

BANKRUPTCY REFORM -- (Senate - March 10, 2005)

Mr. CARPER. Mr. President, I want to take a few minutes to talk about bankruptcy reform legislation.

Much has been said about the bill that is before us. Let me say a few things as well.

Two years ago, roughly 83 Senators voted in favor of an overhaul of our Nation's bankruptcy laws. As you may know, under current law, people who do not have the ability to pay their debts can go into chapter 7 and their debts are largely forgiven. They may have to turn over some of their assets. That is chapter 7. If the court of bankruptcy believes a family has the ability to repay some of their debts, they go into chapter 13, if a payment schedule is worked out.

Concerns have been raised, justifiably, over the last decade or more that some people who have the ability to repay don't; they simply run up their debts and walk away from those obligations, and, frankly, leave the rest of us having to pay more interest on the consumer debt we acquire and to pay more for the goods and services we buy.

Bankruptcy laws exist for a good purpose. People do have disasters that come into their lives; marriages end, serious health problems occur, and people lose jobs. For those reasons, we have bankruptcy laws. Most people who file for bankruptcy are not trying to defraud anybody. They have a genuine emergency, or a huge problem in their life, and they need the protection of the bankruptcy court. That is why we have those laws.

There is a principle, whether you are for this bill or not, that I think we can all agree on. That principle is simply this: If a person or a family has the ability to repay a portion or all of their debts, if they have that financial wherewithal, they should repay a portion or all of their debts. If a family doesn't have that wherewithal to pay or begin repaying their debt, they should be accorded protection of the bankruptcy court. That is it; it is that simple.

The legislation we have before us is an effort to try to codify that principle, and to improve on the system today where too many people, frankly, have abused that system.

Much has been said about credit card banks and putting credit cards in the hands of people, encouraging them to use them. I have heard from my credit card banks. They would like to see this legislation adopted. I have heard more from my credit unions in Delaware than I have from the credit card banks, saying there is a problem and it is one that we need to address.

I want to consider for a moment what will happen, or continue to happen, if we don't enact this legislation.

No. 1, some people who ought to be repaying a portion of their debts do not.

No. 2, the folks who ought to be receiving childcare from parents who are not anxious to meet that obligation will not receive that childcare payment. Their biological parent will file for bankruptcy in an effort to avoid making that childcare payment, or to make an alimony payment. In fact, the way the current law is structured, when somebody is in a position to start paying their responsibilities or obligations, legal fees come ahead of childcare and come ahead of alimony. That is wrong.

Today, under current law, a wealthy individual in a State such as Florida or Texas can go out, if they are a millionaire, and take those millions of dollars and invest that money in real estate, a huge house, property, and land in the State, file for bankruptcy, and basically protect all of their assets which they own because of a provision in Florida and Texas law. Homestead exemptions exist in other States as well. People can put money in trusts today and tomorrow file for bankruptcy and know that all the millions of dollars they put in those trusts can be protected from bankruptcy. That is wrong.

With the legislation we have before us, someone has to figure out that 2 1/2 years ahead of time people are going to want to file for bankruptcy and be smart enough to put the money into a home, or an estate, or into a trust--not something you can do today--and file for bankruptcy tomorrow; or this year and file for bankruptcy next year or the next 2 or 3 years, or 3 1/2 years. It is a much better approach. I, frankly, would like to see a cap on the homestead exemption. I voted for one yesterday. It didn't prevail. It should have.

What is in this current bill is a heck of a lot better than it is in the law that exists today. Here is how this bill would work. For people whose median family income is under 100 percent of median family income, those families for the most part will be able to file for bankruptcy and go into chapter 7 bankruptcy without a whole lot of fuss.

What is median family income? In my State, it is about \$72,000. Nationally, median family income is about \$65,000 for a family of four. It varies from there. It can be as low as \$48,000 or \$49,000 for a family of four in Mississippi, up to \$80,000 in States such as Connecticut and others. But it is a range from the high forties to the low eighties for median family income.

For folks whose income is below 100 percent of median family income, they go into chapter 7 pretty much without a lot of dispute. However, for those families whose income is above median income, above \$72,000, they would have to go through a means test. That is not a bad thing to do.

The PRESIDING OFFICER. The Senator's time has expired.

**BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT
OF 2005 -- (Senate - March 10, 2005)**

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 26, which the clerk will report.

The legislation clerk read as follows:

A bill (S. 26) to amend title II of the United States Code, and for other purposes.

Pending:

Kennedy (for Leahy/Sarbanes) amendment No. 83, to modify the definition of disinterested person in the Bankruptcy Code.

Dodd (for Kennedy) amendment No. 69, to amend the definition of current monthly income.

Dodd (for Kennedy) amendment No. 70, to exempt debtors whose financial problems were caused by failure to receive alimony or child support, or both, from means testing.

Akaka amendment No. 105, to limit claims in bankruptcy by certain unsecured creditors.

Feingold amendment No. 90, to amend the provision relating to fair notice given to creditors.

Feingold amendment No. 92, to amend the credit counseling provision.

Feingold amendment No. 93, to modify the disclosure requirements for debt relief agencies providing bankruptcy assistance.

Feingold amendment No. 95, to amend the provisions relating to the discharge of taxes under chapter 13.

Feingold amendment No. 96, to amend the provisions relating to chapter 13 plans to have a 5-year duration in certain cases and to amend the definition of disposable income for purposes of chapter 13.

Talent amendment No. 121, to deter corporate fraud and prevent the abuse of State self-settled trust law.

Schumer amendment No. 129 (to Amendment No. 121), to limit the exemption for asset protection trusts.

Durbin amendment No. 112, to protect disabled veterans from means testing in bankruptcy under certain circumstances.

The PRESIDING OFFICER. There will now be 2 minutes of debate equally divided on amendment No. 70.

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I ask unanimous consent that it be in order to ask for the yeas and nays at this time.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, I want to talk about the most vulnerable people who go into bankruptcy; they are single women with children. There is \$95 million a year in unpaid alimony and child support. When these women marry--or divorced women end up in bankruptcy, they end up in the harsh provisions of this legislation. That is wrong. These are people who are trying. They are working hard. They are playing by the rules, and they wouldn't be in bankruptcy if their husbands had paid. Why we ought to treat them harshly as this bill does is wrong.

This amendment which I have introduced with the Senator from Connecticut, Senator *Dodd*, makes sure that we are going to treat them fairly under this provision.

I hope the Senate will accept it.

I yield 30 seconds to the Senator.

Mr. DODD. Mr. President, I thank the Senator from Massachusetts. He makes a point. Next year, more than 1 million single women will file for bankruptcy in the United States. Most of them are women with children, significant numbers of children. This is far too harsh for this constituency.

We urge adoption of the Kennedy amendment. It is only right and only fair and ought to be done to provide relief to these people under the bankruptcy system.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I understand the vote is about to start. I yield back all of our time.

The PRESIDING OFFICER. The yeas and nays have been ordered.

The question is on agreeing to Kennedy amendment No. 70.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. *Clinton*) is necessarily absent.

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

The result was announced --- yeas 41, nays 58, as follows:

[Rollcall Vote No. 36 Leg.]
YEAS--41

Akaka

Baucus

Bayh

Bingaman

Boxer

Byrd

Cantwell

Chafee

Conrad

Corzine

Dayton

Dodd

Dorgan

Durbin

Feingold

Feinstein

Harkin

Inouye

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

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

NOT VOTING--1

Clinton

The amendment (No. 70) was rejected.

AMENDMENT NO. 69

The PRESIDING OFFICER. There will now be 2 minutes of debate on Kennedy amendment No. 69.

The Senator from Kentucky.

Mr. *McCONNELL*. Mr. President, I ask unanimous consent that the next 2 votes be 10 minutes each.

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

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, workers in this country have hit a perfect storm with the decline in manufacturing, the outsourcing of jobs, and the increasing of part-time work. This has fallen disproportionately on African Americans and Latinos. The unemployment rate for Latinos has increased by 40 percent in recent years. It has increased by 31 percent with African Americans. If you are a Latino homeowner, you are 250 percent more likely than White homeowners to go into bankruptcy. African-American homeowners are 690 percent more likely to go into bankruptcy.

All this amendment says is that those individuals can still go into bankruptcy, but they will not be caught up in the harsher provisions of this bankruptcy act. It would be enormously unfair, unjust, and discriminatory. That is what this amendment does.

