

**BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT
OF 2005 -- (Senate - March 03, 2005)**

The PRESIDING OFFICER. The Senate will resume consideration of S. 256, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 256) to amend title 11 of the United States Code, and for other purposes.

Pending:

Leahy Amendment No. 26, to restrict access to certain personal information in bankruptcy documents.

Dayton Amendment No. 31, to limit the amount of interest that can be charged on any extension of credit to 30 percent.

Feinstein Amendment No. 19, to enhance disclosures under an open end credit plan.

Nelson of Florida Amendment No. 37, to exempt debtors from means testing if their financial problems were caused by identity theft.

Durbin Amendment No. 38, to discourage predatory lending practices.

Rockefeller Amendment No. 24, to amend the wage priority provision and to amend the payment of insurance benefits to retirees.

The PRESIDING OFFICER. The Senator from Alabama.

AMENDMENT NO. 31

Mr. SHELBY. Mr. President, I rise in opposition to the amendment offered by my colleague from Minnesota, Senator *Dayton*. Basically, he has offered an amendment to create a Federal usury law. While I understand and appreciate the good intentions of my colleague, I cannot support what amounts to Federal price controls. This is a mode of regulation from a bygone day.

Price controls are a failed experiment that often hurt those who they are intended to help. Even if the price control envisioned in this amendment was never triggered, it would set a very bad precedent.

Credit underwriting is the assessment of the risk. Interest rates are intended to reflect the risk of a particular credit. They have to.

While I appreciate my colleague's concerns, I fear that his amendment will result in credit becoming less accessible to more Americans. Market forces are the best regulator of prices. As chairman of the Banking Committee, which has jurisdiction over consumer credit and price controls, I must oppose this amendment and encourage my colleagues to do so. We are going to have some hearings on similar matters in the Banking Committee, and I hope Senator *Dayton* would work with us in that regard.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I rise to underscore the statement just made by the chairman of the Banking Committee. This issue embraced in this amendment is very far-reaching. There have been no hearings on it. The chairman has indicated he intends to do some hearings on issues relating to the matter that is before us. It does not seem to me to be a wise or prudent course to consider what would, in effect, be a very major legislative step in the absence of appropriate consideration by the committee of jurisdiction; therefore, I intend to also oppose this amendment, primarily on those grounds.

The substance is a complicated issue, and in any event it is very clear it needs to be very carefully examined and considered. I do not think that has occurred in this instance, and I hope my colleagues would perceive the matter in the same way.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

AMENDMENT NO. 44

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

The PRESIDING OFFICER. Without objection, the pending amendments are set aside.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. **KENNEDY**], for himself, Mrs. *Clinton*, Mr. *Kerry*, Ms. *Mikulski*, Mr. *Feingold*, and Mr. *Dayton*, proposes an amendment numbered 44.

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

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

The amendment is as follows:

(Purpose: To amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage)

At the appropriate place, insert the following:

TITLE __--FEDERAL MINIMUM WAGE

SEC. __01. SHORT TITLE.

This Act may be cited as the ``Fair Minimum Wage Act of 2005".

SEC. __02. MINIMUM WAGE.

(a) *In General.*--Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

``(1) except as otherwise provided in this section, not less than--

``(A) \$5.85 an hour, beginning on the 60th day after the date of enactment of the Fair Minimum Wage Act of 2005;

``(B) \$6.55 an hour, beginning 12 months after that 60th day; and

``(C) \$7.25 an hour, beginning 24 months after that 60th day;"

(b) *Effective Date.*--The amendment made by subsection (a) shall take effect 60 days after the date of enactment of this Act.

SEC. __03. APPLICABILITY OF MINIMUM WAGE TO THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

(a) *In General.*--Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) shall apply to the Commonwealth of the Northern Mariana Islands.

(b) *Transition.*--Notwithstanding subsection (a), the minimum wage applicable to the Commonwealth of the Northern Mariana Islands under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) shall be--

(1) \$3.55 an hour, beginning on the 60th day after the date of enactment of this Act; and

(2) increased by \$0.50 an hour (or such lesser amount as may be necessary to equal the minimum wage under section 6(a)(1) of such Act), beginning 6 months after the date of enactment of this Act and every 6 months thereafter until the minimum wage applicable

to the Commonwealth of the Northern Mariana Islands under this subsection is equal to the minimum wage set forth in such section.

Mr. KENNEDY. Mr. President, this amendment will increase the minimum wage from \$5.15 an hour to \$7.25 an hour over roughly a 2-year period. My friend from Pennsylvania, Senator *Santorum*, will offer his own minimum wage amendment, and he will do so later on in the afternoon. We intend to debate this and vote on it, subject to the agreements of the leaders, probably late Monday afternoon, and we will take the opportunity during Monday afternoon to get into greater details. Both Senator *Santorum* and I have agreed that we would each make a brief presentation on this item at this time.

We have not seen an increase in the minimum wage for 8 years. At the present time, the minimum wage has fallen to the second lowest level in the last 45 years. Since 1938, the minimum wage has been increased on eight different occasions. On most of those occasions it has been with bipartisan support. Republicans have recognized that we ought to treat people fairly and decently, and those at the lower level of the economic ladder ought to be able to have a livable wage. President Eisenhower felt that way, President Ford felt that way, and the first President Bush felt that way. We are asking the Senate to join us in going back to having the minimum wage at least increase to a reasonable level.

Now, who are the minimum wage earners? The minimum wage earners are men and women of dignity. Even though they get paid at a minimum wage, they work hard, they take a sense of pride in what they achieve, and they do a hard day's work. More often than not, they not only have one job, but they have two jobs and sometimes even three jobs.

What sort of jobs do the minimum wage workers have? First, many of them are teachers' aides in our school systems, working with the young students of America. Many others are working in our nursing homes, looking after the parents who were part of the "greatest generation," men and women who sacrificed for their own children, men and women who brought this country through the Great Depression. These are men and women of dignity who take a sense of pride in their work.

Beyond that, who are they? This is basically a women's issue because the great majority of the millions of people who would benefit from this minimum wage increase are women. It is a children's issue because a one-third of those women have children. So it is a women's issue and it is a children's issue. It is also a civil rights issue because many who earn the minimum wage are men and women of color. So it is a family issue, a women's issue, a children's issue, a civil rights issue, and, most of all, it is a fairness issue.

Americans understand fairness. What they understand is anyone who will work 40 hours a week, 52 weeks of the year, should not have to live in poverty in the United States of America. That is what this issue is all about. That is what the vote will be on, on Monday next, whether we are going to say to millions of our fellow citizens that they will not have to live in poverty, although they will still be earning below the poverty rate.

What the amendment will do is the following. It is the equivalent of 2 years of childcare. It will provide full tuition for a child in a community college, or a year-and-a-half of heat and electricity, or more than a year of groceries, or more than 9 months of rent.

This might not sound like very much to the Members of this body who have seen their pay increase seven times since we have last increased the minimum wage. But we ought to be able to say here and now that we will join the traditions of an Eisenhower, a Ford, and the first President Bush, Democrat and Republican Presidents alike, and say those working Americans who work at some of toughest and most difficult jobs, men and women of pride and dignity, ought to be paid a fair wage. That is what this amendment is about. We look forward to a further debate when we have the opportunity to do so on Monday next.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I ask unanimous consent to temporarily set aside the pending amendments to offer an amendment.

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

AMENDMENT NO. 42

Mr. SCHUMER. The amendment is at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. **SCHUMER**], for himself, Mr. *Bingaman*, Mr. *Durbin*, and Mrs. *Feinstein*, proposes an amendment numbered 42.

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

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

The amendment is as follows:

(Purpose: To limit the exemption for asset protection trusts)

On page 205, between lines 16 and 17, insert the following:

SEC. 332. ASSET PROTECTION TRUSTS.

Section 548 of title 11, United States Code, as amended by this Act, is further amended by adding at the end the following:

“(e) The trustee may avoid a transfer of an interest of the debtor in property made by an individual debtor within 10 years before the date of the filing of the petition to an asset protection trust if the amount of the transfer or the aggregate amount of all transfers to the trust or to similar trusts within such 10-year period exceeds \$125,000, to the extent that debtor has a beneficial interest in the trust and the debtor's beneficial interest in the trust does not become property of the estate by reason of section 541(c)(2). For purposes of this subsection, a fund or account of the kind specified in section 522(d)(12) is not an asset protection trust.”.

Mr. SCHUMER. Mr. President, I will be very brief. This amendment closes the so-called millionaires loophole. If any of you happened to read yesterday's New York Times, there is in existing law a hidden loophole which basically says if you are a millionaire and want to file a certain trust in one of five States, you can hide all your money even though you declare bankruptcy. So the irony is, in this bill, while we are talking about people who make \$35,000 or \$40,000 or \$45,000 and we want to make sure they do not abuse bankruptcy, the law allows this abuse of bankruptcy.

The Bankruptcy Abuse Prevention and Consumer Protection Act, which I am introducing along with my colleagues Senators **DURBIN, FEINSTEIN, and BINGAMAN**, and I believe Senator *Clinton* as well, will close this loophole.

You do not have to be a resident of these five States, but you can be a millionaire or billionaire and stash away assets: mansions, racing cars, yachts, investments, in a special trust, and you can hold onto that windfall after bankruptcy. That is not fair. We will debate the amendment later this afternoon. I want to notify my colleagues and place it in order on the floor.

The amendment has been read?

The PRESIDING OFFICER. Yes, it was.

Mr. SCHUMER. It is now in order so I will yield the floor.

Mr. KENNEDY. Will the Senator yield?

Mr. SCHUMER. I am happy to.

Mr. KENNEDY. One of the concerns many of us had in this bill is the interest of fairness. I think fairness ought to be standard for any piece of legislation. As it is currently before us, we will have those who will be able, with their homestead exemption, to preserve homesteads valued at millions and millions of dollars and, on the other side, individuals will lose completely all of their savings because they will lose their homes. There is no fairness there.

The Senator from New York is pointing out in another area the issue of fairness. Those who have resources and have wealth and have the contacts will be able to shelter their resources while basically middle-income working families, the working poor who are trying to get by and have seen an explosion of different costs, on housing, on health care, on tuition, will be buried.

This will be another dramatic example where those who have it will be able to preserve it and those who have been struggling will lose it.

Mr. SCHUMER. I thank my colleague. He is exactly on point. It is outrageous that someone worth millions or billions of dollars can declare bankruptcy and then shield their assets in this trust so they do not come before the bankruptcy court. The Senator, my friend from Massachusetts, is exactly right; we are talking about people who make \$45,000 and we are going after them, yet we are allowing millionaires and billionaires to use this loophole. Of course, it is not all millionaires and billionaires, it is a small number who go into bankruptcy and who abuse it. We can close it. We will debate this amendment later this afternoon, but let us hope that we do not have a lockstep, let's vote ``no" on everything. It would be hypocritical to say we have to close abuses on middle-income people and not close abuses on the very wealthy.

I will be happy to continue to yield to my friend.

Mr. KENNEDY. I will ask a final question. A third of all the bankruptcies are among those who are earning below the poverty line. Does the Senator think they will be able to take advantage of this loophole?

Mr. SCHUMER. I would say to my colleague from Massachusetts, they can't even afford the lawyer to write the first page of the trust that these others can. Again, the question answers itself. What is good for the goose is good for the gander. What is good for someone below the poverty line certainly ought to be good for millionaires and billionaires who want to abuse the bankruptcy process.

I yield the floor in deference to my colleague from Pennsylvania.

The PRESIDING OFFICER (Mr. **ALEXANDER**). The Senator from Pennsylvania is recognized.

AMENDMENT NO. 44

Mr. SANTORUM. Mr. President, I understand I only have a couple of minutes, so I will be very brief. I want to speak on the issue of minimum wage. I know the Senator from Massachusetts has offered this amendment on the minimum wage to this package. I will be opposing the Kennedy amendment and will be offering an alternate to this amendment. But let me explain first why I oppose the Kennedy amendment.

First, it doesn't belong on this bill. Even the amendment I will offer as an alternative does not belong on the bill. I have spoken to Senator *Kennedy* and others about what I believe is the appropriate place for this discussion. That is the welfare reform bill. It will be a bill that will come here and have a lot of amendments and it focuses on how we help those who are transitioning from welfare to work, how we help them and give them the support they need to be able to have work that pays well enough for them to get out of poverty. I think this discussion fits best, and I would argue has the better chance of actually ending up in a final bill and being sent to the President, on the welfare bill as opposed to here, which I think everyone recognizes is a bill that has been worked on for years and years and years.

We have a bill that has bipartisan support, with the hope of trying to get this to the President at a propitious time. So I would make the argument, No. 1, first and foremost I would oppose the Kennedy amendment on that ground.

Second, I suggest----

Mr. KENNEDY. Will the Senator yield for a question on that part?

Mr. SANTORUM. I only have about 1 minute and I am happy to yield to the Senator from Massachusetts for a brief question.

Mr. KENNEDY. I offered the amendment on the TANF bill last year and the bill was pulled because it was offered as an amendment. So that is part of our frustration.

Mr. SANTORUM. I respect the Senator from Massachusetts. I think there is a little different environment. I think there is a broad group who will deal with the reauthorization of welfare and deal with that and get a bill passed and sent to Congress this year, and you will certainly have my support trying to get that done in a fashion that I believe reinstates work requirements, which have fallen off because of the drop in the welfare rolls across America.

The second reason I oppose the Kennedy amendment is because the increase is too dramatic at this point. We are talking about an over \$2 increase, over a 40-percent increase in the minimum wage. While I do support a modest proposal, something about half that amount, I think that is the wise thing to do in this economy, which is not to put a jolt of that nature into what is already a concern about inflation. To be able to put that kind of minimum wage increase in I think would fuel inflationary fears. It would have strong negative repercussions in our economy, broadly.

While I do understand the need now that it has been almost 8 years without a minimum wage increase, I think what I will be offering is a modest one that comports with and will fit within this economy. We do some things to address the issue of small businesses, which the amendment of the Senator from Massachusetts does not do.

We don't want to disproportionately affect those poor communities, or hurt the small business neighborhood store or cleaners or whatever the case may be that is trying to make ends meet by putting this kind of increased cost on them as high as the Kennedy amendment would be, or even as high as what I would suggest, without some sort of relief to compensate very small businesses. I think that would be unwise and it would hurt the community. We want to help by providing more resources. Increasing the minimum wage does not help those small businesses in that community. I think it would have a bad, overall negative effect on the very poor communities of our society.

