

The PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, in my capacity as chairman of the Senate Judiciary Committee, I am pleased to join my distinguished colleague from Vermont, the ranking member, in beginning the debate on this very important legislation.

At the outset, I congratulate Senator *Grassley* for the work he has done over the past decade, and also former chairman, Senator *Hatch*, for the outstanding job he has done. I thank Senator *Hatch* especially for filling in for me a week ago Thursday on the executive session when the committee took up the bill and reported it to the Senate.

I thank both Republicans and Democrats on the committee for withholding amendments until the floor.

We had one very extensive hearing. I know there was an interest in having more hearings, but the reality is this issue has been debated and has been heard. There is a very comprehensive idea on both sides as to the underlying merits of the bill.

It is important to note that going back to the 105th Congress the Senate passed a similar bill by a vote of 97 to 1, and subsequently voted to proceed to conference by a vote of 94 to 2. The Senate again took up a similar bill in the 106th Congress and passed legislation again by a wide margin, 83 to 14. The House also passed legislation during the 106th Congress, but President Clinton resorted to a pocket veto, so the bill was not enacted. The Senate took up the bill again in the 107th Congress but never reached agreement with the House on certain language. So here we are today with reform legislation that seeks to protect the interests of the debtors, honest Americans, who need relief from bankruptcy, and still address those who take advantage of the bankruptcy laws.

Bankruptcy is obviously a necessary tool for many people who find they simply are not able to repay their debts. Indeed, the vast majority of bankruptcy filers have nothing with which to pay their creditors. They file for bankruptcy as a last resort. And for them bankruptcy will continue to provide a fresh start.

Unfortunately, at the same time, there are some who use bankruptcy as a means of avoiding debts they have the ability to pay. Some bankruptcy filers have the ability to pay a significant portion of their debts, but the current bankruptcy system, which presumes that most people are acting honestly, does not require them to do so. At a recent Judiciary Committee hearing on the bill, the expert testimony was that up to 10 percent of people who file for bankruptcy have the ability to pay for at least part of their debts.

The consequence of having people avoid their debts when they can pay for them has resulted in having these obligations absorbed by other people in the commercial system. The estimate is that there are some \$44 billion in debts discharged annually. There has been an enormous increase in the filings. In recent years, annual bankruptcy filings have exceeded 1.6 million for the first time in history. They more than doubled in the 1980s and again doubled from 1990 to the year 2003.

This legislation is an effort to achieve some balance, balance to see to it that people who genuinely need bankruptcy and cannot pay their debts are able to get the relief in bankruptcy, and at the same time looking at many practices which are in need of reform.

For example, this legislation will require high-income debtors who have the ability to repay some of their debts to do so. The heart of this bill is a means test. It requires the bankruptcy trustee to examine the income and expenses of high-income debtors and determine whether they have the ability to pay something toward their debts.

If so, they must complete a chapter 13 reorganization plan, which requires that they repay part of their debts over time before they can have the rest discharged.

The legislation will also bring to an end other abuses that occur under the current bankruptcy system. For example, it closes the "mansion loophole," which allows opportunistic debtors to avoid paying their creditors by buying a house in a State with an unlimited or extremely generous homestead exemption, and then declaring bankruptcy. It extends the statute of limitations for fraudulent use of the homestead exemption to 10 years.

Another provision prevents debtors from purchasing large amounts of luxury goods on credit and then filing for bankruptcy to have that debt discharged. Other provisions will discourage debtors from repeatedly filing for bankruptcy, and then invoking the automatic stay to avoid repaying their creditors.

The legislation also aims at ensuring that debtors cannot escape their spousal and child support obligations by filing for bankruptcy. That is, of course, a very important item, with dodging child support and spousal support being a matter of an enormous problem nationwide. Chapter 13 debtors cannot have a repayment plan approved or their debts discharged until they are current on their spousal and child support obligations.

The legislation will further improve the bankruptcy process for small businesses and enhance bankruptcy protections for family farmers as well as family fishermen. Small businesses that can restructure will still be able to obtain a fresh start. However, for the many small businesses that will never survive a protracted bankruptcy, the bill imposes deadlines to keep cases

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from languishing and creditors from waiting indefinitely.

In addition, the bill makes it easier for family farmers to obtain bankruptcy protection under Chapter 12, a form of bankruptcy that takes account of the unique concerns of farmers. And, for the first time, family fishermen will also be able to file for Chapter 12 bankruptcy.

Further, the bill contains protections aimed at helping consumers avoid excessive debt and bankruptcy. It requires credit card companies to warn their cardholders that making the minimum payment on a credit card balance can significantly increase the time it takes

to pay off the balance. Many credit card practices are extremely deceptive. Credit card companies must also provide certain disclosures in credit card solicitations, including clear indications when an advertised interest rate is merely introductory--again, a practice which is very deceptive. So the bill is aimed at preventing the little guy from being misled, which leads him into bankruptcy.