The PRESIDING OFFICER. Who yields time?

Mr. *McCONNELL*. I yield back the time on this side.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to Kennedy amendment No. 69.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. **CLINTON**) is necessarily absent.

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

The result was announced--yeas 41, nays 58, as follows:

[Rollcall Vote No. 37 Leg.]
YEAS--41

Akaka

Baucus

Bayh

Biden

Boxer

Byrd

Cantwell

Carper

Conrad

Corzine

Dayton

Dodd

Dorgan

Durbin

Feingold

Feinstein

Harkin

Inouye

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

Bingaman

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

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--1

Clinton

The amendment (No. 69) was rejected.

AMENDMENT NO. 105

The PRESIDING OFFICER (Mr. **GRAHAM**). There will now be 2 minutes of debate equally divided on the Akaka amendment No. 105.

The Senator from Hawaii.

Mr. AKAKA. Mr. President, the bankruptcy bill does not allow consumers to declare personal bankruptcy, in either chapter 7 or chapter 13, unless they receive a briefing from an approved nonprofit credit counseling agency within 6 months of filing for bankruptcy.

About one-third of all credit counseling consumers enter into a debt management plan. In exchange, creditors can agree to offer concessions to consumers to pay off as many of their debts as possible. However, most credit card companies have become increasingly unwilling to significantly reduce interest rates for consumers in credit counseling.

My amendment would prevent unsecured creditors, primarily credit card issuers, from attempting to collect accruing interest and additional fees from consumers in credit counseling.

As a show of support for the effectiveness of sound consumer credit counseling, especially as an alternative to bankruptcy, credit card issuers should waive the amount owed in interest and fees for consumers who enter a consolidated payment plan. Successful completion of a debt management plan benefits both creditors and consumers. For many consumers, paying off debt is not easy, and my amendment seeks to help these struggling individuals.

I encourage my colleagues to support this amendment to help consumers enrolled in debt management plans to successfully repay their creditors, free themselves from debt, and avoid bankruptcy.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, the amendment of the Senator from Hawaii is dressed up as a credit counseling amendment, but it would cause havoc in our modern consumer credit system. It requires that a lender stop charging interest on the outstanding debt of any bankrupt debtor who participates in a debt management program. The practical result is that lenders are forced to either waive further payments on an extension of credit or have the debt discharged in bankruptcy. This will not be good for the consumer, the borrower.

This is a sweeping change in modern banking practices. We have had no hearings in the Senate Banking Committee. I ask my colleagues to oppose this amendment.

The PRESIDING OFFICER. The question is on agreeing to Akaka amendment No. 105.

Mr. AKAKA. 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. DURBIN. I announce that the Senator from New York (Mrs. **CLINTON**) is necessarily absent.

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

The result was announced--yeas 38, nays 61, as follows:

[Rollcall Vote No. 38 Leg.]
YEAS--38

Akaka

Bayh

Boxer

Byrd

Cantwell

Conrad

Corzine

Dayton

Dodd

Dorgan

Durbin

Feingold

Feinstein

Harkin

Inouye

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--61

Alexander

Allard

Allen

Baucus

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

NOT VOTING--1

Clinton

The amendment (No. 105) was rejected.

Mr. BOND. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

**BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT
OF 2005--Continued -- (Senate - March 10, 2005)**

Mr. HATCH. Mr. President, I rise today to speak in favor of S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, and to thank all of the people who made this bill possible. This bankruptcy bill has been a long time coming. We all know how bankruptcy claims have skyrocketed since the last major bankruptcy reform bill in 1978. We all know about the abuses of the system.

Well, that is about to change for the better. This bill is about fairness and accountability. We have made some important changes in this legislation. This bill contains a debtor's bill of rights with new protections that prevent bad actors from preying upon the uninformed.

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.

S. 256 provides for protection of educational savings accounts, and it gives equal protection for retirement savings in bankruptcy. It helps women and children by providing a comprehensive set of protections for child and domestic support throughout the bankruptcy process.

This legislation dramatically revises the reaffirmation agreement provisions of the Code. It imposes critical disclosure requirements that will put a stop to abusive practices. It makes the provisions relating to farmers in chapter 12 permanent and broadens its provisions. It cleans up the law governing complex exchanges and thereby reduces systemic risk in our marketplace. It acts to stop abuse.

When this bill hit the floor on Monday, February 28, I mentioned that we were in the last leg of a legislative marathon. The finish line is finally in sight. I am pleased to have been a part of this process and I am even more pleased we are able to pass this important legislation, and I anticipate that it will pass shortly. This bill has been a long time in development. I am proud of what we have been able to accomplish. Today it seems it is finally going to cross the finish line, and it is well worth it.

This bill may not lead to a severe reduction in the number of bankruptcies. I believe, though, that it will reduce the number of fraudulent and abusive filings and help educate consumers to keep their financial houses in order. This is always an important goal. No responsible society can long countenance the open flouting and abuse of its laws.

This bill, with its means test, will discourage such abusive filings by restricting access to chapter 7 liquidation by those with relatively high incomes. We should all stand behind a law that requires people with the ability to repay their debts to actually repay those debts.

Most of our debate on this bill has focused around the means test. There is no doubt that this will discourage some bankruptcy filings, but I also hope our credit counseling provisions will work to persuade even some low-income debtors that there is another way out.

Right now, too many are only hearing one part of the story: Declare bankruptcy. Liquidate your debts. Some attorneys pushing this line, however, leave out the part about the years of ruined credit that result, the inability to get a car loan or a house loan. My

hope is our modest credit counseling provisions will persuade some people to stay out of bankruptcy and meet their obligations, do what is right, and keep their credit alive.

While a great majority of Senators support this bill, I know not all of my colleagues are pleased. Last night my friend from Massachusetts, Senator *Kennedy*, again voiced his strong opposition to this legislation. This was probably clear from my response. I vehemently disagree with his opinions about this bill, but I hope he understands that we are trying our best.

Could we have done better? I have no doubt about that, not for a second, but I also know this bill has benefitted from some of Senator *Kennedy*'s suggestions over the years. We have not ignored him, and I hope he understands we appreciate his participation.

I also understand some of my colleagues feel that they may not have been treated fairly in this process. My desire throughout this process, and the desire of my colleagues who supported this bill, was always to act as an honest broker who took the suggestions of the other side with appropriate seriousness. I understand the frustration from some on the other side at the inability to get amendments agreed to or considered on the floor, but I hope they in turn can understand that we have tried our best on this side to balance all of the competing interests in this body while also trying to get this very important bill done.

In particular, I think we could have done a better job of working through the technical amendments offered by Senator *Feingold*. Truth be told, I do not think all of these amendments were merely technical amendments. Be that it as it may, Senator *Feingold* had a right to submit his amendments at the committee and then on the floor. Perhaps the consideration of the Feingold amendments would have been more complete if we had all focused on these proposals earlier in this debate. I fully respect the right of the distinguished Senator from Wisconsin to offer his amendments, even if we know he is opposing the underlying bill, which he always has. Getting all the parties on board is an uphill climb.

I was given the assignment by Chairman *Specter* to try to get this bill reported by the last recess. We accomplished that goal. In that process, I know Senator *Feingold* feels he did not get a fair hearing in the committee. I hope the final outcome today persuades him otherwise.

For my part, I instructed my staff to meet with the staff of the distinguished Senator from Wisconsin after the markup. Our staffs met on a number of subsequent occasions. We were able to work out several agreements. Frankly, I was sympathetic to several features of other of his amendments. As we all recognize, proposing an amendment is much easier than getting an agreement on an amendment. I want him to know that we tried.

In discussions with the sponsor of the bill, Senator *Grassley*, the chairman of the Judiciary Committee, Senator *Specter*, our leadership, Senator *Sessions*, who has played a significant role on this bill and others, we had to make a number of determinations over

what amendments to support and what to exclude from the bill. These were not easy decisions, and sometimes they had to be made in conjunction with leaders in the House of Representatives, which is not unusual. We do try to work with them, if we can. In this case, I think we have been working with them.

We could not accept all of Senator *Feingold's* amendments. I think he probably knows that, too. Our staffs made the effort to work through both the substance and the politics of the issues, and these consultations have borne some fruit. That is important to state, because I do not want my colleague to feel badly or feel he has not been treated fairly. I wish we could have found still more common ground, but after consulting with and facilitating consultations between Senator *Feingold's* staff and my staff and other Senate staff, we at least made some progress.

