitan area. Once in America, while attempting to adjust to his new country, he began his work for the Lion's Club almost immediately. In 1963 he founded and became President of the New York Lion's Club of Cubans in Exile. Mr. Benitez fought to get the club recognized by the International Lions Club and eventually the club branched out to form many active Lions Clubs in the metropolitan area.

Next, Oscar Vidal Benitez moved to Miami where he was founded and President of the Miami Buena Vista Lions Club. In 1971, this club was recognized internationally for gaining one of the largest increases in membership in the world.

In total, Mr. Benitez is responsible for the founding of 15 Lions clubs in the United States and since joining the Lions in 1950, he has never missed a meeting. Mr. Benitez has been internationally recognized for his contributions to Lionism. He has received many President's and Governor's medals of appreciation, he was inducted by the International Board of Directors as a Life Member of Lions International and he has been honored as a Member of the World Humanitarian Fraternity Melvin Jones Fellowship on three separate occasions. Mr. Benitez has done an incredible job of spreading Lionism by starting new clubs, attracting new members and raising money for charity, but his most lasting contributions on behalf of the Lions Club may be his work with the blind.

Mr. Benitez is a life member of the Florida Lions Eye Bank Century Club and the Conklin Center for the Blind and he has received a Presidential Honor for his work with the Lions Home for the Blind, Inc. He is also the founder of the Home for the Blind Foundation which is now funded by Dade County.

On Wednesday, June 10, the West New York Lions Club will honor Oscar Vidal Benitez for his incredible contributions to Lionism and to the community. The West New York Lions Club is the largest in New Jersey and it traces its roots to the New York Lion's Club of Cubans in Exile which Mr. Benitez founded when he first came to the United States.

In closing I would like to thank Mr. Oscar Vidal Benitez for his outstanding work on behalf of the Lions Club. His work across two countries and three states will never be forgotten.

RECOGNIZING THE MORRIS ARCHITECTS

HON. SHEILA JACKSON-LEE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Ms. JACKSON-LEE of Texas. Mr. Speaker, I, Congresswoman JACKSON–LEE, submit the following document concerning the Congressional Recognition of Morris Architects.

CONGRESSIONAL RECOGNITION OF MORRIS ARCHITECTS

Whereas, Morris Architects was founded in 1938, S.I. Morris and Talbot Wilson sixty years ago, and;

Whereas, throughout the last sixty years, Morris Architects has served the city of Houston and the great state of Texas in fields of entertainment, government, education and health care architectural work and;

Whereas, Morris Architects have always been on the cutting edge of providing monumental landmarks and economic development throughout the United States and;

Whereas, the Alpha Kappa Omega Chapter has always maintained the highest level of excellence, evidenced by the more than sixty awards won by Morris Architects in the last twenty years, to establish a higher standard of life for the residents of Houston and the United States.

Now therefore, be it resolved that Morris Architects, a firm that has prospered

through diversification, expansion and a solid commitment to high quality architectural design, is a valued and recognized leader in the world of architecture and the Houston community. Furthermore, be it resolved that Morris Architects continually improves the quality of life through their visionary and innovative architectural works that create a lasting impression on Houston and other cities.

THE HONORABLE CLIFF STEARNS, M.C. HONEST BALANCED BUDGET ACT OF 1998

HON. CLIFF STEARNS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. STEARNS. Mr. Speaker, I want to let my colleagues know about legislation I have introduced called the ''Honest Balanced Budget Act of 1998.'' It is identical to the bill introduced by Senator FAIRCLOTH earlier this year.

The Social Security Trust Fund's surplus shouldn't be used to fund other programs. AND it should not be used to mask our nation's debt.

Did you know that the Social Security Trust Fund will be running a $100,000,000,000 Surplus for fiscal year 1999? How is this possible when we keep hearing that the Trust Fund is in trouble?

Let's restore the trust for our seniors. We must ensure that the purpose for which the trust fund was set up is not violated.

No other bill does this this simply.

HONORING ARCHBISHOP SUMBAT LAPAJIAN FOR A LIFETIME OF PUBLIC SERVICE

HON. JAMES E. ROGAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. ROGAN. Mr. Speaker, our nation is as diverse in character as it is in geography. Our communities are held together by faith, spirit, and a commitment to a bright future for our children. Recently many of my constituents celebrated an important anniversary by saluting a prominent religious leader who has exemplified those values. Today, I echo those same sentiments by honoring the life's work of Archbishop Sumbat Lapajian.

A native of Beirut, Sumbat was ordained to the priesthood in 1958 and began a distinguished career of public service. His work was recognized by his peers, and he was soon appointed to serve as rector at the Armenian Apostolic Holy Cross Church of Los Angeles, a position he held until June of 1973 when he was consecrated Bishop by His Holiness Khoren I of Cilicia.

Already well established in his own parish, his work in our community continued to expand. Bishop Lapajian was instrumental in establishing after school and weekend programs for children and worked throughout Southern California to build a strong faith-based educational system. He also worked to build from the ground up three of the largest Armenian Apostolic churches in the Los Angeles area, of which one, St. Mary's Church, is in my hometown of Glendale, California. All continue to flourish today.

In April of 1981, Bishop Lapajian was honored by Catholicos Khoren I with the title of Archbishop in the Armenian Apostolic Church—one of its highest honors.

Mr. Speaker, for 40 years, Sumbat Lapajian has dedicated himself to educating our youth, comforting the sick, inspiring students, and unconditionally working for others. His faith, devotion, and life's work are an inspiration to us all. For his lessons of love, compassion, and humility, and in honor of his lifetime of public service, I ask my colleagues here today to join me in saluting His Eminence Archbishop Sumbat Lapajian.

TRIBUTE TO HEIDY PEREZ

HON. JOHN F. TIERNEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. TIERNEY. Mr. Speaker, I rise to salute Ms. Heidy Perez of Lynn, Massachusetts who has received an award from the Lynn Hispanic Scholarship Fund, Inc. for academic excellence.

I hope Heidy appreciates and is proud of her accomplishments. She has continually challenged herself and graduated sixth in her class. By not taking the easy path, she has given herself the tools to advance her hopes for the future. I trust that she understands the value of continuing her education and hope that she will continue her hard work. In choosing nursing as a career path, she is following her desire to provide care to many who need it most, and I have no doubt she will do so with compassion. Her dedication and commitment are to be commended, and I am certain that she will be successful in her future endeavors.

Indeed, Ms. Perez has worked hard to achieve her goals. Mr. Speaker, I am proud to stand here to recognize the accomplishments of Heidy Perez, and I hope my colleagues will join with me today in wishing Ms. Perez the very best as she continues her education.

THE HIGHWAY BILL

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, June 3, 1998 into the CONGRESSIONAL RECORD.

IMPROVING OUR TRANSPORTATION SYSTEM

Last week, Congress, with my support, significantly boosted investment in our nation's transportation system by passing a six-year highway bill. This bill increases federal funding for transportation by 40%, and provides special funding for key projects in southern Indiana, including the Ohio River bridges project in the greater Louisville area and the U.S. 231 project in Spencer County. This highway bill will improve the quality of services throughout our state, and is one of the most important pieces of legislation for Indiana in decades.

The measure includes funding for construction and maintenance of highways and bridges, highway safety programs, and expansion of mass transit systems. It will also help improve air quality, enhance recreational bike and pedestrian trials, assist current and former welfare recipients get to work, and further innovative ''intelligent transportation'' projects to help move our transportation system into the 21st century.

The transportation bill is of vital importance to Indiana. Maintaining the 93,198 miles of highway in Indiana is a difficult challenge, but the highway bill will help us improve the network of roads and bridges in our state.

THE NEED FOR GOOD ROADS

Indiana is known as the ''crossroads of America'', a few other states are as dependent on highways. Economic development is not possible without good infrastructure. It helps businesses grow and expand and means more jobs for Hoosiers. I often hear from Hoosier business leaders about how the improvement of a local road has helped community businesses and community development.

Across our state, however, we can see a lot of problems with the condition of our roads. According to one recent study, 57% of Indiana roads are rated as being in poor, mediocre, or fair condition. There are two primary reasons for this situation. First, a growing Indiana population means more drivers and higher road use, causing more wear and tear on the roads. Second, over the years, funding for highways has persistently lagged far behind the amount needed just to maintain top condition. The combination of these two forces—more drivers and less money—has made the upkeep of our highways difficult.

The concern is that without greater investment in our transportation system, the long-term prospects for our economy will suffer. The global competitiveness of our economy depends in large part on the efficiency of our infrastructure, especially transportation. Our ability to move goods and services to market must be second to none.

FUNDING INCREASES

The bill will benefit Indiana in two important ways. First, the bill boosts our overall share of federal highway funds. Under the old highway formula, Indiana and other so-called ''donor'' states were paying in more in go as taxes than what they were receiving in federal highway funds, and were thereby subsidizing highway spending in other ''donee'' states. In particular, Indiana was getting back about 78 cents from every dollar of gas pump taxes. The new highway bill, however, changes the formula so that every state is guaranteed a 90.5% return in highway funding on gas taxes paid by the state. Indiana's share under the new bill equals about 91%.

Second, the highway bill increases overall funding for the federal highway program by 40% over current levels. It provides $204 billion over six years for all transportation programs, including $167 billion for highways. As a result of the new formula and the bill's higher spending levels, Indiana will receive an average of $617 million annually, which is a 52% increase over the approximately $405 million Indiana received on average from 1992–1997. This increased funding will likely accelerate major highway and bridge projects in southern Indiana and throughout the state.

The bill will benefit our state and the nation in other ways as well. Mass transit projects, including commuter rail and bus systems, will receive at least $36 billion over six years. Also, a total of $500 million in grants has been set aside for states which implement anti-drunk driving initiatives.

SOUTHERN INDIANA PROJECTS

Passage of the highway bill will help meet the infrastructure needs of southern Indiana

and provides special funding for three important initiatives in our region. First, the bill includes $40 million for the Ohio River Major Investment Study (ORMIS) project, which will entail construction of two new bridges in the greater Louisville area as well as building Spaghetti Junction in downtown Louisville. The funding will enable Indiana and Kentucky, working jointly on the project, to complete required design work on the project and begin acquisition of right-of-way.

Second, the highway bill includes $600,000 for continued design work on the U.S. 231 project in Spencer County. This project involves the construction of a new four-lane highway linking I–64 in Indiana with the Natcher Bridge and the Kentucky Parkway system to the south. Indiana has completed initial environmental work on the project, and aims to move to construction by 2001.

Third, the highway measure includes at least $27 million for continued work on the I–69 project, which will connect Indianapolis to Evansville. The new highway promises to bring growth and development to the southwestern portion of the state and to provide the Evansville area with a critical link to Indiana's interstate system.

ASSESSMENT

I believe the highway bill takes an important step in meeting our crucial transportation needs in Indiana and throughout the nation. One recent study pegged the cost of bringing our nation's transportation system into top condition at $437 billion, including $80 billion to repair the one of every three bridges in the nation that is structurally deficient. This measure will help us start to address these critical problems.

I am especially pleased that the highway bill achieves a more equitable distribution of revenues from the gas tax, thus sending more resources back to the states and increasing the flexibility of state and local governments to meet their most pressing transportation needs. The Indiana congressional delegation has worked in a bi-partisan fashion over the years to address this problem, and these efforts have now paid off.

Investment in our infrastructure is vital to maintaining the high quality of life Hoosiers and all Americans have come to expect. An excellent highway system will make our economy more productive and more competitive. The highway bill recently approved by Congress serves those important goals.

COMMEMORATING 100 YEARS OF RELATIONS BETWEEN PEOPLE OF THE UNITED STATES AND PEOPLE OF THE PHILIPPINES

SPEECH OF

HON. LUIS V. GUTIERREZ

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 9, 1998

Mr. GUTIERREZ. Mr. Speaker, I rise today in support of House Resolution 404. I also take the floor to call on my colleagues to do more than simply commend the Phillipine people on this historic occasion. I also ask that we pass the Filipino Veterans Equity Act—House bill 836—this year.

House bill 836 does more than offer cursory thank yous to the thousands of Filipino veterans who fought with us during World War Two. This bill provides the real compensation and veterans benefits that our government promised to these brave veterans in 1946.

100 years ago the people of the Phillipines won their independence from Spain. Since that time, the Phillipines has remained one of our nation's closest allies in Southeastern Asia. I commend the people of the Phillipines for reaching this important milestone.

The resolution before us today thanks the people of the Phillipines for fighting on our side during the Second World War, Korea and Vietnam. Indeed, thousands of Filipinos died fighting for the freedoms that both our peoples now enjoy.

At the terrible battles of Bataan and Corregidor, Filipino soldiers defended the American flag. They fought side by side with boys from Chicago, the plains of Kansas and other small towns and cities in America. They also suffered the brutality and inhumane treatment that the Japanese army inflicted on allied troops throughout 1941.

These are historical facts that we recognized in resolutions passed in both chambers of Congress last year.

Yet today, as we move to recognize our close ties to the people of the Phillipines, we sadly fail to honor the real debts we owe to these Filipino veterans who helped us keep the world free.

It has been more than a half century since Congress rescinded veterans benefits to members of the Phillipine Commonwealth Army and Special Phillipines Scouts. This is a half century too long. So today, as we commemorate 100 years of relations between the United States and the Phillipines, I ask that we correct the injustices of the past by committing ourselves to greater action for Filipino veterans in the future.

Let us pass House Resolution 404 today and let us pass House bill 836, the Filipino Veterans Equity Act, later this session.

TRIBUTE TO J. WILLIARD (BILL) LINEWEAVER

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. WOLF. Mr. Speaker, I rise today to honor J. Williard Lineweaver, better known in his community as Bill, who recently retired as Mayor of the Town of Warrenton, Virginia, after 39 years of public service. Bill's dedication to the community has resulted in the preservation of Warrenton's small-town charm, and there is little doubt that his legacy will continue for many generations to come.

Bill has served the Town of Warrenton as an elected official since 1955 and became Mayor in 1974. Born in Rockingham County, ''the Mayor'' moved to The Plains/Middleburg area in 1929 and graduated from Marshall High School in 1939. He is a former president of the Virginia Municipal League, an organization which represents local governments before the General Assembly. Bill has also served as moderator of a televised debate for the United States Senate and as a member of the Governor's Advisory Council. Currently, he is serving on the Vint Hill Economic Development Authority, the Fauquier County Airport Committee, and as a member of a number of other town groups.

President Theodore Roosevelt once said that ''The first requisite of a good citizen in this Republic of ours is that he shall be able and willing to pull his weight.'' Bill Lineweaver is a man who has pulled many times his weight for nearly four decades. Those of us who have had the privilege to know him and work with him over the years know that he exemplifies what a good public servant should be.

Mr. Speaker, I ask my colleagues to join me in applauding Bill Lineweaver for his work and commitment. He will always be ''the Mayor'' in the hearts of the citizens of Warrenton.

RECRUITING SKILLED TECHNOLOGY WORKERS

HON. JON CHRISTENSEN

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. CHRISTENSEN. Mr. Speaker, I rise today to introduce new legislation that will help cure a problem that is widespread across our nation. I speak of the difficulties that American businesses are faced with in recruiting skilled, information technology (IT) workers. In my district of Omaha, Nebraska, we recently lost a company due to the fact that they could not recruit enough information technology workers to fill key positions.

As the turn of the century quickly approaches and technology throughout the world continues to progress at a rapid pace, the need for skilled, information technology workers grows as well. A study released by the Department of Commerce, entitled ''America's New Deficit: The Shortage of Information Technology Workers,'' made light of the desperate need for new information technology workers. As a result of this report, the Information Technology Association of America (ITAA) released a study conducted by Virginia Tech—''Help Wanted 1998: A Call for Collaborative Action for the New Millennium.'' This study estimated that 346,000 information technology positions were currently vacant in three core information technology occupational clusters (programmers, systems analysts, and computer scientists/engineers). In addition, there were 129,000 vacancies in 5,874 information technology companies and 217,000 vacancies in 97,733 noninformation technology corporations with more than 100 employees. Moreover, the need for information technology workers will only get worse as technology continues to progress while the pool of skilled workers continues to decrease.

In response to these concerns, I would like to introduce legislation today that would create a tax credit for employers who provide technological training for their employees. I am confident that this legislation will encourage employers to make an investment in the future of their employees and our nation.

The credit would be an amount equal to 20 percent of information technology training program expenses; however, not to exceed $6,000 per trainee in a taxable year. The value of the credit would increase by 5 percentage points if the IT training program is operated in an empowerment zone or enterprise community, in a school district in which at least 50 percent of the students in the district participate in the school lunch program, or in an area designated as a disaster zone by the President or Secretary of Agriculture.

Mr. Speaker, let me conclude by saying that I encourage all members of this chamber to consider cosponsoring this piece of legislation

and I insert the text of this legislation for printing in the RECORD.

H.R.—

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CREDIT FOR INFORMATION TECHNOLOGY TRAINING PROGRAM EXPENSES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following new section:

''SEC. 45D. INFORMATION TECHNOLOGY TRAINING PROGRAM EXPENSES.

''(a) GENERAL RULE.—For purposes of section 38, in the case of an employer, the information technology training program credit determined under this section is an amount equal to 20 percent of information technology training program expenses paid or incurred by the taxpayer during the taxable year.

''(b) ADDITIONAL CREDIT PERCENTAGE FOR CERTAIN PROGRAMS.—The percentage under subsection (a) shall be increased by 5 percentage points for information technology training program expenses paid or incurred by the taxpayer with respect to a program operated in—

''(1) an empowerment zone or enterprise community designated under part I of subchapter U,

''(2) a school district in which at least 50 percent of the students attending schools in such district are eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.), or

''(3) an area designated as a disaster area by the Secretary of Agriculture or by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) in the taxable year or the 4 preceding taxable years.

''(c) LIMITATION.—The amount of information technology training program expenses with respect to an employee which may be taken into account under subsection (a) for the taxable year shall not exceed $6,000.

''(d) INFORMATION TECHNOLOGY TRAINING PROGRAM EXPENSES.—For purposes of this section—

''(1) IN GENERAL.—The term 'information technology training program expenses' means expenses paid or incurred by reason of the participation of the employer in any information technology training program.

''(2) INFORMATION TECHNOLOGY TRAINING PROGRAM.—The term 'information technology training program' means a program—

''(A) for the training of computer programmers, systems analysts, and computer scientists or engineers (as such occupations are defined by the Bureau of Labor Statistics),

''(B) involving a partnership of—

''(i) employers, and

''(ii) State training programs, school districts, or university systems, and

''(C) at least 50 percent of the costs of which is paid or incurred by the employers.

''(e) DENIAL OF DOUBLE BENEFIT.—No deduction or credit under any other provision of this chapter shall be allowed with respect to information technology training program expenses (determined without regard to the limitation under subsection (c)).

''(f) ALLOCATIONS.—For purposes of this section, rules similar to the rules of section 41(f)(2) shall apply.''