The legislation further provides that creditors make certain disclosures before debtors can reaffirm their debts so that debtors fully understand the implications of signing a reaffirmation agreement--a technical matter. The legislation requires that debtors receive credit counseling before filing for bankruptcy so they can understand the consequences of filing and are aware of the alternatives to bankruptcy. A little knowledge there can go a long way.

At the outset, I want to acknowledge that there are many low-income people who will not be able to repay any of their debts. The means test will not affect those people. If they are below the median income for their State, the means test will not apply. However, for those who are above the median income, there will be a balance so those who can afford to do so must repay part of their debts, to help prevent the \$44 billion in discharged debts from burdening other honest Americans, and part of the commercial system will not be saddled with those obligations.

In analyzing this legislation, it is my concern to ensure that it is fair to the "little guy," the working men and women who need bankruptcy as a last resort and who do not abuse the system.

We had a lively debate in the hearing in the Judiciary Committee. We had a lively hearing. I know there are many amendments which will be offered, and I will have an open mind in considering these amendments as we work through the process. It is a very complicated bill. But it has been analyzed and reanalyzed. Again, it attempts to strike a balance so that the person who needs the discharge in bankruptcy will be able to obtain it, but those who game the system will not be able to do so.

Let me reiterate the comments of the majority leader in urging Senators who have opening statements to come to the floor to offer those opening statements. It will be the objective of Senator *Leahy*, the ranking member, and myself to try to move through to amendments. It is anticipated there will be amendments.

We have a very active calendar ahead of us. One of the items on the Judiciary Committee agenda that we are moving forward on is asbestos legislation, an issue of tremendous importance, where many Americans are dying from mesothelioma and other deadly ailments from exposure to asbestos, who collect nothing because the companies are bankrupt. Some 74 companies have gone bankrupt, and more are in the process. I filed a draft discussion bill. There have been very extensive negotiations with Republicans and Democrats, and we are anxious to move ahead. We will be taking that issue up on the executive calendar of the Judiciary Committee on Thursday. But I mention that to underscore the importance of moving ahead on this legislation because

there will be, doubtless, many amendments, and the sooner they are offered, the sooner we can come to grips with the substance of the bill.

At this time, I yield to my distinguished ranking member, Senator *Leahy*.

The PRESIDENT pro tempore. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the distinguished chairman of the committee, the senior Senator from Pennsylvania, for his opening statement. I know he has worked hard on this matter.

The Senator from Pennsylvania, the Senator from Vermont, and the distinguished President pro tempore have noted that it is spitting snow outside. Unfortunately, some think this is a time for panic. They should go to Alaska. They should go to Vermont. They should go over to the mountains of Pennsylvania.

I say to the President pro tempore, you heard me mention not so long ago that I was back home in Vermont. I was listening to the news, and almost as an afterthought they said: By the way, we should have a dusting of snow tonight; No more than 3 to 5 inches. Down here, of course, everything comes to a screeching halt.

Why I bring this up I have no idea, except that when watching TV crews going out begging to get one shot of a snowflake, I say: Go to Alaska. Go to Vermont. We will show them what real weather is.

Today, we are beginning debate on the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005--a big title for S. 256. But it is an important debate. It is the first time in 4 years the Senate has debated bankruptcy reform legislation. I hope it is going to be a fair and informed and beneficial debate that will improve this bipartisan bill and help us enact bankruptcy reform into law.

Both the chairman and I have worked very hard with Senators on our sides of the aisle. We have tried to move this legislation forward. But we know that bankruptcy is a complex area of law. It has many competing public policy interests between debtors and creditors and even among competing creditors.

The very complex and competing interests involved in achieving fair reforms of our bankruptcy system demand that we work in a bipartisan manner throughout the legislative process.

I mentioned that 4 years ago we debated this issue. I mentioned that because today our Nation has an entirely different face than it did then. We have endured the terrorist attacks of September 11, 2001. We have immersed ourselves in wars in Afghanistan and Iraq. We have witnessed a parade of financial misdeeds--more than misdeeds, financial thefts and skulduggery by major U.S. corporations. We have even watched as pension programs, and the promises of the pension programs, were shortchanged by nearly \$100

billion. All these factors have only deepened the financial woes of an already struggling economy. So when we debate this issue today we are discussing real life today, not what it was in 2001.

I think for this legislation to be appropriate and fair, the key provisions have to be carefully examined. If necessary, they have to be modernized, they have to be amended.

Earlier this month, our committee held a bipartisan hearing on bankruptcy reform legislation. As I said, that was our first hearing in 4 years. It was an informed discussion. A week later, the Judiciary Committee held its first markup on bankruptcy legislation in 4 years. During that meeting, we considered 11 amendments, 5 of which were accepted.

They improved the bill. In fact, they were accepted unanimously. I am particularly pleased the committee accepted the Leahy-Grassley amendment that clarifies that any judgment, order, or settlement agreement for violation of securities fraud law after the filing of a bankruptcy case is nondischargeable. In other words, if you want to defraud somebody in securities, if you want to pull some of these big fraud actions we have seen in the past few years, you are not going to escape the consequences by bankruptcy.

