YOUNG from Alaska and GEORGE MILLER from California, the ranking member; this bill passed out very similar to ours on 97-12 vote to try to help bring us to a bipartisanship consensus.

I am hopeful, as we wrap up this session and as we begin to get ready for the next session of Congress, that we are now in a very good position to be able to take some final actions in moving that bill through committee, onto the floor, and into a conference where the final details can be worked out because if we are going to have any permanancy of funding from this source, it is going to have to be something that is shared with the States that produce the money in the first place.

Louisiana produces about 70 percent of our offshore oil and gas revenues. We have great needs as a coastal State, along with States such as New York that just got hit very hard by Hurricane Floyd, causing tremendous damage. The coastal needs of our States to fully fund the land and water conservation and wildlife conservation programs.

I am very hopeful as we position ourselves for next year, that we are in a position to grab this opportunity supported by this grand coalition and do something very positive for America's environment.

I am pleased to say I will be prepared to release my hold on the foreign operations bill in an attempt to do my part to move to reconciliation because we have effectively stopped the administration's efforts to permanently allocate funding but in a way that will not cover all of the things as I outlined. We want to make sure this investment in the Nation is not just about Federal land acquisition, although that is a very important piece of this. We want to make sure bipartisan, with the opportunity for Governors and local officials to purchase land at the local level. We want to make sure it is truly a partnership. We want to make sure the coastal impact assistance is there as well as funding for historical preservation, urban parks, and wildlife programs.

While we didn't reach every goal we set out, we have raised this issue. We have built a strong coalition. We have raised this issue and we have stopped the permanent allocation of these funds until the whole package can be dealt with. We have made a very positive step.

On behalf of the great coalition, I ask of our colleagues in the House, and our friends in the administration, to work with us to pass this legislation so that we can continue to build upon the pioneering conservation legislation that would make a substantial and reliable investment in the conservation of our Nation's wildlife; public lands; coastal and marine resources; historic and cultural treasures; state, local, and urban parks and recreation programs; and open spaces. Design a bill that would provide significant conservation benefits, free of harmful environmental impacts to our coastal and ocean resources, and does not unduly hinder land acquisition programs.

An historic conservation funding bill is within our grasp. It will be an accomplishment that all can celebrate. We look to Congress to make this legislation a reality.

Ms. LANDRIEU. I will read one paragraph from this petition. Let us grab the opportunity now, to: Pass legislation that would make a substantial and reliable investment in the conservation of our Nation's wildlife; public lands; coastal and marine resources; historic and cultural treasures; State, local, and urban parks, and recreation programs; and open spaces. (Let us) design a bill that provides significant conservation benefits, is free of harmful environmental impacts to our coastal and ocean resources and does not unduly hinder land acquisition programs.

I believe we can meet these goals as we negotiate the detail and compromise in the next session.

The Presiding Officer, being from the State of Alabama, has been a great leader in this effort. I look forward to working with the Senate next year. I am pleased to tell our leader I will be removing my hold on foreign ops because we have made some progress on this, and I look forward to working harder to make this a reality for the people of America the next time we meet.

I yield my remaining time.

Mr. REID. Before the Senate from Louisiana leaves the floor, I want to express to her the appreciation of the entire minority caucus. There is no Member of the Senate who is more astute, works harder, and has a better understanding of the issues that face the Senate, which was well demonstrated by her work on this issue about which she feels fervently. We are grateful at this late date the Senator has been willing to work with members to release the hold.

BANKRUPTCY REFORM ACT OF 1999—CONTINUED

Mr. KENNEDY. Mr. President, I understand we are back on the bankruptcy legislation; is that correct?

The PRESIDING OFFICER (Mr. SENSES). The Schumer amendment has not been disposed of.

Mr. KENNEDY. With the understanding of the Senator from New York, I ask unanimous consent we temporarily lay aside that amendment.

Mr. GRASSLEY. Reserving the right to object, and I will not object, I previously talked to the Senator from
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Massachusetts about time agreement on his amendment, I prefer to forego a time agreement and have him proceed according to the bill. Without objection, the Senator from Massachusetts is recognized.

AMENDMENT NO. 2652

(Purpose: To amend the definition of current monthly income to exclude Social Security benefits)

Mr. KENNEDY. I call up amendment number 2652.

The PRESIDING OFFICER. The amendment is as follows:

The amendment is a rather simple amendment. The amendment I have offered will protect a debtor's Social Security benefits during bankruptcy. This amendment is very important to older Americans. I hope my colleagues will support it. As our House colleagues supported it last year.

As currently written, the means test in the pending bill will require debtors to use their Social Security benefits to repay creditors. My amendment excludes Social Security benefits from the definition of "current monthly income" and ensures that those benefits will never be used to repay credit card debt and other debt. This amendment is particularly important to seniors. Between 1991 and 1999 the numbers of people over 65 who filed bankruptcy grew by 120 percent. If we look over the figures from 1991 to 1999 by age of petitioner, we see the growth of those that are going through bankruptcy primarily have increased in the older citizen age group. This is particularly a result of the downsizing, dismissing older workers and because of health care costs—primarily they have been dropped from health insurance. As the various statistics show, increasing numbers of individuals have been impacted because of the prescription drugs.

Debtors filing a medical reason for bankruptcy, as the chart shows, reflects the fact we have gotten a significant increase in the number of older people who have gone into bankruptcy. The debtors who file as medical reason for bankruptcy, we find, increases dramatically for older workers primarily because health care costs more than any other factor.

We believe very strongly those individuals, most of whom are dependent upon Social Security as virtually their only income ought to have those funds protected so they will be able to live in peace with security of retirement and a degree of dignity.