I see my time is up. I yield the floor.

AMENDMENT NO. 31

The PRESIDING OFFICER. Under the previous order, the hour of 2 p.m. having arrived, there will be 4 minutes equally divided on debate in relation to amendment No. 31.

Who yields time?

The Senator from Minnesota.

Mr. DAYTON. Mr. President, this legislation is entitled "The Bankruptcy Abuse Prevention and Consumer Protection Act." Unfortunately, there is actually very little consumer protection in it.

My amendment would add some much needed consumer protections to the bill and end one of the principal abuses that drives people into bankruptcy--exorbitant interest rates.

My amendment would limit the maximum annual interest rate that could be charged to any consumer by any creditor to 30 percent. Thirty percent is still a very high interest rate--far too high, in my view.

Inflation is currently running around 2 percent. The interest rate on 3-month Treasury bills is 2.75 percent. The prime lending rate is 5.5 percent. So 30 percent is exorbitantly high, but it is much less than the 384 percent that is being charged by money centers in Minnesota, or the 535-percent annual interest rate charged by centers in Wisconsin, or the 1,095-percent interest rate being charged by the County Bank of Rehoboth Beach in Delaware. That is not just predatory lending, that is "terroristic" lending.

My amendment would apply to any rate of interest charged by any creditor to any borrower for any purpose. However, it would not preempt any State, local, or private restriction that imposes a lower rate of interest.

For example, 21 States, which include my home State of Minnesota, cap interest rates for credit cards. Minnesota's ceiling is 18 percent. That would still apply. Yet when

money centers operate in Minnesota at 384 percent interest, that limit would be 30 percent.

Again, under my amendment, whenever a creditor is limited to a lower interest rate, that lower rate would apply. Whenever there is no interest cap, or wherever that cap is higher than this amendment's 30-percent limit, then this 30-percent annual interest rate would apply.

I urge my colleagues to support this amendment. It has the support of the Consumer Federation of America, the National Association of Consumer Advocates, and the U.S. PIRG.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, let me just say a few words about why this amendment is not a good amendment and one that should be voted down.

This would cap the interest rate for consumer credit extensions at 30 percent in this country, and, frankly, would preempt many States' usury laws unless the State has a lower interest rate.

In other words, preemption of State laws is something we sought to avoid in this bill. We have refused to do so in the homestead provisions, so there is no reason to touch the State usury laws as well.

There is no dispute that lending agencies are already heavily regulated. We have already restricted usury rates on first-lien loans. Additionally, special usury provisions in the National Bank Act and Federal Deposit Act preempt State usury laws for national State banks.

We did not preempt these State laws haphazardly as we would do today by passing the Dayton amendment.

I believe we should stick with the bill as written. We have taken this into consideration. We have worked long and hard over 8 years to get this right. And, frankly, I think this amendment is an inappropriate amendment and should be voted down.

I hope our colleagues will vote it down.

I yield the remainder of our time.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Wisconsin (Mr. **FEINGOLD**) and the Senator from Hawaii (Mr. **INOUYE**) are necessarily absent.

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

The result was announced--yeas 24, nays 74, as follows:

[Rollcall Vote No. 20 Leg.]

YEAS--24

Akaka

Bayh

Boxer

Byrd

Clinton

Conrad

Corzine

Dayton

Dodd

Dorgan

Feinstein

Harkin

Jeffords

Kennedy

Lautenberg

Levin

Lieberman

Mikulski

Murray

Pryor

Rockefeller

Salazar

Schumer

Stabenow

NAYS--74

Alexander

Allard

Allen

Baucus

Bennett

Biden

Bingaman

Bond

Brownback

Bunning

Burns

Burr

Cantwell

Carper
Chafee
Chambliss
Coburn
Cochran
Coleman
Collins
Cornyn
Craig
Crapo
DeMint
DeWine
Dole
Domenici
Durbin
Ensign
Enzi
Frist
Graham
Grassley
Gregg
Hagel
Hatch

Hutchison

Inhofe

Isakson

Johnson

Kerry

Kohl

Kyl

Landrieu

Leahy

Lincoln

Lott

Lugar

Martinez

McCain

McConnell

Murkowski

Nelson (FL)

Nelson (NE)

Obama

Reed

Reid

Roberts

Santorum

Sarbanes

Sessions

Shelby

Smith

Snowe

Specter

Stevens

Sununu

Talent

Thomas

Thune

Vitter

Voinovich

Warner

Wyden

NOT VOTING--2

Feingold

Inouye

The amendment (No. 31) was rejected.

AMENDMENT NO. 37

The PRESIDING OFFICER. Under the previous order, there will be 4 minutes equally divided for debate in relation to amendment No. 37.

The Senator from Florida.

Mr. NELSON of Florida. Mr. President, there is one exception the Senate should consider to this bankruptcy bill in filing bankruptcy, and that is when someone incurs debts due to no fault of their own. When someone incurs debts through no fault of their own because their identity has been stolen and they are forced to go into bankruptcy, why should we force them not to take chapter 7 in bankruptcy, instead to go through chapter 13?

If you don't think identity theft and bankruptcy therefrom is a problem, look at the top consumer complaints of the Federal Trade Commission and notice 39 percent are identity theft. Don't think you are immune from identity theft. Did you hear the news on Friday night that Bank of America has had the records of 1.2 million Federal employees stolen, including 60 Senators in this Chamber? You are potential victims, including this Senator. I am on the list. So why should we not hear the pleas of people all across the land?

A story from Florida where identity was stolen, they ran up \$40,000. They can't pay that off. Another case in New York, a friend stole identity and ran up \$300,000. The person had no choice but go into bankruptcy. Surely this is an example of an exception to this bill that we should make.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise in opposition to the Nelson amendment, although I commend the Senator from Florida in his work on this issue of identity theft. This amendment is written so broadly, it actually invites fraud despite its well-intentioned purposes. I understand there will be several hearings on the issue of identity theft, and I look forward to working with my friend from Florida and my other colleagues to find a solution. But for now, this is written so broadly that I think it actually invites fraud. I hope my colleagues will oppose the amendment because it would cause a lot of difficulty on this bill.

Mr. NELSON of Florida. Will the Senator yield for a clarification?

Mr. HATCH. I am happy to yield.

Mr. NELSON of Florida. Does the Senator realize that in my amendment anyone who incurs less than \$20,000 of debt as a result of identity theft would not be eligible to become an exception under the bankruptcy bill?

Mr. HATCH. I do. But it is written so broadly that anybody who claims they have been defrauded, whether they have or have not, qualifies under your amendment. That is way too broad under this bill. I am happy to work with the distinguished Senator, and we will see what we can do later in this Congress. I hope everybody will vote down this amendment.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 37.

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Wisconsin (Mr. *Feingold*) and the Senator from Hawaii (Mr. *Inouye*) are necessarily absent.

The PRESIDING OFFICER (Mr. *Coleman*). Are there any other Senators in the Chamber desiring to vote?

The result was announced--yeas 37, nays 61, as follows:

[Rollcall Vote No. 21 Leg.]
YEAS--37

Akaka

Baucus

Bayh

Boxer

Byrd

Cantwell

Clinton

Conrad

Corzine

Dayton

Dodd

Dorgan

Durbin

Feinstein

Harkin

Jeffords

Kennedy

Kerry

Kohl

Landrieu

Lautenberg

Leahy

Levin

Lieberman

Lincoln

Mikulski

Murray

Nelson (FL)

Obama

Pryor

Reed

Reid

Rockefeller

Salazar

Sarbanes

Schumer

Stabenow

NAYS--61

Alexander

Allard

Allen

Bennett

Biden

Bingaman

Bond

Brownback

Bunning

Burns

Burr

Carper

Chafee

Chambliss

Coburn

Cochran

Coleman

Collins

Cornyn

Craig

Crapo

DeMint

DeWine

Dole

Domenici

Ensign

Enzi

Frist

Graham

Grassley

Gregg

Hagel

Hatch

Hutchison

Inhofe

Isakson

Johnson

Kyl

Lott

Lugar

Martinez

McCain

McConnell

Murkowski

Nelson (NE)

Roberts

Santorum

Sessions

Shelby

Smith

Snowe

Specter

Stevens

Sununu

Talent

Thomas

Thune

Vitter

Voinovich

Warner

Wyden

NOT VOTING--2

Feingold

Inouye

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The amendment (No. 37) was rejected.

Mr. *McCONNELL*. Mr. President, I move to reconsider the vote and lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority whip.

Mr. *McCONNELL*. Mr. President, I ask unanimous consent that Senator *Byrd* be recognized for up to 10 minutes and that at 3:25 the Senate vote in relation to the Durbin amendment No. 38 with no amendments in order prior to the vote.

The PRESIDING OFFICER. Is there objection?

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

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I did not quite understand the last portion of the unanimous consent request. I understand Senator *Byrd* shall be recognized for 10 minutes, and then what transpires?

Mr. *McCONNELL*. Then we move to the Durbin amendment, with a vote at 3:25.

Mr. DORGAN. My understanding is Senator *Byrd* will take 10 minutes. I have no objection to the vote at 3:25, but I ask unanimous consent that the request be modified and I be recognized following Senator *Byrd*'s comments.

Mr. *McCONNELL*. I ask unanimous consent that Senator *Dorgan* be recognized at the conclusion of Senator *Byrd*'s remarks.

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

The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the Chair, and I thank Senator *McConnell* and also my own leadership for the kindness in arranging for me to speak at this time.

(The remarks of Mr. **BYRD** pertaining to the introduction of S. 515 and S. 514 are located in today's **RECORD** under ``Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, we are dealing with the bankruptcy bill. I am going to send an amendment to the desk. I ask the pending amendment be set aside so my amendment may be considered.

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

AMENDMENT NO. 45

(Purpose: To establish a special committee of the Senate to investigate the awarding and carrying out of contracts to conduct activities in Afghanistan and Iraq and to fight the war on terrorism)

Mr. DORGAN. I send the 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 North Dakota (Mr. **DORGAN**), for himself and Mr. *Durbin*, proposes an amendment numbered 45.

Mr. DORGAN. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is printed in today's **RECORD** under ``Text of Amendments."

Mr. DORGAN. Mr. President, I send that amendment to the desk on behalf of myself and Senator *Durbin*, who joins me as a cosponsor of the amendment.

The bankruptcy reform bill on the floor of the Senate today ostensibly deals with the subject of those who would attempt to cheat with respect to filing bankruptcy. We have had a lot of discussion on the floor about the abuse of bankruptcy. There is no question about that; there is some of that. It is called cheating. But there is another form of cheating going on now to which very little attention is paid, and my amendment attempts to deal with it.

I am going to put up a chart that shows \$2 million dollars on a table, in a room somewhere in Iraq. These are Americans holding this cash. This cash is to be deposited in a plastic bag to pay contractors in Iraq. The contractors are told ``bring a bag and we will fill your bag with cash." That is the way you pay bills over there.

This particular picture was given to us by this gentleman here, who was working in Iraq. He said it was like the Wild West; just bring your bag and fill it with cash.

His testimony, which we heard at a hearing of the Democratic Policy Committee, followed the testimony of others that we have received about the massive waste, fraud, and abuse in contracting that has been going in Iraq. The American taxpayers are taking it on the chin, but none of the authorizing committees of jurisdiction in the U.S. Senate are holding hearings about this.

Well, the Democratic Policy Committee has held some oversight hearings. The testimony at the hearings is absolutely devastating.

Halliburton charges for 42,000 meals to be served in a day to American soldiers. It is determined, however, that the company is only serving 14,000 meals a day. So they are charging the taxpayer for 42,000 meals to be served to soldiers when in fact they are only serving 14,000 meals.

We hear about the payment of \$7,500 a month to lease SUV vehicles. We hear about the ordering of 50,000 pounds of nails, that turn out to be of the wrong size, and just get dumped by the side of the road. We hear about \$40 to \$45 a case for soda pop.

A senior manager from the Defense Department, who used to be in charge of providing fuel for vehicles in war zones, testified that Halliburton was charging \$1 more per gallon for gasoline than they should have. There are overcharges adding up to \$61 million on that issue alone.

One fellow came to a DPC hearing and he held up towels. He worked for a subsidiary of Halliburton. He ordered towels because the soldiers needed the towels and they got a requisition order. Guess what. KBR, Halliburton's subsidiary, charged nearly double the cost of regular towels because they insisted on having the KBR logo embroidered on the towels. So the U.S. taxpayer gets soaked because the company wants their logo on the towels. It is extraordinary what is happening here, and nobody seems to care that much.

We heard of contractors that were driving \$85,000 brand new trucks in the country of Iraq, and whenever they had flat tires or a plugged fuel lines, they abandoned the vehicles and just bought new ones. The American taxpayer is paying for all of that, and nobody seems to care.

Well, in the years of 1940 and 1941, Harry Truman, as we were about to enter World War II, got into his car and drove around this country touring air bases and military installations. He came back and suggested a special committee be impaneled in Congress. That committee became known as the Truman Committee, and was active for several years. They saved, by today's accounts, somewhere close to \$15 billion by exposing waste, fraud, and abuse. That was a Democratic Senator working at a time when there was a Democrat in the White House. He didn't care whether anyone was embarrassed. On behalf of the American taxpayer, he insisted that we get to the bottom of waste, fraud, and abuse.

I offer today an amendment that would establish a special bipartisan committee of the Senate on war, reconstruction, and contracting. Four members of the committee would be selected from the majority and three members from the minority. It would have subpoena power, and it would put a magnifying glass on the massive amounts of money being wasted, being abused, and in some cases simply being defrauded from the American taxpayer. We owe it to the American taxpayers to do this.

We have pending right now before this body another request for \$82 billion. Most of that is to provide resources for the soldiers, not all of it but most of it. In addition to that, there is some \$15 billion to this yet unspent for the reconstruction of Iraq. That is American taxpayers' money which is in the pipeline.

You hear about all of this waste, fraud, abuse, and the whistleblowers, and then you ask, Who is minding the store? Who is looking after all this?

Another witness testified at the hearing we held recently about a company that went to Iraq. Two guys went to Iraq with no experience and no money. They just showed up. They wanted to be a contracting company. Guess what. They won a contract, all right. They had delivered to them \$2 million in cash, and they were suddenly a security contractor at the airport. Then their employees turned whistleblowers on them. They said the company was taking forklifts, repainting them, and selling them back, and setting up front companies offshore so they could buy and sell at overinflated charges. A couple of employees turned whistleblowers and they were threatened to be killed for doing it. That company, I am told, got over \$100 million in contracting in the country of Iraq.