During consideration of the Sarbanes-Oxley Act of 2002, Senator *Grassley* and I worked together to amend the Bankruptcy Code to make judgments and settlements based on security law violations nondischargeable. We wanted to protect the victims' ability to recoup their losses and hold wrongdoers accountable for their actions. This change in the law was based on a Judiciary Committee amendment that Senator *Grassley* and I introduced to my corporate fraud legislation, S. 2010, the Corporate and Criminal Fraud Accountability Act that was unanimously reported by the Judiciary Committee. It was later adopted as a floor amendment by a vote of 99 to nothing in 2002.

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Recently a bankruptcy court wrongly interpreted the new law by finding that a securities fraud judgment, order, or settlement must be in existence at the time the bankruptcy petition is filed to be nondischargeable. That was never intended. This court precedent could result in future courts discharging securities frauds judgments, orders, or settlements that are entered into after a debtor files for bankruptcy.

To give you an idea of what a get-out-of-jail-free card this is, an Enron executive could avoid paying his securities fraud judgment by filing for bankruptcy where the securities fraud litigation is pending. That would be wrong. Neither Republicans nor Democrats who supported that amendment want that to happen. So the Leahy-Grassley amendment, which was accepted by all Members, Republicans and Democrats, in the committee during committee consideration, would remedy that injustice and makes it clear that Congress intended for all securities fraud judgments, orders, or settlements to be nondischargeable.

Another area we have to consider is the economic hardships faced by service members' families. When you get a call to serve your country in Iraq or Afghanistan or elsewhere--

and now it is a disproportionate number of guardsmen and reservists who are called up; I watch this as the cochair of the National Guard caucus of the Senate--it can cause loss of family income, the close of a family business, a whole lot of other unexpected expenses. Unfortunately, it is not uncommon for service members and their families to be forced into filing for bankruptcy relief. We have to protect those who are fighting for us. I know Senators **DURBIN** and **NELSON** have taken an interest in this issue. I look forward to hearing their thoughts on how we can help the situations faced by service members serving our Nation and their families.

I spoke of the financial misdeeds of U.S. corporations. When you talk about Enron and WorldCom, others, it leaves a very bitter taste in the mouths of average Americans. If an average American were to steal \$500 or \$1,000, they might go to jail. Apparently, if you steel \$100 million, \$200 million, or \$500 million, you are a hero. When it is done, there are no heroes, not to any of us. They have damaged

investor confidence. They have shaken our capital markets. Senators **SARBANES**, **KENNEDY**, **DURBIN**, **HARKIN**, and **CANTWELL** have prepared amendments to address the ongoing problems caused by corporate abuse.

We must strengthen the financial safety net for hard-working American families who confront illness or injury. Medical problems contribute to about half of all bankruptcies, even though most of those who file had health insurance when they became sick. Many lose their jobs and their insurance because they got sick. Others face thousands of dollars in copayments and deductibles for services not covered by their insurance. Senators **KENNEDY**, **DURBIN**, **CLINTON**, and **CORZINE** will be leading the debate on this issue.

Since we last considered bankruptcy reform legislation, financially troubled companies have shortchanged their pension promises by nearly \$100 billion, putting workers approaching retirement age or responsible companies and actually taxpayers at risk. We will hear from Senators **HARKIN**, **ROCKEFELLER**, and **DAYTON** during debate over this issue.

I know that Senators **GRASSLEY**, **DURBIN**, **DODD**, **FEINSTEIN**, and others share a commitment to include credit industry reform in a balanced bankruptcy bill. The millions of credit card solicitations made to American consumers in the past year have contributed to the rise in consumer debt and bankruptcy. It is relatively easy to obtain credit. We have heard the stories of a neighbor's dog getting a \$3,000 preapproved credit card. Kids go to college and are inundated with preapproved credit cards. So it is relatively easy to obtain them. Not nearly enough is done to ensure that credit is properly managed. Currently, credit card statements fail to include all of the information necessary to allow individuals to make fully informed financial decisions. Additional disclosure is needed to ensure that individuals completely understand the implications of their credit card use.

Senator *Akaka* intends to offer the credit card minimum payment warning act. I am proud to be an original cosponsor with him. It will provide a wake-up call for consumers by making it very clear what costs they are going to incur if they make only the minimum payments on their credit cards. The personalized information they will receive for each of their accounts will help consumers make informed choices about their debts. In an era of computers, this is not a real burden on the companies.

Senator *Feingold*, a longtime protector of working middle and lower income families who rely on the ability to resolve overwhelming financial burdens through bankruptcy, is going to offer several amendments to improve this bill. Senator *Feingold* and I have worked together on bankruptcy reform issues for a long time. I know his expertise and the measures he means to propose will enhance this legislation.

We have to be careful that our efforts to ensure accountability in the bankruptcy process do not inadvertently create problems for privacy and security. We are in an age where personal information--far too much personal information--can be easily digitized and shared. If it falls into the wrong hands, it is abused. Identity theft is one danger, as is tracking and harassing a battered spouse. We can look for accountability, but we have to find ways to minimize the possibilities of abuse.