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) of such Code (relating to current year business credit) is amended by striking ''plus'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting '', plus'', and by adding at the end the following new paragraph:

''(13) the information technology training program credit determined under section 45D.''

(c) NO CARRYBACKS.—Subsection (d) of section 39 of such Code (relating to carryback and carryforward of unused credits) is amended by adding at the end the following new paragraph:

''(9) NO CARRYBACK OF SECTION 45D CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the information technology training program credit determined under section 45D may be carried back to a taxable year ending before the date of the enactment of section 45D.''

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end the following new item:

''Sec. 45D. Information technology training program expenses.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act in taxable years ending after such date.

NATIONAL UNDERGROUND RAILROAD NETWORK TO FREEDOM ACT OF 1998

SPEECH OF

HON. TED STRICKLAND

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 9, 1998

Mr. STRICKLAND. Mr. Speaker, I am proud to see the House of Representatives take up the National Underground Railroad Network to Freedom bill. This legislation will allow the U.S. Park Service to initiate public-private partnerships in order to interpret and commemorate the many sites and stories that make up the Underground Railroad.

The spirit and history of the Underground Railroad cannot be confined in a single museum or monument or National Park. Underground Railroad sites are scattered across my district in Southern Ohio, where slaves escaped the states to the South by crossing the Ohio River into freedom. Ohio has the longest border with slave states of any other free state in the union. Many families in Southern Ohio took great risks in order to help their brothers and sisters from the South shed the shackles of slavery. Most of these people had never even met the fugitives they harbored, and never saw them again.

The Underground Railroad Network to Freedom bill will establish a national list of the sites and trails where these daring rescues took place, so that future generations can learn more about the courage and fortitude of the passengers and conductors on the Underground Railroad. I look forward to the implementation of this bill, and I would like to thank my colleagues from Ohio, Representative STOKES and Representative PORTMAN for their hard work on this important legislation.

HONORING THE WORK OF CLIFFORD TURNER OF LOUISVILLE, KENTUCKY

HON. ANNE M. NORTHUP

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mrs. NORTHUP. Mr. Speaker, today I would like to recognize someone who has devoted his time and energy to making Louisville, Kentucky a better place to live. Pioneering one of the first high-tech multifamily developments in the United States, Clifford H. Turner has played an invaluable role for the City of Louisville. Nine years ago Clifford Turner's extraordinary vision enabled him to convert an old elementary school into forty-three apartment units. Listed as one of the top ten HUD insured multifamily housing development, this development is more than housing—it represents community living where neighbors share concerns and dreams.

Building on this success, Clifford Turner continued his vision, converting an old parking lot into an additional twenty-eight housing units. This vision will not only provide new housing opportunities, but will provide new jobs for the citizens of Louisville.

A sense of community spirit is what Clifford Turner has contributed to citizens in Louisville. Working together with local corporations, Turner is involved in a new tutorial program which will teach children, many in the African-American community, to learn how to use computers and to develop pen pals in Africa. Having friends in the community and throughout the world, Clifford Turner is truly an asset to Kentucky and the City of Louisville. His work and his dedication to children and families in Louisville is to be commended.

I hope you will join me in recognizing the great talents of Clifford H. Turner of Louisville, Kentucky.

THE SILICONE BREAST IMPLANT RESEARCH AND INFORMATION ACT

HON. GENE GREEN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. GREEN. Mr. Speaker, as a Member of the House Commerce Subcommittee on Health, I am committed to ensuring patients have complete and comprehensive access to information before they make a decision about a medical procedure.

I am rising today as the House sponsor of the Silicone Breast Implant Research and Information Act because I believe it is critical to the advancement of women's health and is the first step towards answering the many questions about the safety and efficacy of silicone breast implants.

By introducing this bill today, Senator BOXER and I hope to draw attention to an issue that has been either neglected or out right ignored for too long.

It is estimated that as many as two million women have received silicone breast implants over the last thirty years. Unfortunately, the information provided to these women before they elected to have silicone breast implants

has been both incomplete and even inaccurate.

Moreover, results from past studies have only raised more questions about possible negative effects that ruptured or leaking silicone breast implants may have on breast milk, connective tissue, autoimmune diseases and the accuracy of breast cancer screening tests.

Our legislation ultimately seeks to change this by focusing on three critical points—information, research, and communication.

First, and in my opinion most importantly, this bill will ensure that information sent to women about silicone breast implants contains the most up to date and accurate information available.

Current information packets sent to women do not accurately describe some of the potential risks of silicone breast implants. While recent studies by the Institute of Medicine indicate the rupture rate may be as high as 70 percent, information sent to women suggests the rupture rate is only 1 percent.

Second, this bill encourages the director of the National Institutes of Health to expand existing research projects and clinical trials. Doing so will compliment past and existing studies and will hopefully clear up much of the confusion surrounding the safety and efficacy of silicone breast implants.

Finally, this bill establishes an open line of communication between federal agencies, researchers, the public health community and patient and breast cancer advocates.

Women, especially breast cancer patients, want and deserve full and open access to silicone breast implants. Therefore, it is critical that these products are safe and effective, and that women are provided complete and frequently updated information about the health risks and benefits of silicone breast implants.

While I unequivocally support a woman's right to choose to use silicone breast implants, I believe we have a responsibility to support research efforts that will provide the maximum amount of information and understanding about these products. I hope each of you join me in support of this important legislation.

TRIBUTE TO FOOTHILL PARENT TEACHER ASSOCIATION

HON. KEN CALVERT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. CALVERT. Mr. Speaker, one of the things that makes America great is the dedication and commitment of many individuals throughout our country who participate in organizations to promote the well being of their community. The Foothill Parent Teacher Association is one of those commendable organizations.

The Foothill PTA represents Foothill Elementary School located in Corona, California. In order to provide an environment of quality programs and a high level of parental involvement, the Home-School Communications project was implemented. One of the purposes of this program is to provide weekly communication between home and school. Once a week each student is sent home with a packet of information, which the parent signs off on when received, allowing continual communication between home and school. The Foothill PTA also sends out a newsletter every month, which includes a calender of upcoming events and encourages parents and students to participate. Finally, the program offers up-to-date information to all parents by providing a 24-hour PTA Information Hot Line and a PTA web page on the Internet. It is important to acknowledge that the Home-School Communications project would not be possible without the volunteers who actively participate in the PTA.

This outstanding program should be applauded for the positive results it has brought to Foothill Elementary School. Since the commencement of the Home-School Communications project there has been an overall increase in parental involvement in school activities. There has been 99 percent participation at parent-teacher conferences and an increase of 110 percent in PTA membership, and it has brought a sense of togetherness and satisfaction to the parents, teachers, and office staff. There also has been an increase in attendance at school events, including the Halloween Carnival and the First Annual Reflections Awards Night.

All this effort and dedication by the members of the PTA has not gone unrecognized. The Foothill PTA received the California State PTA Advocates for Children Award in 1995 and the Outstanding Unit for California and Creative Membership Awards in 1997. In 1998, the Foothill PTA won Outstanding Unit for California and National PTA Outstanding Unit. Also, the Foothill PTA has been recognized as an Outstanding Unit at the council level for the last 4 years.

I want to thank the Foothill PTA for all their hard work and dedication to the children in our community. I am proud to have an organization like the Foothill PTA in my district. I encourage Foothill PTA members to continue with their involvement and wish them the best in their future endeavors.

TRIBUTE TO SISTER JOHN NORTON BARRETT, O.P.

HON. E. CLAY SHAW, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. SHAW. Mr. Speaker, I rise today with great pleasure to honor Sister John Norton Barrett, who is celebrating her 50th anniversary as an Adrian Dominican sister.

Through her faith, dedication and service, Sister John Norton has become one of the pillars of South Florida. She is widely recognized in our community for her dedication to excellence and her achievements in education.

In 1948, when Sister John Norton entered the Adrian Dominican Congregation, she had a heartfelt passion to serve the Church and the community through education. She graduated from Siena Heights College and later continued her studies at Barry University where she received a Master's Degree in Administration and Supervision.

She began her teaching at St. Mary's Elementary School in 1949 and by 1957 was principal of St. Matthew's School in Jacksonville. In 1963, she moved down to Miami Beach as principal of St. Patrick's High School.

In 1966 Sister John Norton joined the faculty of St. Thomas Aquinas High School. She served at St. Thomas for over thirty years as mathematics teacher, vice principal and principal. After her retirement, she continued her work for St. Thomas as director of the Development Office. Her tireless efforts and strong leadership have made St. Thomas Aquinas High School one of the top Catholic schools in the nation. The many awards and achievements for St. Thomas include the U.S. Department of Education Exemplary School Award as a Blue Ribbon School of Excellence for both 1985 and 1996. This year, alone, the high school boasts 21 National Merit Semifinalists and 26 Commended Students.

One of Sister John's most significant contributions to our community was the establishment of a community service program for St. Thomas Aquinas' students. This program, with the enthusiastic support of the students, requires that students dedicate 20 hours of service to needs in our community. As a result of this program, tens of thousands of service hours are given to the Broward County community each year.

Personally, Sister John Norton has been awarded the Primum Regnum Dei Ward from the Archdiocese of Miami in honor of her devoted service to the Lord and his Church. She has also received the Silver Medallion Brotherhood Award from the National Conference of Christians and Jews for her efforts in encouraging good human relations among all people.

Mr. Speaker, throughout the United States there are unfortunately too few individuals who dedicate their lives to education and community service. For fifty years, Sister John Norton has worked tirelessly for these causes, and we in South Florida are truly grateful. I am sure I speak for all my colleagues in congratulating Sister John Norton Barrett as she celebrates her golden jubilee as an Adrian Dominican sister.

INDEPENDENT COUNSEL STARR ADDRESSES THE MECKLENBERG COUNTY BAR ASSOCIATION

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. CONYERS. Mr. Speaker, I enter into the RECORD the following transcript of a speech made by Independent Counsel Kenneth Starr to the Mecklenberg County Bar Association in Charlotte, NC on June 1, 1998.

REMARKS BY WHITEWATER INDEPENDENT COUNSEL KENNETH STARR AT MECKLENBURG BAR FOUNDATION, CHARLOTTE, NORTH CAROLINA

Mr. STARR: Thank you very much. Thank you, Bill. It is a great pleasure to be here among a number of friends and new friends, in this great and very dynamic city, building upon a rich tradition of wonderful lawyers, some of whom have graced the leading courts in the country, including the Supreme Court of the United States. So thank you for your very kind invitation.

And let me also say at the outset how grateful I am to the sponsors for directing the very generous gift to the Burger Library Project at the College of William and Mary. I was privileged to serve as a law clerk to the late chief justice, and this, as you might imagine, for those who have been privileged to serve as law clerks for federal judges, is a labor of love when one is given the opportunity to be supportive in some way or another of a project that one knows that—as

law clerks like to refer to their judge as either ''the judge'' or ''the boss''—that the boss would say, ''That is a good thing, and I'm very grateful.'' So I am very grateful to you.

Let me also say that in light of the comment about Arthur Miller—how many wives was that?—(laughter)—thankfully, I'm about to celebrate my 28th wedding anniversary. I was thinking about the dog. (Soft laughter.) The dog bit Arthur?

Ms. : Mmm-hmm. (Affirmative.)

Mr. STARR: Now I have argued against Arthur and with Professor Miller, and he's a very distinguished advocate and so forth. But I have a solution. Not only do I have the same wife for the last 20—almost—8 years; we've also had a limited number of dogs. (laughter.) And I've got a dog for Professor Miller—(laughter)—who is a dropout from obedience school. (Laughter.) No Phi Beta Kappa, he.

Thank you again for your hospitality.

Several days ago the nation was once again shocked when a 15-year-old boy walked into a school in a little community in Oregon, of all places, Springfield by name, and opened fire—I should quickly say ''allegedly.''

One can only wonder what lies behind this horror. The pundits are already thinking and commenting. Some may say it's easy access to guns. Some say it's the culture of violence in the mass media, on television and our movies. Others say it's parental failure, breakdown of families, parental responsibility and the like. But it seems to me that when we gather together as a legal community, we cannot lose sight of the broader cultural backdrop, and to look at these unspeakable tragedies of life against that backdrop.

A very thoughtful person, Professor Steven Carter of the Yale Law School, has recently written yet another thoughtful book entitled simply, ''Civility''. And in this book—perhaps you have seen it; it's, again, as his books tend to do—gathering a lot of attention, and rightly so, he discussed what he calls the de-civilization of American society. Professor Carter characterizes civility, a term that is very familiar to the legal profession, in a very intriguing way. He says, ''It's the sum of the sacrifices that each of us as individuals make in order to live as part of organized society.'' The sum of our individual sacrifices.

Now, Professor Carter suggests, rather unhappily, that Americans are losing their sense, as a people, of civility. While individualism, and indeed, rugged individualism is a long and cherished tradition in American society, Professor Carter is seeing something different. Nothing wrong with being individualistic and asserting individual autonomy, but he says there is a cultural difference. His thesis is that, increasingly, Americans see themselves traveling through their lifetime journeys alone. Many believe that—again, Professor Carter's thesis—they should be able to act in a self-centered, egocentric, selfish way, and indeed, to act in whatever manner suits their interests, as they determine it at the time, regardless of the effect that it may have on others.

This callous disregard for civility, that sum of self-sacrifice, Professor Carter argues is threatening to this society. In his view, it threatens our very safety, but even more than that it threatens our political foundations, our democratic way of life.

Many observers believe that the legal profession, notwithstanding its greatness and its traditions, has likewise not been immune from this disease of selfishness. Justice O'Connor put it this way: she said, ''Many lawyers appear to have forgotten the integrity and civility—'' notice her marriage of the two, integrity and civility—''that once distinguished our profession.'' She used the term ''many lawyers,'' not all. Many seem to have forgotten these twin pillars of integrity and civility.

A striking example of what is said all too frequently, namely the low public esteem of the profession, is the fact that notwithstanding that 25—count them—of our 42 presidents has been lawyers, and some are icons. Think of them. Mr. Jefferson; Mr. Madison; Mr. Lincoln. Lawyers, and successful lawyers; practicing lawyers, lawyers who knew courtrooms, knew how to try cases.

Notwithstanding that storied past, one of the candidates in the Washington, DC, mayoral primary is campaigning on this: ''Vote for me because I am NOT a lawyer.'' Now that's in Washington, DC. Makes one wonder. Times have changed. It was 150 years ago, not too terribly far from here, that one of the great courtroom lawyers of his day, Daniel Webster, had this boast: ''Show me a man who is dishonest, and I will tell you, he is not a lawyer.'' We would say, ''He or she is not a lawyer.''

The lawyer of yesteryear was seen as a person who upheld the law and who stood steadfast against recklessness, against tyranny, and indeed against prejudice. As recently as 1960, which some of us do remember, a Southern novelist named Harper Lee wrote a little story. She expanded on what had been a short story, and you know it. She created this marvelous character, a lawyer named Atticus Finch, in ''To Kill a Mockingbird.''

Atticus Finch strove to find the truth while defending a black man who was wrongly accused of rape in a segregated community. The hatred that was directed against the innocent defendant even sparked a lynch mob, and Atticus had to stand and control that mob. And in acting in the story very bravely in the pursuit of truth, Atticus taught his children, through whose eyes we saw the story unfold; the town itself; and now countless Americans, including schoolchildren who across the country happily read this story; some have only seen the movie. But whether one has seen the movie and Gregory Peck or, hopefully, have read the book, have learned important lessons that a lawyer taught about justice, about basic human decency, about tolerance. Now in contrast to this very noble and trustworthy soul, today's popular culture portrays lawyers as greedy and unethical people who will cheerfully hawk their services—and, indeed, their very morals—to the highest bidder.

Whether it is the character Bruiser in John Grisham's novel, also a movie, ''The Rainmaker'' or Al Pacino in last year's movie ''Devil's Advocate,'' popular culture now sees lawyers as anything but seekers of truth and justice. No Atticus Finches in the movies.

Today's fictional lawyer will do anything for the client. No longer is he or she portrayed as being accountable to society as a whole for the authority, responsibility, and indeed power, that the lawyer is able to wield through the justice system. Now many of us, and certainly many here in this room, question profoundly whether this portrayal of modern day is fair, because each of us, I am confident, knows a great many lawyers out there who fall much more on the spectrum of Atticus Finch than they do to Bruiser.

But we still have to concede that the profession has changed, and we face a host—we all know them—of both economic and structural issues quite familiar to everyone in the room. But now to speak personally, one of these issues has been as baleful to our profession as its apparent loss of respect for truth. Too many of today's lawyers take Mark Twain's old aphorism very much to heart. As Mr. Clemens said, ''Truth is the most valuable thing that we have, so let's economize with it.'' (Laughter.)

Not Atticus Finch. Mr. Finch embodied two of the most important, and indeed noble, values of our system, loyalty to the client and yet respect for truth. For Atticus, these two values were not in conflict. The quest for the truth was very decidedly in his innocent client's best interest. What happens when those values do conflict?

When a search for the truth is not in the client's interest, which value should guide the lawyer's conduct? Lawyers have faced this question for some time, indeed I would say for generations. But the balance that the modern-day profession strikes appears to me to have changed.

As a great lawyer practicing in Boston, Justice Louis Brandeis, one of the most creative lawyers of our century, sided unapologetically with the search for the truth. Before becoming a Supreme Court justice, he consistently lifted up and sought assiduously to follow this credo: Advise a client what he should have, not what he wants. It sounds so odd to many ears, now.

Now, skip ahead a generation and Charles Curtis, a lawyer, very successful, in Boston, declaring a generation after the Brandeisian credo, quote, ''One of the functions of the lawyer is to lie for his client.'' The Brandeis-Curtis debate, as it were, even though they were never on the same platform, continues to rage today among practitioners and scholars alike. But the modern day image of the lawyer is the Speilbergian image, if you will, of lawyers as hired guns, suggests that at least a good many lawyers have given the appearance, at a minimum, and perhaps have decided to pay less than scrupulous regard for the truth, the truth.

Now this choice, to the extent it is being made each day, is most unfortunate. It goes to the basic moral foundation of our system. Truth indeed is intended to be the primary goal of our judicial system, because without truth as a foundation, justice cannot predictably be achieved. Our rules of evidence and of procedure demonstrate this. And after all, at a very basic level that all of us as citizens understand, witnesses are not directed, ''Tell whatever is in your interest. Be creative, be imaginative.'' Now, they are sworn to tell, in these wonderful words, ''The truth, the whole truth, and nothing but the truth.''–

Countless judicial opinions have reaffirmed this, ''this'' being it is the truth and not the service of clients, is the legal system's abiding value. One of the more famous examples that I followed rather closely was a decision from just a decade ago, in a case called Mix (ph) against Whiteside. The defendant in that case was a gentleman by the name of Whiteside, and he indicated to his attorney that he intended to commit perjury on the stand, thought it might go better for him if he did.