One final point: Do you know that when the allegation was made that this contractor was ripping off the Coalition Provisional Authority, which was a U.S. creation and represented us in Iraq, the U.S. Justice Department failed to intervene under the False Claims Act because they said defrauding the Coalition Provisional Authority is not the same as defrauding the American taxpayer. There is something fundamentally wrong with that. This amendment would address that as well, by specifying that the investigation called for in this amendment should include the Coalition Provisional Authority spending.

I have the amendment at the desk. I said I offered it on behalf of my colleague, Senator *Durbin*, and myself, and I hope others as we move along. I understand this is not strictly a bankruptcy amendment, but we must waste no more time to establish a committee by which there is real oversight in the matter of contracting abuses that waste billions of dollars of the American taxpayers' money.

Mr. BYRD. Mr. President, will the distinguished Senator yield for a question?

Mr. DORGAN. I am happy to yield.

Mr. BYRD. Actually, the question will be very easy to answer. But for the moment, I must say to the very distinguished Senator that this is one Senator who is not at all surprised at what he found. I can remember when we had Mr. Bremer before the Senate Appropriations Committee to be heard. I asked him, after a while during which he delivered testimony and answered questions, if he would be able to remain or come back before the committee for some additional questions--meaning the same day--if the chairman should ask him to do so. His answer was, "I am too busy."

I came back to our caucus on that day, and I believe he came to the caucus at the same time. I told this to my caucus while Mr. Bremer was there. It was a shocking thing to me--an individual claiming he is too busy, and yet he is asking for quite a great amount of money to be appropriated, \$2 billion.

I am not at all surprised at this. I believe as time goes on we will find more and more of these kinds of stories. I congratulate the distinguished Senator on the excellent work he is doing in bringing these things to light.

Now the question: Will the distinguished Senator add me as a cosponsor to his amendment?

Mr. DORGAN. Mr. President, I would be happy to do so.

Mr. President, I ask unanimous consent that the Senator from West Virginia be added as a cosponsor.

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

Mr. BYRD. I thank the Senator.

Mr. DORGAN. I thank the Senator from West Virginia.

I see the hour of 3:25 has arrived. I believe by a previous order we have other business. I appreciate the opportunity to offer my amendment, and hopefully we will have a vote on it at some point in the future.

AMENDMENT NO. 38

Mr. President, I ask for the yeas and nays on the Durbin amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Wisconsin (Mr. **FEINGOLD**) and the Senator from Hawaii (Mr. **INOUYE**) are necessarily absent.

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

The result was announced--yeas 40, nays 58, as follows:

[Rollcall Vote No. 22 Leg.]
YEAS--40

Akaka

Baucus

Bayh

Bingaman

Boxer

Byrd

Cantwell

Clinton

Collins

Conrad

Corzine

Dayton

Dodd

Dorgan

Durbin

Feinstein

Harkin

Jeffords

Kennedy

Kerry

Kohl

Landrieu

Lautenberg

Leahy

Levin

Lieberman

Lincoln

Mikulski

Murray

Nelson (FL)

Obama

Pryor

Reed

Reid

Rockefeller

Salazar

Sarbanes

Schumer

Stabenow

Wyden

NAYS--58

Alexander

Allard

Allen

Bennett

Biden

Bond

Brownback

Bunning

Burns

Burr

Carper

Chafee

Chambliss

Coburn

Cochran

Coleman

Cornyn

Craig

Crapo

DeMint

DeWine

Dole

Domenici

Ensign

Enzi

Frist

Graham

Grassley

Gregg

Hagel

Hatch

Hutchison

Inhofe

Isakson

Johnson

Kyl

Lott

Lugar

Martinez

McCain

McConnell

Murkowski

Nelson (NE)

Roberts

Santorum

Sessions

Shelby

Smith

Snowe

Specter

Stevens

Sununu

Talent

Thomas

Thune

Vitter

Voinovich

Warner

NOT VOTING--2

Feingold

Inouye

.

The amendment (No. 38) was rejected.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

AMENDMENT NO. 40

Mr. PRYOR. Mr. President, I ask unanimous consent that the pending amendment be set aside and I call up amendment No. 40.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. **PRYOR**] proposes an amendment numbered 40.

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

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

The amendment is as follows:

(Purpose: To amend the Fair Credit Reporting Act to prohibit the use of any information in any consumer report by any credit card issuer that is unrelated to the transactions and experience of the card issuer with the consumer to increase the annual percentage rate applicable to credit extended to the consumer, and for other purposes)

At the appropriate place, insert the following:

SEC. __. LIMITATION ON USE OF CONSUMER REPORTS.

(a) *In General.*--Section 604(d) of the Fair Credit Reporting Act (15 U.S.C. 1681b(d)) is amended to read as follows:

“(d) *Limitation on Use of Consumer Report.*--

“(1) **IN GENERAL.**--A credit card issuer may not use any negative information contained in a consumer report to increase any annual percentage rate applicable to a credit card account, or to remove or increase any introductory annual percentage rate of interest applicable to such account, for any reason other than an action or omission of the card holder that is directly related to such account.

“(2) **NOTICE TO CONSUMER.**--The limitation under paragraph (1) on the use by a credit card issuer of information in a consumer report shall be clearly and conspicuously described to the consumer by the credit card issuer in any disclosure or statement required to be made to the consumer under this title.”.

(b) *Technical and Conforming Amendment.*--Section 604(a)(3)(F)(ii) of the Fair Credit Reporting Act (15 U.S.C. 1681b(a)(3)(F)(ii)) is amended by inserting “subject to subsection (d),” before “to review”.

Mr. PRYOR. Mr. President, I offer my amendment because I want to address a practice in the credit card industry. Basically, what happens with some card companies--and not all of them, certainly--is they make it a practice to look at their cardholders' credit reports on a monthly basis. When they find that the cardholder has a late payment maybe on a utility bill, or a car note, or whatever the case may be, they will actually raise the interest rate on the cardholder, even though they may have made every credit card payment on time. They use that as a justification to raise the interest rate on the cardholder.

I think that is an unfair practice. It is fraught with all kinds of problems, including the problem that many of these credit reports contain errors. I have certainly been subject to those. I am sure almost every Senator in this Chamber has been subject to an error on their credit report at one time or another. The credit card companies don't take that into consideration. They will routinely increase interest rates. I think it is an unfair business practice.

We are talking about bankruptcy. We all know that one of the main reasons people get into financial trouble is because they have credit cards. Sometimes they abuse them. Sometimes the interest rate is so high that it creates great difficulty on our citizens.

I think this amendment is important. I think it is one we can certainly justify, and I think it is one that, if people take a look at it, they would think this is a bad industry practice and this is a way to, hopefully, decrease the number of bankruptcies and the number of families in America who get into financial trouble, if some of these hidden methods of increasing interest rates are taken away.

With that, 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. SPECTER. 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. 48

Mr. SPECTER. Mr. President, I have sought recognition to support a technical amendment, which I send to the desk.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 48.

The amendment is as follows:

(Purpose: To increase bankruptcy filing fees to pay for the additional duties of United States trustees and the new bankruptcy judges added by this Act)

On page 194, strike line 13 and all that follows through page 195, line 22, and insert the following:

SEC. 325. UNITED STATES TRUSTEE PROGRAM FILING FEE INCREASE.

(a) *Actions Under Chapter 7, 11, or 13 of Title 11, United States Code.*--Section 1930(a) of title 28, United States Code, is amended--

(1) by striking paragraph (1) and inserting the following:

“(1) For a case commenced under--

“(A) chapter 7 of title 11, \$200; and

“(B) chapter 13 of title 11, \$150.”; and

(2) in paragraph (3), by striking “\$800” and inserting “\$1000”.

(b) *United States Trustee System Fund*.--Section 589a(b) of title 28, United States Code, is amended--

(1) by striking paragraph (1) and inserting the following:

“(1)(A) 40.63 percent of the fees collected under section 1930(a)(1)(A) of this title; and

“(B) 70.00 percent of the fees collected under section 1930(a)(1)(B);”;

(2) in paragraph (2), by striking “one-half” and inserting “75 percent”; and

(3) in paragraph (4), by striking “one-half” and inserting “100 percent”.

(c) *Collection and Deposit of Miscellaneous Bankruptcy Fees*.--Section 406(b) of the Judiciary Appropriations Act, 1990 (28 U.S.C. 1931 note) is amended by striking “pursuant to 28 U.S.C. section 1930(b)” and all that follows through “28 U.S.C. section 1931” and inserting “under section 1930(b) of title 28, United States Code, 31.25 of the fees collected under section 1930(a)(1)(A) of that title, 30.00 percent of the fees collected under section 1930(a)(1)(B) of that title, and 25 percent of the fees collected under section 1930(a)(3) of that title shall be deposited as offsetting receipts to the fund established under section 1931 of that title”.

(d) *Sunset Date*.--The amendments made by subsections (b) and (c) shall be effective during the 2-year period beginning on the date of enactment of this Act.

(e) *Use of Increased Receipts*.--

(1) **JUDGES' SALARIES AND BENEFITS**.--The amount of fees collected under paragraphs (1) and (3) of section 1930(a) of title 28, United States Code, during the 5-year period beginning on the date of enactment of this Act, that is greater than the amount that would have been collected if the amendments made by subsection (a) had not taken effect shall be used, to the extent necessary, to pay the salaries and benefits of the judges appointed pursuant to section 1223 of this Act.

(2) **REMAINDER.**--Any amount described in paragraph (1), which is not used for the purpose described in paragraph (1), shall be deposited into the Treasury of the United States to the extent necessary to offset the decrease in governmental receipts resulting from the amendments made by subsections (b) and (c).

Mr. SPECTER. Mr. President, this amendment, as I have noted, makes a technical correction to ensure that the bill does not violate our budget laws. It has come to my attention that the bankruptcy bill could draw a potential point of order because of two provisions in S. 256.

The first provision is section 1223 of the bill, which authorizes the creation of 28 new bankruptcy judgeships. According to the CBO's most recent cost estimates for S. 256, these new judges will account for \$45 million in direct Federal spending over a 10-year period. Specifically, the mandatory spending would be earmarked for the judges' pay and benefits.

The second provision subject to this amendment, section 325, addresses the filing fees for bankruptcy and amounts that are directed to a trust fund that compensates bankruptcy trustees. Under current practice, a percentage of bankruptcy filing fees paid by a debtor is allocated to a trust fund that compensates bankruptcy trustees, while the remaining percentage of the filing fee is paid into the Treasury and counted as Federal revenue.

Section 325 of the bill, however, will now increase the allocation percentages from the filing fees that are directed to the trust fund. But because the bill's percentage increase will result in a corresponding decrease of Federal revenue, CBO has reported this provision will result in a net revenue loss for the Treasury. Specifically, the Congressional Budget Office estimates the revenue loss at \$226 million over 5 years, \$456 million over 10 years.

After reviewing this matter with the Budget Committee, we are proposing through this amendment to offset the direct spending from the judgeships and revenue losses from the section 325 percentage by increasing the bankruptcy filing fees in chapters 11 and 7.

The amendment also tries to limit revenue losses by sunseting after 2 years the increased allocation percentage measure in sections 325(b) and 325 (c). By doing so, we estimate that the bill will provide sufficient offsets to cover the potential budgetary problems facing this bill.

Specifically, the amount of the increased filing fees that is greater than the amount that would have been collected, but for this legislation, is earmarked towards the payment of salaries and benefits for the judges. The remaining amounts from the increased filing fees are also used to offset the Federal revenue loss caused by section 325 for the 2 years that the provision stays in existence. I believe this amendment represents the best way of creating offsets within the bill. It will obviate the need to strike the bankruptcy judgeships provision altogether and, most importantly, allow this bill to survive a potential budget point of order.

To the extent there are concerns that the increase in bankruptcy filing fees will make it more difficult for financially strapped debtors to use chapter 7, let me remind my colleagues that I pushed for an amendment in committee during the 105th Congress to give bankruptcy courts the discretion to waive filing fees for lower income debtors. The committee accepted that amendment and it is now embodied in section 418 of the bill.

This amendment removes a significant procedural obstacle that could jeopardize the prospect of this bill's passage in the Senate. As such, I urge my colleagues to support this amendment.

What this all boils down to is we need new bankruptcy judges. We have to pay their salaries and their health benefits, and we do not want to run afoul of the budget laws which would strike down the entire bill unless we got 60 votes.

Mr. President, in the absence of any other Senator seeking recognition, 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. DURBIN. 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. 49

Mr. DURBIN. Mr. President, I ask unanimous consent to set aside the pending amendment, and I send an amendment to the desk.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. **DURBIN**] proposes an amendment numbered 49.

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

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

The amendment is as follows:

(Purpose: To protect employees and retirees from corporate practices that deprive them of their earnings and retirement savings when a business files for bankruptcy)

On page 499, strike line 3 and all that follows through page 500, line 2, and insert the following:

SEC. 1402. FRAUDULENT TRANSFERS AND OBLIGATIONS.

(a) *Federal Fraudulent Transfer Amendments.*--Section 548 of title 11, United States Code, is amended--

(1) in subsection (a)(1)--

(A) by striking "one year" and inserting "4 years";

(B) in subparagraph (A), by striking "or" at the end;

(C) in subparagraph (B), by striking the period at the end and inserting "; or"; and

(D) by adding at the end the following:

"(C) made an excess benefit transfer or incurred an excess benefit obligation to an insider, if the debtor--

"(i) was insolvent on the date on which the transfer was made or the obligation was incurred; or

"(ii) became insolvent as a result of the transfer or obligation.";

(2) in subsection (b), by striking "one year" and inserting "4 years"; and

(3) in subsection (d)(2)--

(A) in subparagraph (C), by striking "and" at the end;

(B) in subparagraph (D), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(E) the terms 'excess benefit transfer' and 'excess benefit obligation' mean--

"(i) a transfer or obligation, as applicable, to an insider, general partner, or other affiliated person of the debtor in an amount that is not less than 10 times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees during the calendar year in which the transfer is made or the obligation is incurred; or

“(ii) if no such similar transfers were made to, or obligations incurred for the benefit of, such nonmanagement employees during such calendar year, a transfer or obligation that is in an amount that is not less than 25 percent more than the amount of any similar transfer or obligation made to or incurred for the benefit of such insider, partner, or other affiliated person of the debtor during the calendar year before the year in which such transfer is made or obligation is incurred.”.