Four years ago, the committee adopted the Leahy-Hatch amendment to protect the personal privacy of consumers whose information is held by firms in bankruptcy as part of bankruptcy reform legislation. I am pleased this bill retains this privacy provision.

Our bipartisan provision permits bankruptcy courts to honor the privacy policies of business debtors. It creates a consumer privacy ombudsman to protect personal privacy in bankruptcy proceedings. I appreciate Senator *Hatch's* efforts to add important consumer privacy protections to the code.

Unfortunately, the Leahy-Hatch amendment is needed because the customer lists and databases of failed firms now can be put up for sale in bankruptcy without any privacy considerations, even in violation of the failed firm's own public privacy policy against sale of personal customer information to third parties.

Let me just tell you what happened in this case, and it is not untypical. We had an online toy store called Toysmart.com. Toysmart.com wanted to encourage parents to allow their children to go online and, in doing so, they promised on their Web site that personal information voluntarily submitted by visitors to the site--such as name, address, billing information, childhood preferences--would never be shared with a third party. If you are a parent, you would look at that and say: I feel a little bit better about this. I don't want my son or daughter's names out there.

Guess what happened. They filed for bankruptcy in 2000. Even though they had made this promise to parents and children, the personal customer information was put on the

auction block. In a way, the bankruptcy court had a catch-22. I suspect the judge realized that this was violating everything every parent thought of, but under the law at that time, there was only one real asset. It was this mailing list. It wasn't the old desks or loading docks or the warehouse. Those were empty. It wasn't the computers. Those would be out of date every few months. The one item of any value was the mailing list. The mailing list that parents had been promised would never go out, the children's names would never be sold, that had to go into bankruptcy. That is why we have the Leahy-Hatch amendment.

The Leahy-Hatch provision included in this legislation adds privacy protections and a consumer privacy ombudsman to the bankruptcy code. We wanted to prevent future cases like Toysmart.com.

We need to take reasonable measures in the bankruptcy process to guide what information will be available publicly and to whom. Debtors are often required to submit documents containing highly personal information. Declaring bankruptcy is challenging enough for those who find themselves in that circumstance, we shouldn't make it worse by creating the possibility that they will be victimized later on. I am submitting an amendment to provide protections in handling personal data in those submissions. These changes reflect current Judicial Conference policy and were included in last term's Hatch-Leahy Federal Courts Improvement Act.

First, my amendment expands the court's discretion to protect information such as social security numbers and passport numbers. The bankruptcy courts are in a unique position to properly balance the need to share information with the need to protect privacy, and we should rely on their good judgment and discretion as much as possible. The amendment draws from the current civil procedure discovery rules to set a standard against which the court can apply its discretion. The amendment also allows individuals to request that the court protect sensitive information before it is placed in the public record. This protection is particularly important given our increasing reliance on electronic filing, where information is immediately available to the public.

Second, my amendment provides important protection for social security numbers. Originally promised to be narrow in purpose and use, social security numbers are now the universal identifier with the key to unlock access to bank accounts and other highly sensitive areas. We must treat these numbers commensurate with their power, and ensure that they are only accessed in appropriate situations by authorized users. My amendment would allow debtors to limit disclosure to only the last four digits of his or her social security number in the notices that are filed with the court. The amendment still protects creditors where necessary, and specifies that creditors who are on the schedule of assets and liabilities should receive the full tax payer identification number in the notices sent specifically to the creditor.

This idea of truncation isn't new. Just last year, we passed the Fair and Accurate Credit Transactions Act of 2003, and that Act required truncation of credit card and debit card numbers on receipts given to cardholders.

As I stand here on the Senate floor, I look at the Presiding Officer, my neighbor from New Hampshire, and I see waiting to speak the other distinguished Senator from New Hampshire. We come from an area where we believe in privacy. We live in a country where we are giving up more and more of our privacy all the time. We have to be careful. We are giving it up not just in corporate areas but in government. Both conservatives and liberals ought to join hands on how much information we are willing to give up on ourselves and allow to go into databanks. An example is what happened with Bank of America, which is one of the dumbest things I have ever seen. All of their records were lost. Good Lord, they send something off or ship it off by plane--not private, but they mail it to a location with backup files of all of their customers. I don't know. I suspect maybe their top executives fly by private jets. Maybe they don't understand that the three Senators on the floor right now fly commercially, and we know how often you get your bags lost or a suitcase lost. They just lost thousands upon thousands upon thousands of files on their customers. How would you like to be a Bank of America customer and wake up and find out they were so stupid and negligent that they lost all your information? They ought to be ashamed of themselves.

But I digress. I mentioned privacy. I have kept an article. It is the only thing I have ever framed that was written about me in one of our newspapers. To put this into context, you have to understand that we live on a dirt road in an old farmhouse. We have an adjoining farm family who kind of watches over the place when we are not there. The reporter in this article drives up on a Saturday with out-of-State license plates and asks the farmer sitting on the porch, "Does Senator *Leahy* live up this road?"