The attorney, quite properly, threatened to withdraw from the representation, and in effect, he prevented Mr. Whiteside from getting on the stand and lying. Now, Whiteside was convicted. Beyond a reasonable doubt is a difficult standard, but the jury found it, and so he's on appeal, and he says, among other things, ''I was deprived of the effective assistance of counsel within the meaning of the Sixth Amendment because my lawyer declined to allow me to lie on the stand.'' Speaking for the nation's highest court, and overturning the court of appeals that had accepted the argument——

Mr. STARR: Thank you—(laughter)—Chief Justice Burger, for whom again, I was privileged to clerk long before this opinion was written, very forcefully disagreed. And I know it's not polite to read from opinions whether you're arguing a case or especially subjecting you to an after-luncheon address, but these words are so powerful and simple and they are brief: ''We recognize counsel's

duty of loyalty and the overarching duty to advocate the defendant's cause. But it is manifest that that duty is limited to legitimate, lawful conduct by the attorney compatible with the very nature of a trial as a search for the truth.''

The chief justice continued, ''The responsibility of an ethical lawyer as an officer of the court—'' what a ring to it, an officer of the court—''dedicated to a search for the truth is essentially the same whether the client intends to commit perjury or to bribe witnesses. A lawyer simply cannot allow the client to commit a fraud on the court.''

His final words: ''The suggestion sometimes made that a lawyer must, quote, ''believe his or her client and not judge him'' in no sense means that a lawyer can honorably be a party to presenting known perjury.''

Now to many of us—(inaudible)—the Whiteside seemed like an easy case, and the result there was, you'll be pleased to know, 9-zip, against Mr. Whiteside. (Laughs.) Perhaps the more difficult question that lawyers face day in and day out is at what point does a lawyer's manipulation of the legal system become an obstruction of truth?

That issue raises tricky, difficult questions, and I think that the answers are found in the position recently advocated by a professor at the Yale Law School, Akhil Reed Amar. ''Our adversary system,'' Professor Amar has very convincingly, to my mind, argued, ''is not an end, but a means to an end. Pleadings, discovery, and the examination of witnesses are not the goals, they are only tools to be employed in a moral enterprise—the search for truth.'' Anthony Kronman, who is dean of the Yale Law School, has expanded on this idea in his very troubling book about our profession called, ''The Lost Lawyer.'' As Dean Kronman observes. ''The good lawyer is not only an advocate, but he or she is also a councilor. A good lawyer, acting as advocate in court, must use arguments to convince others—juries, judges—of the strength of the client's position. And that good lawyer, or other lawyers, acting as councilor, must urge the client against steps that are likely to impede the quest for truth, steps that, as most experienced lawyers and judges will say, will be recognized by juries for what they are.''

This vision, by Dean Kronman of Yale, of the virtuous lawyer, rather than the ''lost'' lawyer, has particular resonance when we talk not about the lawyer for an individual or the lawyer for a private corporation, but when we're speaking about a lawyer for the government, a lawyer for the people, whether it's a prosecutor or some other government lawyer. That public servant lawyer owes a duty not to any individual, but to the people as a whole.

Surprisingly, the basic proposition, grounded in history, tradition and common morality, is the subject to controversy as we speak. But the principle has been resoundingly reaffirmed by two federal courts in the last year. The courts have considered whether the evidentiary privileges that are available to private lawyers are also available to government lawyers paid, as Bill was emphasizing, at taxpayer expense.

The 8th Circuit Court of Appeals in St. Louis, last year, flatly rejected the argument. and it did so in fairly emphatic language, which again I would like to share to you. It's very brief: ''The strong public interest in honest government and in exposing wrongdoing by public officials would be ill served by recognition of a governmental attorney-client privilege applicable in criminal proceedings inquiring into the actions of public officials.''

The court went on: ''We also believe that to allow any part of the federal government to use its in-house attorneys as a shield against the production of information relevant to a federal criminal investigation would represent a gross misuse of public assets.'' Strong words.

Just a few weeks ago, these principles were emphasized and reaffirmed by the distinguished chief judge for the United States District Court in Washington. She is Judge Norma Hollaway Johnson. She wrote, ''A private organization, such as a corporation, and a government institution differ significantly especially in the criminal context.'' And she emphasized, ''Government attorneys are paid by U.S. taxpayers.'' And she quoted the 8th Circuit's very pointed observations about the duties of the public lawyer, the government lawyer.

These principles aren't new, nor should they be in the slightest bit controversial. They should admit of universal approbation. As District Judge Jack Weinstein (sp) stated some 30 years ago, ''If there is wrongdoing''—if—''if there is wrongdoing in government, it must be exposed.'' The law officer has a special obligation. His or her duty is an obligation to the people and to the law, and his (own?) conscience requires disclosure; not hiding, disclosure. Then in fulfilling their duty to the people, government lawyers traditionally have urged upon courts not to create new testimonial privileges to keep evidence out, to keep evidence away, from fact-finders. And in the same vein, government lawyers have historically said: ''Courts, don't expand the old and ancient privileges. Keep them, but don't expand them because they're obstacles to the search for truth.''

Now litigants often try, as they're, entitled to do, to concoct new privileges by contending that their relationship is just as important as the attorney-client relationship, on the spousal relationship or the priest-penitent relationship. But the problem is, the're arguing in the wrong forum. This is, in very broad compass, a legislative task. Congress is the proper forum for new federal privileges to be recognized in federal grand jury proceedings. An example from another field makes the point—and you will be pleased to know I am drawing to the end. I saw that look: ''Is he going to keep going? Are we now going to have a law''—no, we're nearly through.

For many years the accounting industry, our brothers and sisters in the CPA community, have urged and indeed have pleaded for the creation—and many of you are familiar with this—of an accountant-client privilege. The argument is that accountants deserve the same protection as attorneys, and some very interesting policy arguments have been advanced to further that argument. But this effort has been resoundingly rebuffed by the courts. I'm not saying attorneys aren't—that accountants aren't important and the like, but rather saying no, you can't have a privilege. And indeed, the effort was finally resoundingly defeated by a once again unanimous Supreme Court. No such privilege, the court said, is going to be created.

And accordingly, the accounting industry has quite appropriately and properly turned to the Congress of the United States. And indeed, as we speak, on Capitol Hill right now there's a pending bill which, if enacted, would give accountants a narrow privilege in certain civil proceedings.

The point is this: If you want to expand an existing privilege to apply it in a new or unusual area, the place to go is Congress, not federal courts. The courts should not and cannot be in the business of creating new legal privileges from whole cloth, and lawyers ought to tell their clients that.

The search for truth and the proper counseling of clients is equally appropriate outside litigation. I know that there are people in this room who try to avoid courtrooms, so let me say just a brief word in that respect.

What third party will intelligently agree to a one-sided transaction? What court will allow a transaction then to stand if it's based on deception, the hiding of facts, or affirmative misleading and misstatements?

Perhaps Elihu Root, a former secretary of state, a United States senator, and a renowned lawyer in his own right earlier in this century, put it most succinctly: ''About half the practice of a decent lawyer consists in telling would-be clients that they are damned fools and they should stop what they're doing.'' (Laughter.)

Lawyers have great influence in our society. (Chuckles.) I heard a hearty ''amen'' down there—we have an ''amen'' bench here. (Laughter.) And as Justice O'Connor has recognized—let me turn to her very modern voice—''Ethical''—what a wonderful word—''Ethical standards for lawyers are properly understood as a means of restraining lawyers in the exercise of the unique power that they inevitably wield in a system like ours.''

Dean Kronman of Yale describes the lawyer of yesteryear, the great lawyer of the past, as a lawyer statesman; a person who not only uses the law to benefit society, but helps to develop and refine the law so that it can effectively serve our highest and noblest goals. To that end. Sol Linowitz, the distinguished lawyer, business person, ambassador, points out in his also troubling book, ''The Betrayed Profession'' that lawyers of the past played a pivotal role in developing and securing the liberties that Americans today take for granted. In fact, Ambassador Linowitz observes other countries have similar constitutions and similar Bills of Rights, but they don't enjoy our liberties, and largely because those countries, in his words, ''Lack a bar, a legal community with sufficient courage and independence to establish those rights.'' According to Dean Kronman, the lawyer statesman has virtually disappeared from our lives. And the lawyer statesman in the last generation has turned instead into a lawyer technician—Dean Kronman's haunting description. And more broadly, that the legal profession itself has become a business.

But, you know, even if this rather gloomy diagnosis is accurate—and I like to resist it, I truly do—but it hardly excuses lawyers from doing their duties. As a distinguished professor at the Harvard Law School, Mary Ann Glendon very aptly states, ''Any business, including law, thrives best on cooperation and honesty.''

In short, even as technicians, if that is what we have become on a specialized world, lawyers have a duty not to use their skills to impede the search for truth. Imagine the disaster that would consume our profession and indeed our society if lawyers let down their moral guard and simply shrugged when clients declare explicitly or implicitly to commit perjury. No longer in such a world would decisions by our courts be based on a balanced assessment of truth, fairness and justice, and no longer would our society (face/faith?), as it continues to do, in our legal system.

This search for truth, closing on a more cheerful note, advances our profession. I believe that lawyers have a very well-deserved sense of professional pride and a belief that what they do day in and day out has a potential to be worthwhile, rewarding, socially constructive and personally fulfilling. Lawyers serve clients, but they also serve the broader interests of our legal system and society. And in that process, it is important for us as lawyers to maintain a certain degree of independence and detachment. otherwise, we are in danger of becoming that which our ancestors vigorously resisted, the

concept of the indentured servant rather than professionals. As the educator and lawyers Robert Maynard Hutchins once put is very well, ''There are some things that a professional will not do for money.''

The result is this: We cannot, whether in public life or in private practice, look solely to our clients for leadership. Lawyers too have a right, but they also have a responsibility, to exercise independent judgment. And at times, that means saying no to the client. You can't do it. We can't argue it. It means sticking up for the right thing, as our (lights?) lead us to believe what is right.

And in that process, we are, when we are at our best, guided not simply by the client's interest, but by that other pillar, the search for the truth. And that, it seems to me, is the path away from the seedy underworld of Grisham's loser and a rediscovery of the inspiring path that Atticus Finch urged us and urges us today, to walk upon.

Thank you very much.

THOMAS JEFFERSON ELEMENTARY SCHOOL

HON. SHEILA JACKSON-LEE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Ms. JACKSON-LEE. Mr. Speaker, I Congresswoman JACKSON-LEE, submit the following document concerning the Thomas Jefferson Elementary School.

THOMAS JEFFERSON ELEMENTARY SCHOOL

Whereas, Thomas Jefferson Elementary School has been selected one of three national first place award winners in the 12th Annual ''Set a Good Example Contest'' sponsored by the Concerned Businessmen's Association of America;

Whereas, Thomas Jefferson Elementary School under the guidance of their teachers and parents has exhibited hard work, dedication and perseverance combating the war on drugs, violence, crime and delinquency;

Whereas, Thomas Jefferson Elementary School will continue to aid in the war on drugs, delinquency, crime and violence in our schools;

Whereas, the need for strong young men and women and community activism is becoming more necessary and vital for the future of our Country;

Now therefore, be it resolved that Thomas Jefferson Elementary School has demonstrated a collective promise to aid in the fight against drug abuse, delinquency, crime and violence invading our nations schools. From this joining of purpose, Thomas Jefferson Elementary School has found effective ways and means to combat these increasing problems and are spreading the message, through the use of the book, ''The Way to Happiness, a Common Sense Moral Guide,'' written by noted author and humanitarian L. Ron Hubbard, to those who have ears to hear. I will never turn from the example set forth by the remarkable work done by Thomas Jefferson Elementary School.

MANOLO DEL CANAL, MIAMI PROMOTER

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Ms. ROS-LEHTINEN. Mr. Speaker, Mr. Manolo del Canal, an entertainment promoter in my Congressional district, has had many successes in his field.

Mr. del Canal has had experience as a new director for the radio show ''Cuba al Dia'' which aired on WFAB in Miami. He was also a pioneer in establishing the idea of listeners calling directly to the shows they were hearing with their comments, otherwise known as radio call-in shows. He was one of the first to use this idea in his show called ''Opinion Publica''.

Another facet of Mr. del Canal's talents was his experience as a journalist, for he managed and operated a local newspaper called La Prensa. Mr. del Canal is currently in the business of promoting Latin American singers and actors. His goal is to make these Hispanic talents a household name in our great country.

Mr. Speaker, Mr. Manolo del Canal works hard on his craft every day.

TWO PHILANTHROPISTS TO EXPAND PRIVATE SCHOOL GRANTS IN CITIES

HON. NEWT GINGRICH

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. GINGRICH. Mr. Speaker, the attached article from The Washington Post illustrates the frustration across the country over the performance of public schools. Theodore J. Forstmann and John Walton are two of the latest in a series of philanthropists to put up their own money in an effort to send low-income students to private schools. I submit the article to the CONGRESSIONAL RECORD.

[From the Washington Post]

TWO PHILANTHROPISTS TO EXPAND PRIVATE SCHOOL GRANTS TO CITIES

(By Linda Perlstein)

Two wealthy industrialists announced plans yesterday to give 50,000 needy children scholarships that would allow them to abandon public schools in favor of private ones. The $200 million initiative, which would be the largest of its kind, is the latest in a series of efforts by private philanthropists frustrated with the performance of public education.

Wall Street financier Theodore J. Forstmann and Wal-Mart heir John Walton will put up $100 million of the money and will raise the rest from other philanthropists and community groups around the country. The two men say they have lined up $19.4 million in pledges in five cities, including Washington, and are seeking $80 million more by summer's end.

Public schools are a monopoly, Forstmann said, ''monopolies produce bad products at high prices. Eventually, if there's no competition, nothing works very well.''

Attempts to use taxpayer dollars to send children to private schools have hit roadblocks both in Congress and in the courts. Last month, President Clinton, who opposes publicly funded vouchers, vetoed a bill that would have given District students $7 million to attend private schools.

As a result, donors are moving forward with projects. Last year, philanthropist Virginia Gilder offered $2,000 each for students at an Albany, N.Y., primary school to attend private school. In April, a group of San Antonio business leaders put up $50 million to send 13,000 low-income students to private schools.

The plans announced yesterday by Forstmann and Walton would expand a scholarship initiative the two contributed to last year in Washington and New York. Already, 1,000 District students are offered scholarships through the program. The new initiative, called the Children's Scholarship Fund, will finance 400 more.

In Washington and other cities where the two hope to start the program, $1,000 scholarships will be offered to elementary and high school students whose family income falls below a certain level—typically $18,000. They estimate that the money will cover about half of the annual tuition costs in most cities, with the children's parents committing to make up the balance. Students will be selected by lotteries in 1999.

In addition to Washington, the fund has lined up partners in Los Angeles, New York, Chicago and Jersey City, where Mayor Bret Schundler has chipped in $25,000 of his own money.

Forstmann's supporters include many who oppose publicly funded vouchers. A White House spokesman, Barry Toiv, said that President Clinton supports the effort but still firmly opposes using public money for school voucher programs.

''They are in a position to help kids, and the president thinks that's great,'' Toiv said. ''But the question of how we invest our public resources is an entirely different one. The president thinks that money has to remain in public education.''

Even the heads of the two largest teachers unions said they do not object to private citizens giving scholarships. ''I have no problem with what is basically a private act of philantropy,'' said Sandra Feldman, president of the American Federation of Teachers. But ''if the idea is that public schools don't work and children must escape, I would oppose that,'' she said.

HONORING MAJOR GENERAL JAMES C. PENNINGTON, JR., U.S. ARMY (RET)

HON. RANDY ''DUKE'' CUNNINGHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. CUNNINGHAM. Mr. Speaker, it is with great admiration but a heavy heart that I rise to pay tribute to an outstanding American and patriot, retired Major General James C. Pennington who passed away on June 5, 1998. General Pennington was the long-time president of the National Association for Uniformed Services. He died while carrying on the crusade which he had devoted much of his life—the crusade to save military health care benefits that were promised and dutifully earned by this country's veterans and military retirees.

The military and veteran community has lost a great leader. His insightful, frank comments and tenacious determination to convince the country's leaders to honor the promises made to those who put their lives on the line were a rallying point and an inspiration to all.

I got to know General Pennington well during the years we fought together to restore the full Cost of Living Allowance (COLA) to our nation's military retirees. A tireless advocate, he traveled all across the country meeting with veterans and their families, senior government officials, the powerful and the disenfranchised in an unwavering effort to advance the cause. He paid particular attention to the ''old warriors,'' the group of veterans who fought and

won World War II. He was one of them, having joined the Army on D-Day 1944 right out of high school. And while he fought for all veterans, his compassion for his WWII colleagues was legendary as he sought to take care of those most in need.

A man of boundless energy, Jim Pennington was always ready to lead the charge. He never failed to point out that a promise made should be a promise kept; that our Government made a covenant with its veterans for lifelong health care in return for career service in defense of our country. Regrettably, that covenant has been broken for those military retirees passed the age of 65 who are denied access to the military health system. Each month 36,000 WWII veterans die. Of this amount, approximately 10% are military retirees. Current legislative proposals to study or demonstrate greater health care coverage for many of these veterans are simply too little, too late.

General Pennington's valiant and unceasing efforts on behalf of all members of the military community set him apart. In a word, Jim Pennington was one of the few people in this word who made a difference. We owe an enormous debt of gratitude to the courageous men and women who have defended our nation. Jim Pennington never forgot that and he made sure that the people he met and spoke with never forgot it as well. There would be no better way to honor this great man than to make sure our military men and women receive the care they so rightfully have earned. Jim wouldn't want it any other way.

CONGRESSIONAL BRIEFING ON CALIFORNIA INDIAN GAMING

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. BROWN of California. Mr. Speaker, on Tuesday of this week Congressman FILNER of San Diego and I had the opportunity to meet with a very large delegation of Native Americans from California who had traveled to Washington to exercise their Constitutional right to petition their Government for a redress of grievances. In a carefully prepared presentation by numerous representatives of the various Tribes, plus local public officials and business leaders from surrounding communities, they detailed what the impact would be on forcing the tribal governments to sign the Pala Compact. Business and community leaders described the potentially negative effect on local commerce. In addition we must keep in mind the countless individuals, like Maria Figueroa, who have been given a second chance to support their families by being employed by the tribes and being able to leave the welfare rolls. I submit for the RECORD a Declaration of Principles presented by the California Tribal Governments.

A DECLARATION OF PRINCIPLES BY THE CALIFORNIA TRIBAL GOVERNMENTS

For over a century, non-tribal governments and big special interests have used their power to take away the land, resources and even the lives of California Indians. These assaults were called ''legal'' and the tribes' efforts to keep what they always had were deemed ''illegal.''