This is sufficiently important. One can ask, why are we doing this now rather than before? The reason it was not necessary before is because the Social Security effectively was protected with a series of protections that were included in the existing bankruptcy law which have not been included in this legislation. Therefore, without this kind of an amendment, they would be eligible for creditors. We think protecting our senior citizens, those on Social Security, as a matter of both public policy and the fact of the importance of their contributions, obviously, in terms of society, should be protected during their senior years.

Today, many Americans work long and hard into the senior years. A growing percentage of the population is over the age of 85 and predominantly female. We see over the period of the next 10 years our elderly population will double and the increase in the percentage of women is going to increase significantly, as well. Others may be able to find alternative employment but at substantially lower wages or without health and other benefits that become increasingly important with age.

In spite of all of the efforts to slow down the discrimination against elderly, in too many circumstances in our country today, the elderly are discriminated against in terms of employment.

Older Americans sometimes resort to short-term, high-interest credit when faced with unemployment because they assume the unemployment will be temporary. They hope their use of credit or credit card debt will serve as a bridge to cover the necessities until they start receiving paychecks again. Due to their age, however, many of these individuals never earn a salary comparable to the pay they lost. They find themselves unable to deal with the new debt they have incurred. When they have nowhere else to turn, they sometimes turn to the safety value of bankruptcy.

Older Americans are also more frequent victims of predatory lending practices. Sometimes, bankruptcy is the most viable avenue for an elderly person to address the financial consequences of being victimized by unscrupulous lenders. It is unfortunate that Senator DURBIN's amendment to address that problem was defeated last week.

Studies of the problems facing older Americans tell us the same sad story. In one study, one in ten older Americans reported that they filed for bankruptcy after unsuccessfully attempting to negotiate with their creditors. In some cases, their creditors threatened them with seizure of property, or placed harassing collection calls. Some of these senior citizens explained that they were engaged in a number of dubious financial transactions, including buying more than six different expensive and duplicative life insurance policies and spending several thousand dollars on sweepstakes contests. At the time of her bankruptcy, she had mortgaged her previously mortgage-free home for more than $74,000 to try and pay off her debts. She was in danger of losing the home she shared with her husband who was in failing health. The debtor's "current monthly income" shouldn't be made more difficult for those who are depending on Social Security for their livelihood.

Social Security was developed to ensure that seniors can live their golden years in dignity. If we allow Social Security income to be considered while determining whether someone is eligible for bankruptcy, a portion of those benefits could be used in a manner inconsistent with Congress' intent.

Some of my colleagues oppose this amendment because they argue that wealthy seniors would be the beneficiaries. But, practically speaking, wealthy debtors rarely use Chapter 7—they've more likely to file under Chapter 11 of the bankruptcy code.

For very high income individuals, like Ross Perot, Social Security represents a very small percentage of their total income. Indeed, the maximum social security retirement benefit for a new 65-year-old in 1997 was $16,000. For the Perot in this country, $16,000 is a rounding error. His income is so high that including or excluding $6,000 changes his income by only a tiny percentage. But for the poor widow who gets 90 percent of her income from Social Security it makes a big difference.

Rich debtors who file in Chapter 7 would be caught by the means test, whether or not the courts include Social Security income as part of their "current monthly income." It is important to realize that even though we do tax individuals on higher Social Security, 75 percent of our seniors pay no tax on Social Security because they are below $25,000 in income. This is the group about which we are talking.

For two-thirds of American seniors, Social Security income represents more than 50 percent of the their total income, and for 42 percent of seniors, it is 80 percent or more of their total income. That is basically what we are talking about. We will hear: We can't accept this because it will create some loophole for our seniors.
We have to realize that for 42 percent of all seniors, Social Security represents three-quarters of their total income. But for many of those seniors, 30 percent of their workers never reach the maximum Social Security benefit. That means only 5 percent of workers earn more than $72,000, and the average person is well below that income level. The reality is that many of our elderly have survived by working hard. But our Social Security providers must not be held as a hostage to all the others in bankruptcy. There are already 250,000 petitions—20 percent of all petitions—filed in bankruptcy court in a single week. The President of the Senate. The Clerk will 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.

As I understand it, there is a potential time agreement on virtually every amendment. Virtually every Senator has expressed their interest in bringing this bill to conclusion and are prepared to accept time limits.

I further understand the majority is giving some consideration now to going out early tonight after we have had a couple votes. I hope that isn't the case because I would like to see if we could finish this bill either tonight or tomorrow. There is no reason why we cannot finish it and move on to other matters. There are a number of other matters pending.

So I speak for a lot of our colleagues in expressing our gratitude to the distinguished assistant Democratic leader for his effort yet again. He has done this on so many bills, but on this bill in particular he has really done an extraordinary job of not only working to accommodate Senators but also to manage the legislation on our side, along with Senators LEAHY and TORRICELLI, and, of course, the chairman of the subcommittee, Senator GRASSLEY, for his work in working with Senators who wish to offer amendments.

I know some of these amendments have been accepted, and some of these amendments will require rollcalls. The point is, let's get the work done. Let's finish either tonight or tomorrow, but let's finish the bill.

There was a time when I feared we would not finish this legislation this year. Maybe that is the only silver lining for those of us who would like to bring this matter to closure. That we will have the opportunity to finish this legislation.

Many members still have amendments. Some of these amendments that are yet to be offered may tell the story with regard to Democratic support. There are some good amendments that are still pending. Senator KENNEDY has a very good amendment that needs to be addressed. I hope we can do that and move on the other Democratic amendments that I know Senator SCHUMER and others have indicated they are prepared to offer.

So we are getting down now to the final few amendments. I hope we will just keep the heat on, and finish up this critical legislation many of us have worked so long and so hard to enact.

I yield the floor.

Mr. REID. Reserving the right to object, I want to be sure. Is it amendment No. 2761? Is that the Schumer amendment—4?