The farmer said, "Are you a relative of his?"

He said, "No."

"Are you a friend of his?"

He answered, "Not really."

"Is he expecting you?"

"No."

"Never heard of him."

That is the kind of privacy we like. These people in a cavalier way--like Bank of America and all--are giving information away. We are finding more and more that our own Government is being lax with the information they have. Of course, the information can often be wrong. The third most senior Member of the Senate has been stopped half a dozen times getting on an airplane when going home--something he has been doing for decades--because he is on a terrorist list. He is one of the most recognizable people in America, and he cannot get off this list. You have to kind of ask, how much are we willing to give up and what does it do for us? Bank of America didn't do much of

anything. These are some of the reforms included in the bill. I hope we will all look at this carefully and work together closely.

Requiring truncation of social security numbers is similarly reasonable. It provides protection against abuse, but still allows for important information sharing to take place.

These are just some of the reforms that should be included in this bill. I hope that all Senators will give fair and thoughtful consideration to amendments proposed on either side of the aisle. When the Senate works productively and constructively, we can

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improve legislation on a bipartisan basis. I have worked with Senator **GRASSLEY** and others to make bipartisan improvements in the past and I hope that we can do that again on this bankruptcy reform legislation.

In particular, I urge my colleagues to give full consideration to an amendment Senator **SCHUMER** will offer to make sure debts incurred through violence and other illegal acts at health clinics may not be discharged in bankruptcy. Senator **SCHUMER** has been the leader on ending this bankruptcy abuse and I have always been proud to support his efforts. Any fair bankruptcy reform measure should end abusive bankruptcy filings used to avoid the legal consequences of violence, vandalism and obstruction to deny access to legal health services.

As we move forward with reforms that are appropriate to eliminate abuses in the system, we need to remember the people who use the system, both the debtor and the creditor. We need to balance the interests of creditors with those of the poor and middle class who need the opportunity to resolve overwhelming financial burdens.

These are important subjects that have a real impact on the lives of many people who have already suffered from illnesses or divorce or job loss. We should utilize the expertise of our colleagues on both sides of the aisle to ensure that the Senate passes balanced legislation.

I look forward to continuing to work with Senator **GRASSLEY**, Senator **SPECTER** and the rest of my colleagues to make more bipartisan improvements on the Senate floor to enact balanced bankruptcy reform legislation into law.

The PRESIDING OFFICER (Mr. **SUNUNU**). The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, we are on the bill, I take it.

The PRESIDING OFFICER. The Senator is correct.

Mr. GREGG. Mr. President, first, it was a pleasure to hear the presentation by the chairman of the Judiciary Committee and the ranking member relative to the bankruptcy

bill, which is an extraordinarily important piece of legislation, which has been to the floor before--in fact, too many times. Hopefully, this year we will pass it and send it to the President to be signed. I congratulate the Judiciary Committee for bringing it out. Certainly, it is a piece of legislation that is very important to the commerce of our country and needs to be passed.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise in support of S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The purpose of this bill is to make our bankruptcy system more fair and efficient. Every citizen has a stake in this bill. It is obvious that bankruptcy filers have a lot at stake in this legislation.

In recent years, the number of bankruptcies has been on the rise, and I understand that today more bankruptcies are filed every year than during the entire decade of the Great Depression, and this chart shows that. It begins in the year 1900. It is basically a flat line until we get to about 1984--actually, 1995--and then it heads straight up. These are bankruptcy filings per 100,000 population, and they have gone up dramatically over the years. Annual bankruptcy filings have now reached about 1.6 million Americans, and this is up significantly since the time we started working on the overhaul of the bankruptcy system now 8 years ago.

One of the key goals of legislation we have before us today is to make sure the system is not abused by the unscrupulous who leave their creditors high and dry. At the same time, the concept of allowing those citizens who have become saddled by debt to use bankruptcy to get a fresh start is firmly entrenched in the American legal system. Gone are the days of debtor prisons.

We want to treat debtors fairly and give those who become overwhelmed by debt a second chance. We do not want

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to send a signal to those who for whatever reason get into a financial hole that it is okay to go deeper in that hole prior to filing for and become absolved by bankruptcy. We want to give those in debt a fair second chance to bring their fiscal houses in order.

We also want to treat creditors fairly. At the end of the day, it is law-abiding, bill-paying citizens who pay for the bankruptcy of others, regardless of whether the debts involved were taken on by con men or those whose situations simply got out of hand.

As this debate goes forward, it is important for all to understand that according to some experts, a conservative estimate is that every American family pays about \$400 a year in a hidden tax associated with bankruptcies, taxes they should not have to pay. I am told that others place the fair estimate of this hidden bankruptcy tax in the range of \$550 per

person per year. There are numerous examples of people who take advantage of loopholes today at the expense of everyone else tomorrow.