(b) *Fair Treatment of Employee Benefits.*--

(1) **DEFINITION OF CLAIM.**--Section 101(5) of title 11, United States Code, is amended--

(A) in subparagraph (A), by striking “or” at the end;

(B) in subparagraph (B), by inserting “or” after the semicolon; and

(C) by adding at the end the following:

“(C) right or interest in equity securities of the debtor, or an affiliate of the debtor, held in a pension plan (within the meaning of section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2))), including an employee stock ownership plan, for the benefit of an individual who is not an insider, officer, or director of the debtor, if such securities were attributable to--

“(i) employer contributions by the debtor or an affiliate of the debtor other than elective deferrals (within the meaning of section 402(g) of the Internal Revenue Code of 1986), and any earnings thereon; and

“(ii) elective deferrals (and any earnings thereon) that are required to be invested in such securities under the terms of the plan or at the direction of a person other than the individual or any beneficiary, except that this subparagraph shall not apply to any such securities during any period during which the individual or any beneficiary has the right to direct the plan to divest such securities and to reinvest an equivalent amount in other investment options of the plan;”.

(2) **PRIORITIES.**--Section 507(a) of title 11, United States Code, is amended--

(A) by redesignating paragraphs (8) and (9) as paragraphs (9) and (10), respectively;

(B) by redesignating paragraphs (6) and (7), as redesignated by section 212, as paragraphs (7) and (8), respectively;

(C) in paragraph (7), as so redesignated, by striking “Sixth” and inserting “Seventh”;

(D) in paragraph (8), as so redesignated, by striking “Seventh” and inserting “Eighth”;

(E) in paragraph (9), as so redesignated, by striking "Eighth" and inserting "Ninth";

(F) in paragraph (10), as so redesignated, by striking "Ninth" and inserting "Tenth";
and

(G) by striking paragraph (5), as redesignated by section 212, and inserting the following:

"(5) Fifth, allowed unsecured claims for contributions to an employee benefit plan-

"(A) arising from services rendered before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only

"(B) for each such plan, to the extent of-

"(i) the number of employees covered by each such plan multiplied by \$15,000; less

"(ii) the aggregate amount paid to such employees under paragraph (4), plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

"(6) Sixth, allowed claims with respect to rights or interests in equity securities of the debtor, or an affiliate of the debtor, that are held in a pension plan (within the meaning of section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) and section 101(5)(C) of this title), without regard to when services were rendered, and measured by the market value of the stock at the time the stock was contributed to, or purchased by, the plan."

Mr. DURBIN. Mr. President, this is the bankruptcy reform bill. It is about 500 pages long. If I went to Illinois and asked the people I represent what they think we should do when it comes to bankruptcy, I am virtually certain that the first thing they would say to me is, you have to do something about these horrible corporate bankruptcies, Enron, WorldCom, and the list goes on, and the abuses which these officers and CEOs have demonstrated as heads of these corporations, the fact that because they were feathering their own beds when their companies went bankrupt, hurting shareholders, hurting employees, hurting investors in pension plans, and hurting retirees.

I think my constituents in Illinois are right. When it comes to bankruptcy, that is the scandal in America. We read about it every day. There is another criminal trial. Somebody is on trial because of corporate malfeasance that lead to bankruptcy. It is going on right now.

When one takes a look at this 500-page bill, how many pages in this bill address corporate bankruptcies? Five. Ninety-nine percent of this bill hardly relate to corporations at all. Ninety-nine percent relates to individuals and families who, through no fault of their own, in most circumstances, are crushed by debt and go to bankruptcy court.

Ninety-nine percent of this bill relates to bankruptcies of people who have a medical diagnosis they never anticipated and end up in treatment incurring medical expenses that their health insurance does not cover. That is almost half of the cases in bankruptcy court.

So this bill is designed to make the bankruptcy process more difficult for those individuals and families to get out from under their debt. That is what this is about. So that at the end of the day, when we pass this legislation--and surely we will--the credit card companies and the banks will end up keeping people in debt longer. So that people facing a crushing debt, when all is said and done, will not be able to walk out of that court, having been declared bankrupt, and start their lives again. That is what this bill addresses.

My amendment goes to the 5 pages about corporate bankruptcy. I believe this: If we are going to hold Americans and families to a high moral standard, if we are going to say to them that before they go into a bankruptcy court, pay their bills and prove to the court that they cannot pay their bills before we let them off the hook, if we are going to say that it is immoral and unjust for someone to go into a bankruptcy court and ask to be declared bankrupt and leave their bills and assets behind, if they, in fact, can pay, then fair enough.

But my amendment says, if we are talking about justice and high moral standards, should we not also talk about these corporate CEOs and insiders? Should they not be held to a high moral standard? Should they not be held to the standard of justice? Sadly, this bill does not do it.

When a corporation files for bankruptcy, their workers are left standing at the back of the line behind all the other creditors. Many of them lose their retirement savings, health care benefits and opportunities to get back to work and back on their feet.

The story of Bethlehem Steel Corporation is a good illustration. After years of decline in the steel industry, Bethlehem Steel dissolved in January of last year. Along with the end of Bethlehem Steel, 95,000 retired steelworker employees, who literally helped build America, lost the health care benefits they were promised. These are workers who, at the expense of their own health, went to work every day, played by the rules, paid into their pension plans, anticipated their health care, and yet because of the bankruptcy of Bethlehem Steel they were left unprotected. They lost their pension. They lost their benefits. They have nothing.

The problem is not limited to just steel companies. WorldCom, a telecommunications company; Adelphia, a cable company; PG&E and Enron, energy companies; Conesco, an insurance company; Financial Corporation of America and HomeFed, banks; United Airlines, U.S. Airways, TWA, all in the transportation business; Texaco, K-Mart, Polaroid, household names. These are some of the once great corporate giants that ended up in bankruptcy. They employed hundreds of thousands of Americans, but once the companies filed for bankruptcy, their employees were left with nowhere to turn.

This bankruptcy bill does not even talk about those bankruptcies and those employees and the problems that they face.

Many of the companies that filed for bankruptcy over the past few years are also associated with world-class scandals: Global Crossing, WorldCom, Adelphia, and, of course, the grand-daddy of them all, Enron. Those corporate giant names are synonymous with corruption, malfeasance, and greed; they are synonymous, from my point of view, with immoral corporate conduct and unjust treatment of their shareholders, workers, and retirees.

It is even more painful to think that while the workers and retirees of these scandal-tainted companies were left with little more than their dignity, the corporate executives and the insiders escaped with their treasures.

When companies are headed for bankruptcy, the corporate insiders know it is going to happen long before the worker out in the plant, and that is especially true when these same insiders are cooking the books. They know where the corporate loot is hidden, and they are going to get their hands on it when they can.

One might say that as soon as he saw the tip of the iceberg far ahead of the ship, the captain of the Titanic sneaked out on the deck, jumped in the lifeboat, went overboard with food, water, and life-vests, and left everybody else behind. That is what happened. Bon Voyage!

Let me describe a case study of the worst: Enron. This is the poster child for corporate corruption.

Enron of Houston, TX. During the 1990s, Enron was the envy of every executive in corporate America: creative, aggressive, growing fast, money coming in hand over fist, Fortune 500's top 10 list of assets with close to \$100 billion, and doing business in far-flung reaches of commerce.

By the year 2000, Enron stock had increased in value by 1,700 percent since its first shares were issued in the 1980s. It had 21,000 employees in the United States and all around the world.

But not everything was coming up roses for Enron. Behind the glass walls of the corporate skyscraper in Houston, something very opaque was going on.

Listen to these famous names: Ken Lay, Jeff Skilling, Andrew Fastow. The company's top three executives obviously realized their astronomical success was not based on reality or truth. It was based on hype, speculation, and deceit. It was all smoke and mirrors.

Wall Street analysts later were forced to admit that they made out-of-control valuations of this company based on the puffery of these corporate bandits. All the while, these

executives cooked up ingenious schemes to move assets on and off the books, create phony partnerships, offshore accounts, and so-called "special purpose entities."

These were just corporate accounting tools designed to move around assets on paper. Why would they do that if they had nothing to hide? Ken Lay, Jeff Skilling, Andrew Fastow, and others at Enron were undeniably the masters of manipulation.

We talk in this bankruptcy bill about what we are going to do with people who are abusing the bankruptcy court. This bill addresses the waitress with a second part-time job who is a single mother raising a couple of children who just was diagnosed with breast cancer and ends up with medical treatment and bills she cannot pay. She is forced finally to go to bankruptcy court.

This bill says, we are going to take care of her. In this bill we will give her a long list of things to do to prove that she is not taking advantage of the bankruptcy court.

But when it comes to these smoothies--Ken Lay, Jeff Skilling, and Andrew Fastow at Enron, and other corporations--this bill is silent. We are for morality when it comes to working families. Obviously, we are not for morality when it comes to these corporate cheats.

They kept the perception up at Enron that they were making money even when they were not, but eventually it fell apart.

On October 16, 2001, Enron reported a third-quarter loss of \$618 million and shareholder equity loss of \$1.2 billion. The date October 16, 2001, is important. A week later, on October 22, the Securities and Exchange Commission announced an inquiry into the company.

On November 8, 2001, Enron filed an amendment to its financial report revising its income back 4 years to 1997, 4 years of lies, it turns out, once they were caught. They came forward and disclosed \$586 million in losses, and obviously investor confidence and their stock values cratered.

The next day Ken Lay entered into a deal with Dynergy Corp. to sell Enron for \$10 billion, in a desperate attempt by him to keep that company afloat. A few days later he was forced to admit that Enron was not worth the amount he wanted to sell it for.

Naturally the deal with Dynergy was called off, and on December 2, 2001, Enron filed for bankruptcy.

Let me tell you what happened to two groups of Enron employees during the last few weeks of the company's solvency.

Here is Mr. Lay. Everybody knows his face now. CEO Ken Lay is the man who made over \$200 million from Enron stock, and \$19 million in bonuses. Other executives in the

Enron Corporation received bonuses as high as \$5 million. While that was going on, while the company was heading toward a bankruptcy, there were over 5,000 employees who lost their jobs and thousands more who lost millions in retirement savings.

Our bill goes after the employees who lost their jobs. Our bill goes after the employees who lost their health care. Our bill goes after retirees who ended up penniless and were forced into bankruptcy court. We are going to get real tough on them.

But how about Mr. Lay? What price is he going to pay for his misconduct? In this bill, no price at all. Everyone knows about Ken Lay's extravagance.

I won't venture to assert whether Ken Lay had any actual insight or knowledge which he took advantage of insider information as he made sales of stock he held in Enron. Those are decisions for a judge and jury.

But what is certain is that Ken Lay pocketed \$81.5 million in loan advances from his company while Enron was cascading toward bankruptcy--\$81.5 million for this man who couldn't run his company correctly. All told, he received over \$200 million in Enron stock and \$19 million in bonuses.

During the same time Jeff Skilling raked in \$66.9 million.

The board of directors was sharing in these good times as well. Sixteen members of the corporate board made a combined total of \$164 million, just on selling shares they had in the company. If you add all the other corporate insiders and executives at Enron with the corporate directors and all the amounts they pilfered from the company from 1998 to 2001, the grand total comes to well over \$1 billion.

Now let's see how the employees at Enron fared.

There is an old country song by Jerry Reed called, ``She Got the Goldmine, I Got the Shaft." It could be the theme song for Enron workers.

Of the 21,000 people worldwide who worked for Enron, 12,200 were enrolled in their pension plan. Over 60 percent of the assets in the plan invested in Enron stock and all of Enron's matching contributions went into company stock as well. But the Enron stock, which once sold as high as \$90 during its heyday, became worthless. The workers' losses were aggravated during the course of the weeks when they were locked out of the pension plans and could not even sell the stock as the value of the stock was cratering.

Under Federal law, companies are not allowed to let their employees withdraw their investment while the company switches pension plan administrators. And wouldn't you know it, Enron chose to switch their plan administrator on October 16, 2001.

Remember that date? That's the very same date I mentioned earlier, when they announced they were writing off more than \$1 billion in charges to their books. This

meant that thousands of employees sat by helplessly and watched their retirement plan literally disappear before their eyes.

On October 18, 2001, while Enron workers were frozen out of amending their pension plan, the stock price was down to \$32 a share. By the time the hurricane blew over and they finally could get to their funds, Enron stock value plummeted to 26 cents per share. Needless to say, the company went into bankruptcy. The employees at Enron could do nothing but sit by and watch their savings melt away during that time.

Thousands of these employees lost their jobs as a result of the Enron bankruptcy. Hundreds, perhaps thousands, were forced into bankruptcy themselves. But during the months and years that led up to this disaster, 29 Enron insiders and top execs walked away with over \$1 billion.

I have talked to some of these Enron executives. There is no good explanation. Sadly, this legislation on bankruptcy we are discussing today will not hold them accountable.

Let me give another case study: Polaroid. This is a company that many of the people in Congress from Massachusetts know all about. It filed for chapter 11 protection on October 12, 2001, just a couple of months before Enron did.

Let me show you the chart on Polaroid. CEO Gary DiCamillo ran the company into the ground but received \$1.7 million. Other executives got \$4.5 million. Over 6,000 employees lost health and life insurance, and thousands lost severance pay. Forced to invest 8 percent of their pay in company stock, they lost their retirement savings, too.

So these corporate insiders--whether Enron or Polaroid or WorldCom or others--were lining their own pockets, taking money out of the company destined for bankruptcy, and the ultimate losers were the employees and the retirees.

The amendment which I sent to the desk is an attempt to level the playing field for employees, pensioners, and others who find themselves shut out of court when companies they work for file for bankruptcy.

There are two provisions in this amendment to protect employees of bankrupt companies.

First, my amendment would address fraudulent transfers made by corporate insiders, all those huge payouts and loans and bonuses and transactions that went to these corporate executives as the company was headed to bankruptcy, these are payouts that exceed anyone's sense of what is reasonable compensation. Under my amendment, those payouts will have to be scrutinized by the bankruptcy court.

Think about that for a minute. These executives were being rewarded with millions, sometimes hundreds of millions of dollars out of corporations headed for bankruptcy.