Mr. DASCHLE. Amendment No. 2659. I send the modification referred to by the Senator from Iowa.
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Mr. REID. The Schumer-Santorum amendment, unanimous consent. Mr. GRASSLEY. I have an objection, Mr. President, to the Schumer-Santorum amendment. Mr. GRASSLEY. We have an objection from the Banking Committee on that one at this point. And also, for the benefit of Senator KENNEDY, who has been very patient, I have one Senator I have to consult before we go to a final decision on that amendment. But I think we can take care of this when we are over here voting, if you would let us proceed to these. And then I will work with you to get to the bottom of that at the time of that vote. Is that OK? The PRESIDING OFFICER. Is there objection? Without objection, It is so ordered. Mr. GRASSLEY. 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. Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded. The PRESIDING OFFICER. Without objection. It is so ordered. Mrs. FEINSTEIN. Mr. President, to sum up my amendment, what this bankruptcy bill is all about is encouraging debtor responsibility—in other words, to the extent that an individual possibly can, they should repay their debt. That is one side of it. I think to the extent the credit industry can be responsible, you need to have a balance between the two. Right now, there is not a balance between the two. I think we all know of people who have a number of credit cards who do not have the income even to pay back the minimum debt or the minimum monthly payment plus interest over a period of time.

Let me give an example. If you have a $1,500 debt and your minimum monthly payment is $25 and you have no late fees, no new purchases, at 19.8 percent interest, it takes 362 months to pay that debt off. I know people in this situation who shouldn’t have credit cards, who should have been checked out, who have six, who are going into bankruptcy because they didn’t understand this simple concept.

What the amendment before you would do is ask the Federal Reserve to do a study of lending practices in this area and make public their findings, and also have the ability to set new regulations if they believe those regulations are warranted.

This amendment was passed a year ago by a voice vote. It was removed in conference. The amendment would be accepted. My concern is that it would again be deleted in conference. Therefore, I have asked for the yeas and nays. I am hopeful this Senate will go on record as supporting this study by the Federal Reserve.

I thank the Chair, and yield the floor, Mr. GRASSLEY. Mr. President, I yield back the remainder of the time we have on this side. The PRESIDING OFFICER. The question is on agreeing to amendment No. 2756. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll. Mr. FITZGERALD (when his name was called), Present. Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN), is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 82, nays 16, as follows:

[Rollcall Vote No. 368 Leg.]

YEAS—82

Abraham
Akaka
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Bryan
Burns
Byrd
Campbell
Chafee
Cleland
Cochrane
Collins
Conrad
Craig
Crapo
Daschle
DeWine
Dodd
Domenici
Dorgan
Dodd
Durbin
Edwards
FEINSTEIN. Mr. President, to the extent the credit industry can be responsible, you need to have a balance between the two. Right now, there is not a balance between the two. I think we all know of people who have a number of credit cards who do not have the income even to pay back the minimum debt or the minimum monthly payment plus interest over a period of time.

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I thank the Chair, and yield the floor, Mr. GRASSLEY. Mr. President, I yield back the remainder of the time we have on this side.
The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I know my good friend from Alabama is here as manager on his side. I know we have no further rollcalls on this. I see my friend from Wisconsin on the floor. I am wondering if we can get some of the debate out of the way, and I wonder if we might yield to the Senator from Wisconsin and let him begin debate on his amendment.

Mr. REID. Will the Senator yield for a question?

Mr. LEAHY. Yes.

Mr. REID. I say to my friend from Vermont that in looking over these amendments, which have gone from 320 to now probably 7 or 8, a handful of amendments, the Senator understands that the movement of this bankruptcy bill is not being slowed on this side of the aisle. Our Members have been very cooperative. Would he agree to that?

Mr. LEAHY. Yes. The Senator from Nevada has cleared out an awful lot of them. I think we have cleared 300-some-odd down to half a dozen or so. We could, for example, vote tonight without further debate on the Schumer-Santorum amendment, No. 2761. We could stagger them in the morning. I came in at 10 yesterday morning to be prepared to manage the bill on this side, and, for whatever reason, we stayed in morning business until 4 in the afternoon. What I am trying to do here—and I know the Senator from Alabama is on the floor, too—if there are things we can take care of on the bill tonight, let’s do it.

Mr. REID. If the Senator will yield. Senator WELLSTONE has two amendments he will offer first thing in the morning. Senator FEINGOLD has a one amendment that has already been offered. He wants to debate it some more, and he said he would do that tonight. We also have Senator FEINGOLD who has one other amendment he wishes to offer at a subsequent time. We also have a Dodd amendment that, I think with the managers’ bill, we have worked out, and it has been agreed to by the chairman of the Judiciary Committee and the manager. Senator SARABANES has an amendment he wishes to offer. Senator BAKIN has an amendment he said he may offer tonight. We are basically finished.

The two things that are holding this up—and we should not play around with it anymore—are an amendment by the Senator from New York dealing with clinics, on which he has agreed to a half-hour time limit, and we have the Senator from Michigan, Mr. LEVIN, who has agreed to 17 minutes on an amendment relating to gun manufacturers.

I say to my friend, in short, we have almost nothing left. So it would seem to me we should move forward as rapidly as possible and finish this bill.

Mr. SESSIONS. Mr. President, on the order, I think it would be appropriate for Senator FEINGOLD to proceed at this time. Further, I think we will proceed without unanimous consent after that. Senator GRASSLEY will be back, and we can decide what to do then.

I yield the floor.

The PRESIDING OFFICER. The privilege of the floor.

Mr. INHOFE. Mr. President, I ask unanimous consent that Paul Barger have the privilege of the floor for this day.

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

AMENDMENT NO. 278. Mr. REID. I say to my friend from Alabama that is designed to lessen the harsh consequences of section 311 of the bill with respect to tenants while at the same time protecting the legitimate financial interests of landlords.

Just to review, current law provides for an automatic stay of eviction proceedings upon the filing of a bankruptcy case. Landlords may apply for relief at that stage so the eviction can proceed. But it is a process that often takes a few months.