I thank and congratulate Senator *Grassley*, the prime sponsor of this bill over the last 8 years. He has worked extraordinarily hard on this bill. It has been a long time in coming.

My hat, as usual, is off to him. Senator *Sessions* is another Senator whose hard work made this possible. We all appreciate his work in the committee and on the floor during the last few weeks.

I would also thank the majority leader, Senator *Frist*, and the majority whip, Senator *McConnell*, and the chairman of the Judiciary Committee for their efforts on behalf of this legislation. Chairman *Specter* has been here working hard for the people of Pennsylvania only days after his cancer treatments, and that is not easy to do, and certainly not easy since he has a continuation of those treatments. He is a heroic figure, in my eyes, for the way he has handled himself in this very difficult time.

I must also thank Chairman *Shelby*, and Senator **SARBANES** of the Banking Committee. We all know how vital the Banking Committee was to this process. We could not have gotten this done without their help.

I believe that several Senators from across the aisle deserve recognition as well. I want to once again thank the Minority Leader, Senator *Reid*, and the Minority Whip, Senator *Durbin*, for helping to move this bill through the Senate.

Senators *Biden* and *Carper* have worked tirelessly for years on this legislation, and they have taken some tough votes to get it done. Senator *Nelson* from Nebraska has also shown great resolve and deserves recognition for his efforts, particularly with respect to the provisions affecting farmers. Senator *Johnson* has also been committed to this legislation and I thank him.

No thank you list would be complete without the Senator from Vermont. My dear friend Senator *Leahy* and I have not always agreed on every aspect of this legislation, but we have worked hard to make it better. Senator *Leahy* developed two important amendments that were accepted. Similarly, Senator *Feingold*--who has been an ardent opponent of this legislation--has nevertheless dedicated himself to improving it. I have

enjoyed working with him, and several other Democratic members of the Judiciary Committee over the years--including Senators *Feinstein, Kohl, Kennedy, Schumer* and *Durbin*--to get this bill done.

I would also like to take a moment to thank all of the staff who worked so hard to make this happen. I know that several of them--on both sides of the aisle--have not seen their significant others in weeks. We owe them a great debt of gratitude. If my colleagues would permit me, I would like to name a few of them.

I think the record should reflect that Rene Augustine, a former counsel now at home with her new-born child, and Makan Delrahim and Manus Cooney, both former Judiciary Committee Chief Counsels, worked for years on this legislation and it would not have been possible but for their efforts. Similarly, John McMickle, a former staffer of Senator *Grassley* who worked on this bill while he was in the Senate, has taken an enormous amount of time away from his young children to help on this project.

For staff who still work here, I think that Senator *Grassley's* chief counsel, Rita Lari-Jochum, should be singled out for her hard work and dedication to this bill. She has helped manage this process over the last several weeks, and she has done a fantastic job. Similarly, Mike O'Neill, Judiciary Committee Chief Counsel, and Harold Kim, Chief Civil Counsel, have done an outstanding job--as have the whole Judiciary team. There are several new counsels in that office that were thrown into the crucible in their starting weeks. First with class action, and now with bankruptcy. The record should reflect the professionalism and excellence with which Ivy Johnson, Tim Strachan, Ryan Triplette, Hannibal Kemmerer, and Nathan Morris have conducted themselves. They are a fantastic group.

In Senator **SESSIONS** office, no one could overlook his chief counsel, William Smith, or his deputy chief counsel Cindy Hayden. Amy Blakenship and Wendy Fleming also with Senator *Sessions*, did a great job as well. They all did wonderful job.

In the Majority Leader and Majority Whip's office, Eric Ueland, Sharon Soderstrom, and Allen Hicks led the team. John Abegg in Senator *McConnell's* office, proud father of a baby girl born on the day this bill hit the floor, nevertheless managed to get the job done. Kyle Simmons, Brian Lewis, and Malloy McDaniel all worked vigorously to plan and manage the strategy and votes on amendments. Stephen Duffield and his team at the R.P.C. has also provided timely and accurate information on the bill on a daily, and when needed, hourly, basis.

As my colleagues all know, the Banking Committee played an important role in this process. Senator *Shelby* is fortunate to have people like Kathy Casey, Doug Nappi and Mark Oesterle working for him.

I would also like to thank the House Judiciary Committee staff--they have been an invaluable resource and we would not have been able to get this done without them. As always, Phil Kiko provided a steady hand steering important legislation. Susan Jensen is

a treasure trove of information and she has devoted herself to this endeavor. Stephanie Moore and Perry Applebaum of Representative **CONYER**'s office, I am sure will help the legislation move through the House.

The hardworking people in the legislative counsel's office have also undertaken a Herculean effort and flourished in the process. I believe that 125 amendments were filed on this bill, and that does not include the 50 or so that we had in Committee. That is a lot of drafting of complex legislation and we all owe Bill Jensen, Matt McGhie and Amy Gaynor our thanks for their contributions during this long trip. I would add Bob Schiff of Senator *Feingold's* staff, who worked to make this a better bill. It is a pleasure to work with him and he is someone we respect. I wish we could have done more for him and his great boss. We have done the best we can.

Finally, on my own staff, Bruce Artim, Kevin O'Scannlain, Perry Barber and Brendan Dunn all worked very hard on this legislation.

My personal executive assistant, Ruth Montoya, has put up with an awful lot over these last few weeks, and I appreciate her as well as my chief of staff Trish Knight, and Susan Cobb and the many others who literally have worked so hard to help me over these last several weeks--frankly, over the last many years. I know there are many others I have not been able to recognize, and they should all know what a wonderful job I believe they have done. I believe we have an important achievement with this bill, and I think it is only a matter of time until we get this bill passed on the floor, which will be a good end.

Mr. President, the bankruptcy legislation cures some abuses in the Bankruptcy Code regarding executory contracts and unexpired leases.

One provision, Section 404(a) of the bill, amends Section 365(d)(4) of the Bankruptcy Code. Presently, Section 365(d)(4) provides a retail debtor 60 days to decide whether to assume or reject its lease. A bankruptcy judge may extend this deadline for cause--and therein is the problem. Some experts believe that too many bankruptcy judges have allowed this exception essentially to eliminate any notion of a reasonable and firm deadline on a retail debtor's decision to assume or reject a lease. Some bankruptcy judges have been extending this deadline for months and years, often to the date of confirmation of a plan.

This situation can be troublesome. For example, a shopping center operator is a compelled creditor. It has little if any choice but to continue to provide space and services to the debtor in bankruptcy. Yet, the current Code permits a retail debtor as long as years to decide what it will do with its leases. Coupled with the increased use of bankruptcy by retail chains, the Bankruptcy Code is seen by some to be tipped unfairly against the shopping center operator.

Some stores curtail their operations or go dark, and still the lessor cannot regain control of its space.

This legislation, like the conference report in the last two Congresses, acts to curb this abuse. It imposes a firm deadline on a retail debtor's decision to assume or reject a lease. It permits a bankruptcy trustee to assume or reject a lease on a date which is the earlier of the date of confirmation of a plan or the date which is 120 days after the date of the order for relief. A further extension of time may be granted, within the 120 day period, for an additional 90 days, for cause, upon motion of the trustee or lessor. Any subsequent extension can only be granted by the judge upon the prior written consent of the lessor: either by the lessor's motion for an extension, or by a motion of the trustee, provided that the trustee has the prior written approval of the lessor. This is important. We are limiting the bankruptcy judges' discretion to grant extensions of the time for the retail debtor to decide whether to assume or reject a lease after a maximum possible period of 210 days from the date of entry of the order of relief. Beyond that maximum period, there is no authority in the judge to grant further time unless the lessor has agreed in writing to the extension.

Retail debtors filing for bankruptcy will undoubtedly factor into their plans this new deadline. Most retail chains undertake a careful review of their financial condition and business outlook before they file for bankruptcy. They will already have an understanding of which leases are ones they wish to assume and which ones they wish to dispose of. The legislation gives them an additional 120 days to decide on what to do with their leases, once they file for bankruptcy. Beyond that 120 day time period, an additional 90 days can be granted for cause. A further extension may be negotiated by the retail debtor and the lessor if circumstances warrant, and any such extension can be granted by a judge only with prior written consent of the lessor. Further, a lessor's prior written approval of one such extension does not constitute approval for any further extensions--each such extension beyond the 210-day period requires the lessor's prior written approval.