Now, history is repeating itself. We face a shutdown of our gaming operations, the loss of thousands of jobs for non-Indians, millions of dollars to local communities and state and local governments, and the renewed deprivation of our people. Yet for years we have asked the Governor of California to sit down with tribes and negotiate a good faith tribal-state gaming compact, one that would permit the tribes to continue to conduct legal, responsible and regulated gaming. The Governor consistently refused to do so—in our judgment, contrary to the express obligations under the Indian Gaming Regulatory Act (IGRA). Now California's gaming tribes face enforcement actions by the U.S. Government to shut us down because there is no compact! Yet the same U.S. Government, contrary to its historical, legal and moral obligation as the trustee of the Indian tribes, refuses to enforce the law and require the California Governor to negotiate in good faith with us.

Where is the fairness? Where is the justice?

Recently over one million Californian voters signed petitions—in a record-breaking four weeks time—to afford us an opportunity to have a model compact that provides for regulated and legal gaming to be approved by the people. It appears Las Vegas gaming have already invaded our state with tens of millions of dollars in an attempt to prevent Indian tribes from achieving economic self-reliance. We are determined they will not be successful.

We are no longer willing to be labeled illegal or un-American or be branded criminals for our struggle to support ourselves. We are the first people to know and call California our home and the first people to love this land we now share. Our fathers and mother, brothers and sisters, and sons and daughters fought in every American war to defend the principles upon which the country was founded—the right of self-government and self-determination and the freedom to establish a promising future that our children and our children's children can depend on.

As representatives of the tribal governments of California, we want America's elected leaders to understand the principles that define, inform and guide our actions:

1. The key to our future is the protection of our tribal sovereignty and our right to self-governance.

It is our inherent right and responsibility to protect our culture, our lands, our resources, and our children. It is a precious legacy from our ancestors and a responsibility to our children. The tribe's government-to-government relationship with the federal government, including its agencies, is not merely a philosophical statement. It is based upon federal law and recognized in President Bill Clinton's statement to the tribes in the historic White House meeting in 1994. President Clinton directed the heads of the federal agencies to work with tribes on a government-to-government basis. The U.S. Government must honor its historic, legal and moral obligation to serve as the trustee for the Indian people. Mere words are not enough. Action is required. Under the law set forth in the 1988 Indian Gaming Regulatory Act, the U.S. Government must serve as the tribes' trustees to enforce the State of California's obligation to negotiate tribal-state gaming compacts in good faith with tribal governments consistent with their rights as sovereign nations under federal law.

2. We stand for legal, regulated, and responsible gaming—with the objective of achieving economic self-reliance an improving the quality of life for tribal members and their children.

California tribes stand at the brink of cultural and economic extinction. Economic self-reliance has been, and will continue to be, the true goal of tribal governments through the conduct of legal responsible and regulated gaming operations, particularly to provide the tribes the means to achieve other economic development and (consistent with California law and it's state constitution) diversity for the tribes. The U.S. Government, as trustee of Indian tribes, has a responsibility to support these efforts to achieve economic self-reliance and diversity. Achieving such economic self-reliance for Indians is one of the key purposes expressed by the U.S. Congress when it passed the Indian Gaming Regulatory Act.

3. We believe in sharing. We are committed to the protection of continued economic benefits from tribal gaming for all Californians.

It is a tribal tradition to share. Sharing means sometimes ensuring that our neighbors do not go hungry or that an electric bill gets paid. This tradition did not start when we commenced gaming operations and were able to generate financial resources. When the Pilgrims faced their first winter with little food or shelter, it was the Indians who helped them by sharing their resources. Currently legal, regulated gaming operations provide thousands of jobs, an overwhelming majority of which are provided to non-Indian people; millions in retail sales and tax revenues; and substantial financial support for social programs and charitable organizations—thereby benefiting our neighbors and local communities surrounding the tribes and Californians state-wide. For example, in San Diego County, the Viejas, Barona, and Sycuan Bands of Kumeyaay—combining wages paid, tax revenues generated, and goods and services purchased—are estimated to contribute $186 million to the state and local community economies. We are proud of our legacy of sharing and are committed to seeing our gaming continue as a resource for both gaming and non-gaming tribes, our neighboring communities, and all of California.

4. Consistent with tribal sovereignty and government-to-government relations, we believe in working with local governments, agencies and elected officials who fully recognize and respect tribal sovereignty.

Indian tribes are committed to working towards a process that ensures a partnership with local governments and elected officials. Such a partnership would be premised on mutual respect and assurances of no incursions on tribal sovereignty. Tribes also support strong and fair employment relations. Indian tribes continue to be committed and responsible employers, carrying out tribe-maintained fair employment policies. We want to preserve and encourage amicable relations with our non-Indian neighbors. We will continue to work cooperatively with governmental agencies that respect tribal sovereignty.

5. We support the Tribal Government Gaming and Economic Self-Sufficiency Act—a model compact that recognizes and honors Indian governmental sovereignty while preserving the emerging economic self-reliance provided by Indian gaming.

The California Governor has refused to negotiate with Indian tribes in good faith)—as required under the Indian Gaming Regulatory Act. Therefore, the California Indians have been forced to place their own model gaming compact on the ballot. It is called the Tribal Government Gaming and Self-Sufficiency Act. We support this ballot measure that preserves the ability of tribes to create and sustain the emerging economic self-sufficiency provided by Indian Governmental gaming.

The model compact to be voted on by California voters provides for regulated and responsible gaming operations, licensing and regulatory standards. It also provides for the

sharing of resources with non-gaming tribes as well as community programs and charitable organizations.

We are confident the people of California will not permit outside, powerful money interests—mostly from Las Vegas—to alter their support for California tribes in their effort to finally achieve economic self-sufficiency through legal, regulated and responsible gaming operations.

Therefore, be it resolved: We, as tribal nations, stand together at a time when our opponents are determined to keep us powerless and in poverty. We will not allow it! Gaming and non-gaming tribes alike are affected by these struggles. We strongly support the continued operation of Indian gaming consistent with the aforementioned and mutually agreed-upon principles.

Signed this day, June 9, 1998 in Washington, D.C. the California Nations Indian Gaming Association/Assembly for Economic Justice.

DANIEL TUCKER,
Chairman, California Nations Indian Gaming Association.

HONORING THE MEADOWOOD RETIREMENT COMMUNITY

HON. JON D. FOX

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. FOX of Pennsylvania. Mr. Speaker, I rise today to pay tribute to the Meadowood Retirement Community which has become one of the finest retirement communities in the country because it has been developed by people who have had a willingness to work, a seriousness of purpose and a genuine interest in the well being of others.

The original root of what has become Meadowood was a response to a growing need in my district to enhance the lives of those men and women who were becoming older and were seeking ways to live where there was a glow in the quality of life.

As a newspaper editor and publisher from the 13th District, William E. Strasburg felt the need to provide retirement living where men and women could live and work together and have the benefit of health care and the totality of life care.

Sylvia Strasburg, his wife, had been working with senior citizen programs in Montgomery County and was fully aware of the need to provide a suitable retirement community.

Sylvia's parents, Blanche and Malcom Schweiker, had lived on the property that is now known as the Schweiker Guest House. It had been handed down through her mother's family, the Schultz family, and when her father died in 1982, Bill and Sylvia together went to several members of the Schwenkfelder Church and the local community to form a Board to sponsor such a retirement community which would be separate from the Church and yet an outreach of the mission of the Church.

Richard Schweiker lived with his parents in the Schweiker Guest House and began his political career there. He was Montgomery County's Congressman for four terms and then United States Senator for two terms when he became Secretary of Health and Human Services in President Reagan's cabinet.

To reflect the location, the meadows and the woods, the new community would take on the name of Meadowood. The independent living apartments would be named for the birds and the trees of the meadows and the woods.

Central to the development and the operation of Meadowood would be a mission statement which would reflect the common objective to create a caring environment where each person is respected and valued. This would be illustrated as a three legged stool where each of the equal legs would provide a solid support. The Schwenkfelder Church as well recognizes that growth toward spiritual maturity is a life-long process.

Additional land was acquired, permits were obtained, the sewer plant was acquired, upgraded and turned over to the Township and financing was completed . . . and then in March of 1986 ground was broken for Meadowood. The first residents moved into their new homes on a rainy day in May of 1988. The dedication took place around the fountain in June of 1989.

The Board has selected dedicated and caring professionals to manage Meadowood. Since 1989 Meadowood has been managed by American Retirement Corporation Management of Brentwood, Tennessee. This caring dedication is a strength that has been woven into the fabric of Meadowood's development and continues today.

God bless the Meadowood retirement community and all of its residents. The mission of creating a caring and respecting environment has truly enhanced Montgomery County.

IN HONOR OF MONSIGNOR LEO TYMKIW

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. KUCINICH. Mr. Speaker, I rise to honor Monsignor Leo Tymkiw, Pastor of St. Andrew's Ukranian Catholic Church in Parma, Ohio, who is celebrating 50 years as a priest.

Monsignor Leo Tymkiw was born on April 21, 1914 in Boiany, Ukraine. He completed his elementary and secondary education in Stanyslaviv, Ukraine. In 1938, he graduated from Theological Academy in Lviv, Ukraine, with a degree in theology. Subsequently, he graduated from the School of Library Science where he studied church history for several years. On Easter Sunday, May 2, 1948, he was consecrated to the Holy Priesthood by Archbishop Ivan Buchko. His first assignment was as the Spiritual Director for Ukranian students in Munich.

Monsignor Leo Tymkiw emigrated to America in 1950. In 1952, he organized the parish ''Under the Protection of Blessed Virgin Mary'' in Troy, New York, and he served as its pastor for three years. In 1955 he organized another new parish, also named ''Under the Protection of Blessed Virgin Mary'' in Bristol, Pennsylvania. Monsignor Leo Tymkiw served as their pastor for four years. He was pastor of a parish in Crisholm, Minnesota for several months in 1959. From 1960 to 1972 he served as pastor of St. John the Baptist Ukranian Catholic Church in Lorain, Ohio. On August 1, 1972 Monsignor Leo Tymkiw was appointed the first pastor of St. Andrew's Ukranian Catholic Church in Parma, Ohio. He has served as their pastor for the past 26 years.

Mr. Speaker, let us recognize the achievements of Monsignor Leo Tymkiw, who will be honored at a dinner on June 14, 1998 for a lifetime of giving, service and achievement.

PERSONAL EXPLANATION

HON. CASS BALLENGER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. BALLENGER. Mr. Speaker, had I been present on June 9 for Rollcall vote 212, Rollcall vote 213, and Rollcall vote 214, I would have voted ''yea''. In addition, I would have cast an ''aye'' on Rollcall vote 215, had I voted.

A FOND FAREWELL TO FATHER ANTALL

HON. STEVEN C. LaTOURETTE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. LATOURETTE. Mr. Speaker, I rise today to honor the Rev. Richard C. Antall, who this week will leave St. Mary's Catholic Church in Painesville, Ohio, to return to El Salvador to work as a missionary. He will leave a void that many suspect will never fully be filled.

For the residents of Painesville, Ohio, and indeed all of Lake County, Ohio, Father Antall was much more than simply a local priest. In the four years Antall spent as an associate pastor at St. Mary's, he immersed himself in virtually every aspect of the community, and was often considered the spiritual, legal, and political arm of the Hispanic community.

Not only did Father Antall lead a Spanish-speaking mass each Sunday at the church, but he became intertwined in the lives of the migrant workers who travel to Lake County each year from Mexico to work in the county's many nurseries and farms. For a great number of the workers, Father Antall was not just their spiritual mentor, but also served as their advocate whenever disputes arose over working or living conditions. He was a friend, mentor, translator and a wonderful listener.

Father Antall was tireless in defending the workers, and was of great assistance to me personally when I was new to the Congress, particularly when we began addressing immigration legislation and its effect on seasonal workers. His input was invaluable to me, and I witnessed firsthand the kindness that drew so many to him. Father Antall has a wonderful quality of placing those around him at ease—be they his parishioners, children, educators, lawyers or lawmakers.

So many lives in the Painesville area have been touched by this selfless man, and while many wish he did not have to leave, those who know him certainly understand his need to pursue his lifelong dream of being a missionary in El Salvador. This will mark a homecoming to the remote Central American country where Father Antall spent seven years working with the Cleveland Diocese mission before coming to St. Mary's.

It is my full expectation that Father Antall will provide a voice, a heart and a helping

hand to the neglected, the downtrodden, the silenced, and the dreamers in El Salvador, just as he has in Painesville. He will offer an uplifting message centered on the love of God, and the need to be kind to one's fellow man. On behalf of the 19th Congressional District, I thank Father Antall for his many acts of kindness and for the indelible mark he left on his community and his congregation. I wish him well in his new life, and hope that he will always save a space in his heart for Lake County.

RICHARD MELLON SCAIFE FUNDS CLINTON CRITIC LARRY KLAYMAN'S JUDICIAL WATCH ORGANIZATION

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. CONYERS. Mr. Speaker, I ask unanimous consent to enter into the RECORD the following new story from The Washington Post.

[From the Washington Post, June 10, 1998]

SCAIFE FOUNDATION GAVE $550,000 TO ANTI-CLINTON LEGAL GROUP

(By David Segal)

Richard Mellon Scaife, the Pittsburgh billionaire whose foundations have bankrolled an array of anti-Clinton activities, gave one of his largest grants last year to Judicial Watch, the conservative group suing the Clinton administration in 18 separate matters, newly released records show.

Scaife gave Judicial Watch $550,000, according to documents disclosed by the Carthage Foundation, one of four philanthropies underwritten by Scaife. That sum is nearly nine times as large as the $60,000 in outside contributions Judicial Watch said it received in 1996.

''It's a minority of our support and we're very proud to receive it,'' Judicial Watch founder and president Larry Klayman said yesterday before refusing further comment. In a recent interview, Klayman would not confirm the Scaife grant and deflected financing questions by saying, ''Basta! . . . that means 'stop it' in Italian.''

Scaife's foundations last year gave away a total of $25 million to conservative groups as well as academic institutions such as Boston University and Carnegie Mellon University. The scion of the Mellon banking family, Scaife has become a major financial resource for those eager to probe Clinton administration controversies, from the Monica S. Lewinsky case to the death of White House deputy counsel Vincent W. Foster.

Independent counsel Kenneth W. Starr had once planned to accept a Scaife foundation-financed deanship at Pepperdine University, leading Clinton allies to criticize the prosecutor's conservative movement ties.

The recipient of the largest single Scaife grant last year—for $1.5 million—was the Free Congress Research and Education Foundation Inc., a think tank run by conservative activist Paul Weyrich. Free Congress is part owner of America's Voice, a TV network formerly known as national Empowerment Television.

The American Spectator magazine took in nearly $1 million last year from two Scaife foundations—Carthage and the Sarah Scaife Foundation. Part of that money paid for the so-called ''Arkansas Project,'' an investigation of alleged Clinton skulduggery in his home state. The project was criticized by several Spectator staffers and has given rise to an investigation into whether some Scaife money improperly went to pay a key Starr witness.

But the financial relationship between the magazine and Scaife's foundations is over. ''Let's just say that the Spectator had Scaife foundation money in the past [but] they decided to quit contributing this year,'' said publisher Terry Eastland.

The Landmark Legal Foundation, a Herndon group that has pounded Pentagon officials for allegedly leaking data from Linda R. Tripp's personnel file, took in $525,000 from Scaife. ''We have a hard and fast rule here,'' said Landmark president Mark Levin. ''We don't accept money laundered through Indian tribes or Buddhist nuns.''

The award to Judicial Watch is in some ways the most notable of the Scaife grants, representing a huge financial boon for a group that barely registered on Washington's radar screen until recently. In 1996, the group's largest benefactor was Klayman himself, a formerly obscure international trade attorney; he kicked in about $110,000 of his own money and took in just $60,000 in outside contributions.

Scaife foundation officials did not return calls about why they decided to start giving to Judicial Watch.

Klayman first gained notice when he took a deposition from Democratic fund-raiser John Huang in 1996, just as the controversy about Democratic campaign financing was breaking. By last year, Klayman was becoming a regular on TV chat shows such as ''Rivera Live'' as he subpoenaed a parade of Clinton allies for depositions in various lawsuits. Klayman has turned up such disclosures as a pentagon official's admission that he authorized the Tripp information leak. But Judicial Watch's advertising also has featured far-fetched theories, including that the late Commerce Secretary Ron Brown might have been shot in the head by top White House officials.

Klayman is deposing witnesses for three lawsuits against the Commerce Department and one against the Justice Department, among others, and he represents Republicans whose FBI files were obtained by White House officials.

THE MEDICARE HOME HEALTH EQUITY ACT OF 1998

HON. MICHAEL PAPPAS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. PAPPAS. Mr. Speaker, I come here today to speak about a bill I have introduced to restore equity to the home health care industry. Congressmen Coyne, Saxton, Smith of New Jersey and I have introduced H.R. 3567, ''The Medicare Home Health Equity Act of 1998'' to address what we feel are major problems with the implementation of HCFA of the Balanced Budget Act of 1997.

Last year's Balanced Budget Agreement brought much needed common sense to government spending. As part of the Balanced Budget, changes were made to make payment for home health care more efficient. A Prospective Payment Schedule for home health services was created but is not ready yet. HCFA has created the IPS as a transitional approach. However, the IPS is a ''one size fits all'' plan that continues the practice of rewarding inefficient home health services and punishing efficiency. Agencies which had already implemented efficiency measures to save Medicare money have been penalized for this thrift, while those that have not are rewarded. I do not believe this was the intent of Congress.

H.R. 3567 will level the playing field by basing the per patient cost limit of the IPS on a blend of national and regional data rather than on individual agency data. It already has 69 bi-partisan co-sponsors and has the support of numerous home health care organizations. Congress must act now to avoid further pain to the home health care communities. Moreover, according to Price Warehouse, H.R. 3567 is budget neutral and I hope the CBO will finish a scoring of this bill shortly.

I hope my colleagues will seriously consider this bill and join me in the effort to restore equity to home health care agencies.

HONORING SOL AND JUNE ZIM

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. ACKERMAN. Mr. Speaker, I rise today to join with my constituents and members of the Hollis Hills Jewish Center as they celebrate the 50th anniversary of this great house of worship, and honor their most distinguished and world-renowned Cantor, Sol Zim and his wife June, for 35 years of distinguished service to the synagogue.

In 1964, Sol and June Zim began a relationship with the Hollis Hills Jewish Center that would not only enhance the spiritual and secular lives of the synagogue's members, but would allow Cantor Zim to perform around the world to share the joy and fulfillment that epitomize his music. As the sixth generation of a family of exceptionally talented cantors, Sol Zim has studied with such outstanding cantorial instructors as Joshua Weisser, Moshe Koussevitzky, Sholom Secunda and Oscar Julius. He has received degrees from the Jewish Theological Seminary of America. Brooklyn College and New York University. His extraordinary voice brought him offers for positions in such distinguished opera companies as the Vienna State Opera Theater and the Israeli National Opera. Yet it was to our great benefit that Sol Zim chose to pursue his musical career as a cantor.