Section 311 of Senate bill 625, the bill we are considering, eliminates the stay in all landlord-tenant cases so that an eviction can proceed immediately. In essence, my amendment would allow tenants to file an application while trying to sort out the difficult consequences of bankruptcy if, and only if, they are willing to pay the rent that comes due after they file for bankruptcy. If the tenant fails to pay the rent, the stay can be lifted 15 days after the landlord provides notice to the court that the rent has not been paid. If the reason for eviction is drug use or property damage, the stay can also be lifted after 15 days.

Finally, if the lease has actually expired by its terms—in other words, if there is no more time on the lease and the landlord plans to move into the property—then, again, after 15 days notice the eviction can proceed. This 15-day notice period does not apply if the tenant has filed for bankruptcy previously. In other words, in cases of repeat filings, the stay never takes effect, just as under section 311 in this bill.

So we are all clear on why this whole issue came up in the first place, the main abuse that has been alleged is in Los Angeles County, where unscrupulous bankruptcy petition preparers advertise filing bankruptcy as a way to live rent free. Under my amendment, first of all, you could never live rent free. If you file for bankruptcy, you can’t file for relief from the stay. If the debtor misses a rent payment, the stay will be lifted 15 days later. Second of all, the automatic stay does not take effect if the tenant is a repeat filer. So we take care of this problem one step at a time.

So my amendment gets at the abuse, and it protects the rights and economic interests of the landlord. What it eliminates, though, is the punitive aspect of this amendment and the possibility that tenants who are willing and able to pay rent once they get a little breathing room from their other creditors will instead be put out on the street.

I am, frankly, disappointed that my colleague from Alabama passed the harsh aspects of section 311 when my amendment would get at the problem he has identified just as well.

The Senator from Alabama argued yesterday that somehow my amendment changes current law and moves us in the direction of litigation and delay. On the contrary, my amendment leaves intact the current law that allows landlords to get relief from the automatic stay. Let me be very clear about that. My amendment does not eliminate the ability of landlords to apply for relief from the stay under current law. The law now gives debtors some breathing room in legal proceedings, including eviction proceedings. But landlords can apply for relief from the stay. It is not an abuse of the law to take advantage of the automatic stay to get your affairs in order. Some tenants use that time to work out a payment schedule for their back rent so they can stay in their home. Most landlords don’t want to throw people out on the street. They just want to be paid. My amendment requires that they be paid once bankruptcy is filed, or the eviction can proceed immediately. But even if the rent is paid while the bankruptcy case is pending, if a landlord can still seek relief from stay under the normal procedures and press forward with the eviction.

I frankly think that most landlords will be happy to let a tenant stay as long as the rent is being paid. Who knows, if the bankruptcy is successful, especially if it is a Chapter 13, the tenant will be able to stay indefinitely by resuming payment of rent. By no means does this amendment permit a tenant to stay in an apartment indefinitely without a lease.
And any suggestion to the contrary is just wrong. It doesn’t do that at all. It just covers the few months after the bankruptcy petition is filed when the debtor is most vulnerable and the debtor is most in need of a roof over his or her head.

Now let me address one of the frequent refrains of the Senator from Alabama when he talks about this provision. He seems to be very offended by the idea that people are staying in their apartments after the term of their lease has expired. Those who are familiar with landlord-tenant law know that this is commonplace in the rental market. Many, many leases are for a term of one year but convert to a month to month lease when the year is up. The contract essentially remains in force, but the term has expired. There is nothing wrong with that. It is perfectly legitimate. Typically, the conversion to month-to-month tenancy is provided for in standard lease language.

This is not an abuse. It is the way many leases proceed in this country on a day-to-day basis.

Furthermore, the language of section 311 doesn’t lift the stay when the term of a lease has expired but rather in cases where “a rental agreement has terminated under the lease agreement or applicable state law.” Well, most rental agreements “terminate” when a rent payment is missed. So section 311 applies in all landlord-tenant cases, not just those where the lease term has expired.

I want to remind my colleagues that both the bill we passed last year, and the conference report had a form of the kind of language that my amendment provides for debtors. Section 311 of the bill that we passed last year, and the conference report had a form of the language that the Senator from Alabama last week said was most in need of a roof over his head.

Mr. Sommers goes on to state:

That’s a crucial point, Mr. President, because one of the concerns expressed by the Senator from Alabama is the expense and inconvenience of the relief from stay processes. Unemployed debtors. Mr. Sommers concludes:

Your amendment would make it impossible to obtain significant delay simply by filing a bankruptcy petition, as can occur today. But it would not hurt the innocent family, struggling to get its finances together, that is able to begin making rent payments and cure its rent default.

That is really the crucial point Mr. President. We are talking about real people here. People who are very vulnerable. The Senator from Alabama argued yesterday that a landlord may have another tenant lined up to move into an apartment. And he said that if my amendment were adopted, and I’m quoting here: “There may be an eviction case pending that may be disrupted if the landlord can’t deliver the premises.” Well, Mr. President, what about the life of the current tenant, very possibly a single mother with children? For months she’s been trying to make ends meet, but the child support she is owed by her ex-husband has not been coming. She misses a few rent payments as she tries to make sure her children are fed and their home is heated. The landlord starts eviction proceedings. And she is forced to file for bankruptcy.

Now once the bankruptcy is filed, and her other creditors are temporarily at bay, she can pay her rent. On time and in full. What about disruption to her life if we put her and her children out on the street? Do we not care about that? If the landlord is not economically harmed, why wouldn’t we allow her to stay in her apartment for a few months more? Why can’t we maintain the breathing room that the automatic stay under current law provides? What is so terrible about that?

Mr. President, this is the situation I am concerned about. I want to respond in a reasonable way to the abuses that section 311 is supposedly designed to address. But I don’t want to cause undue hardship to people who are able to pay their rent while their bankruptcy case is pending.