The bill in Section 404(b) also amends Section 365(f)(1) of the Bankruptcy Code to make sure that all of the provisions of Section 365(b) of the code are adhered to and that 365(f) of the code does not override Section 365(b).

This addresses another problem under the Bankruptcy Code. The bill helps clarify that an owner should be able to retain control over the mix of retail uses in a shopping center. When an owner enters into a use clause with a retail tenant forbidding assignments of the lease for a use different than that specified in the lease, that clause should be honored. Congress has so intended already, but bankruptcy judges have sometimes ignored the law.

Congress made clear, in Section 365(b)(1) and 365(f)(2)(B), that the trustee may assume or assign an executory contract or unexpired lease of the debtor, only if the trustee gives adequate assurance of future performance under the contract or lease.

In Section 365(b)(3), Congress provided that for purposes of the Bankruptcy Code:

adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance--

(A) of the source of rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease;

(B) that any percentage rent due under such lease will not decline substantially;

(C) that assumption or assignment of such lease is subject to all provisions thereof, including (but not limited to) provisions such as a radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to such shopping center; and

(D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

Congress added these provisions to the Code in recognition that a shopping center should be allowed to protect its own integrity as an ongoing business enterprise, notwithstanding the bankruptcy of some of its retail tenants. A shopping center operator, for example, must be given broad leeway to determine the mix of retail tenants it leases to. Congress decided that use or similar restrictions in a retail lease, which the retailer cannot evade under nonbankruptcy law, should not be evaded in bankruptcy.

It is my understanding that some bankruptcy judges have not followed this Congressional mandate. Under another provision of the Code, Section 365(f), a number of bankruptcy judges have misconstrued the Code and allowed the assignment of a lease even though terms of the lease are not being followed. This appears to ignore Section 365(b)(3).

For example, if a shopping center's lease with an educational retailer requires that the premises shall be used solely for the purpose of conducting the retail sale of educational items, as the lease in the *In re Simon Property Group, LP v. Learningsmith, Inc.* (D. Mass. 2000) case provided, then the lessor has a right to insist on adherence to this use clause, even if the retailer files for bankruptcy. The clause is fully enforceable if the retailer is not in a bankruptcy proceeding, and the retailer or the bankruptcy trustee or judge should not be able to evade it in bankruptcy. Otherwise, the shopping centers operator could lose control over the nature of its business.

In the *Learningsmith* case, the judge allowed the assignment of the lease to a candle retailer because it offered more money than an educational store to buy the lease, in contravention of Section 365(b)(3) of the Code. As a result, the lessor lost control over the nature of its very business, operating a particular mix of retail stores. If other retailers file for bankruptcy in that shopping center, the same result can occur.

In the past, courts have disagreed about whether Section 365(f) overrides the provisions of Section 365(b)(3). For example, in the case of *In re Rickles Home Ctrs., Inc.*, 240 B.R. (D.Del. 1999), appeal dismissed, 209 F.3d 291 (3d Cir.), cert. denied, 531 U.S. 873 (2000), the judge disregarded the use clause and allowed a lease sale to go through to a non-conforming user. However, in *In re Trak Auto Corp.*, 367 F.3d 237 (4th Cir. 2004), an appellate court held that a use clause must be strictly enforced under Section 365(b)(3) on sale of the lease, notwithstanding Section 365(f). This legislation provides the necessary clarity by amending Section 365(f)(1) to help make clear it operates subject to all provisions of Section 365(b).

I note that Section 365(d)(4) of the Bankruptcy Code applies to cases under any chapter of Title 11. Language to that effect in the current Code's Section 365(d)(4) is deleted because it is repetitive of Sections 103(a) and 901 of the Code, which already make clear that provisions like Section 365(d)(4) apply to all cases under Title 11.

This bill creates new legal protections for a large class of retirement savings in bankruptcy. This measure has widespread support from a long list of groups, ranging from the American Association of Retired Persons, to the Small Business Council of America and the National Council on Teacher Retirement.

Let me take this opportunity to point out that the assets of some pension plans already are protected from bankruptcy proceedings. The United States Supreme Court has ruled in *Patterson v. Shumate*, reported at 504 U.S. 753 (1992), that assets of pension plans which have, and are required by law to have, anti-alienation provisions, are excluded from bankruptcy estates.

Let me be absolutely clear that this provision is not intended in any way to diminish the protections offered under existing law and under the United States Supreme Court's decision in *Patterson v. Shumate*, but rather, is intended to provide protection to other retirement plans and accounts not currently protected.

Mr. President, this has been a battle, there is no question about it, like all hotly contested issues are. But I think virtually everybody has contributed, and we have had some tough times on the floor. We have had even some bad feelings from time to time. But we have been at this for 8 solid, difficult years. It is unfortunate we could not work out more amendments, also, but we couldn't and still have this bill pass, hopefully for the last time. We worked in good faith to try to do that.

For those who feel they have not been treated as fairly as I would certainly have wanted to treat them or I feel I have treated them and others as well have treated them, we feel bad about that and hope they will forgive us for not being able to make some of the changes that perhaps we would have made had this been the first year of this bill and we didn't have the difficulty of meeting the suggestions of our friends over in the other body.

We think they have done a terrific job. The people in the House of Representatives are tremendous leaders, from Chairman *Sensenbrenner* right on through the whole Judiciary

Committee and, of course, the leadership over in the House as well and others who are not on the Judiciary Committee but are concerned about this very important bill. They work closely with us. It is difficult for them and it is difficult for us, but that is the way these two bodies ought to work together, and this bill is a perfect illustration of what can happen if good people can get together, compromise on some of these issues that can be compromised, and yet stand firmly so we can pass legislation like this that will benefit the whole country.

In my final remarks, let me recognize the efforts of Ed Pagano and Bruce Cohen of Senator *Leahy's* office and Jim Flug and Jeff Teitz of Senator *Kennedy's* office for all the hard work they have done over the years on this issue as well. It is a pleasure to work with staff on the Judiciary Committee. They are bright. They are articulate. They are brilliant, as a matter of fact. That is what you want in Judiciary Committee staffers. I wish those on the minority side would not be nearly as tough as they are, but I respect them for being that way.

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

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

**BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT
OF 2005--Continued -- (Senate - March 10, 2005)**

AMENDMENT NO. 90

The PRESIDING OFFICER. There will now be 2 minutes of debate, equally divided, on the Feingold amendment No. 90.

Mr. FRIST. Mr. President, for the information of my colleagues, in consultation with the Democratic leader, we would like to have all of the remaining votes be 10-minute votes. We are going to be enforcing it strictly, so we have a reason to keep moving along. We ask that everybody, once we start voting shortly, stay in the Chamber and continue to vote. We will have 10-minute votes for the remainder of the evening.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, if we have a brief quorum call, I believe we may be able to eliminate the need for some of the votes.

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

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

The Senator is recognized.

Mr. FEINGOLD. Mr. President, I appreciate the fact that we have had some opportunity to make a few modest modifications at the end of this process. Obviously, I hoped for more, but I do thank the Senator from Utah, Mr. *Hatch*, the Senator from Alabama, Mr. *Sessions*, the Senator from Iowa, Mr. *Grassley*, and the Senator from Pennsylvania, Senator *Specter*, who are working on a number of changes and accepting a couple of amendments so we can move this process through. The result will be that the next five votes on my amendments will not be necessary, if this agreement is made. So I hope that causes the unanimous consent agreement to go through.

AMENDMENTS NOS. 90, 93, 95, AND 96 WITHDRAWN

AMENDMENT NO. 92, AS MODIFIED

AMENDMENT NO. 87, AS MODIFIED

I ask unanimous consent that my amendments No. 90, No. 93, No. 95, and No. 96 be withdrawn; that my amendment No. 92, as modified and as at the desk, be adopted; and that a modification of my amendment No. 87 which was agreed to last night be accepted as well.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment (No. 92) as modified, was agreed to, as follows:

Credit Counseling Amendment:

(1) On page 34, after line 25, insert--

“(4) The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements

because of incapacity, disability, or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1);

(2) On page 42, line 15, strike "and"; and

(3) On page 43, between lines 3 and 4, insert the following:

"(E) if a fee is charged for the instructional course, charge a reasonable fee, and provide services without regard to ability to pay the fee."