Mr. Speaker, in addition to his unforgettable voice, Sol Zim is a most prolific writer of Jewish popular songs and prayer melodies that are sung in congregations throughout the world. He has composed more than 20 cassettes and tapes of music dedicated to Yiddish, Hebrew, Chassidic and Cantorial themes. A hallmark of his desire for all people to love music is the creation of a children's choir in those cities in which he has appeared. In the 1970's and 80's, he founded ''The Brothers Zim'' which quickly became America's foremost Jewish singing group.

Both he and his wife June take their role as community leaders most seriously. Through their efforts, they have brought direction and compassion to many viable undertakings. June has served as the synagogues' Vice-President of Sisterhood, Vice-President of Jewish Family Living for the Queens Region of National Women's League, and Co-Chair of

many of the Hollis Hills Jewish Center's annual conferences.

Sol serves the National Chairman of the Jewish War Heroes Fund, and has been honored as Man of the Year and received humanitarian awards by such diverse organizations as the United Jewish Appeal, Israel Bonds, Hadassahm Bnai Brith, Amit Women and Shaare Zedek Hospital.

Mr. Speaker, in honor of all their great achievements, I ask all my colleagues in the House of Representatives to join with me and rise to express their appreciation for the Zims.

A TRIBUTE TO WILLIAM AVERY

HON. ROBERT A. BRADY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. BRADY of Pennsylvania. Mr. Speaker, I rise to honor a great Philadelphian, William Avery. Bill Avery began his career as a management trainee with Crown Cork and Seal's Chicago plant in 1959, while he completed his studies at the University of Chicago. His career at Crown advanced steadily through the last four decades, as he rose from the position of Plant Manager, to Area Manufacturing Manager, Vice President of Sales for the Mid-Western Division, and Corporate Vice President. After only four years, Bill was promoted from the Vice Presidency to President and Chief Operating Officer of Crown.

Mr. Speaker, because of Bill's leadership as President, and today, as Chairman and CEO, Crown has grown exponentially. It is a global leader in the packaging industry and a wonderful corporate citizen in my home town of Philadelphia.

Bill Avery is personally active in educational and charitable organizations in the Philadelphia region. His board memberships include the YMCA, Fox Chase Cancer Center, Opportunities Industrialization Center, University of Chicago Graduate School of Business, Gwynedd Mercy College, the Connelly Foundation, PhAME, PAL, Avenue of the Arts, Inc., the Franklin Institute and the Regional Performing Arts Center. Mr. Speaker, Bill has also been honored by His Holiness Pope John Paul II with a knighthood in the Order of St. Gregory.

Mr. Speaker, I am sure that my colleagues join me in honoring a great Philadelphian and a great American, Bill Avery.

COMMENDING MONSIGNOR JOSEPH F. SEMANCIK

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. VISCLOSKY. Mr. Speaker, it is my sincerest pleasure to commend an outstanding leader of Indiana's First Congressional District, Monsignor Joseph F. Semancik. On Sunday, June 28, 1998, Monsignor Semancik will be honored by the Midwest Slovak Cultural Society during their annual Slovak Day Celebration. In honor of Monsignor Semancik's announced retirement, Sunday, June 28, 1998 has been designated as ''Monsignor Semancik Day.'' This highly anticipated event, in its twenty-fifth year, is a cultural celebration combining the best of religious, civic, and ethnic entertainment. Awarding this high honor to Monsignor Semancik clearly shows how valuable and indispensable he has been for the residents of Northwest Indiana, the Catholic Charities of the Gary Diocese, and all the people he has touched through the service of God.

On Thursday, October 1, 1998, Monsignor Semancik will officially retire as the Director of Catholic Charities. Since he finished his master's degree in social work from Loyola University, Monsignor Semancik has spent the last thirty-eight years serving the Northwest Indiana Catholic community as one of the region's most accessible, compassionate, and dedicated spiritual leaders and social advocates. In 1958, Monsignor Semancik was directed by Bishop Andrew G. Grutka to study social work. Though spending most of his time helping others, Monsignor Semancik advanced his own learning by earning a master's degree from Loyola University in 1960 and a doctorate from the University of Chicago in 1977. Driven by his compassion, desire to help people, and education, he spearheaded the efforts that led Catholic Charities to become the great helping organization that it is today. During his long tenure as Director of Catholic Charities, his service on the Lake County Economic Opportunity Council, and the Lake County Community Development Committee, as well as his successful efforts in establishing the Indiana Catholic Conference, Monsignor Semancik has truly earned the love, respect, and admiration of everyone in Indiana's First Congressional District.

Though Monsignor Semancik, at sixty-nine years of age, will soon retire from his position with Catholic Charities, he will maintain his position as Pastor of Sacred Heart Church in East Chicago, Indiana. As well, he will continue one of his lifelong passions: writing. Currently, Monsignor Semancik is planning to write a history of the Catholic Charities in the Diocese of Gary. He also plans to continue his long-standing tradition of researching and writing about Catholic Charities directors. These works, when completed, will go along with the work that he completed on the history of Slovaks in Indiana.

Mr. Speaker, America is made a better place because of the tireless and unselfish service of her citizens. Monsignor Joseph Semancik is a man who has dedicated his entire life to helping those around him, resolutely working to aid the unfortunate and needy, and serving as an upright pillar of morality and conscience. In so doing, he has strengthened his community, Northwest Indiana, and whole of our country and society. I ask you, and my other distinguished colleagues, to join me in commending Monsignor Semancik for his lifetime of remarkable accomplishments, enduring service, and the unforgettable effect he has had on the people of his community.

PHILIPPINES CENTENNIAL CELEBRATION

HON. CHARLES F. BASS

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. BASS. Mr. Speaker, I rise to pay tribute to the Philippines Centennial Celebration. On June 12, 1998, the Philippines will celebrate the 100th Anniversary of their independence from Spanish rule.

Nearly a century ago, a revolution in the Philippines ended more than 300 years of Spanish domination in the area and established the first democratic republic in Asia. The makings of the revolution began in the late nineteenth century with the children of the elite business class. They had been educated in Europe and exposed to ideas of independence and revolution. Among these nationalists was Jose Rizal, whose novel Noli Me Tangere sparked the revolt against Spain. Followers of Jose Raizal formed a secret group of reformists and radicals called the Katipunan. Eventually, in August of 1896, tensions in the Philippines had raged to the point that the Katipunan's leader, Andres Bonifacio, declared complete severance from the colonial government and the revolution began.

The Philippine-Spanish Revolution began at the same time that the Spanish-American War was being fought halfway around the world. The Americans came to the aid of the Philippines, and on June 12, 1898, Emilio Aguinaldo, a leader of the Katipunans, declared victory over the Spanish colonial government and established the Philippine Republic.

The survival of the Philippine Republic over the last 100 years has not been without difficulty. The Philippines has survived American colonialism, a four year occupation by Japan during World War II, the complete wartime destruction of Manilla, Ferdinand Marco's martial law regime, and a devastating volcano called Pinatubo.

However, even with all of these struggles the Philippines is on the road to prosperity. It has been over a decade since the People's Revolution ousted the Marcos regime and instituted the democracy that now exists. The Philippine economy has been rejuvenated and stands poised to join in the globalization of the East-West world market.

It is fitting that in the year of their centennial, the dictators are gone, the volcanoes are quiet, and the Philippines appear to have reached what Emilio Aguinaldo proclaimed nearly 100 years ago: that an independent Philippines, ''today begins to have a life of its own.''

WELCOMING SOUTH KOREAN PRESIDENT KIM DAE JUNG

HON. SAM GEJDENSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. GEJDENSON. Mr. Speaker, it is a pleasure to welcome South Korean President Kim Dae Jung to our country, on his first state visit. I join my colleagues in wishing President Kim the best as he assumes the duties and responsibilities of his new office. Mr. Kim's victory last fall was a triumph for democracy and reform—and above all, for the people of South Korea. Since assuming office, President Kim has been trying to fulfill his campaign promises, to bring a new era to South Korea, one recognizing democracy and human rights, one that is free of corruption and embraces economic reform and the rule of law.

This is a time of great promise for South Korea. The steps the government has taken

are certainly in the right direction, but the path to true reform is long indeed. In particular, the IMF reform package accompanied by the specific reform measures has enjoyed some success. However, much more needs to be done: Justice must be served to those directly wronged by the old regimes, and some punishment should be meted out on the wrongdoers. Old, long held, practices associated with crony capitalism need to be abandoned.

Specifically, one series of crimes allegedly perpetrated by the old regimes that must be investigated involves several companies that were subject to the ''rationalization'' policy of the mid-80s. The companies included Kuk Je, Jung Woo, Jung A, Nam Kang, and Samho were forced to transfer all of their assets to allies of the Chun government. Samho, formerly one of Korea's largest construction companies, helped to build much of Korea's infrastructure, including the subway, water filtration system, first skyscraper and much of the country's affordable, middle income housing. However, because the owner, Mr. B.K. Cho did not participate in the widespread corruption associated with the government of President Chun, his company and his family's personal possessions were taken by the government.

Samho was one of Korea's largest construction companies valued at over $750 million at the time of this illegal transfer. The company had projects throughout Korea, the Indochina Peninsula, Saudi Arabia, and Kuwait. Subsidiary companies included a textile plant, a chemical company, and one of the Korea's largest chains of stores. Now, Samho is a wholly owned subsidiary of Daelim Construction Company, operating under the same name. Daelim's director in the 1980s was a friend of the Chun family. Daelim is now the third largest construction company in Korea and one of the largest conglomerates with over 11,000 employees and annual revenues in excess of $5 billion. However, it was a relatively minor construction firm prior to the illegal acquisition of the Cho assets.

Many of the individuals in the Chun and Roh governments who were responsible for these illegal activities remain in powerful positions in the country. Kim Mahn Je was Chun's Minister of Finance, and is now the chairman of the Pohang Iron and Steel Company. He serves in his current position at the discretion of the Kim government. Kim threatened the director of Samho with physical force if he did not sign over the company, saying his orders came from ''the Blue House,'' or from President Chun himself.

Lim Chang Yuel, who worked with the Minister of Finance Kim Mahn Jae under Chun, recently guided Korea through its IMF negotiations, and is currently running for governor of the Seoul province for President Kim's party. Lim was in charge of ''forced liquidations'' of corporations for President Chun.

Only one meager effort has been made to right the wrongs of the past for these companies. In July 1993, the Constitutional Court of the Republic of Korea held that the liquidation of Kuk Je was invalid, and awarded modest, although not fair, compensation to its former owners. I strongly believe that an investigation of these crimes would engender even greater confidence in the government of President Kim and his plan of implementation of the necessary reforms. By demonstrating that the era of corruption and crony capitalism is in the past, the Korean Government can foster greater economic growth and demonstrate that Korean corporations and government alike abide by the rule of law.

TRIBUTE TO SAMUEL L. GINN

HON. BOB RILEY

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. RILEY. Mr. Speaker, I rise today in recognition of Samuel L. Ginn of Hillsborough, California. A graduate of Auburn University, located in Auburn, Alabama, Sam is being presented an honorary Doctor of Science Degree from his alma mater, Auburn. In addition, he is the Commencement Speaker at this year's ceremonies.

Mr. Ginn's contributions in the field of telecommunications is uncontested. A pioneer in wireless communications, Sam Ginn has been innovative in creating one of the largest, international communications companies in the world. AirTouch serves over 20 million individuals, fully 10 percent of the market.

In addition to being an exemplary businessman, Sam Ginn is an active member of his community, including both civic and professional organizations. He is a member of: The Business Council, Industry Policy Advisory Committee on JOBS, California Business Roundtable, and The Institute for International Studies at Stanford University. In addition he retains corporate board memberships with Chevron Corporation, Hewlett-Packard Company, Safeway Inc., and Transamerica Corporation.

Finally, Sam lives with his wife, Ann, in the San Francisco Bay Area. They have two sons and a daughter.

Mr. Speaker, Sam Ginn returns to Auburn University to not only receive an honorary degree, but to share with graduating students some of the wisdom and experience that he has gained over the last thirty years. Mr. Speaker, I would ask that my colleagues join me in congratulating Sam on his degree, and I would also ask my colleagues to join me in congratulating and wishing the best of luck to all of the students of Auburn University's Class of 1998.

THE LINK BETWEEN ANIMAL VIOLENCE AND VIOLENCE AGAINST INDIVIDUALS

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. LANTOS. Mr. Speaker, I rise today to call the attention of my colleagues to the important connection between violence against animals and violence against humans. Recently, we held an important Congressional briefing to explore the link between animal abuse and domestic violence. This briefing was jointly cosponsored by the Congressional Friends of Animals, which our colleague, Christopher Shays of Connecticut, and I chair; the Congressional Caucus on Women's Issues, chaired by Congresswomen Eleanor Holmes Norton and Nancy Johnson; and the Congressional Children's Caucus chaired by Congresswomen Sheila Jackson-Lee and Ileana Ros-Lehtinen, and with the support of Congresswoman Elizabeth Furse, Congressman Jon Fox, and Senator Robert Torricelli.

Mr. Speaker, it is no surprise that individuals who brutalize animals are very often guilty of committing similar crimes against people. Not all of us are aware of the well defined link between cruelty to animals and both domestic violence and violent crimes like murder, assault and serial crimes.

Violence towards animals precedes and coexists with domestic violence including: spouse abuse, child abuse, elder abuse, as well as murder and assault. Unfortunately, pets often serve as surrogate targets of a troubled offender's wrath. A 1997 survey found that 85.4 percent of women in shelters talked about violence towards pets as part of the cruelty at home. Mr. Speaker, Animal Abuse is recognized as a symptom of mental disorder by the American Psychiatric Association, which considers animal abuse one of the diagnostic criteria of a conduct disorder.

Animal abuse can also be an important indicator of future violent behavior. When a child is caught hurting an animal, this problem should be addressed immediately because this problem is not self-correcting. Abusing animals is often a precursor to more violent offenses, and a child that is abusing animals must be taught the value of all life. The FBI has used this connection between animal abuse and violent behavior for two decades in profiling serial killers and violent criminals.

Mr. Speaker, we must focus attention on this important connection. If we can help increase reverence for the life of animals, we will foster a greater respect for human life. Strengthening laws against animal abuse and publicizing this issue will serve to protect humans in the long run. Animal abuse is a warning sign, and we must learn to look for it and recognize it.

This past week, Mr. Speaker, I introduced H. Con. Res. 286 which expresses the view that the link between violence against animals and violence against humans should be given greater emphasis and that it should be used to identify and treat individuals who are guilty of violence against animals. This resolution notes that animal abuse is a crime in its own right in all 50 states, but such abuse should also be identified and treated because of the link with violence against humans. The resolution also urges research to increase understanding of the connection between cruelty to animals and violence against humans.

Mr. Speaker, I would like to call the attention of my colleagues to statements that were given at the recent briefing on this issue. I want to mention the remarks of Barbara Sweeney, a social worker from Alexandria, Virginia. She testified that individuals who batter often abuse animals to threaten, control, and intimidate their partner. Ms. Sweeney also discussed how the Alexandria Domestic Violence program addresses the link of violence through such programs as counseling and humane education for children who witness this form of abuse and are deeply affected. The Alexandria Domestic Violence Program has taken this link seriously and should be considered a model program.

A number of distinguished and well-informed experts provided outstanding testimony at this important briefing. They were Kim Roberts,

M.S.W., First Strike Campaign Manager for the Humane Society of the United States; Special Agent Alan C. Brantley of the Federal Bureau of Investigation; Julie Bank of the ASPCA (the American Society for Prevention of Cruelty to Animals) and founder of the ASPCA'S Family VISION (Violence Information Sharing, Intervention, and Observation Network); and Suzanne Barnard, M.S., Assistant Director of the Children's Division of the American Humane Association.

Mr. Speaker, I ask that their statements be placed in the RECORD, and I ask that my colleagues give careful and thoughtful attention to their remarks.

CONGRESSIONAL INFORMATIONAL BRIEFING—ANIMAL ABUSE AND DOMESTIC VIOLENCE

(By Kim Roberts)

The HSUS' campaign about the connection between animal cruelty and human violence is called ''First Strike'' because the first strike is often against the family pet. The family pet may be the most vulnerable victim in a violent household. Violence against a family pet is often used to control, manipulate or terrorize family members. Animal abuse can also be a warning sign that the violence is escalating. Taking animal cruelty seriously offers an opportunity to intervene in violent households and with violent individuals, and strong anti-cruelty laws can provide the means. Through enforcement of laws and intervention with perpetrators we may prevent future violence against animals and people. In a violent household, all family members are victims. Enforcement of strong anti-cruelty laws can also provide an opportunity to provide assistance to other victims in the family.

Strong state anti-cruelty laws are a major focus of The HSUS. Some of the key components of a strong anti-cruelty law include a wide range of options such as felony provisions, psychological evaluation and counseling, a wide range of available fines and prison sentences, restitution, reimbursement of costs, seizure of animals and community service. Cross-reporting and cross-training of humane investigators and those charged with investigating child abuse and domestic violence are also valuable tools in the identification of current and possible future victims of violence, both human and animal.

In addition to supporting strong anti-cruelty laws elected officials and other leaders can also help address this issue by encouraging data collection and research at the local, state and federal level; support emergency housing programs for pets of individuals seeking to leave a violent situation and the development of community coalitions; stronger penalties for perpetrators who abuse animals in front of a child; and mandatory reporting of animal cruelty.

The next steps to prevent violence include formal recognition by the federal government of the connection between animal cruelty and various forms of human violence; assistance in making others aware of the connection through inclusion of this connection in discussions of violence-related issues; cooperation between various government agencies and organizations interested in anti-violence efforts; inclusion of animal cruelty in state and federal level crime data collection; and the incorporation of animal abuse into the Justice Department's comprehensive plans for research and program development in violence-related areas such as domestic violence, child abuse, youth violence, etc.

The main message I would like to leave you with is that strong anti-cruelty laws don't just protect animals, they protect people too.

CONGRESSIONAL BRIEFING

(Remarks of Alan C. Brantley)

I come to you today from your National Center for the Analysis of Violent Crime, which is part of the FBI's Critical Incident Response Group located at Quantico, Virginia. The National Center for the Analysis of Violent Crime or NCAVC, was formed in the mid-1980's as the direct result of the then burgeoning phenomena of stranger-to-stranger homicides or so called murders with no apparent motive. At that time, we in the NCAVC were tasked with the identification and tracking of serial killers and other violent offenders who committed unusual or particularly vicious offenses.

It is our belief that since all crimes are committed by human beings then at some stage along the crime commission continuum there will be the display of behavior that lends itself to analysis and interpretation. From this interpretation, information of lead value can be gleaned from the results and provided to investigators, prosecutors, judges, and juries who may not encounter these types of behaviors in their professional or personal life experiences.