We recently heard from a Wisconsin credit union president who testified before the Judiciary Committee about a young couple who wanted a clean financial slate before they got married. What did they do? They ran up their credit card purchases. One of them prepaid a car loan with the credit union to have the other cosigner released. Then, although they were both employed full-time, they filed for bankruptcy to wipe out their debt. Their credit union and its members had to absorb the \$3,000 in credit card debt and then another couple of hundred dollars on the car itself. Bankruptcy relief was never meant to allow this kind of abuse. Hard-working Americans, including the members of credit unions nationwide, have been victimized by abusers of the current bankruptcy system long enough.

Bankruptcy abuse also hurts our Nation's small

businesses. Without reforms from this bill, losses from bankruptcy abuse will continue to break the backs of the Nation's small businesses and retailers, which work with slim profit margins and have even smaller margins for error.

Throughout this debate, I want those who pay their bills in full and on time to understand that our attempt to rebalance some of the aspects of the bankruptcy system will have a positive impact on their pocketbooks each time they go to the store. In effect, we all pay for the bankruptcies of others through this "hidden tax." In some respects, I suppose one could view this bill as a tax cut for the responsible people.

While one large impact of bankruptcy is felt in the wallet, perhaps the most important principle involved in this is when one borrows money, they need to take personal responsibility to pay it back. Personal responsibility is a core American value. This legislation, which has been crafted over years of debate and compromise, reflects that basic value.

We are mindful of the old adage there is no such thing as a free lunch. When some people do not pay their credit card bills, the rest of us pay for them in the form of increased prices. We do not get off. We have to pay for it. Great strain is placed on businesses, particularly small businesses, when customers do not pay for their purchases.

While we want to be fair to those who are in serious debt, we must also be mindful that sometimes it is employees and their families who have to pay through lost salary increases or even pay cuts or job loss when some do not pay their bills. No firm can expand or even maintain its operations or stay in business for long if a substantial portion of goods and services it sells is not paid for by its customers. We all simply have a stake in bankruptcy policy and, therefore, we all have a stake in this bill.

Unfortunately, our current system allows certain people with the ability to repay at least some of their debt load to take advantage of the system at the expense of everyone else.

Today, individuals with relatively high incomes can run up substantial debts and then too easily use bankruptcy to get out of honoring them. In the end, all of us pay for those who abuse the system.

As I will describe, one of the key improvements made by this bill is to devise a new and equitable system to see that those who declare bankruptcy will be called upon to repay a fair portion of their past debts with future earnings if they are able to do so. This is the so-called means test that I will describe in a few minutes.

First, I will take a few minutes to highlight some of the key proconsumer provisions of this bill. S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, includes a debtor's bill of rights with new consumer protections to prevent the bankruptcy mills from preying upon those who are uninformed of their legal rights and needlessly pushing them into bankruptcy. This is an important improvement over current law and helps rectify the current practice whereby some, both debtors and creditors alike, lose out in the long run to some shady legal advisers who take their fees and run.

The bill also includes new consumer protections under the Truth in Lending Act, such as new required disclosures regarding minimum monthly payments and introductory rates

for credit cards. It protects consumers from unscrupulous creditors with new penalties on creditors who refuse to negotiate reasonable payment schedules outside of bankruptcy.

Our bill provides penalties on creditors who fail to properly credit planned payments in bankruptcy. It includes credit counseling programs to help people avoid the cycle of indebtedness. This is an important provision for consumers.

Except for those with evil motivations and a willingness to take advantage of the system, no one likes to be in debt. This bill helps consumers learn how to better protect their financial resources. S. 256 provides for a protection of educational savings accounts, and it gives equal protection for retirement accounts or retirement savings in bankruptcy. These provisions will help our children and our parents have adequate resources.

The bankruptcy legislation also contains important changes in current law that will benefit women and children. We have heard some people complain that our bankruptcy laws do not adequately take care of women and children. Through our years of work on this bill, we have tried to make the law more protective in these areas, and this bill accomplishes that goal.

Current law provides that child support obligations are seventh in overall priority among unsecured claims. This bill dramatically changes the world with respect to child support. This bill contains a large set of provisions addressing the treatment of child support, including making domestic support obligations first in priority after certain required expenditures.

I will repeat that for emphasis. Child support goes from seventh to first in priority within its category for repayment under this bill. From seventh in line to top priority, this is a big change. Unfortunately, those who have slow walked this bill for the last 8 years have prevented this important change from taking effect.

The legislation also includes a provision that makes staying current on child support a condition of getting a discharge in bankruptcy. It makes debt discharge in bankruptcy conditional upon full payment of past due child support and alimony. S. 256 makes domestic support obligations automatically nondischargeable without the costs of litigation. It prevents bankruptcy from holding up child custody, visitation, and domestic violation cases. It helps eliminate administrative roadblocks in the current system so children can get the support they need. All of these measures are valuable additions and changes in the bankruptcy laws.

It is in the best interests of women and children to pass this bill. It is a tremendous improvement for children and families over current law. That is why there is such overwhelming support for this legislation from the child support professionals across the country--the very people who go after deadbeats to help get children the financial support they need.