Most of the time, you are rewarded with a bonus for a good job. They are being rewarded as their company is heading into debt and eventually disbanding. So they know what is going on. They are grabbing the money before they hit bankruptcy court. The money they grab out of the corporation is at the expense of people who loaned money to the corporation, especially at the expense of their workers and retirees. They end up taking the money that otherwise would have gone into the pension funds and putting it in their own pockets.

My amendment gives the bankruptcy court the tools to investigate and treat these fishy, self-serving deals Ken Lay and Jeff Skilling and Andrew Fastow and others at Enron cut for themselves. It gives the judge the power to review questionable insider transfers. That is only reasonable.

It includes a fair and workable formula for what the court can determine might be excessive.

It also extends the period of time a bankruptcy court can go back and recapture the assets of these executives, a 4-year reachback instead of the 1 year allowed under current law and the 2 years proposed in this bill.

As I described in the Enron example, some of the most outrageous transactions by the Enron executives took place 3 or 4 years before the company filed bankruptcy, so this bill would not even touch them. This bill lets those corporate insiders end up in their mansions with hundreds of millions of dollars squirreled away at the expense of the retirees who lost their pensions and their health care. By recapturing these assets, this provision would make more money available for employees and retirees and act as a deterrent to future corporate executives seeking the same sort of sweetheart deal.

But this is not all about Enron. Let me give you other examples in the headlines today.

WorldCom CEO Bernie Ebbers. He took \$366 million in personal loans and his contract called for a \$1.5 million yearly pension. Not bad. Mr. Ebbers ought to be proud. His skills and talents as CEO took his company, WorldCom, into the record books as the largest bankruptcy in the history of the United States. While he is grabbing all of the money out of the corporation, it is sinking like a rock.

John Jenkins, the former president of Global Crossing. He took more than \$1 million in pension benefits--something called "transitional assistance," consulting fees, and other benefits, as his company was spiraling downward.

Let us take a look at Kmart and its CEO, Chuck Conaway. As Kmart was falling apart, eventually becoming the largest American retailer to file bankruptcy, Mr. Conaway received a \$9 million golden parachute. About one-half of it was a severance package. But his former employer decided to give him a little break as he left this bankrupt corporation. A \$5 million loan was forgiven. Talk about a Blue Light Special at Kmart, this one takes the cake.

John Rigas of Adelphia Communications took about \$1 million per month from the company while he and others used it as their personal piggy bank. According to the indictment from the U.S. Attorney, the Rigas family used company loans to buy Adelphia shares and engage in insider transactions between Adelphia and other companies controlled by the Rigas family. Here is one example of how they fared. Rigas and his sons used \$2.3 billion in off-balance-sheet loans from the company to build themselves a private 18-hole golf course at the cost of \$13 million. Not bad for a cable guy. He raided his corporation for \$2.3 billion at the expense of shareholders and retirees.

What does this bill do to that kind of corporate bandit? Nothing. This bill focuses on the employees who lost their jobs. This bill focuses on the retirees who lost their health care and their pension. This bill makes it tough for them.

This is inspired by our feeling that we need more morality and justice in our bankruptcy courts. But wouldn't you start at the top? Wouldn't you start with the biggest thieves in the business--the people who broke a record when it comes to bankruptcy and raiding these corporations?

These insiders knew what they were doing. They saw their companies going down, and they grabbed everything they could get their hands on. They canceled their workers' pension plans and benefits.

My amendment says we would go back 4 years before the bankruptcy to recover that money and put it in the hands of creditors, employees, and retirees.

The second part of my amendment directly helps employees of these companies with some relief in bankruptcy court. This gives them a place in line as creditors that they currently don't have.

The amendment gives them a priority unsecured claim in bankruptcy for the value of company stock which was held for their benefit in an employee pension plan, unless the plan beneficiary had the option to invest the assets in some other way.

Under current law, these retirees who ended up with the short end of the stick in these retirement plans have nowhere to turn. They are not even in line in priority for these claims. My amendment would fix that.

The amendment determines the value of these claims to be measured by the market value of the stock at the time it was contributed to the plan.

In other words, the employee who was not at fault in the collapse of his employer corporation ought to have a fair claim for the fair value of his contribution to his pension plan as it was valued when he made that contribution. That's only fair.

My amendment is simple, yet necessary. I urge my colleagues to support it.

In conclusion, I am proud of the support of the groups behind this amendment--the U.S. Public Interest Research Group, the National Consumer Law Center, Consumers Union, Consumer Federation of America, Consumer Action, AFL-CIO, United Auto Workers, United Steel Workers of America, and the American Federation of Teachers.

I ask unanimous consent to have their letters of support printed in the **RECORD**.

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

American Federation of Labor and Congress of Industrial Organizations,

Washington, DC, March 3, 2005.

DEAR SENATOR: The bankruptcy-reform bill currently before the Senate will result in severe injustice to thousands of workers and consumers and we urge you to oppose it. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (S. 256) is basically unchanged from the version drafted by the financial services industry in the mid-1990s. It remains a one-sided attempt to favor creditor interests at the expense of working families who have suffered the loss of a job, high medical bills, and other unforeseen financial emergencies. Senators Rockefeller, Kennedy, Durbin and Feingold will offer amendments to improve this bill, and we urge you to support them.

Supporters of S. 256 suggest that the current system is riddled with "high rollers" who are gaming the system to get out of paying their fair share. To the contrary, studies suggest that 90% of those filing for bankruptcy do so because of circumstances largely outside their control. In recent years, business failures and mass layoffs resulting from corporate fraud have led to innumerable individual bankruptcies. Rather than correcting deficiencies in current law that fail to protect workers in these circumstances, the bill places new burdens on working families when they are most vulnerable.

We strongly support Senator Rockefeller's amendment to raise the current wage priority cap from \$4,950 to \$15,000 because the amounts owed to workers frequently exceed the per employee cap. Senator Rockefeller's amendment would also eliminate arbitrary payment rules that prevent workers from collecting compensation owed to them by a bankrupt employer. Importantly, Senator Rockefeller's amendment will compensate workers who lose retiree health benefits by requiring bankrupt companies to provide cash payments for replacement coverage.

The AFL-CIO also urges you to support amendments that will be offered by Senator Kennedy to protect low-income families from means testing and unnecessary paperwork and to protect workers who declare bankruptcy after becoming unemployed because of outsourcing or a mass layoff.

We also support Senator Feingold's amendment to remove provisions that impose substantial new requirements on small businesses attempting to reorganize under Chapter

II. There is no justification for increasing the hurdles that small businesses already face in trying to survive financial distress.

Finally, we urge you to support amendments that will be offered by Senator Durbin to restrain bankrupt employers from rewarding corporate insiders and other senior managers with large bonuses and excessive perks at the same time that their employees suffer economic devastation from the loss of a job or their savings in a company 401(k).

In sum, S. 256 is an unnecessarily harsh and one-sided bill that will penalize countless working Americans facing financial crises beyond their control. The AFL-CIO strongly urges you to support the above-mentioned amendments to this deeply flawed bill.

Sincerely,

William Samuel,
Director, Department of Legislation.

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March 2, 2005.
Hon. **RICHARD J. DURBIN**,
U.S. Senate,
Washington, DC.

DEAR SENATOR DURBIN: The undersigned national consumer organizations applaud you for offering amendments to the Senate bankruptcy bill (S. 256) that would better protect employees and retirees in the event of a corporate bankruptcy. The inclusion of these amendments will bring much-needed balance to a harsh and one-sided bill that would harm many families that have suffered genuine financial misfortune.

The raft of corporate scandals in the last few years has exposed many flaws in a system of market oversight that used to be the envy of the world. Many investors lost faith in our markets, tens of thousands of employees lost their jobs and workers and retirees have lost significant portions of their pension plans.

It is essential that Congress take a comprehensive approach to reform. The Sarbanes-Oxley Act to reform corporate accounting practices took an important first step. It is bringing much needed improvements to the quality and independence of the audits of public companies and help to restore investor confidence. But this law was never intended to give employees and retirees more power to combat the tactics of corporate officers who systematically loot their corporations and line their pockets, even as their companies' financial position starts to deteriorate. To do that, one must change corporate bankruptcy laws.

These amendments will help employees and retirees prevent corporate officers from pillaging their earnings and retirement savings in two of important ways:

It increases the power of bankruptcy judges to nullify fraudulent transfers of benefits and money by corporate officers, and to examine off-book transactions. This will increase the ability of employees to recover assets that have been stripped.

It increases the ability of employees to recover the value of company stock, when the stock was purchased because employees were not allowed to choose other investment options.

These amendments are the important ``next step" in reforming our corporate accountability laws. It is being introduced at a time when Congress is poised to pass a personal bankruptcy law that will make it more difficult for moderate-income individuals who have been harmed by economic disruption, corporate scandals and personal misfortune to get a financial fresh start. We commend you for focusing on the kind of bankruptcy reform that will help, not hurt, employees, retirees and working families.

Sincerely,

Travis B. Plunkett,

Legislative Director, Consumer Federation of America.

Edmund Mierzwinski,

Consumer Programs Director, U.S. Public Interest Research Group.

Susanna Montezemolo,

Policy Analyst, Consumers Union.

Linda Sherry,

Editorial Director, Consumer Action.

John Rao,

Staff Attorney, National Consumer Law Center.

Mr. DURBIN. Mr. President, these groups and their members know what happened with these companies.

I am troubled by the fact that the Senate has spent this entire week talking about bankruptcy abuse and making it tough for families trying to pay medical bills, making this process more difficult for the guardsmen and reservists who were activated to go overseas to serve our country only to lose their business at home and face bankruptcy when they return.

There is nothing in this bill to help them. There is nothing in this bill to help them with medical bills.

Senator *Kennedy* was here on the floor yesterday. He had an extreme suggestion, a radical idea. Senator *Kennedy* said, if you lose everything because of medical bills, we are going to protect your little home--\$150,000 worth of your home--so that when it is all said and done, as sick as you may be, you will at least have a home. But that proposal was rejected. I am not sure of the vote on that amendment, 58-39, somewhere in that range but a partisan vote. Everyone on this side--virtually everyone--voted against it.

According to that vote, we can't help those people. They have to face the reality. They have to face up to the fact they won't have a home to go to when it is all over.

But what about the mansions these CEOs go to, the millions of dollars they have drained out of these corporations for their own personal benefit to buy mansions, to buy golf courses, to create a lifestyle with \$30,000 shower curtains? Are we going to hold them accountable for raiding these corporations and driving them into bankruptcy? The answer is no. Not a word in this bill holds them accountable.

I urge my colleagues. If you can work up a rage over the possibility that someone with medical bills that are overwhelming goes to bankruptcy court seeking relief from their debts, can you work up a little bit of discomfort over these CEOs and bandits of the major corporations? Can you bring yourselves to say maybe we will hold them accountable, too, for their misconduct?

It would be a new day in this Senate, a grand departure from the debate as it has gone down at this point. We have never come close to this yet. I haven't heard a word yet from

the other side--not a word on this floor by the supporters of this bankruptcy bill about these corporate bankruptcies and what they have done to hundreds of thousands, if not millions, of unsuspecting investors, workers, and retirees.

The Durbin amendment will give my colleagues a chance to do something about it.

I urge my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER (Mr. *DeMint*). The Senator from Massachusetts is recognized.

AMENDMENT NO. 49

Mr. KENNEDY. Mr. President, this legislation that we have before us cracks down unfairly on large numbers of hard-working families that are in dire financial straits because of a sudden serious illness or because their loved ones are fighting in Iraq. Yet, this bill blatantly ignores the real abuses in our bankruptcy laws: the corporate abuses that have become epidemic in recent years. It is the worst corporate misconduct since before the Great Depression.

Some of these companies were brought down by outright criminal activities. Many more of them were driven into bankruptcy by the greed and mismanagement of a small group of reckless insiders who ignored their responsibility to their employees and their stockholders alike.

Current law on corporate bankruptcy is grossly inadequate in dealing with these problems. Often, the very insiders whose misconduct brought the company down do very well in bankruptcy. The people who suffer the most are the innocent victims, the employees, the retirees.

Increasingly, the bankruptcy court has become a place where corporate executives go to get permission to line their own pockets and break their promise to their workers and retirees. That kind of abuse is terribly wrong, and it is our responsibility to prevent it.

Instead, we are considering a 500-page bankruptcy bill that virtually ignores this issue. It does nothing to address the corporate looting by high-level insiders. It does nothing to protect a company's workforce from losing their jobs, their health care, and their pensions. This bill should not move forward until those glaring omissions are corrected, and the Durbin amendment is the way to do it.

Take a close look at the examples of executives in some of America's largest corporations, and see how lavishly they benefitted while their companies went into bankruptcy. Top executives made sure they were well provided for at the company's expense. Yet, loyal employees and their families were left to struggle on their own.

A major corporation in Massachusetts, Polaroid, filed for bankruptcy in 2001. In the months leading up to the company's filing, \$1.7 million in incentive payments were made to its chief executive officer on top of his \$840,000 salary. The company also received the approval of the bankruptcy court to make \$1.5 million in payments to senior managers to keep them on board. And these managers collectively received an additional \$3 million when the company's assets were sold.

Yet, just days before Polaroid filed for bankruptcy, it canceled the health and life insurance benefits for more than 6,000 retirees. It also canceled the health insurance coverage for workers with long-term disabilities, and halted the severance benefits for thousands of workers who had recently been laid off.

Polaroid employees had been required to contribute to the company's Employee Stock Ownership Plan. When the company failed, their retirement savings were virtually all wiped out.

The loss was devastating for workers like Karl Farmer, a Polaroid engineer in Massachusetts for more than 30 years. He had been required, as had other Polaroid employees, to pay 8 percent of his pay into the company's Employee Stock Ownership Plan. At its peak, this stock was worth over \$200,000. But after the company declared bankruptcy, the stock was worthless. And he also lost his severance pay and medical benefits.

Or take Betty Moss of Smyrna, GA. Betty and her husband retired and were traveling across the country in their camper when they learned that Polaroid had stopped her severance pay and that they had lost her health insurance and life insurance. Because of the fall in Polaroid stock, her retirement savings plunged from \$160,000 to only a few hundred dollars.

The loss of health insurance and life insurance benefits was particularly devastating for long-term disabled workers. With their disabilities, they cannot go back to work, and they have no way to obtain other insurance coverage.