Since the mid-1980's to the present, the NCAVC has expanded its examination of criminals and offenses to include not just the serial offenders but all types of violent crime. One of the services provided by the NCAVC is in the area of threat analysis and the assessment of dangerousness. To aid in the prediction of dangerousness in law enforcement settings, we have developed a checklist or guide which enumerates sixteen categories. These categories and the elements within each, serve as risk indicators or warning signs that when critically reviewed and recognized can assist during assessments of subjects suspected or known to be dangerous.

Provided to you today is a copy of the checklist which is entitled the ''Traits and Characteristics of Violent Offenders.'' You will note categories number twelve and sixteen which are two of the most important warning signs. Both of these categories concern an individuals history of actual violence to include violence against people and animals. It has long been accepted among professionals who must assess dangerous populations that the best predictor of future behavior is past behavior and a past history of violence is the single most important predictor of future violence.

Some in our society make too much out of qualitatively distinguishing between violence against humans and violence against animals. Ladies and gentlemen, violence against animals is violence and when it is present, it is considered by the people I work with to be synonymous with a history of violence. In many cases reviewed at the NCAVC we have seen examples whereby violence against animals is a prelude to violence against humans. We in the NCAVC find ourselves in the unenviable position of literally seeing the absolute worst that human beings can do to other human beings and animals. Some offenders kill animals as a rehearsal for targeting human victims and may kill or torture animals because to them, the animals symbolically represent people.

In many cases, depending on the context and quality of the behavior, animal violence does not occur in a vacuum and co-exists with other major adjustment problems. It is not only highly predictive in identifying children at risk for committing future acts of violence but also in identifying children being abused and cases of spousal abuse. The most profound predictor of future violence against humans, in my opinion, is when the animal abuser kills the animal in a very public way and flaunts the act in order to seek attention and gain a perverted sense of status. They begin to identify with the role of becoming a violent criminal and in many cases achieve their goal.

To close I will leave you with some insight into how convoluted the thinking of such individuals can become. For them what is good is bad, what is bad is good, and what is cruel, violent and inhumane is even better.

TRAITS AND CHARACTERISTICS OF VIOLENT OFFENDERS

The prediction of dangerousness in law enforcement settings has long been a topic of interest, especially for those who must make arrests, conduct threat assessments, are hostage negotiators, and who preside over parole decisions. A number of factors have been identified by researchers as risk indicators for future violence to include past violence, substance abuse, mental disorders, brain damage, and a history of witnessing violence in the home. While the above risk indicators are well known to many, there has been no systematic method of combining all that is known about risk indicators into an off-the-shelf, user friendly model that can be applied to individual cases.

The following checklist was developed by Supervisory Special Agent (SSA) Alan C. Brantley of the Critical Incident Response Group's National Center for the Analysis of Violent Crime. It is intended to serve as a guide when conducting assessments of subjects suspected or known to be dangerous. The items included on the checklist were selected primarily on the basis of both law enforcement and mental health experience with violent offenders. Questions about this checklist may be directed to SSA Brantley at (540) 720–4902.

1. ANGER/LOW FRUSTRATION TOLERANCE—Reacts to stress in self-defeating ways, unable to effectively cope with anxiety, acts out when frustrated. Frustration leads to aggression.

2. IMPULSIVE—Is quick to act, wants immediate gratification, has little or no consideration for the consequences, lacks insight, has poor judgment, has limited or impaired cognitive filtering (A–C vs. A–B–C).

3. EMOTIONAL LABILITY/DEPRESSION—Quick-tempered, short-fused, hot-headed, ''flick,'' rapid mood swings, moody, sullen, irritable, humorless.

4. CHILDHOOD ABUSE—Sexual and physical abuse, maternal or paternal deprivation, rejection, abandonment, exposure to violent role models in the home.

5. LONER—Is isolated and withdrawn, has poor interpersonal relations, has no empathy for others, lacks feelings of guilt and remorse.

6. OVERLY SENSITIVE—Hypersensitive to criticism and real or perceived slights, suspicious, fearful, distrustful, paranoid.

7. ALTERED CONSCIOUSNESS—Sees red, ''blanking,'' ''blackouts, derealization/depersonalization (''it's like I wasn't there; it was me but not me''), impaired reality testing, hallucinations.

8. THREATS OF VIOLENCE—Towards self and/or others, direct, veiled, implied, conditional.

9. BLAMES OTHERS—Projects blame onto others, fatalistic, external locus of control, avoids personal responsibility for behavior, views self as ''victim'' vs. ''victimizer,'' self-centered, sense of entitlement.

10. CHEMICAL ABUSE—Especially alcohol, opiates, amphetamines, crack, and hallucinogenics (PCP, LSD), an angry drunk, dramatic personality/mood changes when under the influence.

11. MENTAL HEALTH PROBLEMS REQUIRING IN-PATIENT HOSPITALIZATION—Especially with arrest history for any offenses prior to hospitalization.

12. **HISTORY OF VIOLENCE**—Towards self and others, actual physical force used to injure, harm, or damage. **This category is the most significant in assessing individuals for future dangerousness.**

13. ODD/BIZARRE BELIEFS—Superstitious, magical thinking, religiosity, sexuality, violent fantasies (especially when violence is eroticized), political, social, delusions.

14. PHYSICAL PROBLEMS—Congenital defects, severe acne, scars, stuttering, any of which may contribute to poor self-image, lack of self-esteem, and isolation. History of head trauma, brain damage/neurological problems.

15. PREOCCUPATION WITH VIOLENT THEMES—Movies, books, TV, newspaper articles, magazines (detective), music, weapons collections, guns, knives, implements of torture, S&M, Nazi paraphernalia.

16. PATHOLOGICAL TRIAD/SCHOOL PROBLEMS—Firesetting, enuresis, cruelty to animals, fighting, truancy, temper tantrums, inability to get along with others, rejection of authority.

CRUELTY TO ANIMALS THROUGH MY EYES

(By Julie Bank)

Thank you for the opportunity to speak with you today. I'm honored to be here but I'm saddened by the need to describe the world of animal cruelty to you. You see, I have been crusading against cruelty for over a decade and although I have seen positive results of mine and other advocates' efforts, there still seems to be much to do. Working at the ASPCA has given me a first hand look into the eyes of the victims of abuse and not only the four legged victims. I remember working as an adoption counselor, eager and energetic to find animals a home. One afternoon, a man walked in, he was a tall man, he was dragging a dog that was so thin I could almost count his ribs. The dog had almost no hair and was bleeding from the ears. It had looked like the ears had been chopped off with scissors. You could see the terror and the panic in the dog's eyes as he tried to pull away from the man. Trailing behind the man was a young boy, about eight, carrying a box. The box was filled with puppies. Two of them were already dead. I could swear the boy had the same look in his eyes as the dog. He too was thin, pale, and dirty. The man dumped the dog on the counter, turned to the boy and said, ''I am going to teach that bitch a lesson once and for all.'' When the boy bent down to say goodbye to his once beloved friend, the father smacked the boy in the face, grabbed him by the arm and said, ''Just you wait till we get home.'' The man and the boy left and the dog was humanely euthanized by ASPCA technicians. One of the puppies survived, and is now living in a happy home.

I think it was that day that I began to recognize the cycle of violence. I couldn't help but wonder what other abuse was occurring in this home since the man was willing to show us a brutal display in the shelter. Was there anything I could do as an individual or as an animal worker to stop the abuse from happening again?

Eight years later, and a lot of hard work, we have begun to make headway. I am proud to say that the ASPCA is part of a network in NYC which is recognizing that animal abuse is an important piece of the abuse puzzle. The network consists of a whole range of city social service and protection agencies including:

The NYPD, Administration for Childrens Services, Department of the Aging, Human Resource Agency, Mental health, education, animal welfare, and other public and private agencies.

NYC Family VISION, as it's called looks at violence as a societal issue and is working on programs to address it. All members of Family VISION bring to the table different perspectives and experiences. Many of us define abuse differently but, no matter what our background is or who the population is we are serving, whether adult, child, or animal, abuse is abuse and must be stopped.

NYC Family VISION has five goals: Cross training animal, law enforcement, and social service workers to recognize animal and human abuse. For example, In January of this year, ASPCA staff trained 800 Domestic Violence police officers on animal abuse.

Cross reporting so that we can gather statistics and make sure that the proper agency is informed when an abuse case occurs. Recently, ASPCA humane law enforcement officers went into a home to investigate an animal abuse complaint and found three children under five home alone. They immediately called the Family VISION NYPD and ACS representative and the mother who was found in the local bar was brought up on child abuse charges.

Intervention which is a new program where adjudicated offenders of animal abuse are sent to the ASPCA by the courts for a twelve-week psycoeducational program.

Education. As an educator, I recognize the importance of establishing school and family programs that will continue to foster the human animal bond that exists in millions of households. NYC Family VISION is helping educators support their students, and to continue to promote programs that stimulate responsible, empathetic behaviors toward all life.

Foster care. Helping victims of domestic violence by temporarily placing their animal so they can leave an abusive situation quickly.

Programs like Family VISION are not limited to NYC. Humane Organizations around the country already understand the impact violence has on humans and animals.

In Colorado Springs, the DIVERT program receives federal funding to collaboratively review Domestic Violence cases.

The Toledo Humane Society has developed a comprehensive training program for law enforcement personnel to recognize all forms of abuse.

At Purdue University, an animal foster care program was developed to address the needs of human victims of domestic violence.

The Quad Alliance Against Abuse in Alabama run by the Civitan Club, has a logo that reads, ''There's No Excuse for Abuse, Child, Elderly, Spousal, and Animal.''

And, in Oregon, the Domestic Violence Assistance program's motto reads, ''Protecting Women Children and their Pets.''

The emergence of programs like the ones mentioned above show a clear recognition by all individuals working on preventing abuse, that abuse does not stand in isolation. Working together to understand family dynamics, the role of each individual (and animal) in the household, and to develop programs to address the needs of the family, can only help to put an end to the awful violence that exists today. As part of the legislative process you have the opportunity to support programs like NYC Family VISION in your community.

In the past, child abuse used to be considered a family affair where people shouldn't meddle. Today we are all concerned with child abuse. We are becoming more sophisticated to seeing the connection among all abuses.

It is no longer acceptable to look the other way when someone is hitting an animal on the street.

It is no longer acceptable to say ''Boys will be boys'' when there is a news report about a peer group setting fire to a cat singeing its whiskers off.

It's no longer acceptable for the court to let someone off with a slap on the wrist for tying up an animal to a car and dragging it throughout the streets for the whole neighborhood to see.

Its time that we take animal abuse seriously, look at it for inherent wrongs, and look at it as an indicator of other problems in society. As leaders, you have a responsibility to stand up for all your constituents and their families. If any of you currently have or had a pet in the past, you can remember how important an animal is in the entire picture of a family. I applaud your efforts in the past on behalf of animals, and plead with you to continue to support stronger laws, and programs that can help to solve Americas abuse problem.

Thank you for this opportunity to speak with you today.

AMERICAN HUMANE ASSOCIATION

(Presented By Suzanne Barnard)

As the jury deliberated the death penalty for convicted pedophile and child murderer Jesse K. Timmendequas, whose crimes were the incentive for Megan's Law, lawyers argued that Timmendequas allegedly endured years of childhood physical and sexual abuse during which family pets were tortured in front of him to ensure his silence. In Janesville, Wisconsin, police arrested a man after finding numerous cats and dogs, in his home, that had been beaten to death. In his statements to police, the man indicated that he had been beaten as a child and killing the animals helped to release his anger. And finally, a teenager accused of murdering his mother and two classmates in Pearl, Mississippi wrote of his torturing and killing of the family pet. He described how he and an accomplice beat his dog, then set it on fire and threw it in a pond . . . ''it was true beauty'', he wrote.

Good morning, my name is Suzanne Barnard and I am with the Children's Division of the American Humane Association. I am a social worker with over 20 years of experience in the field of child protection.

My organization has a long history of concern for and involvement in the protection of both children and animals. In 1877 The American Humane Association was founded by those concerned with both animal and child abuse. Using rudimentary animal protection laws to remove an abused child from horrifying conditions, a church worker and an attorney made history with one of the first recorded cases of legal child protection in this country. Today, the fate of children and animals is more linked than ever, and both child welfare organizations and animal protection groups are beginning to refocus their attention on recognizing and responding jointly to abuse, neglect, and cruelty toward both children and animals.

This refocused attention brings forward several issues for consideration, First, and at the heart of any discussion concerning the links between human and animal abuse must be the understanding that we are not talking about child welfare vs. animal welfare, but rather about creating a more comprehensive response to both children and animals. Second, we must focus attention on teaching children compassion toward animals as a regular part of any school curriculum. Although the issue of the relationship between childhood cruelty to animals and later violence to adults is far from settled, enough information currently exists that illustrates the association between repetitive acts of severe cruelty in childhood and severe antisocial behavior in adulthood. Groundbreaking studies by Alan Felthous,

Stephen R. Kellert, Fernando Tapia, Frank Ascoine and others indicate that those who have been cruel toward people share a common dual history of cruelty to animals. There is also a need to research and develop treatment techniques for those children who do show early antisocial behavior toward animals. Third, we must ensure that training for different professions such as social work, psychology, law, law enforcement, veterinary medicine, medicine, animal control and others includes information about the research linking different forms of violence and abuse including child abuse, animal abuse, and domestic violence. Lastly, the significance of these links must be fully explained and understood across professions and specific programmatic linkages and treatment protocols must be created that in practice produce a linked response.

Those of us who work in child protection know that animal abuse, by a parent or a child is one indicator that abuse may be occurring in the family. Animals, especially pets, get caught in the family ''cycle of violence.'' The sexual abuse of children has also been associated with cruelty to animals. Sometimes, adult perpetrators of abuse will threaten to harm or destroy the family pet if the child victim tells of the abuse.

Other times, animal abuse may indicate that a child is deeply disturbed as is indicated in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders which includes cruelty to animals as a behavioral characteristic of the diagnosis of conduct disorder.

My colleague, Dr. Frank Ascione, a Developmental Psychologist at Utah State University, indicated in a chapter we co-wrote that in some cases animal maltreatment may come from the natural curiosity and exploration common in very young children. In those cases, parents or guardians may use existing education programs to help instill values concerning the humane treatment of animals in the children. Peer pressure in the form of group initiation or proof of loyalty or to shock adults may also account for some cases of cruelty to animals where the child, if alone would not have harmed an animal. Children may also mistreat animals if that is what they have learned as a model for animal treatment within the family. If the family practice is the beat or torture animals to discipline them, the child may assume that this is part of regular animal care.

AHA's campaign against violence toward children and animals has taken us to many states where we have organized collaborative programs in communities, at the grass roots level, and trained both animal control officers and social workers about how to recognize and report abuse. We have also designed a curriculum on recognizing and reporting child abuse and neglect for animal control officers nationally and for third year veterinary medical students in Colorado, where veterinarians are now mandated to report suspected child abuse. We provided support for the passage of legislation, in San Diego, California, that modified an existing municipal code which required animal control officers to report suspected child abuse to additionally require child protection social workers to report abuse of animals.

On June 4, 1997 Colorado Governor Roy Romer signed HB 1181 into law. This historic piece of legislation has both severe financial penalties for animal cruelty and a mandatory requirement for mental health treatment/anger management as part of the penalty phase for convicted adult and juvenile perpetrators of animal cruelty.

AHA is also working jointly with Dr. Ascione to develop a book titled Children and Animals, Kindness and Cruelty which would be directed at a lay audience, especially parents, counselors, teachers, clergy, children care and other child serving professionals and which will explore the relational issues between cruelty to animals and child development—particularly as they pertain to the development of childhood interpersonal skills such as compassion, empathy, and nonviolent problem solving. This is a topic on which very little has been researched or written.

We urge you to join in our efforts to awaken and inform the public about the need to take both animal abuse and child abuse seriously. By keeping issues like animal cruelty and human violence separate in nature, in implication, and in remedy, we risk taking a dramatic step backward in our efforts to protect both children and animals.

Some excerpts taken from Protecting Children, a publication of the American Humane Association.

PERSONAL EXPLANATION

HON. ROBERT WEXLER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 10, 1998

Mr. WEXLER. Mr. Speaker, yesterday, on roll call votes number 211, 212, 213, 214, 215, I was detained due to personal matters. Had I been present, I would have voted ''yea'' on all five of these roll call votes.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, June 11, 1998, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

JUNE 12

9:30 a.m.

Special on SPECIAL COMMITTEE ON THE YEAR 2000 TECHNOLOGY PROBLEM

To hold hearings to examine how the Year 2000 computer conversion will affect utilities and the national power grid.

SD–192

JUNE 15

2:00 p.m.

Judiciary

Administrative Oversight and the Courts Subcommittee

To hold hearings on S. 1166, to prevent Federal agencies from pursuing policies of unjustifiable nonacquiescence in, and relitigation of, precedents established in the Federal judicial circuits, and to review the judgeship needs of the 10th Circuit.

SD–226

JUNE 16

10:00 a.m.

Armed Services

To hold hearings on the nominations of Louis Caldera, of California, to be Secretary of the Army, and Daryl L. Jones, of Florida, to be Secretary of the Air Force, both of the Department of Defense.

SR–222

Judiciary

To hold hearings to examine mergers and corporate consolidation.

SD–226

10:30 a.m.

Appropriations

Foreign Operations Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1999 for the Department of State.

SD–192

2:30 p.m.

Energy and Natural Resources

Water and Power Subcommittee

To hold hearings on S. 1398, S. 2041, S. 2087, S. 2140, S. 2142, H.R. 2165, H.R. 2217, and H.R. 2841, bills relating to water and power construction projects.

SD–366

Foreign Relations

To hold hearings on the nominations of Shirley Elizabeth Barnes, of New York, to be Ambassador to the Republic of Madagascar, William Davis Clarke, of Maryland, to be Ambassador to the State of Eritrea, Vivian Lowery Derryck, of Ohio, to be Assistant Administrator for Africa, Agency for International Development, George Williford Boyce Haley, of Maryland, to be Ambassador to the Republic of the Gambia, Katherine Hubay Peterson, of California, to be Ambassador to the Kingdom of Lesotho, Charles Richard Stith, of Massachusetts, to be Ambassador to the United Republic of Tanzania, and William Lacy Swing, of North Carolina, to be Ambassador to the Democratic Republic of the Congo.

SD–419

4:00 p.m.

Foreign Relations

To hold hearings on the nominations of Paul L. Cejas, of Florida, to be Ambassador to Belgium, Eric S. Edelman, of Virginia, to be Ambassador to the Republic of Finland, Nancy Halliday Ely Raphel, of the District of Columbia, to be Ambassador to the Republic of Solvenia, Michael Craig Lemmon, of Florida, to be Ambassador to the Republic of Armenia, Rudolf Vilem Perina, of California, to be Ambassador to the Republic of Moldova, Edward L. Romero, of New Mexico, to be Ambassador to Spain and to serve concurrently and without additional compensation as Ambassador to Andorra, and Cynthia Perrin Schneider, of Maryland, to be Ambassador to the Kingdom of the Netherlands.

SD–419

JUNE 17

10:00 a.m.