That is not all. Let me cite a few more improvements over current law for women and children.

The bill makes the payment of child support arrears a condition of plan confirmation. It provides stronger and more comprehensive notice requirements and more information for easier child support collection. It provides help in tracking down deadbeats.

It allows for claims against a deadbeat parent's property. It allows for

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payment of child support with interest by those with means. It facilitates wage withholding to collect child support from deadbeat parents.

As I have just described, there are many important provisions in this bill for children, women, and the aged. I hope that we can finally get this bill to the President's desk for signature. This is a bill that is way overdue.

This legislation, S. 256, also requires extensive new disclosure requirements by creditors in the area of reaffirmations and more judicial oversight of reaffirmations to protect people from being pressured into agreements against their interests.

These are important provisions. Let me explain why.

Reaffirmation agreements commonly occur in conjunction with bankruptcy proceedings when debtors agree to repay a debt they would not otherwise have to pay.

These reaffirmation agreements can be very helpful to debtors as they seek to reestablish their good financial status with their creditors as they emerge from bankruptcy.

By increasing disclosure requirements and judicial oversight, the reaffirmation process can operate to the advantage of debtor and creditor alike.

Next, I would like to briefly describe one of the key features of the bill, the means test, and how it relates to, and will improve, the overall operation of our bankruptcy system.

The premise behind the means test is that those who are able to pay all, or some, of their past debts should do so. The means test helps the courts determine who can and who can not repay their debts and, perhaps most importantly, how much they can afford to pay.

The challenge is to set this figure at the right level, neither too high nor too low.

If the figure is set too high, the debtor may be placed in a vicious cycle from which he or she can never escape and get a fair chance to start over. Of course, if the repayment schedule is set too low, the debtors will escape responsibility at the expense of those who they owe.

Through this new means test, in certain circumstances, the bill requires those filing for bankruptcy to pay a fair but not overly burdensome portion of their future earnings.

The means test allows for a straight deduction of actual expenses for the care and support of an elderly, chronically ill, or disabled household member, or member of the debtor's immediate family.

This test allows for a straight deduction for food and clothing expenses.

This test allows for up to \$1,500 to be deducted per child for educational purposes.

This test includes an allowance for housing and utilities costs.

This test includes all the categories enumerated under the National Standards, Local Standards and Other National Expenses issued by the Internal Revenue Service.

This test allows for the straight deduction of expenses incurred in maintaining the safety of the debtor and the family of the debtor from family violence.

This test includes a special circumstances safety valve that allows debtors to adjust their income or expenditures based on unforeseen circumstances such as military activation and deployment or unexpected and catastrophic medical conditions.

Finally, this test includes a safe harbor provision which exempts debtors below their respective State median incomes.

After all of these exemptions are applied, including the safe harbor, it is estimated that 90 percent of debtors will not be affected by the changes in the repayment provisions of this bill.

Who constitutes the remaining 10 percent? They are the people who can afford to pay at least some of their debts. And that is what the means test is all about.

All of these changes that I have described are important. Many of us have worked for many years on this bill. Frankly, some of us think this bill has already taken way too many years to complete.

I want to take a few minutes describing the extensive legislative history of the bill. This is important for many reasons. One of those reasons is that this history will reveal that this measure has already been fully debated and this bill reflects literally dozens and dozens of compromises along its 8-year journey.

I will describe the nadir of this bill when President Clinton pocket vetoed the legislation after Congress adjourned in the fall of 2000.

This bill has had broad bipartisan support from the very beginning.

In the Senate, Senators *Grassley* and *Biden* have been at this for a long time, as have many others on both sides of the aisle.

When we debate amendments over the next few days, I want my colleagues to pay close attention to those who are offering amendments.

If what occurred at the Judiciary Committee mark-up of the bill repeats itself on the floor, it might be the case that many amendments will be offered by that relatively small group of Senators who have steadfastly opposed this bill each step of the way during the last 8 years. If that is the case, we must examine their amendments with both exacting scrutiny and heavy skepticism.

It is one thing to attempt to improve a bill and bring it more to your liking, it is another matter altogether to try to scuttle a bill. This can be a fine line on any bill. But with a bill with the extensive history as this, it is easier to assess who is trying to get this bill over the goal line finally and who is trying to push us out of bounds and into yet another period of legislative overtime.

The House and Senate have been engaged in the process of deliberating on this issue since 1997, back during the 105th Congress. Turning back the clock to 1997, we see that the comprehensive bankruptcy reform bill was developed and passed in both bodies by overwhelming votes. The actual substance of bankruptcy reform legislation has been a bipartisan, bicameral effort.

The successful work by each chamber of Congress in 1997 was followed by the appointment of conferees, negotiations with the House, and, in October of 1998, an overwhelming vote by House Members in favor of the conference report. Unfortunately, the Senate did not complete its vote on final passage before the end of the Congress.

Next, in February of 1999, Congressman Gekas and Senator **GRASSLEY** reintroduced the same bankruptcy bill agreed to by both bodies during the previous conference committee. That bill passed the House in May by an overwhelming margin. Later that same month, the Senate Judiciary Committee marked up our bill and we reported it from committee.