In the spirit of compromise, I have proposed a few other changes to the amendment to the Senator from Alabama, in response to some of the concerns he and his staff have raised. We are trying to listen very carefully to the points that the Senator from Alabama is making. First, I am willing to have the stay lifted not only in cases where the lease has expired and the landlord wants to move into the property, but also in cases where the landlord wants to let a member of his or her immediate family to occupy the premises. I will expand the language in my amendment to cover that situation.

Mr. President, I am trying to be reasonable. I am going to make these changes in a second degree amendment and I hope the Senator from Alabama will accept the amendment. I want my colleagues to understand that this amendment is designed to address the abuses that the Senator from Alabama has identified, but do it in a much more reasonable way, so that we can protect some very vulnerable people from being thrown out on the streets at a very difficult time in their lives.
under subsection (a)(3), of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property—

"(A) on which the debtor resides as a tenant under a rental agreement; and

"(B) with respect to which—

"(i) the debtor fails to make a rent payment that initially becomes due under the rental agreement or applicable State law after the date of filing of the petition or within 10 days after the filing of the petition, if the lessor files with the court a certification that the debtor has not made a payment for rent and serves a copy of the certification to the debtor; or

"(ii) the debtor has not made a payment for rent and serves a copy of the certification to the debtor; or

"(iii) the lessor enters into an enforceable lease agreement with another tenant prior to the filing of the petition, if the lessor files with the court a certification that the debtor has not made a payment for rent and serves a copy of the certification to the debtor;

"(24) under subsection (a)(3), of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property, if during the 1-year period preceding the filing of the petition, the debtor—

"(A) commenced another case under this title; and

"(B) failed to make a rent payment that initially became due under an applicable rental agreement or State law after the date of filing of the petition for that other case; or

"(25) under subsection (a)(3), of an eviction action based on endangerment of property or the use of an illegal drug, if the lessor files with the court a certification that the debtor has endangered property or used an illegal drug and serves a copy of the certification to the debtor; and

"(4) at all or any part of the end of the flush material at the end of the subsection the following: "With respect to the applicability of paragraph (23) or (25) to a debtor with respect to the commencement or continuation of a proceeding described in that paragraph, the exception to the automatic stay shall become effective on the 15th day after the lessor meets the filing and notification requirements under that paragraph, unless the debtor or takes such action as may be necessary to address the subject of the certification or the court orders that the exception to the automatic stay shall not become effective or provides for a later date of applicability."

Mr. FEINGOLD. Mr. President, this second-degree amendment incorporates the modifications I just described. I hope it will be acceptable to the managers of the bill. I have actually shared these ideas and changes with the managers and with the Senator from Alabama. If not, I urge my colleagues to support it.

I yield the floor.
rent, when a bankruptcy court is involved, the eviction case is stayed; an automatic stay is issued. The landlord cannot proceed with that eviction until the stay is lifted in the bankruptcy court. Once that happens, the landlord can go back to State court and continue with his lawful eviction actions.

This has caused quite a bit of gaming of the system. For example, I will share with Members some statistics from California. The Los Angeles County Sheriffs Department estimates that 3,886 residents filed for bankruptcy in 1996 simply to prevent the execution of valid court-ordained evictions. The sheriff has the responsibility of actually evicting the tenant. The Sheriffs Department of Los Angeles said these 3,886 bankruptcy petitions represent over 7 percent of all the eviction cases handled by that department and that losses have been estimated at nearly $6 million per year in that county. Some people routinely flaut that automatic stay provision—lawyers do—that advertizes that persons may live rent free by filing bankruptcy.

One bankruptcy filer sent out said for a fee the lawyers will use more moves than Magic Johnson to prolong the eviction process. This is what the judge continues to say in his opinion:

...the bankruptcy courts...are flooded with chapter 7 and chapter 13 cases filed solely for the purpose of delaying unlawful detainer evictions. Inevitably and swiftly following this in bankruptcy court, the filing of these cases, is the filing of a motion for relief of stay by the landlord.

After the bankruptcy is filed and the eviction notice has been served, the landlord has to go to bankruptcy court with his lawyer and file for relief from stay and say: Look, I have not been paid rent for many months; the tenant is in violation of the lease; there is no asset of which the bankruptcy court has jurisdiction. Bankruptcy judge, allow me to proceed with my eviction.

Or the landlord will say: The lease has expired. The tenant has been here a year. In month 14, the lease expired. He has not paid the next month's rent. He has 2, 3, 4 months now. His lawyer is advising him to do this. He owes rent and files for bankruptcy, he can wait until after his first rent payment is due and then file it and have 15 days before his first rent payment is due. Then he could make that payment and not make any more payments and remain on the property—maybe even when the lease has expired he can stay there—and not pay the next month's rent.

This is the problem I have been talking about. We have 3, 4 months now. His lawyer is advising him how to do this. His lawyer is going to advise him, first of all: Pay me. Pay your lawyer and do not pay your other debts until you have to. The debtor will do that. Then the landlord has to get a lawyer to file a motion for relief from stay. If the landlord is approved by the court, after a further delay of 15 days, then he has to go back to State court, now months behind schedule, and pick up again his legitimate eviction notice.

Bankruptcy court ought not be for that purpose. If the people of the United States want to provide individuals with assets a place to live, we ought to do so. In fact, we do that. We have low-rent housing for people with low income or rent-free housing for people who cannot afford it. We have benefits for people who do not have housing. But why should an American citizen, a landlord, bear the financial losses of some individual who has violated his lease, an asset rent free that we in the U.S. Congress are not willing to fund? If it is so easy and it costs so little, why don't we pay for it? Why don't we tax American people to pay for other expenses? We are doing that to a degree right now.