Finance

To hold hearings on S. 1432, to authorize a new trade and investment policy for sub-Saharan Africa.

SD–215

Judiciary

To hold hearings to examine the extent of drug abuse among children.

SD–226

10:30 a.m.

Foreign Relations

To resume hearings on S. 1868, to express United States foreign policy with respect to, and to strengthen United States advocacy on behalf of, individuals persecuted for their faith worldwide; and to establish an Ambassador at Large on International Religious Freedom within the Department of State, a Commission on International Religious Persecution, and a Special Adviser on International Religious Freedom within the National Security Council, focusing on views from the religious community.

SD–419

2:00 p.m.

Energy and Natural Resources

Forests and Public Land Management Subcommittee

To resume hearings on S. 1253, to provide to the Federal land management agencies the authority and capability to manage effectively the federal lands in accordance with the principles of multiple use and sustained yield.

SD–366

2:30 p.m.

Select on Intelligence

To hold closed hearings on intelligence matters.

SH–219

JUNE 18

10:00 a.m.

Finance

To hold hearings to examine new directions in retirement income policy, focusing on social security, pensions, and personal savings.

SD–215

Foreign Relations

East Asian and Pacific Affairs Subcommittee

To hold hearings to examine congressional views of the U.S.-China relationship.

SD–419

Judiciary

Business meeting, to consider pending calendar business.

SD–226

Labor and Human Resources

To hold joint hearings with the House Commerce Committee to examine organ donation allocation.

2123 Rayburn Building

2:00 p.m.

Energy and Natural Resources

National Parks, Historic Preservation, and Recreation Subcommittee

To hold hearings on S. 469, to designate a portion of the Sudbury, Assabet, and Concord Rivers as a component of the National Wild and Scenic Rivers System, S. 1016, to authorize appropriations fo rthe Coastal Heritage Trail Route in New Jersey, S. 1665, to reauthorize the Delaware and Lehigh Navigation Canal National Heritage Corridor Act, S. 2039, to designate El Camino Real de Tierra Adentro as a National Historic Trail, and H.r. 2186, to authorize the Secretary of the Interior to provide assistance to the National Historic Trails Interpretive Center in Casper, Wyoming.

SD–366

United States Senate Caucus on International Narcotics Control

To hold hearings to examine United States efforts to combat drugs, focusing on international demand reduction programs.

SD–628

JUNE 24

9:30 a.m.

Indian Affairs

To hold hearings on S. 1771, to amend the Colorado Ute Indian Water Rights Settlement Act to provide for a final settlement of the claims of the Colorado Ute Indian Tribes, and S. 1899, ''Chippewa Cree Tribe of the Rocky boy's Reservation Indian Reserved Water Rights Settlement Act of 1998''.

SR–485

10:00 a.m.

Governmental Affairs

To resume hearings to examine the state of computer security within Federal, State and local agencies.

SD–342

JUNE 25

9:30 a.m.

Governmental Affairs

Permanent Subcommittee on Investigations

To resume hearings to examine the adequacy of procedures and systems used by the Department of Agriculture Food Safety and Inspection Service and the Department of Health and Human Services Food and Drug Administration to oversee the safety of food imported into the United States.

SD–342

Labor and Human Resources

To hold hearings to examine health insurance coverage for older workers.

SD–430

JULY 21

10:00 a.m.

Judiciary

To hold oversight hearings to examine the Department of Justice's implementation of the Violence Against Women Act.

SD–226

OCTOBER 6

9:30 a.m.

Veterans' Affairs

To hold joint hearings with the House Committee on Veterans Affairs on the legislative recommendations of the American Legion.

345 Cannon Building

CANCELLATIONS

JUNE 11

2:00 p.m.

Energy and Natural Resources

Forests and Public Land Management Subcommittee

To resume hearings on S. 1253, to provide to the Federal land management agencies the authority and capability to manage effectively the federal lands in accordance with the principles of multiple use and sustained yield.

SD–366

POSTPONEMENTS

JUNE 11

10:00 a.m.

Judiciary

Business meeting, to consider pending calendar business.

SD–22

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S6001–S6129

Measures Introduced: Four bills and four resolutions were introduced, as follows: S. 2152–2155, S.J. Res. 50 and 51, S. Res. 246, and S. Con. Res. 103. **Page S6037**

Measures Reported: Reports were made as follows:

H.R. 2614, to improve the reading and literacy skills of children and families by improving in-service instructional practices for teachers who teach reading, to stimulate the development of more high-quality family literacy programs, to support extended learning-time opportunities for children, to ensure that children can read well and independently not later than third grade, with an amendment in the nature of a substitute. (S. Rept. No. 105–208)

H. Con. Res. 131, expressing the sense of Congress regarding the ocean, with an amendment in the nature of a substitute. (S. Rept. No. 105–209)

S.J. Res. 41, approving the location of a Martin Luther King, Jr., Memorial in the Nation's Capital. (S. Rept. No. 105–210)

S. 1683, to transfer administrative jurisdiction over part of the Lake Chelan National Recreation Area from the Secretary of the Interior to the Secretary of Agriculture for inclusion in the Wenatchee National Forest, with an amendment in the nature of a substitute. **Page S6037**

Measures Passed:

Senate Chamber Photograph: Senate agreed to S. Res. 246, authorizing the taking of a photograph in the Chamber of the United States Senate. **Page S6115**

International Year of the Ocean: Senate agreed to H. Con. Res. 131, acknowledging 1998 as the International Year of the Ocean and expressing these sense of the Congress regarding the ocean, after agreeing to a committee amendment in the nature of a substitute. **Pages S6115–16**

Federal Reports Elimination Act: Senate passed S. 1364, to eliminate unnecessary and wasteful Federal reports, after agreeing to committee amendments, and the following amendment proposed thereto: **Pages S6116–27**

Collins (for Levin/McCain) Amendment No. 2570, to provide for additional reports. **Pages S6226–27**

Indian Mineral Leasing: Senate passed S. 2069, to permit the mineral leasing of Indian land located within the Fort Berthold Indian Reservation in any case in which there is consent from a majority interest in the parcel of land under consideration for lease, after agreeing to a committee amendment in the nature of a substitute. **Page S6127**

Universal Tobacco Settlement Act: Senate resumed consideration of S. 1415, to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, and to redress the adverse health effects of tobacco use, with a modified committee amendment in the nature of a substitute (Amendment No. 2420), taking action on amendments proposed thereto, as follows: **Pages S6001–03, S6005, S6007–08, S6010–33**

Adopted:

Gramm Modified Amendment No. 2686 (to Amendment No. 2437), to eliminate the marriage penalty reflected in the standard deduction, to ensure the earned income credit takes into account the elimination of such penalty, and to provide a full deduction for health insurance costs of self-employed individuals. (By 48 yeas to 50 nays (Vote No. 154), Senate failed to table the amendment.) **Pages S6030–31**

Rejected:

Daschle Amendment No. 2688 (to Amendment No. 2437), to provide a deduction for two-earner married couples, and to allow self-employed individuals a 100-percent deduction for health care insurance costs. (By 55 yeas to 43 nays (Vote No. 155), Senate tabled the amendment.) **Pages S6031–33**

Pending:

Gregg/Leahy Amendment No. 2433 (to Amendment No. 2420), to modify the provisions relating to civil liability for tobacco manufacturers. **Page S6001**

Gregg/Leahy Amendment No. 2434 (to Amendment No. 2433), in the nature of a substitute. **Page S6001**

Gramm Motion to recommit the bill to the Committee on Finance with instructions to report back forthwith, with Amendment No. 2436, to modify the provisions relating to civil liability for tobacco manufacturers, and to eliminate the marriage penalty reflected in the standard deduction and to ensure the earned income credit takes into account the elimination of such penalty. **Page S6001**

Daschle (for Durbin) Amendment No. 2437 (to Amendment No. 2436), relating to reductions in underage tobacco usage. **Page S6001**

During consideration of this measure today, Senate also took the following action:

By 43 yeas to 55 nays (Vote No.153), three-fifths of those Senators duly chosen and sworn not having voted in the affirmative, Senate failed to agree to close further debate on the modified committee amendment in the nature of a substitute (Amendment No. 2440). **Page S6001–02**

A vote on a third cloture motion will occur Thursday, June 11, 1998.

U.S. Holocaust Assets Commissions Act: Senate concurred in the amendment of the House to S. 1900, to establish a commission to examine issues pertaining to the disposition of Holocaust-era assets in the United States before, during, and after World War II, and to make recommendations to the President on further action, clearing the measure for the President. **Pages S6127–29**

Messages From the House: **Page S6034**

Measures Referred: **Page S6034**

Measures Placed on Calendar: **Pages S6034–35**

Petitions: **Pages S6035–37**

Statements on Introduced Bills: **Pages S6037–52**

Additional Cosponsors: **Pages S6052–53**

Amendments Submitted: **Pages S6054–S6111**

Authority for Committees: **Page S6111**

Additional Statements: **Pages S6111–15**

Record Votes: Three record votes were taken today. (Total—155) **Pages S6001–02, S6031, S6033**

Adjournment: Senate convened at 11 a.m., and adjourned at 7:44 p.m., until 9:45 p.m., on Thursday, June 11, 1998. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S6129.)

Committee Meetings

(Committees not listed did not meet)

LIVESTOCK INDUSTRY

Committee on Agriculture, Nutrition, and Forestry: Committee concluded hearings to examine economic issues facing the red meat industry, including production, price and profit prospects for cattle, hog and sheep producers, and trends in export markets, after receiving testimony from Keith Collins, Chief Economist, Department of Agriculture; David C. Nelson, Credit Suisse First Boston, New York, New York; Richard Kjerstad, South Dakota Farm Bureau Federation, Huron, on behalf of the American Farm Bureau Federation; George Swan, Rogerson, Idaho, on behalf of the National Cattlemen's Beef Association; Donna Reifschneider, Smithton, Illinois, on behalf of the National Pork Producers Council; Lorin Moench Jr., American Sheep Industry Association, Englewood, Colorado; Leland Swenson, National Farmers Union, Aurora, Colorado; J. Patrick Boyle, American Meat Institute, Arlington, Virginia; and Herman Schumacher, Herried, South Dakota.

APPROPRIATIONS—DISTRICT OF COLUMBIA

Committee on Appropriations: Subcommittee on the District of Columbia held hearings on proposed budget estimates for fiscal year 1999 for the District of Columbia, receiving testimony from Mayor Marion S. Barry, Jr., Linda W. Cropp, Chairman, Council of the District of Columbia, Andrew F. Brimmer, Chairman, Financial Responsibility and Management Assistance Authority, Arlene Ackerman, Superintendent and Chief Executive Officer, District of Columbia Public Schools, and Camille Barnett, Chief Management Officer, City of the District of Columbia, all of the District of Columbia.

Subcommittee recessed subject to call.

YEAR 2000 READINESS

Committee on Banking, Housing, and Urban Affairs: Subcommittee on Financial Services and Technology concluded hearings to examine federal efforts to promote Year 2000 readiness in the securities industry, the capital markets, and their underlying industries, including the Securities and Exchange Commission's guidance as to what public companies should consider when disclosing information about their Year 2000 readiness, after receiving testimony from Laura

S. Unger, Commissioner, U.S. Securities and Exchange Commission; Steven L. Hock, Triaxsys Research, Missoula, Montana; Edward Yardeni, Deutsche Bank Securities, and Ed Bankole, Moody's Investors Service, both of New York, New York; and Lynn A. Stout, Georgetown University Law Center, and Matthew J. Schlesinger, McKenna & Cuneo, both of Washington, D.C.

AUTHORIZATION—FCC

Committee on Commerce, Science, and Transportation: Subcommittee on Communications concluded hearings on proposed legislation to reform and authorize funds for the Federal Communications Commission, focusing on the implementation of the schools and libraries program designed to connect schools and libraries to broadband technology, after receiving testimony from William E. Kennard, Chairman, and Susan Ness, Harold W. Furchtgott-Roth, Michael Powell, and Gloria Tristani, each a Commissioner, all of the Federal Communications Commission.

CAMBODIA

Committee on Foreign Relations: Subcommittee on East Asian and Pacific Affairs concluded hearings to examine United States policy strategy on democracy in Cambodia and the outlook for the election scheduled for July 26, 1998, after receiving testimony from Stanley O. Roth, Assistant Secretary of State for East Asian and Pacific Affairs; Stephen Heder, University of London, London, England; Sidney Jones, Human Rights Watch, New York, New York; and Janet E. Heininger, American University, of Washington, D.C.

U.S. INFRASTRUCTURE PROTECTION

Committee on the Judiciary: Subcommittee on Technology, Terrorism, and Government Information resumed hearings to examine the need for a national strategy and proactive policies to protect the critical infrastructures of the United States, focusing on the role of the FBI's National Infrastructure Protection Center, receiving testimony from Michael A. Vatis, Deputy Assistant Director, and Chief, National Infrastructure Protection Center, Federal Bureau of Investigation, Department of Justice.

Also, committee met to receive a briefing on the Presidential Decision Directive (PDD–63) aimed at countering attacks on U.S. critical infrastructure, and the Department of Defense exercise known as ''Eligible Receiver'' which simulated an attack on government computers to test the security of their system from Richard Clarke, Senior Director, National Security Council; and certain officials of the National Security Agency, Department of Defense.

Subcommittee recessed subject to call.

PACIFIC NW EMERGENCY MANAGEMENT ARRANGEMENT/INTERSTATE FOREST FIRE PROTECTION COMPACT

Committee on the Judiciary: Subcommittee on the Constitution, Federalism, and Property Rights approved for full committee consideration the following measures:

S.J. Res. 35, granting the consent of Congress to the Pacific Northwest Emergency Management Arrangement; and

S. 1134, granting the consent and approval of Congress to an interstate forest fire protection compact.

INDIAN SCHOOL CONSTRUCTION

Committee on Indian Affairs: Committee concluded oversight hearings on the implementation of the Bureau of Indian Affairs' school facility improvement program, after receiving testimony from John Berry, Assistant Secretary for Policy, Management and Budget, and Kevin Gover, Assistant Secretary for Indian Affairs, both of the Department of the Interior; Thomas E. Atcitty, Navajo Nation, Window Rock, Arizona; Jon Whirlwind Horse, Dakota Area Consortium of Tribal Schools, Inc./Loneman School Corporation, Oglala, South Dakota; and Lorraine P. Edmo, National Indian Education Association, Alexandria, Virginia.

NATIONAL SECURITY

Select Committee on Intelligence: Committee resumed hearings on the investigation of the impacts to United States national security from advanced satellite technology exports to China and Chinese efforts to influence United States policy, receiving testimony from Katherine V. Schinasi, Associate Director, Defense Acquisitions Issues, National Security and International Affairs Division, General Accounting Office.

Hearings were recessed subject to call.

House of Representatives

Chamber Action

Bills Introduced: 10 public bills, H.R. 4025–4034, were introduced. **Pages H4478–79**

Reports Filed: Reports were filed as follows:

H.R. 2742, to provide for the transfer of public lands to certain California Indian Tribes, amended (H. Rept. 105–575); and

H. Res. 465, providing for consideration of H.R. 2888, to amend title 18, United States Code, with respect to violent sex crimes against children (H. Rept. 105–576). **Page H4478**

Speaker Pro Tempore: Read a letter from the Speaker wherein he designated Representative Solomon to act as Speaker pro tempore for today. **Page H4333**

Recess: The House recessed at 9:03 a.m. and reconvened at 11:00 a.m. **Page H4333**

Joint Meeting to receive His Excellency Kim Dae-Jung, President of the Republic of South Korea: It was made in order that the proceedings conducted during the recess be printed in the Record. **Pages H4333–36**

Bankruptcy Reform Act: The House passed H.R. 3150, to amend title 11 of the United States Code by a recorded vote of 306 ayes to 118 noes, Roll No. 225. **Pages H4354–S4443**

Rejected the Conyers motion that sought to recommit the bill to the Committee on the Judiciary with instructions to report back forthwith with amendments that revise the needs-based bankruptcy section to exclude support of a child, alimony, or support paid to a spouse or former spouse and adds a section for protection against reaffirmation agreements adversely affecting child support (rejected by a recorded vote of 153 ayes to 270 noes, Roll No. 224). **Pages H4440–42**

Agreed To:

The Gekas amendment that ensures that a debtor who is disqualified from obtaining relief under chapter 7 by virtue of the bill's need-based formula is not disqualified from relief under chapter 11; makes revisions relating to debt counseling and financial management provisions; limits amount of a debtor's homestead to prevent manipulation of the provision to the disadvantage of homeowners; adds safeguards to fee examiner appointments and creditor's committee membership; revises section to accord more protection to recording artists; and clarifies that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States will establish rules and forms for small business debtors; **Pages H4394–97**

The Boucher amendment that expands the definition of ''household goods'' to include personal property that is necessary for the support of a dependent child; and moves child support, alimony, and marital dissolution obligations from seventh priority to first priority during bankruptcy proceedings; **Pages H4398–H4400**

The Shaw amendment, as modified, that requires credit card companies who obtain payments from parents who owe past-due child support to distribute the payment to parents and children who are entitled to priority under the bill; **Pages H4400–02**

The Gekas amendment that prohibits the conversion of non-exempt assets into exempt homestead property within 1 year of filing for bankruptcy (agreed to by a recorded vote of 222 ayes to 204 noes, Roll No. 221); **Pages H4404–06, H4438–39**

The Velázquez amendment that requires the Executive Office of U.S. Trustees and Administrative Office of the U.S. Courts to conduct a study of the causes of small business bankruptcies; **Pages H4407–08**

The Baldacci amendment that directs the Comptroller General to conduct a study of the impact on the nation's bankruptcy rate due to the extension of credit to students enrolled in post-secondary education programs who are claimed as dependents for tax purposes by their parents or legal guardians; **Pages H4408–09**

Rejected:

The Nadler amendment that sought to modify the small business subtitle; restore the right to count debt as disposable income; strike paperwork and bureaucratic burdens and rigid deadlines which are not otherwise imposed on larger businesses; and strike provisions which allow a creditor to violate the automatic stay; prohibit a small business from filing a new petition for two years after a case was dismissed; and require a successor entity to bring forward a plan capable of confirmation in order to file the case (rejected by a recorded vote of 136 ayes to 290 noes, Roll No. 219); **Pages H4397–98, H4436–37**

The Delahunt amendment that sought to authorize the Judicial Conference of the United States to reduce disbursements to unsecured nonpriority creditors payable in Chapter 13 cases to cover the increased costs to the courts and the U.S. Trustees Office of implementing and administering the means testing system (rejected by a recorded vote of 149 ayes to 278 noes, Roll No. 220); **Pages H4402–03, H4437–38**

The Paul amendment that sought to reorder tax priorities for debt repayment to repay local governmental units first, then state governmental units, then Federal governmental units; **Pages H4403–04**

The Scott amendment that sought to eliminate Section 212 and maintain current law relating to recording artists and the discharge of obligations under service contract agreements with recording companies (rejected by a recorded vote of 111 ayes to 316 noes, Roll No. 222); and

Pages H4406–07, H4439

The Nadler amendment in the nature of a substitute that sought to delete the one size fits all means test; strengthen procedure under current law for dismissal of a case for abuse of chapter 7; restore existing priorities among creditors; protect alimony and child support; revise small business subtitle to be consistent with recommendations of the National Bankruptcy Conference and the Small Business Administration; and ensure that government including the IRS cannot harass debtors (rejected by a recorded vote of 140 ayes to 288 noes, Roll No. 223).