(4) On page 35, line 12, insert "who is a person described in section 109(h)(4) or" after the word "debtor."

(5) On page 36, line 9, insert "who is a person described in section 109(h)(4) or" after the word "debtor."

The amendment (No. 87) as modified, was agreed to, as follows:

On page 445, strike lines 10 through 13, and insert the following:

SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104(b) of title 11, United States Code, as amended by this Act, is further amended--

(1) by inserting "101(19A)," after "101(18)," each place it appears;

(2) by inserting "522(f)(3) and (f)(4)," after "522(d)," each place it appears;

(3) by inserting "541(b), 547(c)(9)," after "523(a)(2)(C)," each place it appears;

(4) in paragraph (1), by striking "and 1325(b)(3)" and inserting "1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28"; and

(5) in paragraph (2), by striking "and 1325(b)(3) of this title" and inserting "1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28".

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

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

Mr. BIDEN. Mr. President, I checked with the leader on our side, and I hope it is all right with the Republican leader. I have no amendment relating to the bill. I would like to proceed as if in morning business until anyone has an opportunity to move on the bill, and I will cease and desist at that moment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

(The remarks of Mr. *Biden* are printed in today's **RECORD** under ``Morning Business.")

(The remarks of Mr. *Biden* pertaining to the submission of S. Con. Res. 17 are located in today's **RECORD** under ``Submission of Concurrent and Senate Resolutions.")

The PRESIDING OFFICER (Mr. **THUNE**). The Senator from Tennessee.

Mr. FRIST. Mr. President, for the information of our colleagues, we are about to have the last vote of the evening which is final passage of bankruptcy legislation. I thank all Members for their hard work today in the Chamber, as well as the Budget Committee and their efforts on the budget resolution. They made huge progress today. We will start on the budget Monday morning. We expect amendments during Monday's session. Therefore, we do expect the next vote to be Monday evening at 5:30.

Mr. BIDEN. Mr. President, several years ago, when we were considering this legislation, I spoke here on the Senate floor about some important provisions that I think have been overlooked in our discussions. In my remarks today I will repeat what I said back then, in March of 2001.

We have heard a lot in recent days about how this bill lacks compassion--specifically, that it will hurt women and children who depend on alimony and child support.

Critics claim that by making sure that more money is paid back to other creditors, this bill will make it harder for women and children to get what is coming to them.

I am particularly proud of my record of protecting women and children during my career in the Senate. That record includes the Violence Against Women Act to protect women threatened by domestic violence.

I am here again today to show that, contrary to a lot of the rhetoric that has been tossed around, this bill actually improves the situation of women and children who depend on child support. It specifically targets the problems they face under the current bankruptcy system into a virtual extension of the current national family support collection system.

There may be other aspects of this legislation that we can debate: the balance between creditors and debtors, between different kinds of creditors, or between different kinds of debtors. But on the question of child support and alimony, there should be no dispute.

Because this bill strengthens the collection of alimony. Period.

Over the many years we have discussed this bill, it has earned the support of the National Child Support Enforcement Association, which represents over 60,000 child support professionals.

It has earned the support of the National Association of Attorneys General, which has sent a letter of support personally signed by twenty-seven State attorneys general.

Over the years, the child support protections in this legislation were endorsed by the Attorney General of the State of Vermont.

The Attorney General of Minnesota endorsed them, too, along with the Attorneys General from Illinois, from Massachusetts, and from California, Montana, North Carolina, Michigan, Maryland, Iowa, Hawaii, and Washington.

The child support and alimony protections in S. 256 are so far superior to current law that the National District Attorneys Association, representing more than 7,000 local prosecutors, have endorsed them.

In addition to those national associations, those protections have earned the support of: the California Family Support Council, whose 2,500 enforcement professionals are responsible for carrying out the Federal child support program in California;

The Western Interstate Child Support Enforcement Council, composed of child support professionals from the private and public sectors west of the Mississippi River;

The California District Attorneys Association, consisting of elected district attorneys from each of every one of California's 58 counties and over 2,500 deputy district attorneys; and finally,

The Corporation Counsel of the City of New York. Yes, even New York City loves this bill.

Why has this legislation earned such overwhelming support from the professionals out in the field and in the trenches who, ever single day, seek and enforce child support orders?

One reason is the hard work of Phillip Strauss, who, speaking for the National Child Support and Enforcement Association, has represented the concerns of child support professionals in testimony before our committee over the years we have debated bankruptcy reform. From his personal experience with the problems women and children

face under current bankruptcy law, he brought together his fellow enforcement officials to draft the provisions I am here to discuss.

As Mr. Strauss and his colleagues have told us, right now the treatment of child support and alimony in bankruptcy is a mess, and this bill fixes it.

When a deadbeat dad files for bankruptcy under the current system, what happens to mom and the kids?

Well, if the dad is actually making the payments, those payments stop. That's right, the payments stop cold. Mom then has to find a lawyer or a government advocate, take time off of work, and go to bankruptcy court to try to get those payments started again. And when she goes to court, her claim may not be heard that day, so she'll have to return again and again or if she's late, she'll miss her day in court.

What else happens under current law? When dad's bill collectors show up in bankruptcy court, mom has to fight with them over dad's assets. There's a good chance that mom not only needs her payments started again, but she is due past support--support payments dad never made last month, last year. She needs him to pay her back for all the payments he failed to make.

And in asserting her claim, she is not the "Number 1" collector in line. Under current law, she is Number 7. That's right--Not So Lucky Number 7. The current Code permits other bill collectors to beat her in the race to get at dad's assets. The current law handicaps her at the starting line. She is forced to wage a fight to make sure she and the kids receive their due.

And what happens after she fights it out with the bill collectors? Well, under the current system, she might be lucky and get every dollar due. But, she may only get a portion of what is due or she may not get one red cent.

That's not right. If a bankrupt household is a sinking ship, then women and children should be protected first. This is what the current law fails to do, but it is what this bill does: it puts women and children first.

S. 256 dictates that even if he files for bankruptcy, dad must continue making those support payments that mom needs to feed and clothe her children. Under this bill, women and children will continue to receive their support payments during bankruptcy, while everybody else, from the credit card bank to the department store, waits for the bankruptcy judge's final order and plan.

That alone would be a major improvement over current law. But that is just the beginning of the advances of this bill over current law.

This bill makes mom "Number 1" and places her ahead of all the bill collectors on her past-due claim. No other bill collector--not the credit card company, not the car loan

company, not the student lenders--can jump ahead of a mother and her children. Every other bill collector must stand in line behind the family.

What is so great about the continuation of payments and making mom ``Number 1"? As a practical matter, she doesn't have to find room in her hectic schedule to make appearances in a federal bankruptcy court--an intimidating place for most people. She can go to work without interrupting her day. She can complete her errands and pick up her kids after school. Under the bill, she will be automatically first in line on her claims and she will continue to receive her payments during bankruptcy.

When we pass this bill, she does not have to work her way through the bankruptcy system. The system will work for her, not against her.

That's the beauty of this bill: It is self-executing. The provisions to be added to the Bankruptcy Code will function automatically. This is vital. Unrepresented women will not be harmed by the process, as they are under the current Code.

Today, under current law, these women have to get an attorney and go to court to assert their claims.

In addition, under this bill, family support will never be dischargeable. It must be paid in full. All of it.

This is important because, under the current, domestic debts may not be paid in full or at all believe it or not. Right now, a deadbeat father can file for bankruptcy and come out without paying one penny of support. While his slate is wiped clean, a mother and her children go without. When this bill passes and the President signs it, the law will hold the deadbeat dad's feet to the fire: he will pay, he will pay in full.

There are other important ways that this bill will remove real obstacles to justice that exist in current bankruptcy law.

This bill not only lifts the stay on support payments during bankruptcy, but it adds that, when a wife-beater files for bankruptcy, a domestic violence restraining order against him must remain in effect. It cannot be stayed. And the woman who needs a restraining order against him can still get one.

I have here an order from a family court in my home state of Delaware. A woman went to the court and requested a restraining order against her abuser, who had already filed for bankruptcy. Incredibly, the judge found, under the current Bankruptcy Code, that a proceeding for a domestic abuse restraining order is automatically stayed ``by operation of law."

That's right. We have judges out there right now who look at today's Bankruptcy Code, and they find that filing for bankruptcy stops all proceedings. They find that we have

failed to write an exception for proceedings like those for domestic violence. They find their hands are tied.