I do not believe that is a legitimate approach to the matter. It is not common sense. It is not what American law is about. When you are in a Federal court in a bankruptcy court, there is a State court, if you violate a lease, that is a contract, and if you violate that lease, then you lose the benefit of the contract.

This is so basic and fundamental that I do not know how we in this Congress can think we can pass a law that makes American citizens responsible for someone to have a place to live when they are not paying for it.

We have a number of different provisions in State law that allow tenants rights to hold on and refinance and maybe keep the place in which they live. That is all right. I want to continue that. If people want to change that, go to your State court, change your eviction laws in your State, and take it to your State legislature.

Let's not make the bankruptcy law become a policy of social engineering to decide who should get special benefits and who should pay for bankruptcy. In effect, it is a tax. The landlord who loses this money is a person who is taxed. Indeed, we may have landlords going bankrupt if tenants do not pay rent.

Two-thirds of rental residences in America today are four units or less. That means we have an awful large number of our grandparents and brothers-in-law who may have a duplex or garage apartment and are renting them to people, and all of a sudden somebody does not pay. They cannot get the tenants out. The landlords are not receiving any money. Two, 3 months go by, and finally the landlord files for eviction. Boom, the tenant files for bankruptcy. The landlord has to hire a lawyer to go to bankruptcy court, and that is another 2, 3 extra months delay. The landlord is without rent for 2, 3 months, and they still do not have their property back.

This is an abuse of the bankruptcy law, and this legislation is designed to fix it. This bill does not change substantial landlord tenant law. Rather, it is a change in that if certain circumstances exist, the landlord does not have to hire a lawyer to go to Federal bankruptcy court to get relief.

It says there is an exemption from the automatic stay if the eviction proceeding was started prior to the filing of the bankruptcy. If the landlord had already filed for eviction before the individual files for bankruptcy, the eviction process can continue as it would have normally.

In addition, the bill says the automatic stay does not apply if an eviction proceeding was based on the fact that the lease had already been terminated. It was a year's lease, and you are in month 13, 14, 15, 16 and no payments have been received and the landlord wants to lease to another tenant. It is the landlord's property. The tenant has no property rights. His lease has expired, for heaven's sake.
I say to Senator Feingold, I respect his concern for these matters. States do provide protections for persons who have difficulty paying their rent.

Also, many landlords all over America try to work with their tenants. They do not want to change tenants if they are happy with a tenant. If they can help the tenant by making rent payments, for previous months, that is a courtesy extended by small landlords, two-thirds of whom have four units or less. Those courtesies can turn sour in a hurry if, after months of working with a tenant, the tenant becomes a deadbeat and further behind in rent. Boom, a bankruptcy petition is filed; boom, they are stayed from eviction; months go by and the landlord has to hire a lawyer and great cost is incurred. This is an abuse of the system, and I must stay, for previous months, that is a courtesy extended by small landlords, two-thirds of whom have four units or less. Those courtesies can turn sour in a hurry if, after months of working with a tenant, the tenant becomes a deadbeat and further behind in rent. Boom, a bankruptcy petition is filed; boom, they are stayed from eviction; months go by and the landlord has to hire a lawyer and great cost is incurred. This is an abuse of the system, and I must oppose this amendment.

The PRESIDING OFFICER (Mr. Smith of Oregon). The Senator from Alabama. Mr. Feingold. Mr. President, I am disappointed in the response of the Senator from Alabama. His comments to the effect that the only thing we should be considering is State laws having to do with leases and contracts almost suggests to me he does not believe there is any role for Federal bankruptcy law.

Bankruptcy law is contemplated in the U.S. Constitution. It certainly was not understood there would be no role at all for Federal bankruptcy law but to have an impact on people's lives in our States, whether it be Alabama or Wisconsin. The automatic stay is an integral part of the federal bankruptcy laws and its purpose is not just to protect the property of the estate but also to provide some breathing room for the debtor. I will be the first to concede to the Senator from Alabama that one of the concerns he has is that making sure creditors get paid as much as possible and as efficiently as possible. That is legitimate. And a second important concern is to make sure people do not abuse the bankruptcy system.

But the concern the Senator from Alabama refuses to address, refuses to discuss, is that the bankruptcy law is supposed to help people get back on their feet. I will tell you that one lousy way to help people get back on their feet is to kick them out of their apartments, where it serves no financial interest of the landlord for that to happen.

The Senator from Alabama simply refuses to address the example I gave of a single woman with children, who is not getting her child support, who wants to and is prepared to pay her rent and is simply running into trouble and is ready to pay it again after she files for bankruptcy and has a stay against her other creditors. In the world that the Senator from Alabama portrays, this person loses out. This is deeply troubling to me.

What more can you do than listen to a colleague give hypothetical after hypothetical after hypothetical about what might be wrong with the amendment and try to specifically address those concerns? That is exactly what I have done in making the changes contained in my second degree amendment.

So, yes, efficiency in preventing abuses is an important principle. Let me review: The Senator from Alabama, both in committee and on the floor, has attempted to suggest that all kinds of abuses will still continue under the amendment that we have. The trouble is, the abuses he cites and the statistics he cites are all irrelevant to my amendment. My amendment will prevent the abuses.

He talks about the abuse of lawyers who do repeat filings, you are out of luck; the stay is lifted automatically. Essentially, the provisions of the bill that the Senator from Alabama prefers apply in that situation.

In committee he argued against my amendment by saying: What happens if a landlord wants to move back into his own place? All right, we took care of that. We address that concern in the amendment. But then he says: What happens if his brother wants to move into the place? Well, we took care of that concern in this second degree amendment that I just offered.

Here is another example, because instead of admitting that we have actually dealt with some of these hypotheticals, he says: What happens if the landlord has a signed agreement for a new lease prior to the filing of the bankruptcy? We addressed that concern too, but that still isn't good enough.