Finally, in February of 2000, after months of procedural delays and debate on the Senate floor, the reform legislation passed by another impressive margin of 83 to 14.

I suspect this body will approve this bill by a similar lopsided margin when a vote on final passage is taken in this Congress if we can get to a vote on final passage. There are some who have indicated they are going to filibuster this bill. We will have to see. But there have been far too many people, on both sides of the aisle, who promised they would work to get this bill through, and they should fight against any filibuster.

Turning back to the year 2000 after the bipartisan 83-14 vote, the Senate then requested a conference. This should be a routine matter, but the objection of a single Senator blocked the appointment of conferees. As a result, the House and Senate had to turn to an informal conference process.

With a great deal of effort by Members on both sides of the aisle, we reached a compromise agreement on over 400 pages of legislation.

Ultimately, both the House and Senate were able to pass that conference report in another series of decisive votes in the fall of 2000.

However, President Clinton chose to pocket-veto the legislation and (refused to sign it into law, despite the overwhelming support. Once again, the stone pushed by Sisyphus was at the bottom of the mountain.

Representative Gekas introduced the bill, yet again, in January of 2001. The conference report for that bill, H.R. 333, became the backbone of the legislation pending before us today. It too, had overwhelming support, except for what is now understood to be a poison-pill amendment.

I will not take the time today to discuss just how this important comprehensive change in the bankruptcy bill got waylaid in the eleventh hour

by this problematical and, many believe, perhaps mostly hypothetical and politically motivated, provision.

We all know that this bill has repeatedly won the overwhelming approval of our colleagues in both Houses of Congress.

Before we began a conference meeting on an earlier version a few years ago I referred to that meeting as being the last leg of a legislative marathon. I was wrong then--but I hope, and I have every confidence, that this floor debate represents the final beginning of that last leg.

We succeeded in finally enacting the class action reform bill 2 weeks ago and I am hopeful that we can duplicate this success with the bankruptcy bill over the next several days.

As many have said, this is a compromise bill that enjoys broad bipartisan support among Democrats and Republicans, and conservatives and liberals.

Even after having worked for 8 years already, we agreed to make some additional compromises in the Judiciary Committee during mark-up 2 weeks ago to satisfy some concerns of our colleagues on the other side of the aisle. Those compromises were difficult to make, but we have made them.

I should add that there are some on our side of the aisle, such as Senator **CORNYN**, who would like to make additional changes in this bill. He has a very substantial proposal addressing the issue of venue reform. It is an area in which he has special expertise from his experiences with some important bankruptcies that affected many citizens of Texas but were litigated out of State.

There are things I would like to see changed in the bill.

But I also recognize that many have cooperated and compromised in order to reach the state where this legislation is today. Given the extensive and lengthy history of this bill, I think it best for my colleagues to refrain from offering controversial amendments on this vehicle at this time--and I will do so because I know that any further amendments might scuttle this bill.

This bill provides new consumer protections, helps children in need of child support, and makes other necessary reforms to a system that is open to abuse.

I want to stress the fact that this legislation does not make it more difficult for people to file for bankruptcy, but it does eliminate some of the opportunities for abuse that exist under the current system.

This is a good bill. We should pass it promptly and send it to the House.

It is possible that during this debate that some may falsely suggest that this bill unfairly treats low-income persons. Let me tell you at the outset that the poor are not affected by the means test. The legislation provides a safe harbor for those who fall below the median

income, so they are not subjected to the means test at all. What the means test is designed to do, and what it will do, is to prevent abuse by those who can and should pay a portion of their debts with future earnings. It will stop the fraud. It will stop the abuse of a system that has been going on through some of these unscrupulous lawyers and bankruptcy helpers.

Another misconception that I have heard again and again from opponents of the bill is that this legislation will not let people file for bankruptcy relief when they need it. The fact is that this legislation does not deny anyone access to bankruptcy relief, it just requires those who have the means to repay their debts based on their income and ability to pay.

It is that simple. It is fair. It is a long overdue change for the better.

Some opponents of this legislation have also claimed that it somehow hurts women and children. This falsehood is particularly disturbing for me to hear, because I have had a long history of advocating for children and families in Congress, and I have worked tirelessly, provision by provision, to make this legislation dramatically improve the position of children and ex-spouses who are entitled to domestic support. I have already told you in some detail why these allegations are baseless and how this bill works to help women and children.

I look forward to participating in this debate.

This is a very good bill.

It represents years of bipartisan, bicameral work. It is time we pass this bill. This President will sign this bill.

I hope that we will not get sidetracked by nonrelevant or counterproductive, controversial amendments on a consensus bill that has been so long in the making.

I hope there will not be any frivolous amendments or amendments designed to kill the bill or message amendments trying to make political points rather than solve the problems we have regarding bankruptcy.

Let us pass this bill for the fourth and final time and get on to other business.

I urge all of my colleagues to support S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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