Then they send a woman in fear for her life off to a federal bankruptcy court to lift the Code's automatic stay by filing a special motion. Unbelievable.

If you think this is fair, if you prefer this state of affairs, then I guess you will vote against this bill. Personally, I am proud of this bill, and I wish that those who are fabricating wild claims about it would stop. If they have their way, the women and children in this country who depend on alimony and child support will be robbed of real protections.

That would be a crime.

Under current law, more than just child support and--alimony are stopped in their tracks by the filing of bankruptcy. That automatic stay, as it is called, stops a lot of other proceedings that could provide real help to women and children.

This legislation changes that. It lifts the stay on a number of methods that family support officials use to go after deadbeat dads, who today can hide behind the bankruptcy system. Unlike current law, this bill would permit reporting the deadbeat's overdue support payments to a consumer reporting agency. Under current law, it would permit restrictions on a deadbeat dad's driving, professional, or recreational licenses. It would permit family support collection officials to intercept his tax refunds.

The legislation also clarifies the definition of support payments, ending conflicting bankruptcy decisions by different courts that today question what support payments actually are.

Most significantly, though, this bill prevents a father from completing bankruptcy unless he has paid all his support obligations due after he filed for bankruptcy.

Let's think about this. Under current law, a father filed for bankruptcy and can complete bankruptcy under a plan that relieves him of his past-due domestic obligations. Under the bill, however, this scenario will become obsolete. A father will never complete bankruptcy until he is paid up. He must pay.

Moreover, the bill protects mom during a bankruptcy plan. Once a father is under a bankruptcy plan and he fails to make his support payments, a mother can march to the bankruptcy court and ask the court to dismiss his plan. The court will call dad back in to explain himself. He doesn't want to make payments during his bankruptcy plan? Fine, he can be thrown out of bankruptcy, and find himself back at square one.

Some claim that this bill lacks compassion. Well, right now, women who want child support orders or who already have orders but fail to enforce them slip through the

cracks. If we pass this bill, the Bankruptcy Code will empower women with the information they need.

Section 219 of the bill requires the U.S. Bankruptcy Trustee to notify a woman of her rights to use the services of her state child support enforcement agency and gives her the agency's address and phone number. Better yet, the Trustee likewise notifies the agency independently of the woman's claim. This is striking.

Women who need help will get the information they need, because the bankruptcy system is charged with reaching out to family support professionals--acting under federal family support collection law--and putting them at the service of the women and children who need them.

This last item needs stressing, Mr. President, because so much has been made about what will happen after someone who owes family support payments comes out of bankruptcy. The claim is that other ``more powerful" creditors will push women and children aside and strip the dad bare before he can make payments to his family.

That makes for a moving story, Mr. President, but it is fiction, not fact.

This legislation requires the bankruptcy Trustee to notify both the woman and the family support collection professionals about the dad's release from bankruptcy, his last known address, the name and address of his employer, and a list naming all the bill collectors who will still be collecting from dad.

This section helps mothers both during and after bankruptcy.

The new notification process will help a mother and the support enforcement agencies keep track of a father, where he is working, and what other bills he is required to pay.

Because of this monitoring, which would be put in place by the bankruptcy system under this bill, mothers and collection agencies can more easily go to court and get that portion of a father's wages that now really belongs to them. Dad may complete his bankruptcy plan, but his obligations do not stop.

These new protections guarantee that family support claims of women and children will always receive ``Number 1" priority--during and after bankruptcy. The process for obtaining a portion of a father's wages--through a wage attachment--gives priority to domestic support orders over orders held by bill collectors, including credit card companies.

That money is taken out of his paycheck before he even sees it. He can't be forced by ``powerful creditors" to choose between them and his alimony or child support. Those payments are automatic. Again, the picture of greedy bill collectors rushing to the front of the line makes for dramatic storytelling. But it is only that--storytelling.

The legislation builds on the existing Federal Child Support Enforcement Program, that exists to help women of all walks of life receive their support payments. By tying Federal dollars to federal standards, current law requires state and local support enforcement agencies to enforce national standards.

A couple of the requirements under Federal family support law are: first, that immediate wage withholding should be included in all child support orders; and second, that the withholding of child support obligations be given top priority over every other legal process under State law against the same wages.

Therefore, after bankruptcy, when a mother and the bill collectors walk into court to make claims against the father's wages, the mother is again "Number 1" in priority and those bill collectors fall in line behind her.

In response to some of my colleagues concerns--concerns that I would certainly share if I listened to some of the claims out there--I looked for ways to make the system even tighter.

I found out that the only way to do that was to require a wage attachment, whether the woman wanted one or not. Maybe she wants nothing to do with an abusive husband. Maybe she is afraid for him to know her address. We have to leave that decision up to her, but she will get all the help we can give to help her know her rights.

As I said, I looked for ways to make this bill stronger in support of women and children who depend on support payments, and I simply couldn't find any.

Even if a father does not earn wages, then support enforcement agencies have many tools to use to ensure that the mother and her children are paid. A support enforcement agency can intercept taxes and unemployment benefits, revoke driver's, professional and recreational licenses (like those used for fishing, hunting, and boating), deny passports, and institute criminal and contempt actions.

That is why, even compared to any imaginary "powerful creditor" you might be able to conjure up, mothers and children have real, tangible protections and resources at their disposal to bring a first priority claim against a father's wages after bankruptcy.

Finally, let me conclude where I began: with the enthusiasm for this legislation that we have heard from the folks in the trenches.

Here is what the National Association of Attorneys General has asserted: the bill "improve[s] the treatment of domestic support obligations" and when the current Code's "obstacles are removed, as this legislation seeks to accomplish, we believe that our State and local support offices will continue to be able to collect these monies effectively, regardless of whether other lower-priority creditors remain."

As I mentioned before, the Association's letter was personally signed by the State Attorneys General from twenty-seven States, including the--State Attorneys General from Vermont, Minnesota, Illinois, Massachusetts, California, North Carolina, Michigan, Montana, Maryland, Iowa, Hawaii, and Washington.

The National District Attorneys Association, with more than 7,000 local prosecutors in their membership, does not believe that after bankruptcy it would be more difficult to collect support simply because credit card debts are not discharged. To the contrary, support collectors have vastly more effective, and meaningful, collection remedies before a bankruptcy case is filed, or after the case is completed, than any other financial institution It is under the current law, during bankruptcy, that support collectors have the greatest difficulty because they are in competition with all other creditors for bankruptcy estate assets and because their most effective collections remedies have been stayed This legislation provides a major improvement to the problems facing child support creditors in bankruptcy proceedings."

I support the reform that the enforcement professionals call for, from New York City to California, from Minnesota to Vermont, from Massachusetts to Michigan. I want to save women and children from having to fight their way through a broken bankruptcy system. I want to make the system work for them, not against them.

A vote against this bill is a vote in favor of the current broken system. A vote for this bill is a vote to protect family support payments in bankruptcy.

That is why I support this bill.

Mr. DORGAN. Mr. President, I know that the Senate is about to pass a bankruptcy reform bill, and that this bill will be signed into law. And it is with some regret that I say that I will not vote for it.

I do believe that there have been cases of abuse of our bankruptcy system, and that some reform is needed. Nobody likes to hear of wealthy people who walk away from their debts because they can game the system. That's not fair to financial institutions, and perhaps more importantly, it's not fair to Americans who pay their debts in full.

I voted for a bankruptcy reform bill twice in the past, most recently in 2001. That bill passed in the Senate with significant bipartisan consensus, and I had hoped that it would be signed into law. But the House of Representatives refused to compromise with the Senate, and ultimately the bill failed.

This time around, I would have liked to have reached another bipartisan consensus. However, the bipartisan spirit seems to have broken down.

My colleagues on the Democratic side offered a number of amendments that were reasonable, common-sense tweaks to the bill, to reflect changes in our country since the last time the bankruptcy bill was considered.

There have been hundreds of thousands of National Guard and reserve troops called up because of the conflicts in Afghanistan and Iraq. They have left behind their jobs, their businesses, and their families. When they find themselves in bankruptcy, why not allow them some consideration? My colleague from Illinois, Senator **DURBIN**, offered an amendment that would have done precisely that, but it was voted down on a largely partisan vote.

Or how about victims of identity theft? In the last few years, identity theft has become a plague on law-abiding citizens. My colleague from Florida, Senator **NELSON**, offered a most reasonable amendment, which simply said that if someone is forced into bankruptcy because of identity theft, he should receive some consideration. That amendment was also voted down along partisan lines.