But I tell you what frustrates me. The Senator from Alabama keeps saying that people will live rent free. It is as if I have said nothing here on the floor at all. It is as if I have not said, time after time after time, that under my amendment a tenant cannot live rent free for 5 or 6 months, as the Senator has suggested. After filing for bankruptcy, if you do not pay your rent as it is due, you are out of there under my amendment.

So what is all this talk about abuses, when in each and every hypothetical the Senator has proposed in committee or on the floor we have addressed his concern? We have addressed abuse. We have addressed the fact that the system has to be efficient.

But what has not been addressed and what this amendment is trying to deal with is what the Senator from Alabama has attempted to suggest: He gives no alternative to the person that I describe: the woman with children, who is not getting her child support, who is willing and able to pay her rent once she files for bankruptcy, but the Senator from Alabama would have her booted out of her apartment with her kids at the very moment when she is trying to get back on her feet.

So I urge the Senator from Alabama to actually review all of my attempts to try to address his concerns so that I can feel at least that this has been a process where he has raised concerns that he was worried about and we tried to deal with them. That is what we have been doing in debating and modifying this amendment.

I know on other issues we have been able to do that with the Senator, and I appreciate that. But I urge him, surely there has to be a better answer than just "tough luck" for these individuals who I have described, who are not in a position where they are going to abuse the system, who cannot get month after month of free rent living, because that is exactly what we dealt to prevent in the amendment. We have specifically dealt with the problem of a person who tries to get more than 1 month of rent free.

The whole problem with this overall bill is sort of symbolized by this debate. There needs to be some balance. I have recognized, in that spirit, the call of the Senator from Alabama for more efficiency, the call of the Senator from Wisconsin for preventing abuses. But where is the balance? Where is the recognition that there are human beings with limited resources who may need the opportunity to stay in that apartment and pay the rent after the bankruptcy is filed?

Mr. President, I yield the floor.

The PRESIDING OFFICER. Mr. Sessions is recognized for an unlimited period of time.

Mr. Sessions. I do thank the Senator from Wisconsin for accepting some changes because of my objections to his last amendment. As I indicated earlier, I think he did respond to a number of those. But I also think he fairly clearly made the arguments I made a few minutes ago. I made those the last time his amendment came up also; and those were not addressed. They still remain a fundamental flaw.

Mr. Feingold. Will the Senator yield for a question?

Mr. Sessions. Yes.

Mr. Feingold. What objection do you have?

Mr. Sessions. My concern is that there is fundamentally no legal basis for a stay in bankruptcy court of a lease that has expired or a lease that has been breached by lack of payment—since there is none, then the landlord ought not to have to hire a lawyer and go to bankruptcy court. So I continue to have that concern. But the Senator from Wisconsin has repeatedly said the tenant would be able to remain on the property, but only if they paid rent.

Let me give you a hypothetical.
On October 1, the tenant's rent is due. The tenant does not pay. On October 11, he files bankruptcy. On November 1, the rent is overdue and it is not paid. On November 1, the landlord immediately files his notice in the bankruptcy court. And then 15 days are allowed to go by, presumably so the tenant could file some other complaint in bankruptcy court, some other delay or motion. And 15 days go by; and on November 16, the stay of the eviction proceedings is lifted. Then the landlord has to go back to the State court again to pursue his eviction notice, which has been stopped, which has probably fallen behind the 10,000 other cases in that State court system. And now the landlord has a hard time bringing it up.

So I would suggest to you, it is quite possible that the tenant could have 6 weeks rent free if 3 months in the months, about "rent free" because I will show this advertisement right here in San Bernardino: "7 months free rent." That is what is being advertised in the paper: No matter how far you are behind in your rent. We guarantee you can stay in your apt. or house for 2-7 months more without paying a penny!!! Find out how. We can stop the Sheriff or Marshall and get you more time.

Mr. FEINGOLD. Is the Senator aware that our amendment would prohibit what you are reading right there?

Mr. SESSIONS. It does not exactly, but it gives them at least a month and a half—if not 2 months, a month and a half.

Mr. FEINGOLD. Isn't it a fact—

Mr. SESSIONS. In addition, it still allows the abuse of forcing the landlord to go two different courts to pursue a legitimate—

Mr. FEINGOLD. If I could follow up, under the scenario you described, isn't it true that you are talking about a maximum of 6 weeks, and not 6 months? Wouldn't you concede that?

Mr. SESSIONS. Under this scenario, it is clearly 6 weeks, if everything goes perfectly for the landlord. It is guaranteed 6 weeks under these circumstances.

Mr. FEINGOLD. I would suggest to the Senator, you described the most egregious and extreme possibility under our amendment. And you were talking about 3 months, not 6 months. Not only is that not accurate, that is clearly not my intent.

My intent, as I have indicated time after time, is to try to make sure a person who is in this position has to pay that rent once they file for bankruptcy, and keep paying it or else they are out of luck. And the goal, just so it is clear to the Senator from Alabama, is obviously not to create that kind of scenario you described. If fact, you just made a case, that the maximum exposure there would probably be about 6 weeks, not 6 months, as you suggested.

Mr. SESSIONS. Mr. President, I believe I have the floor.

The PRESIDING OFFICER. The Senator from Alabama has the floor.

Mr. SESSIONS. Under most State eviction proceedings, a tenant who desires to stay on the property can maintain possession of that rental property 45 to 60 days. There are many rights and remedies for tenants. But at some point, the ability to stay without paying rent has to be ended. Where they can do that, 45 to 60 days, and then file a bankruptcy petition, and then get another 6 weeks on top of that—and that is assuming everything goes smoothly, that the landlord can find a lawyer who will go to bankruptcy the first day he calls one, and who can get down there and file the proper petition or get his certificate filed. Maybe the landlord's lawyer does not understand how to file one of these certificates, and ends up filing him, they can go for filing the darn thing, when, in fact, as the Senator, who is an excellent lawyer, knows, bankruptcy court has jurisdiction over property. It is the estate of the person who is filing. If there is no property, there is no estate, which is the case where the lease has expired, or the case where the lease has been breached by lack of payment. Then the bankruptcy court can't legitimately issue an order affecting that property. The bankruptcy judge can never issue an order under those circumstances. So why make somebody go to bankruptcy court to file these petitions if it will not do anything other than cost the landlord more money to delay the eviction and cost that person money?