Sally Ferrari of Saugus, MA, was diagnosed with Alzheimer's disease after working for Polaroid for 20 years. In recent years, she required round-the-clock care. Yet, Polaroid cut off her health care benefits in bankruptcy, which meant that her husband had to stay at work full time until he recently passed away in order to provide medical coverage for his wife.

I also have letters from other employees.

This letter is from David Maniscalco. He was injured while working for Polaroid. Now he is unable to work, and his medical bills are consuming his family's savings and his retirement because Polaroid took away total health care coverage. He points out:

After Polaroid declared bankruptcy, they terminated all the people on long term disability, and terminated all of our Medical, Life and Dental Insurance. I wear a fiberglass back brace and sleep in a hospital bed and am not able to work. My wife changed jobs in order to have medical insurance for herself. And I am on Medicare and a secondary insurance. The cost to us is \$895.00 a month for medical insurance alone. The problem is, we're using our retirement money to help with the cost of our medical insurance.

Here you have the corporate officials well taken care of, and the loyal employees were notified with less than 24 hours. And this is how they end up. How? Because they go to bankruptcy court. Does this bill do anything about protecting those individuals? Absolutely zero. Absolutely nothing. Absolutely nothing.

We have here a letter from Elaine Johnson. She lost a lung to cancer. When Polaroid went into bankruptcy, she lost her health insurance, too. She writes:

When Polaroid declared bankruptcy, I lost my life insurance, medical and dental insurance. Because of my disability, I'm unable to get other insurance and another job.

Once you have these serious illnesses, it is virtually impossible to ever get your health insurance again. I have a son who had osteosarcoma at 12 years old. He, as an individual--he is 43 years old--cannot get a health insurance policy today no matter what he is prepared to pay for it, unless he goes into some kind of group. Why? Because he had cancer at one particular time.

Here you have individuals who have disabilities who are tied into their company's program. The company has made a commitment to them. And then what happens? At the time they go into bankruptcy court, one of the first things that happens is the corporate officials free themselves from the obligations to pay the employees' health insurance, and they are left out in the cold.

The list goes on. Polaroid employees, like Betsy Williams of Waltham, MA, were financially devastated by the loss of medical and health care benefits. Betsy was with Polaroid for 28 years, and she thought, when she came down with lupus, her company's disability, health and life insurance would cover her. She writes:

When I received an unsigned letter from Polaroid Corporation in July of 2002 stating that I (along with other employees on Long Term Disability) would be terminated by the company and my medical, dental and life insurance benefits would end, I was shocked and dismayed. Unable to work because of my disabilities, my husband (who is also disabled) and I are forced to pay approximately \$1,125/month for a Medicare Health plan and an additional \$400-\$500/month for prescription co-payments, supplies, etc.; no available dental plan, and I was only able to get 50% of my life insurance at an exorbitant rate. We now have two mortgages; our groceries are bought with a credit card; and we are holding on financially by a thread.

There it is. That is the person who is going to get burned with this bill. That is the person who is going to be marched in. That is the person who is going to be required to pay \$10, \$15, \$20 a week, \$80 a month on into the future under this bill. But do we do anything about the corporate executives? Absolutely nothing.

And the list goes on. These are hard-working people who were crushed when Polaroid cut their benefits. Yet, while they suffered, Polaroid executives filled their pockets to overflowing.

When the chief financial officer left, she got a \$600,000 pension. Recently, she received \$1 million in severance pay from Royal Dutch/Shell Company, even though she left under a cloud of scandal. And Polaroid's former president is now the president and CEO of one of the country's largest staff outsourcing companies. He plans to take the company public soon and will reap enormous profits.

Enron, as my friend and colleague, the Senator from Illinois, pointed out, is another flagrant example of massive company looting while employees lost everything. Enron executives cashed out more than \$1 billion of company stock when they knew the company was in trouble. And just before the company declared bankruptcy, its top executives were paid bonuses as high as \$5 million each to stay on.

Enron workers, however, were forced to hold their company stock until the age of 50. They were subject to blackout periods that executives were not.

They lost a total of \$1 billion in retirement savings. Thousands of them lost their jobs. Thousands lost their health insurance. Thousands of them will be dragged into bankruptcy court under this particular legislation.

Yet we have WorldCom, another shameful case. Bernie Ebbers is on trial for corporate fraud. I don't know how many Americans read the newspapers yesterday, but Bernie Ebbers is on trial. He received millions of dollars in personal loans from the company and was originally granted a pension worth \$1.5 million a year. This week he denied knowing anything about the biggest accounting fraud in history. "I don't know about technology. I don't know about financing. I don't know about accounting," he claimed.

What about those people I just mentioned who worked for Polaroid all their lives and because of the bankruptcy lost their health insurance, do you think they will be able to give those kinds of answers? Not under this bill.

Ordinary Americans will not have this defense when they are facing bankruptcy. Countless WorldCom employees who honestly knew nothing about the fraud wound up losing their jobs and their retirement.

Another example is the popular retailer Kmart. As Kmart was teetering on the edge of bankruptcy, the company bought two new corporate jets. Once it finally went into

bankruptcy, CEO Chuck Conaway was given a \$9 million golden parachute. Meanwhile 57,000 Kmart workers lost their jobs, and the company closed 600 stores.

Abuses like these have made the headlines, but this bankruptcy bill doesn't deal with them. It comes down hard on those families who have critical health bills, families who are touched by cancer and heart and stroke, families who have children with disabilities. It comes down hard on those individuals and lets these people off free. And we call that fair? Take away their homes if they live in 40-odd States, but let them keep millionaire homes in Texas and Florida. And they do nothing about it, the proponents of this bill, nothing. Call that fair? Call this bill fair?

We know what it is. It is making the various bankruptcy courts the collection agencies for the credit card companies. Mr. American Taxpayer, you are going to be paying for more bankruptcy judges and staff and buildings because there are going to be so many more people who are going to be thrown into bankruptcy. The fastest growing group of bankruptcy filers is the elderly, individuals fifty-five and older, who are being hit with increased medical costs. As I mentioned the other day, they are seeing increased premiums on Medicare--wait until they get their new prescription drug program and start paying the costs for that, which is an inadequate program that has special provisions in it that have giveaways to the HMOs and to the prescription drug companies. They are just going to end up paying more and more, Mr. American Taxpayer, to support these courts of bankruptcy, and they are going to squeeze our fellow citizens out all the more. Meanwhile other people are getting \$9 million golden parachutes.

Senator *Durbin's* amendment will stop the travesty of high-level corporate insiders walking away with millions of dollars in bankruptcy while workers and retirees are left emptyhanded. This amendment will strengthen the ability of bankruptcy courts to invalidate fraudulent transfers by corporate insiders. The current legislation does zero, nothing. The proponents of this legislation have opposed this effort by the Senator from Illinois. This amendment will strengthen the ability of bankruptcy courts to invalidate fraudulent transfers. Currently the court can only compel the return of money improperly taken out of the company in the preceding year. In many instances the looting has taken place over a number of years, and the court has no authority to go after those lost assets. This amendment will allow bankruptcy judges to reach back as far as 4 years to recover corporate assets.

It also empowers the court to review and set aside the excess benefit transfers made to corporate management while the company was insolvent or which contributed to the company's insolvency. These sweetheart deals often take the form of huge bonuses, golden parachutes, and other payments to corporate executives before the public learns that the company is in trouble. Such payments violate the most basic principle of fiduciary duty, and the bankruptcy court should have the power to correct these wrongs. Every dollar recovered from these outrageous inside deals is another dollar that will be there to compensate workers, retirees, and other creditors.

Finally, our amendment--I welcome the opportunity to cosponsor it with the Senator from Illinois--will give a priority claim in bankruptcy to employees who are forced to invest their retirement savings in employer stock.

Polaroid workers lost their retirement because they were required to invest 8 percent of their pay in their company as a condition of holding their jobs. Workers at Enron were also forced to keep their company stock until the age of 50 and subject to blackout periods during which they couldn't sell their stock, but the company executives could. Under current bankruptcy law, workers have no way to recover from these losses. They deserve a chance to recover some of what they lost. This amendment will provide it.

The issue is simple fairness. We learned even yesterday about the new loophole, about trusts that are going to be created so those individuals who may go into bankruptcy and who have resources can go out and hire a lawyer and shelter their income from any kind of bankruptcy court. But the average worker can't do that. The average worker out there working a lifetime for a company and then dismissed, the company then goes into bankruptcy, can't do that.

They can't hold onto their homes like so many of the wealthiest individuals in our country. In Florida they will be able to do it, but they won't be able to do it in most of the other States. In Texas they can do it, but not in most of the other States. Yet here on the floor of the U.S. Senate, the Senate refused, absolutely refused to show any consideration to home ownership for people who have worked hard all of their lives, just having \$150,000 in equity.

This issue is about fairness. If a corporation has gone into bankruptcy, those who ran the ship aground certainly should not be enriched at the very time those who depend on the company for their livelihood are driven into poverty. Yet that is what happens all too often in corporate bankruptcy today. Any bankruptcy bill which fails to address these critical issues is a cruel hoax on the American people.

I urge my colleagues to support the Durbin amendment, recognizing that bankruptcy reform has to apply to corporations, too.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SCHUMER. 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. 42

Mr. SCHUMER. Mr. President, I rise in support of my amendment No. 42 and will call for the yeas and nays on my amendment at the appropriate time.

Mr. President, I rise to speak to my amendment to the Bankruptcy Abuse Prevention and Consumer Protection Act to close an ugly loophole that protects millionaires, while at the same time this bill will punish, among others, veterans' families and sick people with mountains of medical bills.

The front page of yesterday's business section in the New York Times ran a story on a shocking loophole in bankruptcy law that is a windfall for the wealthy, called the millionaire's loophole. Let me read to you a little bit about it. I am going to read from the New York Times here. The headline is:

Proposed law in bankruptcy has loophole; wealthy could shield many assets in trust.

The bankruptcy legislation being debated by the Senate is intended to make it harder for people to walk away from their credit card and other debts. But legal specialists say the proposed law leaves open an increasingly popular loophole that lets wealthy people protect substantial assets from creditors, even after filing for bankruptcy.

Here is the problem. In five States--Alaska, Delaware, Nevada, Rhode Island and Utah--millionaires and even billionaires can stash away their assets--whether it be a mansion, racing car, a yacht, or any kind of financial asset or investment, or even a suitcase filled with cash--in a special kind of trust, so that they can hold on to that windfall even after filing for bankruptcy. When they file for bankruptcy, these wealthy people, creditors would not be able to reach anything in those trusts. So here you have wealthy people filing for bankruptcy and yet having huge amounts of assets protected in a little trust hidden away.

The bill tries to address the infamous homestead exemption by attaching a \$125,000 ceiling to it. But it doesn't matter. A millionaire doesn't need a home to protect his or her assets. All they need is a good lawyer, a pencil, paper, and one of these trusts.

As one legal expert said: With this loophole, the wealthy won't need to buy houses in Florida or Texas to keep their millions. So if anyone is manipulating the system, it is these guys. By the way, you don't have to be in these five States. All you have to do is file the trust in one of these States. My great State of New York, I am happy to say, is blessed with many millionaires. We hope there are more of them. But they should not be allowed to file in Delaware, or Utah, or Alaska a trust that allows them to declare bankruptcy and yet keep their assets. It is a basic way for wealthy people to not pay their debts.

We have heard a lot in this bill about people who gamble profligately and waste their money and declare bankruptcy. That is an abuse that the bill should, in my judgment, close. But then why are we continuing to allow it to remain in the law? It is not this bill that does it; it is in the law. But as we close those methods of using bankruptcy abusively,

how can we leave this one open? This ``million dollar bankruptcy baby" deserves an Oscar for the best legal loophole for the wealthy. This millionaire's loophole is so bad that it must be knocked out before this fight is over. There is no question that, without this amendment, the bankruptcy laws will continue to make it easier for millionaires to keep their millions than for poor people to simply stay afloat.

I hope my colleagues on the other side of the aisle will join me in that amendment. I know there seems to be some kind of edict that you cannot vote for any amendment. Can we please make an exception for this one? I am sure just about everybody agrees with us. I am joined in this amendment by my colleagues Senators **BINGAMAN, DURBIN,**

FEINSTEIN, and **CLINTON**; they have cosponsored the amendment. This amendment closes this millionaire's loophole by forcing those who seek to use these trusts to cheat. It only allows them to protect as much as \$125,000 in assets in these trusts and not a penny more. In other words, it makes it analogous to what we do for homes in the homestead exemption in this bill.

Again, if we don't want wealthy people to be able to hide their assets in their homes and escape the rigors of the bankruptcy law, why would we allow them to do that in trusts? To clarify, the amendment doesn't adversely affect retirees who have saved for a lifetime to build a retirement nest egg. The solution is straightforward. It is written in the spirit of the bill. In fact, when looking at statements made by some of this bill's greatest champions, you would think they would have no problem accepting this amendment in the bill.

The bill's sponsor is a good man. I am now on his committee. He is known as having a great deal of integrity. Well, here is what Senator *Grassley* said about the bill. This was in one of his State's local papers: Filing for chapter 7 bankruptcy, he said, ``was not intended to be a convenient financial planning tool where deadbeats can get out of paying their debts scot-free, while honest Americans who play by the rules have to foot the bill."

I agree with that statement. This amendment fits the words of Senator *Grassley* exactly. Why would we not include this amendment in the bill? That is the essence of the amendment we have. Deadbeats exist in all tax brackets. There are some middle-class deadbeats. There are some poor deadbeats, of course. What about the wealthy deadbeats? Why are they treated differently than everybody else?

I hope my friends on the other side of the aisle, because of this grand edict ``don't vote for any amendment," don't end up protecting wealthy deadbeats from the same punishment they are doling out to those who are not so financially fortunate.

I have listened to my Republican friends and their concerns about the abuse of our bankruptcy system by gamblers, hustlers, and cheaters. I have listened for a number of years, and I share those concerns. But I hope my colleagues will come to the floor to vote for this amendment that will end the egregious millionaire's loophole. Make no mistake about it, I am not against millionaires and billionaires. I think it is great when an

American achieves success and makes a lot of money. But don't declare bankruptcy and hide your assets and shed your debts. The people who should least be able to do this are the wealthy.

I hope my colleagues will vote for this amendment, which will end the egregious millionaire's loophole. We cannot let a few bad apple millionaires evade the system by cutting and running on their debts. This bill, I am afraid, of course, doesn't go after just the bad apples. That is an issue my colleague from Massachusetts has been ably taking up on the floor, as have many other of my colleagues. It actually labels the whole bushel of bankruptcy filers rotten.