Or how about Americans who suffered major medical problems and were driven into bankruptcy? A very recent Harvard Medical School study found that about half of all people that have been driven to bankruptcy have suffered a major medical problem. Many of these people have lost their homes. So Senator **KENNEDY** offered an amendment that would have allowed such Americans to keep their home--not a mansion, mind you, but a modest home, while they try to get back on their feet. But this amendment also was shot down.

We have not heard good arguments for why these amendments should have failed. The majority party have really only had one argument: that they want to avoid displeasing the House of Representatives, and don't dare modify the Senate bill even with modest, reasonable amendments.

Well, I am just not going to support a bill that turns its back on service members and veterans, or on hardworking people that just happen to have had a medical crisis, and have been driven into bankruptcy not because they are gaming the system, but because of circumstances beyond their control.

One other point. This bankruptcy bill was supposed to be about preventing cheating in the bankruptcy system. Well, I offered an amendment, along with Senator **DURBIN**, that would have dealt with a different kind of cheating: the fraud, waste, and abuse that has been rampant in many of the reconstruction contracts in Iraq. My amendment said, let's appoint a bipartisan special committee of the Senate to investigate these abuses. But that amendment did not even get a vote.

In 1941, a Senator from Missouri by the name of Harry S Truman heard allegations of wasteful and fraudulent spending in the preparations for World War II. He thought this waste and fraud could undermine the war effort, so he drove around the country, visiting military bases. And when he came back, he called for the creation of a special committee. That committee, which came to be known as the Truman Committee, saved the U.S. government an estimated \$15 billion--and that's in 1940s dollars.

That was a case of a Democrat calling for investigations of contracts handled by a Democratic Administration. But for Harry Truman, this wasn't about politics--it was about looking out for the U.S. taxpayer, and not squandering resources that were meant for the war effort.

We need a Truman Committee again, because the majority party is not calling for oversight hearings on these contracting abuses in Iraq. My amendment would have created a bipartisan special committee to do just that. But it did not even get a vote, because the majority party rested on a technicality in Senate rules to deny a vote.

Under these circumstances, I am, regretfully, not going to vote for the bankruptcy bill.

Ms. MIKULSKI. Mr. President, today I rise to oppose S. 256, the Bankruptcy Reform Bill. This bill is unfair to the little guy--to families who are struggling to overcome medical bills, unemployment, or divorce and find themselves forced to declare bankruptcy. Under the guise of reform it makes it tougher on families who have done the right thing. That's not what we should be doing in the United States Senate. Our job is to make sure we are protecting middle-class Americans and small businesses who are the lifeblood of our economy, not hurting them. While some of the reforms of the bill are good steps it goes too far to favor credit card companies and corporations over working families.

This bill creates such strict standards that many of our nation's most vulnerable families are treated unfairly when they are forced to file bankruptcy because of the loss of a job, the high cost of health care or a divorce. This bill does nothing to address the problems these individuals are having, the problems that have driven them to bankruptcy and it provides virtually no discretion for courts dealing with these bankruptcy claims.

I have supported bankruptcy reform legislation in the past--but it was not this bill and it was not this process. This bill was rushed through Committee with the promise that amendments would be considered on the floor, that there would be debate and an opportunity to improve the bill. Yet, none of the amendments were truly considered, most were opposed by Republicans marching in lock step to defeat every amendment to the existing bill. In short, there was no real opportunity to improve the bill. What came to the floor leaves the floor virtually unchanged and truly unfair to many of our citizens who are forced to file bankruptcy because of unforeseen circumstances like job loss, divorce or medical costs.

Half of all families filing for bankruptcy have faced illness or high medical costs. Medical costs, especially for seniors, are one of the fastest growing causes of bankruptcy. These are not folks who use their credit cards to buy fancy suits, designer wares or other luxury goods. They are paying for the basic necessities of their lives with their credit cards. They are putting their food, clothing and medical bills on the credit cards. Nearly 9 out of 10 people file bankruptcy because of health care problems, job loss or divorce. These individuals don't want to file bankruptcy--in fact, they have tried to avoid bankruptcy. That's why they pay those medical bills with credit cards when they simply

can't afford any other way. Or they skip going to the doctor all together because they know have no means to pay. And what happens--they get sicker, incur greater costs for catastrophic care and that sends them spiraling further into debt and forcing many into bankruptcy.

We ought to be doing something to help those individuals--not creating a law that will make matters worse. The Senate should be on the side of those Americans who are facing hard times and hard decisions. We should be addressing the lack of health care and working to ensure that we are creating good, high paying jobs.

I am opposing this version of the Bankruptcy Reform Bill because it creates needless and unfair hoops for these individuals to jump through and the rigid means test puts those in real need of relief at a disadvantage. It imposes new burdens on families already overburdened by the debt they must shoulder. Certainly we all agree that those who can afford to should pay their creditors back--that they should be responsible for their debt. Those debtors who charge thousands of dollars on luxury goods, new cars and the like, only to then declare bankruptcy, should be held accountable. Many of us can remember a mother or father who taught us about debt, taught us the dangers of getting into debt and to be responsible for paying all our debts back. But we need to be fair in how we calculate who can pay. And we need to make sure that the provisions are not so rigid that they allow courts no discretion to take into account the circumstances that lead to the bankruptcy.

The legislation that the Senate considers today is different from past versions that I have supported. There is obviously the removal of the Schumer amendment which held those who block access to abortion clinics accountable for the court judgments that they have incurred. But it also gives women, single parents, families and those living in poverty less opportunity to overcome their hardships and get a fresh start. This bill punishes people, assumes that all those filing for bankruptcy have purposefully created their debt problems, imposes a strict standard that does not take into account the circumstances surrounding the bankruptcy and the real means of individuals to pay their debt back. That's not fair, it's not right, and it makes life tougher on working families. I urge my colleagues to join me in standing up for women, children and working families by opposing this bill.

Mr. REED. Mr. President, today I share my concern over S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, and urge my colleagues to vote against this flawed legislation. This legislation provides a misguided and uneven approach to combating bankruptcy abuse, especially because it leaves so many causes of bankruptcy unaddressed.

Most provisions in this bill were written years ago and do not target abuses which have recently gained public attention. When this bill was originally drafted, corporate fraud at Enron and elsewhere had not yet come to light. The executives at these corporations had not yet been caught enjoying huge personal gains at the expense of shareholders and

employees only to later file for bankruptcy. This bill does not fully address these types of bankruptcy abuses, and unfortunately efforts to close these loopholes failed.

At the time this bill was drafted, companies were less likely to file for bankruptcy to shed health care and pension obligations to their retirees. In fact, the number of senior citizens in bankruptcy tripled from 1992 to 2001, representing the largest increase of any group. Today, nearly a million Americans have had their pension plans taken over by the Pension Benefit Guarantee Corporation and their benefits reduced; this is a substantial increase from when the bill was drafted. I am disappointed that this body not only voted against the Feingold amendment that would have helped elderly Americans protect their houses, but also against the Rockefeller amendment to improve employees' claim for owed wages and benefits. The Rockefeller amendment would have also required companies that dropped retiree health benefits to reimburse each affected retiree for 18 months of COBRA coverage upon reemerging from bankruptcy.

The bill adds a means test, which supporters of the bill say will significantly reduce abuse. The nonpartisan American Bankruptcy Institute found that over 96 percent of families seeking to go into chapter 7 bankruptcy would be judged as unable to pay under the new means test. However, the means test would likely deter qualifying families from filing for bankruptcy due to the addition of regulatory requirements and legal costs.

I am not opposed to sensible bankruptcy law reform, but this is a reverse Robin Hood--squeeze the down-on-their-luck middle class and impoverished Americans and give the proceeds to the financial services industry. Contrary to the claims of creditors, many of these families simply cannot pay. About half of families going into bankruptcy have had their utilities or phone shut off, and 60 percent went without medical care. One in five families that are bankrupt because of medical bills went without food. Surveys have shown that many of them want to repay their bills but are unable to, and they must ultimately file for bankruptcy to stop the harassment of collection agents.

This bill does nothing to prevent bankruptcy by targeting its causes. We should work to ensure adequate worker compensation, lower the high cost of health care, improve financial education, and stem predatory lending.