Pages H4409–36, H4439–40

The Clerk was authorized in the engrossment of the bill to make corrections and conforming changes to the bill. **Pages H4442–43**

H. Res. 462, the rule that provided for consideration of the bill was agreed to by a yea and nay vote of 251 yeas to 172 nays, Roll No. 218. Agreed to order the previous question by a yea and nay vote of 236 yeas to 183 nays, Roll No. 217.

Pages H4338–54

Earlier, a point of order was raised against the rule under Section 425 of the Congressional Budget Act of 1974, regarding unfunded mandates. Pursuant to Section 426 of the Congressional Budget Act, the House agreed to consider H. Res. 462, by a yea and nay vote of 248 yeas to 166 nays, Roll No. 216.

Pages H4339–43

Constitutional Amendment to Limit Campaign Spending: The House completed debate on H.J. Res. 119, proposing an amendment to the Constitution of the United States to limit campaign spending. The record vote on final passage was postponed, and consideration of the joint resolution will resume on June 11. **Pages H4443–65**

Res. 442, the rule that is providing for consideration of the joint resolution was agreed to on May 21.

Sales Incentive Compensation Act: The House completed debate on H.R. 2888, to amend the Fair Labor Standards Act of 1938 to exempt from the minimum wage recordkeeping and overtime compensation requirements certain specialized employees.

Pages H4466–75

Agreed To:

The Fawell amendment that specifies that employee sales that are predominantly to persons or entities to whom the employee's position has made previous sales or the position does not involve initiating sales contacts; and **Page H4474**

The Andrews amendment that specifies that an employee, rather than the position, has detailed understanding of the needs of those to whom the employee is selling and the employee exercises discretion in offering a variety of products and services.

Page H4475

Vote Postponed:

The Owens amendment that seeks to require the employee's consent to work any hours in excess of 40 in any workweek or 8 in any day was debated and a recorded vote was postponed. **Pages H4474–75**

Agreed by unanimous consent that during further consideration of H.R. 2888, in the Committee of the Whole pursuant to the rule, after the legislative day of today, June 10, no further debate or amendments to the committee amendment in the nature of a substitute shall be in order. **Page H4466**

H. Res. 461, the rule that is providing for consideration of the bill was agreed to earlier by a voice vote. **Pages H4465–66**

Senate Messages: Message received from the Senate today appears on page H4335.

Referrals: S. 1531, to deauthorize certain portions of the project for navigation, Bass Harbor, Maine was referred to the Committee on Transportation and Infrastructure. **Page H4478**

Amendments: Amendments ordered printed pursuant to the rule appear on pages H4479–80.

Quorum Calls—Votes: Three yea and nay votes and seven recorded votes developed during the proceedings of the House today and appear on pages H4342–43, H4353, H4353–54, H4437, H4437–38, H4438, H4439, H4439–40, H4441–42, and H4442. There were no quorum calls.

Adjournment: Met at 9:00 a.m. and adjourned at 12:12 a.m. on Thursday, June 11.

Committee Meetings

METHYL BROMIDE PHASE OUT

Committee on Agriculture: Subcommittee on Forestry, Resource Conservation, and Research held a hearing to review the phase out of methyl bromide. Testimony was heard from Representatives Thomas, Herger and Miller of Florida; Paul Stolpman, Director, Office of Atmospheric Programs, Office of Air and Radiation, EPA; Keith Pitts, Special Assistant to the Deputy Secretary, USDA; and public witnesses.

OVER-THE-COUNTER DERIVATIVES MARKET REVIEW

Committee on Agriculture: Subcommittee on Risk Management and Specialty Crops held a hearing to review the regulation of the over-the-counter derivatives market. Testimony was heard from Brooksley Born, Chairperson, Commodity Futures Trading Commission; John D. Hawke, Under Secretary, Domestic Finance, Department of the Treasury; Richard Lindsey, Director, Division of Market Finance, SEC; and public witnesses.

AGRICULTURE, RURAL DEVELOPMENT, FDA, AND RELATED AGENCIES APPROPRIATIONS

Committee on Appropriations, Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies approved for full Committee action the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies appropriations for fiscal year 1999.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS

Committee on Appropriations: Subcommittee on Energy and Water Development approved for full Committee action the Energy and Water Development Appropriations for fiscal year 1999.

LEGISLATIVE APPROPRIATIONS

Committee on Appropriations: Subcommittee on Legislative approved for full Committee action the Legislative Appropriations for fiscal year 1999.

MILITARY CONSTRUCTION APPROPRIATIONS

Committee on Appropriations: Subcommittee on Military Construction approved for full Committee action the Military Construction Appropriations for fiscal year 1999.

SECURITIES LITIGATION UNIFORM STANDARDS ACT

Committee on Commerce: Subcommittee on Finance and Hazardous Materials approved for full Committee action amended H.R. 1689, Securities Litigation Uniform Standards Act of 1997.

ELECTRONIC COMMERCE

Committee on Commerce: Subcommittee on Telecommunications, Trade, and Consumer Protection held a hearing on Electronic Commerce: The Future of the Domain Name System. Testimony was heard from George Strawn, Division Director, Division of Advanced Networking Infrastructure and Research, NSF; J. Beckwith Burr, Acting Associate Administrator, Telecommunications and Information and Director of the Office of International Affairs, National Telecommunications and Information Administration, Department of Commerce; and public witnesses.

MISCELLANEOUS MEASURES

Committee on Education and the Workforce: Ordered reported amended the following bills: H.R. 2869, to amend the Occupational Safety and Health Act of 1970 to exempt safety and health assessments, audits, and reviews conducted by or for an employer from enforcement action under such Act; H.R. 2661, Sound Scientific Practices Act; H.R. 2873, to amend the Occupational Safety and Health Act of 1970; and H.R. 3725, Postal Service Health and Safety Promotion Act.

YEAR 2000 PROBLEM—STATUS UPDATE

Committee on Government Reform and Oversight, Subcommittee on Government Management, Information, and Technology, hearing on the Status Update on the Year 2000 Problem. Testimony was heard from the following officials of the Accounting and Information Management Division, GAO: Joel Willemssen, Director; and Jack L. Brock, Director, Governmentwide and Defense Information Systems; John Callahan, Assistant Secretary, Management and Budget, Department of Health and Human Services; Marshall Smith, Acting Deputy Secretary, Department of Education; William Curtis, Special Assistant for the Year 2000, Command, Control, Communication and Intelligence, Department of Defense; and Howard Lewis, Jr., Acting Chief Information Officer, Department of Energy.

OVERSIGHT—U.S. POSTAL SERVICE

Committee on Government Reform and Oversight: Subcommittee on Postal Service held an oversight hearing on the U.S. Postal Service. Testimony was heard from the following officials of the U.S. Postal Service: William J. Henderson, Postmaster General and CEO; and Karla W. Corcoran, Inspector General; and Bernard L. Ungar, Director, Government Business Operations Issues, GAO.

CHINA—FORCED ABORTION AND STERILIZATION

Committee on International Relations: Subcommittee on International Operations and Human Rights held a hearing on Forced Abortion and Sterilization in China: The View from the Inside. Testimony was heard from public witnesses.

MISCELLANEOUS MEASURES

Committee on Resources: Held a hearing on the following bills: H.R. 2893, to amend the Native American Graves Protection and Repatriation Act to provide for appropriate study and repatriation of remains for

which a cultural affiliation is not readily ascertainable; and H.R. 3903, to provide for an exchange of lands located near Gustavus, Alaska. Testimony was heard from Representative Hastings of Washington; Katherine Stevenson, Associate Director, Cultural Resources, Stewardship and Partnership, National Park Service, Department of the Interior; and public witnesses.

CHILD PROTECTION AND SEXUAL PREDATOR PUNISHMENT ACT

Committee on Rules: Granted, by voice vote, a structured rule providing 1 hour of debate on H.R. 3494, Child Protection and Sexual Predator Punishment Act of 1998. The rule waives all points of order against consideration of the bill. The rule makes in order the Committee on the Judiciary amendment in the nature of a substitute now printed in the bill, which shall be considered as read. The rule waives all points of order against the committee amendment in the nature of a substitute.

The rule provides for consideration of only those amendments printed in the Rules Committee report accompanying this resolution, which may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. The rule waives all points of order against the amendments printed in the Rules Committee report.

The rule allows the Chairman of the Committee of the Whole to postpone votes during consideration of the bill, and allows the Chairman of the Committee of the Whole to reduce votes to five minutes on a postponed question if the vote follows a fifteen minute vote. Finally, the rule provides one motion to recommit with or without instructions. Testimony was heard from Representatives McCollum, Franks of New Jersey, Bachus, Bass, Foley, Gutknecht, Kelly, Salmon, Riley, Jackson-Lee, Lampson and Sherman.

OVERSIGHT—ROLE OF SCIENCE IN MAKING EFFECTIVE DECISIONS

Committee on Science: Held an oversight hearing on The Role of Science in Making Effective Decisions. Testimony was heard from public witnesses.

NATIONAL DRUG CONTROL POLICY—DRUG INTERDICTION

Committee on Transportation and Infrastructure: Subcommittee on Coast Guard and Maritime Transportation held a hearing on Drug Interdiction and other matters relating to the National Drug Control Policy. Testimony was heard from Rear Adm. Ernest R. Riutta, USCG, Assistant Commandant, Operations, U.S. Coast Guard, Department of Transportation; Gregory K. Williams, Chief of Operations, Drug Enforcement Administration, Department of Justice; Robert Brown, Assistant Deputy Director, Office of Supply Reduction, Office of National Drug Control Policy; Joseph W. Maxwell, Acting Executive Director, Air Interdiction, U.S. Customs Service, Department of the Treasury; and public witnesses.

OVERSIGHT—BOARD OF VETERANS' APPEALS; COURT OF VETERANS' APPEALS ACT

Committee on Veterans' Affairs: Subcommittee on Benefits held an oversight hearing on the Board of Veterans' Appeals and the Court of Veterans Appeals and to review H.R. 3212, Court of Veterans Appeals Act of 1998. Testimony was heard from Frank Q. Nebeker, Chief Judge, U.S. Court of Veterans Appeals; Richard B. Standefer, Acting Chairman, Board of Veterans' Appeals, Department of Veterans Affairs; and representatives of various veterans' organizations.

INTELLIGENCE COMMUNITY WHISTLEBLOWER PROTECTION ACT

Permanent Select Committee on Intelligence: Held a hearing on the Intelligence Community Whistleblower Protection Act of 1998. Testimony was heard from Fred Hitz, Inspector General, CIA; Eleanor Hill, Inspector General, Department of Defense; Michael Bromwich, Inspector General, Department of Justice; Fred Kaiser, Specialist in National American Government, Congressional Research Service, Library of Congress; and Kate Martin, Director, Center for National Security Studies.

Joint Meetings

MONETARY POLICY

Joint Economic Committee: Committee concluded hearings to examine monetary policy and the current economic outlook, after receiving testimony from Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, *p. D575)*

H.R. 2400, to authorize funds for Federal-aid highways, highway safety programs, and transit programs. Signed June 9, 1998. (P.L. 105–178)

COMMITTEE MEETINGS FOR THURSDAY, JUNE 11, 1998

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Appropriations, business meeting, to mark up proposed legislation making appropriations for the Departments of Veterans Affairs and Housing and Urban Development and independent agencies for the fiscal year ending September 30, 1999, 2 p.m., SD–106.

Committee on Energy and Natural Resources, Subcommittee on Energy Research and Development, Production and Regulation, to hold oversight hearings on the federal oil valuation regulations of the Minerals Management Service, 10 a.m., SD–366.

Full Committee, to hold oversight hearings to examine the Recreational Fee Demonstration program, 2 p.m., SD–366.

Committee on Finance, to hold hearings to examine the causes of the trade deficit and its implications for the United States economy; to be followed by a hearing on the nominations of Raymond W. Kelly, of New York, to be Commissioner of Customs, James E. Johnson, of New Jersey, to be Under Secretary of Enforcement, and Elizabeth Bresee, of New York, to be an Assistant Secretary, all of the Department of the Treasury, 10 a.m., SD–215.

Committee on Foreign Relations, to hold hearings to examine Chinese missile proliferation, 10:30 a.m., SD–419.

Full Committee, to hold hearings on the nominations of E. William Crotty, of Florida, to be Ambassador to Barbados, and to serve concurrently and without additional compensation as Ambassador to Antigua and Barbuda, to the Commonwealth of Dominica, to Grenada, to St. Kitts and Nevis, to Saint Lucia, and to Saint Vincent and the Grenadines, John O'Leary, of Maine, to be Ambassador to Chile, and Arthur Louis Schechter, of Texas, to be Ambassador to the Commonwealth of The Bahamas, 2 p.m., SD–419.

Committee on the Judiciary, Subcommittee on Immigration, to hold hearings to examine proposals to reform the service aspects of the Immigration and Naturalization Service, 2 p.m., SD–226.

Committee on Labor and Human Resources, Subcommittee on Employment and Training, to hold hearings to examine child labor issues, 9:30 a.m., SD–430.

NOTICE

For a listing of Senate committee meetings scheduled ahead, see pages E1102–03 in today's Record.

House

Committee on Agriculture, hearing to review the Forest Service timber sale program, 10 a.m., 1300 Longworth.

Committee on Appropriations, Subcommittee on Treasury, Postal Service, and General Government, to mark up appropriations for fiscal year 1999, 2 p.m., B–308 Rayburn.

Committee on Banking and Financial Services, hearing and markup of the following bills: H.R. 4005, Money Laundering Deterrence Act of 1998; and H.R. 1756, Money Laundering and Financial Crimes Strategy Act of 1997, 9:30 a.m., 2128 Rayburn.

Committee on Commerce, Subcommittee on Energy and Power, to mark up H.R. 4017, Energy Conservation Reauthorization Act of 1998, 10 a.m., 2123 Rayburn.

Committee on Education and the Workforce, Subcommittee on Early Childhood, Youth, and Families, hearing on reauthorization of the National Assessment of Educational Progress and the National Assessment Governing Board, 10:45 a.m., 2175 Rayburn.

Committee on Government Reform and Oversight, Subcommittee on Human Resources, hearing on Institutional Review Boards (IRBs): A System in Jeopardy, 9:30 a.m., 2154 Rayburn.

Committee on International Relations, Subcommittee on Africa, hearing on Reconstructing Sierra Leone, 1 p.m., 2255 Rayburn.

Subcommittee on International Economic Policy and Trade, hearing on Modernization of U.S. Customs: Implications On Trade, 10:30 a.m., 2172 Rayburn.

Committee on the Judiciary, Subcommittee on the Constitution, to mark up H.R. 3682, Child Custody Protection Act, 9 a.m., B–352 Rayburn.

Subcommittee on Courts and Intellectual Property, oversight hearing on the United States Judicial Conference, the Administrative Office of the United States Courts, and the Federal Judicial Center; and to hold a hearing on H.R. 3578, Protecting American Small Business Trade Act of 1998, 10 a.m., 2226 Rayburn.

Subcommittee on Crime, hearing on the FBI's implementation of a national instantcheck system for screening prospective gun buyers, 9:30 a.m., 2141 Rayburn.

Subcommittee on Immigration and Claims, to mark up the following: H.R. 2837, Naturalization Reform Act of 1997; H.R. 371, Hmong Veterans' Naturalization Act of 1997; and private immigration bills, 11 a.m., 2237 Rayburn.

Committee on National Security, Subcommittee on Procurement and the Subcommittee on Military Research and Development, joint hearing on the Fiscal Year 1999 National Defense authorization request on Critical Infrastructure Protection-Information Assurance, 11:30 a.m., 2118 Rayburn.

Committee on Resources, Subcommittee on Fisheries Conservation, Wildlife and Oceans, oversight hearing on the impact of the spiny dogfish harvest on striped bass, 2 p.m., 1324 Longworth.

Subcommittee on National Parks and Public Lands, to mark up the following: H.R. 1390, to authorize the Government of India to establish a memorial to honor Mahatma Gandhi in the District of Columbia; H.R. 1728, National Park Service Administrative Amendment of 1997; H.R. 2800, Battle of Midway National Memorial Study Act; H.R. 3109, Thomas Cole National Historic Site Act; H.R. 3830, Utah Schools and Lands Exchange Act of 1998; H.R. 4004, to authorize the Secretary of the Interior to provide assistance to the Casa Malpais National Historic Landmark in Springerville, Arizona, and to establish the Lower East Side Tenement National Historic Site; and H.R. 3055, to deem the activities of the Micosukee Tribe on the Tamiami Indian Reservation to

be consistent with the purposes of the Everglades National Park, 10 a.m., 1324 Longworth.

Committee on Rules, hearing on H. Res. 463, to establish the Select Committee on U.S. National Security and Military/Commercial Concerns With the People's Republic of China 1 p.m., H–313 Capitol.

Committee on Transportation and Infrastructure, Subcommittee on Aviation, hearing on the problem of passenger interference with flight crews and a review of H.R. 3064, Carry-on Baggage Reduction Act of 1997, 9:30 a.m., 2167 Rayburn.

Committee on Ways and Means, Subcommittee on Human Resources, hearing on Adoption Reunion Registries and Screening of Adults Working with Children, 10 a.m., B–318 Rayburn.

Permanent Select Committee on Intelligence, executive, hearing on China Proliferation, 2 p.m., H–405 Capitol.

Next Meeting of the SENATE

9:45 a.m., Thursday, June 11

Senate Chamber

Program for Thursday: After the recognition of six Senators for speeches and the transaction of any morning business (not to extend beyond 11:15 a.m.), Senate will resume consideration of S. 1415, Universal Tobacco Settlement Act, with a third vote on a motion to close further debate on the modified committee amendment in the nature of a substitute to occur thereon at 12 noon.

Next Meeting of the HOUSE OF REPRESENTATIVES

10 a.m., Thursday, June 11

House Chamber

Program for Thursday: Consideration of H.R. 3494, Child Protection and Sexual Predator Punishment Act of 1998 (structured rule, one hour general debate);

Vote on H.J. Res. 119, Proposing an Amendment to the U.S. Constitution Limiting Campaign Spending;

Vote on H.R. 2888, Sales Incentive Compensation Act; and

Consideration of H. Res. 458, the rule providing for further consideration of H.R. 2183, Bipartisan Campaign Integrity Act (rule only).

Extensions of Remarks, as inserted in this issue

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