I wish the bill made more of a distinction between those who are abusive, who gamble, or who are profligate and try to shake off their debt, and those who have run into real hardship because they are in the military or because they have health care problems. The bill makes no distinction between those two groups and that is wrong. We need to make sure the bill targets the Nation's cheats and not its cheated. I urge my colleagues to close the millionaire's loophole by voting for this amendment.

Mrs. FEINSTEIN. Mr. President, I rise today to join my colleague from New York, Senator *Schumer*, in offering an amendment which would address a serious loophole in the bankruptcy bill we are now considering it allows rich debtors to unfairly shield assets from their creditors.

In recent years a number of financial and bankruptcy planners have taken advantage of the law of a few States to create what is called an "asset protection trust." These trusts are basically mechanisms for rich people to keep money despite declaring bankruptcy. They are unfair, and violate the basic principle of this underlying legislation that bankruptcy should be used judiciously to deal with the economic reality that sometimes people cannot pay their debts, but to prevent abuse of the system.

This loophole is an example of where the law, if not changed, permits, or even encourages, such abuse.

The amendment is simple: It sets an upper limit on the amount of money that can be shielded in these asset protection trusts, capping the amount at \$125,000. This amount parallels the limit placed on the similar "homestead exemption" elsewhere in the bill. The homestead exemption allows some assets to be protected from creditors in bankruptcy where they are in the form a residential home.

The bottom line: Wealthy people will be able to preserve only \$125,000 in an asset protection trust.

This amount, \$125,000, is not a small sum. It is more than enough to ensure that the debtor is not left destitute. But I believe it is a reasonable amount. It is deliberately based on the now-accepted \$125,000 limit for the homestead exemption, which will also remain available to a debtor.

Yesterday the New York Times, in an article entitled Proposed Law on Bankruptcy Has Loophole detailed the potential problem in this bill. The article quotes Professor Elena Marty-Nelson, a law professor at Nova Southeastern University in Florida, who states:

[i]f the bankruptcy legislation currently [before the Senate] gets enacted, debtors won't need to buy houses in Florida and Texas to keep their millions [t]he millionaire's loophole that is the results of these trusts needs to be closed.

Professor Elizabeth Warren of Harvard Law School is also quoted in the article. She notes that:

[t]his is just a way for rich folks to be able to slip through the noose on bankruptcy and, of course, the double irony for her is that the proponents of this bill keep pressing it as designed to eliminate abuse.

I unanimously consent that the full text of the article be printed in the **RECORD**.

[From the New York Times, Mar. 2, 2005]

Proposed Law on Bankruptcy Has Loophole

(By Gretchen Morgenson)

The bankruptcy legislation being debated by the Senate is intended to make it harder for people to walk away from their credit card and other debts. But legal specialists say the proposed law leaves open an increasingly popular loophole that lets wealthy people protect substantial assets from creditors even after filing for bankruptcy.

The loophole involves the use of so-called asset protection trusts. For years, wealthy people looking to keep their money out of the reach of domestic creditors have set up these trusts offshore. But since 1997, lawmakers in five states--Alaska, Delaware, Nevada, Rhode Island and Utah--have passed legislation exempting assets held domestically in such trusts from the federal bankruptcy code. People who want to establish trusts do not have to reside the five states; they need only set their trust up through an institution in one of them.

``If the bankruptcy legislation currently being rushed through the Senate gets enacted, debtors won't need to buy houses in Florida or Texas to keep their millions," said Elena Marty-Nelson, a law professor at Nova Southeastern University in Fort Lauderdale, Fla., referring to generous homestead exemptions in those states. ``The millionaire's loophole that is the result of these trusts needs to be closed."

Yesterday in Washington, Republicans in the Senate beat back the first in a series of Democratic amendments aimed at softening the effects of the bankruptcy bill on military personnel, and the majority leader of the House vowed to get quick approval of the bill if the Senate did not significantly alter it.

“We will grab hold of it just like we did class action if it is a good and clean bankruptcy reform bill,” said Representative Tom DeLay, a Texas Republican, referring to the quick action the House took last month on a measure limiting class-action lawsuits.

The Senate bill is favored by banks, credit card companies and retailers, who say it is now too easy for consumers to erase their debts through bankruptcy. It is almost identical to previous versions that have been introduced in Congress, unsuccessfully, since 1998. Perhaps because the current bill was written so long ago, some legal authorities say, it does not address the new state laws that have allowed asset protection trusts to flourish.

“This is just a way for rich folks to be able to slip through the noose on bankruptcy, and, of course, the double irony here is that the proponents of this bill keep pressing it as designed to eliminate abuse,” said Elizabeth Warren, a law professor at Harvard Law School. “Yet when provisions that permit real abuse by rich people are pointed out, the bill’s proponents look the other way.”

Senator Charles E. Grassley, an Iowa Republican, is the main sponsor of the bankruptcy bill. His press secretary, Beth Levine, said the senator’s staff was unaware of the trusts and the loophole for the wealthy that they represented. “The senator is always open to suggestions for closing these loopholes,” she said.

Money held in asset protection trusts can elude creditors because federal bankruptcy law exempts assets governed by “applicable nonbankruptcy law.” Intended to preserve rights to property under state law, the exemption makes it difficult for creditors to get hold of assets that they would not be able to seize through a nonbankruptcy proceeding in state court.

Asset protection trusts have become increasingly popular in recent years among physicians, who fear large medical malpractice awards, and corporate executives, whose assets are at greater peril now because of new laws. The Sarbanes-Oxley legislation, for example, requires chief executives and chief financial officers to certify that their companies’ financial statements are accurate; anyone who knowingly certifies false numbers can be fined up to \$5 million. In addition, under Sarbanes-Oxley, executives may have to reimburse their companies for bonuses or other incentive compensation they received if their company’s financial reports have to be restated in later years. “Given all the notoriety of what we’re seeing today, from HealthSouth to WorldCom, there is probably more of an impetus for executives to consider going this route,” said Scott E. Blakeley, a lawyer at Blakeley & Blakeley in Irvine, Calif. “And yet in the bankruptcy bill, this topic is not touched.”

While it is difficult to quantify how much money is sitting in domestic asset protection trusts, their popularity is undeniable, bankruptcy specialists said. “I’ve heard figures for foreign asset protection trusts and those probably are in the billions,” said Adam J. Hirsch, a law professor at Florida State University. “I haven’t seen any figures for domestic asset protection trusts, but they could very well be the same.”

Current federal bankruptcy law protects assets held in a type of trust, known as a spendthrift trust, traditionally set up by one family member to benefit another. But current law does not protect the assets of people who set up spendthrift trusts to benefit themselves. And the law limits the purposes of the trusts that qualify for exemption. Retirement planning or paying for education are two approved purposes for such trusts. By contrast, domestic asset protection trusts can be set up by the same people who plan to benefit from them. In addition, there are no caps on the dollar amount of assets they can hold and no restrictions on their purpose, Ms. Marty-Nelson said. One limitation is that the trusts cannot be set up by people who are already insolvent.

The states that allow these trusts do so to attract the significant money management and trustee fees that accompany them, Mr. Hirsch said. "It's what is known in the parlance of legal policy analysis as a race to the bottom," he said.

The authors of the Delaware law, for example, noted when it was passed in 1997 that it was meant to "maintain Delaware's role as the most favored jurisdiction for the establishment of trusts."

In some ways, asset protection trusts are similar to the homestead exemption that keeps homes in Florida, Texas and other states out of the reach of creditors. But the bankruptcy law now under consideration limits this exemption to \$125,000 for those who purchased the home within 40 months of their bankruptcy filing or for those who have committed securities fraud.

Ms. Marty-Nelson said the bankruptcy bill should at least apply such a cap to domestic asset protection trusts. Better yet, she said, the bill should exclude these trusts from the federal exemption altogether.

"Congress can and should close this huge loophole," she said.

Mrs. FEINSTEIN. I believe it is critical that we appropriately reform our bankruptcy system, and I applaud the efforts of Senator *Grassley* and others to do that. But it is important that we ensure that, wherever possible, loopholes subject to abuse are closed. This is just such a loophole. I hope that my colleagues will join me and Senator *Schumer* in closing this one.

Mr. KENNEDY. Mr. President, the most disturbing thing about this supposed "bankruptcy reform" is the utter lack of fairness and balance in the legislation. It gets tough on working families who are facing financial hardship due to a health crisis, a job loss caused by a plant closing, or a military call up to active duty. The laws of bankruptcy are being changed to wrest every last dollar out of these unfortunate families in order to further enrich the credit card companies.

However, the authors of this legislation look the other way when it comes to closing millionaires' loopholes and ending corporate abuse. The bill fails to deal effectively with the unlimited homestead exemptions in a few States which allow the rich to hold on to

their multi-million dollar mansions while middle class families in other States lose their modest homes. And, the bill totally fails to address the shocking abuse of millionaires hiding their assets in so-called "asset protection trusts," placing them completely beyond the reach of creditors. They can hold on to their wealth merely by signing a paper placing title their bank accounts, stocks, bonds, and other holdings in the name of a trust. The wealthy debtors don't even have to change their residences or put all of their money into a country estate in Florida or Texas. All they need to do is file a trust document in one of the five States that allow this subterfuge. They do not have to relinquish control over their property and it can continue to be used to support their extravagant lifestyle.

Unfortunately, average families facing bankruptcy don't have large bank accounts and stock portfolios so they cannot take advantage of this loophole. Most couldn't even afford to hire a lawyer to set up the trust. However, that's all right because the asset protection trust scam was not designed for them. It was designed to protect millionaire deadbeats, people who ran their companies into the ground leaving their creditors and their former employees holding the bag. It was designed to protect those who took the money and ran.

Somehow the authors of this bill, after eight years of studying the bankruptcy code in search of ways to tighten the law so that more people would be held accountable for their debts--somehow they overlooked this loophole. I wonder how they could have missed this one. I guess they were just too busy finding ways to make working families pay a few more dollars to the credit card companies.

Fortunately, the New York Times did expose this outrageous loophole and Senator *Schumer* has offered an amendment to close it. It will empower the bankruptcy court to reach out and pull the assets in these abusive trusts back into the bankruptcy, using those assets to help pay creditors. The vote on this amendment will be a real test of the sincerity of those who say their goal is to hold debtors more accountable for the money they owe. I would hope that same desire to enforce personal responsibility applies to the millionaire deadbeat who hides his assets as well as the working family struggling to survive.

Mr. GRASSLEY. Mr. President, I oppose the Schumer amendment. This is an issue that just needs more time for us to determine whether there is an abuse that needs to be addressed. We need to ensure that this amendment doesn't have unintended consequences. For instance, it doesn't define the term "asset protection trust" and therefore we aren't even sure what we are being asked to vote on. Further, it not only covers asset protection trusts, but also covers "similar trusts." Until we have had time to really understand whether this is a loophole, and if it is, how to close it in a way that doesn't harm innocent third parties.

In addition, this issue is even more complex because it implicates 50 different State laws. We don't know enough at this point about how it works. This would override at least some State laws, like the homestead cap would. I think it is important to look at this issue, have a hearing and consult with senators whose States might be uniquely affected. Be sure, however, that my opposition to this amendment doesn't mean that I will not ultimately find that this issue needs to be addressed at some future date. I think that all

the work we have done on this bill, the compromises we have reached should not be disrupted by this last-minute proposal that has not been well thought out.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. *McCONNELL*. 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. *McCONNELL*. Mr. President, I ask unanimous consent that the Senate now proceed to a series of stacked votes in relation to the following amendments: Schumer amendment No. 42 and Rockefeller amendment No. 24; further, that no amendments be in order to the amendments prior to the votes; that the second vote be limited to 10 minutes in length; and that there be 1 minute on each side to explain these amendments prior to the vote.

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

AMENDMENT NO. 48

Mr. *McCONNELL*. Mr. President, I ask unanimous consent that the pending Specter amendment No. 48 be agreed to and the motion to reconsider be laid upon the table.

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

The amendment (No. 48) was agreed to.

AMENDMENT NO. 42

Mr. *McCONNELL*. Mr. President, I ask for the yeas and nays on the Schumer amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The PRESIDING OFFICER. Who yields time on the amendment?

Without objection, time is yielded back.

The question is on agreeing to amendment No. 42 offered by the Senator from New York, Mr. *Schumer*. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr **MCCONNELL**. The following Senator was necessarily absent: the Senator from Oklahoma (Mr. **INHOFE**).

Further, if present and voting, the Senator from Oklahoma (Mr. **INHOFE**) would have voted ``no."

Mr. **DURBIN**. I announce that the Senator from California (Mrs. **BOXER**), the Senator from New Jersey (Mr. **CORZINE**), the Senator from Wisconsin (Mr. **FEINGOLD**), and the Senator from Hawaii (Mr. **INOUYE**) are necessarily absent.

The **PRESIDING OFFICER** (Mr. **THUNE**). Are there any other Senators in the Chamber desiring to vote?

The result was announced--yeas 39, nays 56, as follows:

[Rollcall Vote No. 23 Leg.]
YEAS--39

Akaka

Baucus

Bayh

Biden

Bingaman

Byrd

Cantwell

Chafee

Clinton

Conrad

Dayton

Dodd

Dorgan

Durbin

Feinstein

Harkin

Jeffords

Kennedy

Kerry

Kohl

Landrieu

Lautenberg

Leahy

Levin

Lieberman

Lincoln

Mikulski

Murray

Nelson (FL)

Obama

Pryor

Reed

Reid

Rockefeller

Salazar

Sarbanes

Schumer

Stabenow

Wyden

NAYS--56

Alexander

Allard

Allen

Bennett

Bond

Brownback

Bunning

Burns

Burr

Carper

Chambliss

Coburn

Cochran

Coleman

Collins

Cornyn

Craig

Crapo

DeMint

DeWine

Dole

Domenici

Ensign

Enzi

Frist

Graham

Grassley

Gregg

Hagel

Hatch

Hutchison

Isakson

Johnson

Kyl

Lott

Lugar

Martinez

McCain

McConnell

Murkowski

Nelson (NE)

Roberts

Santorum

Sessions

Shelby

Smith

Snowe

Specter

Stevens

Sununu

Talent

Thomas

Thune

Vitter

Voinovich

Warner

NOT VOTING--5

Boxer

Corzine

Feingold

Inhofe

Inouye

The amendment (No. 42) was rejected.