If we in the Congress want to fund people who can't pay their rents and give them emergency funding, something like that, that is a matter to debate. I don't think we ought to tax private citizens to support individuals in bankruptcy. He wrote to me:

Mr. FEINGOLD. If I could follow up, under the scenario you described, I think it is somehow a sweet deal for lawyers. The Senator from Alabama is premised on the idea that this bankruptcy system is a prompt and efficient relief by giving landlords the opportunity to get back on their feet and providing a little breathing room in the case of the type of person I described.

I described a single woman with children who is not getting her child support, who is in danger of being booted out of that apartment. When the Senator responds, he talks about the people who game the system, people who have different debts all over the place and who can hire sophisticated attorneys. That is not who we are talking about.

In fact, I refer back to Mr. Sommer's summary of what my amendment would do. The amendment is actually perfectly tailored to the situation of the person who can't hire a lawyer or afford a lawyer. That is who we are talking about. We are talking about people who certainly are not sophisticated enough or able to game the bankruptcy system. They are not in that category at all. They are people who simply want to stay in their apartment. They have financial problems, but once they file for bankruptcy, they want to be able to start paying that rent again.

Let me read what Mr. Sommer said. He is not a person who works on bankruptcy. He is a distinguished author on bankruptcy law. He wrote to me:

To the extent there are abuses in the current system, your amendment will provide prompt and efficient relief by giving landlords a streamlined procedure which could be pursued quickly and without an attorney.

Let me reiterate that. So much of the argument of the Senator from Alabama is premised on the idea that this is somehow a sweet deal for lawyers. What this expert says is that these provisions allow this kind of opportunity
Mr. FEINGOLD. It is significant if you don’t get rent for 2 months or 1 month or 6 months, if you need it.

The Senator suggests these people are not trying to game the system. They are not sophisticated in all of this. They go to lawyers. They take advertisements like this. Those advertisers will still be there. They tell tenants how to do this. They are shocked when the lawyer says, don’t pay any more on your credit card. Don’t pay any more at the bank. Don’t pay any more for your rent. Take your next paycheck, give it to me, and I will wipe out everything you owe.

I ask unanimous consent to have printed in the RECORD these three documents:

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

7 MONTHS FREE RENT
100% GUARANTEED IN WRITING

No matter how far you are behind in your rent. We can get you back in your apartment or house for 2-7 months more without paying a penny!!! Find out how. We can stop the Sheriff or Marshall for 30 days. If the Sheriff or Marshall has been to your home, don’t panic CALL US! If you lost in court don’t give up. Call us and we’ll get you more time.

Call Now (213) * * * All counties (Orange, Riverside, San Bernardino, Ventura, etc.) are open 24 hours. Call us and we’ll give you our toll-free number (800 * * *). If all lines are busy please call (213) * * * for the location nearest you.

TENANT ORGANIZATION, INC.

Dear Tenant, As you know your landlord has filed for your eviction. Chances are you’ll have to move! How long until you are forced to move depends on you.

The TENANT ORGANIZATION can legally stop your eviction for up to 120 days at rock bottom prices. ALL WITHOUT HAVING TO PAY RENT OR APPEAR IN COURT!

We are not a foundation or a National bureau, we are the TENANT ORGANIZATION in Southern California. Our prices are the lowest with the best service and quality you can find. For example we will prepare and file Chapter 11 Bankruptcy Petition for only $120. This is a Federal Restraining Order that will delay your eviction for an average of 2 months. That is not all! We have more moves when it comes to prolonging your eviction. more moves than MAGIC JOHNSON!

REMEMBER THE TENANT ORGANIZATION CAN HELP YOU EVEN IF:

You have lost in Court.

Legal Aid can’t help you and says you must move.

Your situation seems hopeless, JUST CALL!

A very urgent warning! Beware of strangers showing up at your front door unexpected and unlimited offering a legal service for your money. Usual these con men and rip off artists will claim to be attorneys or sent by the court. If you are approached by any of these people report them to your local police department. Don’t become their next victim!

Prompt Action in this Matter is Necessary. Failure to respond to this most urgent matter may result in your Immediate Eviction.

For Assistance in filing your answer or obtaining an Automatic Restraining Order call 24 hr. 7 days a week.

Mr. SESSIONS. One of the things Senator GRASSLEY has done in the bill, and the Senator has mentioned, is to provide that you do not have to have an attorney in bankruptcy court for most of the actions that take place. This is indeed a good step forward. You would not have to have an attorney in this landlord tenant situation. I would suggest that for the average small apartment owner who gets a notice that he is to stay his eviction procedures, and he has a lawyer who is doing the eviction procedures, he is going to ask his lawyer: What is this? What can you do to get this stay lifted?

The landlord is going to hire a lawyer and end up spending several hundred dollars to get this matter taken care of. I believe the Senator’s concern. I believe this bill, as written, will provide all the protections the States have given to tenants. I believe we have a responsibility to see they have protections, that they can defend their interests in court before being thrown out of their apartments.

And, indeed, that is the law in every State in America today. But I do not believe we ought to allow those who file bankruptcy to have substantial benefits over those who don’t file bankruptcy, who are managing somehow, in some way, on the same income, to pay their debts. I don’t believe they should have what you are talking about.

Mr. FEINGOLD. It isn’t there a substantial difference between 6 weeks and 6 months of rent? I would say that is significant.