Mr. *McCONNELL*. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. *McCONNELL*. Mr. President, let me announce to all Members that following the next vote we will vote in relation to the Durbin amendment No. 49. We will have an explanation of 2 minutes equally divided. Both of these votes are going to be 10 minutes. We are going to enforce the time on this vote. Everybody please stay in the Chamber at the convenience of all Members so we can finish this vote and the next vote within 10 minutes each, particularly this one.

The PRESIDING OFFICER. There are 2 minutes evenly divided prior to the vote on the Rockefeller amendment.

Who yields time?

The Senator from West Virginia.

Mr. *ROCKEFELLER*. Mr. President, this amendment is critical to making corporate bankruptcies fairer to the people who have worked in those corporations and toiled during the course of their lives and expect, reasonably, at end of their service, to have something to show for it.

My amendment does three things.

First, it allows employees to recover up to \$15,000 in backpay or other compensation that is owed them.

Second, my amendment would eliminate the accrual time period for calculation of priority claims. And, if we do not eliminate the accrual period, then increasing wage priority in the bill is meaningless.

Finally, my amendment would provide at least some compensation to retirees whose promised health insurance has been taken away.

Under my proposal, each retiree would be entitled to payment equal to the cost of purchasing comparable health insurance for a period of 18 months.

I encourage the support of my colleagues.

Mr. *BYRD*. Mr. President, the great union leader, John L. Lewis, spoke of those who sup at labor's table and who have been sheltered in labor's house.

That image thrives in West Virginia, where children are raised to believe that the fruits of their labor ought to yield a decent wage and comfortable living. Many work long

hours, concerned less about titles and honors than providing for their families in the present and securing their retirement in old age.

They devote themselves to their labors and take pride in their work and their employer. These workers are committed, hard-working individuals who contribute much and ask for nothing more than simple fairness. And so imagine how they are made to feel--the anguish, frustration, and betrayal they are made to feel--when they learn the pension they worked for, the health benefits they labored for, the security they toiled for, has vanished.

That is what is happening in West Virginia to an alarming degree. Special Metals, Horizon Natural Resources, Weirton Steel, Wheeling-Pitt, Kaiser Aluminum--all have filed for bankruptcy, endangering the health and pension benefits of workers and retirees.

I scold not those who have sought to protect their employees but those scoundrels who have used bankruptcy to abandon their obligations.

It is shattering to those workers and retirees affected. It cripples their faith in the moral values of an honest day's work for an honest day's pay. It's terrifying for retirees who cannot begin new careers. These independent, proud men and women fear becoming a burden to their children and grandchildren.

I understand how they are made to feel, and I seek to help them, as I always have sought to help them. I support the Rockefeller amendment, and I commend my colleague for his endeavors in this regard.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, this amendment would provide a nearly fourfold increase in claim amounts and strike the time period. That means it would be much harder to confirm a plan under Chapter 11. It will cost us jobs, because the debtor companies would not be able to survive the bankruptcy process.

My colleague from the Finance Committee is concerned about the co-provisions. Rest assured, they are bad. We all know how many compromises have been made on this bill. This amendment would undo years of hard work.

I urge my colleagues to vote no on this amendment.

I yield the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. HATCH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Oklahoma (Mr. **INHOFE**) and the Senator from Pennsylvania (Mr. **SPECTER**).

Mr. DURBIN. I announce that the Senator from California (Mrs. **BOXER**), the Senator from New Jersey (Mr. **CORZINE**), the Senator from Wisconsin (Mr. **FEINGOLD**), and the Senator from Hawaii (Mr. **INOUYE**) are necessarily absent.

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

The result was announced--yeas 40, nays 54, as follows:

[Rollcall Vote No. 24 Leg.]
YEAS--40

Akaka

Baucus

Bayh

Bingaman

Byrd

Cantwell

Clinton

Collins

Conrad

Dayton

Dodd

Dorgan

Durbin

Feinstein

Harkin

Jeffords

Johnson

Kennedy

Kerry

Kohl

Landrieu

Lautenberg

Leahy

Levin

Lieberman

Lincoln

Mikulski

Murray

Nelson (FL)

Obama

Pryor

Reed

Reid

Rockefeller

Salazar

Sarbanes

Schumer

Snowe

Stabenow

Wyden

NAYS--54

Alexander

Allard

Allen

Bennett

Biden

Bond

Brownback

Bunning

Burns

Burr

Carper

Chafee

Chambliss

Coburn

Cochran

Coleman

Cornyn

Craig

Crapo

DeMint

DeWine

Dole

Domenici

Ensign

Enzi

Frist

Graham

Grassley

Gregg

Hagel

Hatch

Hutchison

Isakson

Kyl

Lott

Lugar

Martinez

McCain

McConnell

Murkowski

Nelson (NE)

Roberts

Santorum

Sessions

Shelby

Smith

Stevens

Sununu

Talent

Thomas

Thune

Vitter

Voinovich

Warner

NOT VOTING--6

Boxer

Corzine

Feingold

Inhofe

Inouye

Specter

The amendment (No. 24) was rejected.

Mr. FRIST. Mr. President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. For the information of our colleagues, this will be the last rollcall vote tonight. We will have probably two votes at 5:30 on Monday.

AMENDMENT NO. 49

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, pursuant to unanimous consent, on the next amendment you should keep in mind Kenneth Lay who, on the road to bankruptcy, took \$200 million out of Enron. Bernie Ebbers took \$366 million in personal loans out of WorldCom, and John Rigas took \$2.3 billion in loans for a golf course--driving the companies into bankruptcy at the expense of the stockholders, employees, and retirees. This amendment reaches back and brings that money to the people who need it. It also gives a claim in bankruptcy for the pension rights that are extinguished in bankruptcy. I ask for Members' support.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, this is an important matter, but this amendment is too. I ask Members to vote no on the amendment.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 49.

Mr. DURBIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Oklahoma (Mr. **INHOFE**) and the Senator from Pennsylvania (Mr. **SPECTER**).

Mr. DURBIN. I announce that the Senator from California (Mrs. **BOXER**), the Senator from New Jersey (Mr. **CORZINE**), the Senator from Wisconsin (Mr. **FEINGOLD**) and the Senator from Hawaii (Mr. **INOUYE**) are necessarily absent.

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

The result was announced--yeas 40, nays 54, as follows:

[Rollcall Vote No. 25 Leg.]

YEAS--40

Akaka

Baucus

Bayh

Biden

Bingaman

Byrd

Cantwell

Carper

Clinton

Conrad

Dayton

Dodd

Dorgan

Durbin

Feinstein

Harkin

Jeffords

Johnson

Kennedy

Kerry

Kohl

Landrieu

Lautenberg

Leahy

Levin

Lieberman

Lincoln

Mikulski

Murray

Nelson (FL)

Obama

Pryor

Reed

Reid

Rockefeller

Salazar

Sarbanes

Schumer

Stabenow

Wyden

NAYS--54

Alexander

Allard

Allen

Bennett

Bond

Brownback

Bunning

Burns

Burr

Chafee

Chambliss

Coburn

Cochran

Coleman

Collins

Cornyn

Craig

Crapo

DeMint

DeWine

Dole

Domenici

Ensign

Enzi

Frist

Graham

Grassley

Gregg

Hagel

Hatch

Hutchison

Isakson

Kyl

Lott

Lugar

Martinez

McCain

McConnell

Murkowski

Nelson (NE)

Roberts

Santorum

Sessions

Shelby

Smith

Snowe

Stevens

Sununu

Talent

Thomas

Thune

Vitter

Voinovich

Warner

NOT VOTING--6

Boxer

Corzine

Feingold

Inhofe

Inouye

Specter

The amendment (No. 49) was rejected.

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

[Page: S1996]

The motion to lay on the table was agreed to.

Mr. LOTT. I yield the floor, and 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. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ALLEN). Without objection, it is so ordered.

AMENDMENT NO. 50

Mr. REID. I ask unanimous consent the pending amendment be laid aside.

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

Mr. REID. I send an amendment to the desk on behalf of Senator *Baucus*.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. *Baucus*, proposes an amendment numbered 50.

Mr. REID. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To amend section 524(g)(1) of title 11, United States Code, to predicate the discharge of debts in bankruptcy by any vermiculite mining company meeting certain criteria on the establishment of a health care trust fund for certain individuals suffering from an asbestos related disease)

On page 47, strike lines 12 through 14, and insert the following:

SEC. 202. EFFECT OF DISCHARGE.

Section 524 of title 11, United States Code, is amended--

(1) in subsection (g)(1), by adding at the end the following:

“(C)(i) Congress finds that--

“(I) the vermiculite ore mined and milled in Libby, Montana, was contaminated by high levels of asbestos, particularly tremolite asbestos;

“(II) the vermiculite mining and milling processes released thousands of pounds of asbestos-contaminated dust into the air around Libby, Montana, every day, exposing mine workers and Libby residents to high levels of asbestos over a prolonged period of time;

“(III) the responsible party has known for over 50 years that there are severe health risks associated with prolonged exposure to asbestos, including higher incidences of asbestos related disease such as asbestosis, lung cancer, and mesothelioma;

“(IV) the responsible party was aware of accumulating asbestos pollution in Libby, Montana, but failed to take any corrective action for decades, and once corrective action was taken, it was inadequate to protect workers and residents and asbestos-contaminated

vermiculite dust continued to be released into the air in and around Libby, Montana, until the early 1990s when the vermiculite mining and milling process was finally halted;

“(V) current and former residents of Libby, Montana, and former vermiculite mine workers from the Libby mine suffer from asbestos related diseases at a rate 40 to 60 times the national average, and they suffer from the rare and deadly asbestos-caused cancer, mesothelioma, at a rate 100 times the national average;

“(VI) the State of Montana and the town of Libby, Montana, face an immediate and severe health care crisis because--

“(aa) many sick current and former residents and workers who have been diagnosed with asbestos-related exposure or disease cannot access private health insurance;

“(bb) the costs to the community and State government related to providing health coverage for uninsured sick residents and former mine workers are creating significant pressures on the State's medicaid program and threaten the viability of other community businesses;

“(cc) asbestos-related disease can have a long latency period; and

“(dd) the only significant responsible party available to compensate sick residents and workers has filed for bankruptcy protection; and

“(VII) the responsible party should recognize that it has a responsibility to work in partnership with the State of Montana, the town of Libby, Montana, and appropriate health care organizations to address escalating health care costs caused by decades of asbestos pollution in Libby, Montana.

“(ii) In this subparagraph--

“(I) the term `asbestos related disease or illness' means a malignant or non-malignant respiratory disease or illness related to tremolite asbestos exposure;

“(II) the term `eligible medical expense' means an expense related to services for the diagnosis or treatment of an asbestos-related disease or illness, including expenses incurred for hospitalization, prescription drugs, outpatient services, home oxygen, respiratory therapy, nursing visits, or diagnostic evaluations;

“(III) the term `responsible party' means a corporation--

“(aa) that has engaged in mining vermiculite that was contaminated by tremolite asbestos;

“(bb) whose officers or directors have been indicted for knowingly releasing into the ambient air a hazardous air pollutant, namely asbestos, and knowingly endangering the residents of Libby, Montana and the surrounding communities; and

“(cc) for which the Department of Justice has intervened in a bankruptcy proceeding; and

“(IV) the term ‘Trust Fund’ means the health care trust fund established pursuant to clause (iii).

“(iii) A court may not enter an order confirming a plan of reorganization under chapter 11 involving a responsible party or issue an injunction in connection with such order unless the responsible party--

“(I) has established a health care trust fund for the benefit of individuals suffering from an asbestos related disease or illness; and

“(II) has deposited not less than \$250,000,000 into the Trust Fund.

“(iv) Notwithstanding any other provision of law, any payment received by the United States for recovery of costs associated with the actions to address asbestos contamination in Libby, Montana, as authorized by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), shall be deposited into the Trust Fund.

“(v) An individual shall be eligible for medical benefit payments, from the Trust Fund if the individual--

“(I) has an asbestos related disease or illness;

“(II) has an eligible medical expense; and

“(III)(aa) was a worker at the vermiculite mining and milling facility in Libby, Montana; or

“(bb) lived, worked, or played in Libby, Montana for at least 6 consecutive months before December 31, 2004.”; and

(2) by adding at the end the following:

Mr. KENNEDY. Mr. President, Senator **SESSIONS**, on the floor yesterday, criticized Elizabeth Warren's study on bankruptcies, and the high percentage of bankruptcy filers who file because of significant debt related to illness and medical costs, uses.

Senator **SESSIONS** cited a U.S. Trustee Program “survey” from 2002 that looked into medical costs as a factor in bankruptcy. He argued that “only slightly more than 5

percent of unsecured debt reported in those cases was medically related;" "54 percent of the cases listed no medical debts whatsoever. I want to repeat that," he said.

He also said that "they found that 90 percent of the cases that did have medical debts reported debts of less than \$5,000."

Elizabeth Warren sent a letter to the Judiciary Committee last month which pointed out many of the problems with this U.S. Trustee Program "survey":

The survey underreported both the breadth and impact of medical bankruptcies because of the way it was conducted.

U.S. trustee's sample was limited only to chapter 7 cases and omitted chapter 13 cases. Families filing for bankruptcy under chapter 7 have an annual median income of \$19,000. Therefore, the average medical debt identified by the U.S. trustee--the average is \$5,000 for those with medical debt--is quite substantial for those families trying to cope with medical problems. Mr. President, \$5,000 in medical debt is more than 25 percent of the annual income for that family.

The petition data used by the Office of the U.S. Trustee does not include any medically related debts charged onto credit cards such as prescription medications, doctors visits, rehabilitation treatments, medical supplies, hospital bills, or even second mortgages that people have put on their homes to pay off hospital bills and other medical expenses, or cash advances, bank overdrafts or payday loans that people have incurred to pay for medical services when they are delivered or to pay medical bills that are outstanding. If any of these bills were paid by being charged on a credit card, then the trustee's survey would not include them in its figures.

For these and other reasons, the petition data gathered by the U.S. Trustee Program provides very little information about medical bankruptcy. This is why it is so important to survey the debtors themselves in order to collect accurate data, the way the Harvard study actually did.

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. FRIST. Mr. President, I ask unanimous consent that that the order for the quorum call be dispensed with.

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

END