Our middle class is increasingly squeezed. Median family income has been relatively stagnant, rising by only 12 percent in constant dollars from 1978 to 2003. This increase has not kept up with families' sharply increasing costs. Health care costs have risen by 327 percent in constant dollars from 1988 to 2004. The real cost of tuition at a four year public university increased by 646 percent from 1978 to 2003. Child care costs have risen by 35 percent more than inflation from 1986 to 2003.

With less disposable income, families are less able to make it through difficult financial times and can be devastated by a single unexpected event. It saddens me that many of my colleagues in the majority voted against Senator *Kennedy's* amendment to raise the minimum wage for the first time in eight years. This measure could have meant the

difference to countless Americans between being able to pay their bills and having to file for bankruptcy.

Indeed, according to a new Harvard Law School study, illness or high medical costs cause half of personal bankruptcies. Certainly this is sure to affect the 45 million uninsured Americans, up from 30 million in 1978. It also has a traumatic effect on those who do have health insurance, one-third of whom lost it while they were sick. Yet again, I believe it was a mistake for this body to have killed an amendment to offer protections to patients with high medical bills.

We also continue to see some banks cross the line into predatory lending practices. We must continue to find a balance between providing access to credit and capital and protecting individuals from predatory lending. Unfortunately, as many of my colleagues have pointed out, members of our Armed Forces have become a top target of these unsavory practices. Senator *Durbin's* G.I. protection amendment would have extended protections to military members who have been forced into bankruptcy because of income loss connected to their service. It would also have protected them from predatory "pay day" loans. Unfortunately, this amendment was voted down.

For all of these reasons, I intend to vote against this flawed legislation, and I urge my colleagues to do the same.

Mr. LAUTENBERG. Mr. President, we are now into our second week of debate on this bill, but in fact, we have been talking about it for 8 years, since it was originally introduced.

During that time, personal bankruptcies in our Nation have surged, while the profits of credit card companies have soared.

We had an opportunity to pass a good bill that would have curbed real abuses of bankruptcy, while protecting consumers who fall on hard times because of a medical catastrophe, divorce or the loss of a job. Instead, the majority rejected dozens of amendments that would have protected the homes of senior citizens, and required credit card companies to level with consumers about how much they would really pay in interest and penalties.

Now we are left with a bill that punishes consumers and lines the pockets of the credit card companies, a bill that protects the mansions of multimillionaires who file for bankruptcy protection but makes it easier for landlords to evict tenants from their homes if they are forced into bankruptcy, and, a bill that makes no distinction between a family struck by catastrophic illness, and a spendthrift who maxes out his credit cards on a shopping spree.

I mentioned catastrophic illness because half of all bankruptcies today are the result of medical debts. Most families who are driven into bankruptcy by a medical problem

probably think it can never happen to them because they have health insurance. But it can happen to anyone, and it does.

Three-fourths of the people who file for bankruptcy because of medical debts have health insurance when the medical problem begins.

But eventually their insurance runs out or certain treatments are not covered. And the next thing they know, they are facing financial ruin.

Bankruptcy also hits families that have been torn apart by divorce. On Sunday, the Washington Post published a front-page article about this bill.

The article described how a woman who was left alone by her husband to raise three children had fallen behind on her credit card payments. Even though she worked a second job and paid \$2,000 a month to the credit card companies, her debt continued to pile up because of exorbitant late fees and interest rates. This woman was almost an indentured servant to her credit card companies, struggling to pay off a debt that could never be satisfied.

This is not an isolated incident. The trend in the credit card industry today was described by one expert as a "fee feeding frenzy."

Credit card companies collected almost \$15 billion in penalty fees last year--nearly 10 times the \$1.7 billion they collected in 1996.

Penalty fees have become so important to the bottom line that some banks refer to customers who pay their bills on time as "deadbeats," because they cannot be hit with exorbitant penalties.

It has become commonplace for credit card companies to jack up the interest rates of customers who are slightly late with their payments--in some cases, by no more than one day.

Credit companies already charge late fees of up to \$39 for every late payment. Piling a higher interest rate on top of that late fee is like double jeopardy, and that is not fair to consumers.

There are many reasons why a consumer might be a day or two late in making a credit card payment. Maybe a child got sick and had to see a doctor, and his mom was too busy taking him to the hospital to worry about a credit card payment. Maybe a car broke down, and it had to be fixed so a worker could get to their job. Maybe the mail was a little slow that week.

Whatever the reason, a consumer should not be unfairly and harshly punished for one late payment.

At the very least, credit card companies should give consumers fair warning before hiking their interest rates. If there is a problem, the consumer should have a chance to correct it before their rate can be increased.

But the credit card companies are not interested in fairness. In fact, they actually hope customers will be late with a payment so they can be hit with penalty fees.

To that end, they engage in "bait and switch" tactics to lure consumers with low rates, then automatically jack those rates up the first time a payment is a day late.

One example of this is the Capital One Platinum MasterCard.

Customers going to the Capital One Web site to apply for a credit card will find the following ad, which touts "a great low rate"--an "8.9 percent fixed APR."

This ad is pretty prominent. As you can see, the type is large and easy to read, and there is a nice picture.

On an entirely separate Web page, buried in pages of fine print, Capital One discloses that:

All your APRs may increase to a default rate of up to 25.9% ANNUAL PERCENTAGE RATE if you default under this Card Agreement because you fail to make a payment to us when due, you exceed your credit line or your payment is returned for any reason. Default APRs will be effective immediately.

In other words, despite advertising a "fixed" rate of 8.9 percent, Capital One can almost triple a customer's rate to a whopping 25.9 percent--just for sending one payment one day late.

The cost of this rate hike to a customer with a balance of \$5,000 would be as much as \$880 in interest payments over the following year. That is simply too harsh of a penalty for sending one payment one day late.

This is the dire situation in which many consumers find themselves. Even though they make payments every month, and don't charge any new purchases to their credit card, they fall deeper and deeper into debt. Eventually, seeing no other way out, some of these people declare bankruptcy.

Many States have passed laws to protect consumers from unscrupulous penalties and rate increases. Unfortunately, these laws cannot be enforced, as courts have ruled that the banks are bound by the laws of the States where they are located, not where their customers reside.

As a result, credit card companies have flocked to States with weak consumer protections, creating a "race to the bottom."

With this bill, we had an opportunity to put a stop to that, and end the unscrupulous gouging of consumers. By giving consumers a chance to correct problems before they were hit with higher interest rates, we could have prevented many bankruptcies. Unfortunately, we have squandered that opportunity.

This bill does nothing to address the roots of the bankruptcy problem in our country today. And it does nothing to help consumers. For that reason, I must vote against S. 256.

Mrs. MURRAY. Mr. President, today I voted against a bankruptcy bill that puts credit card companies and politics ahead of ordinary Americans. Rather than providing balanced reform, this bill punishes those who have fallen on hard times--particularly our military families and those who are struggling under the weight of soaring medical bills.

I have heard from residents across Washington State that the cost of medical care is forcing them into bankruptcy. In fact, a report last summer by the Working for Health Coalition found that half of Washington State bankruptcies were due to rising health care costs. Most of these families are working and more than half have health insurance, but the growing cost of health care is so overwhelming it pushes them into bankruptcy. A national study last month found that 61 percent of bankruptcy filers did not seek the medical care they needed. These families deserve help, but instead this bill punishes them for circumstances beyond their control.

This bill also fails to adequately protect our military families, particularly our Guard and Reserve members. These patriotic families have had to struggle with half their normal income during long--and often extended--deployments. Many have seen their businesses collapse at home while they have served overseas. I have met with Washington State Guard and Reserve families and have seen how they are struggling to meet the financial burdens of long deployments. They deserve a lifeline, not more paperwork, legal fees, and threats from collection agencies. The Senate had an opportunity to protect our soldiers through Senator **DURBIN**'s amendment, but that was rejected for a Republican amendment that falls far short. Our military families deserve better.

If Republicans had been willing to make the bill less punitive toward ordinary Americans, they would have adopted a number of reasonable amendments in committee and on the Senate floor, but they refused. For example, Republicans blocked an amendment that would have protected workers and retirees if their company files for bankruptcy. Republicans also voted down amendments to ensure the elderly don't lose their homes and to discourage predatory lending. And they even failed to protect people who have had their identities stolen by criminals who then run up huge credit card bills. These are all examples of how Republicans are protecting corporate interests at the expense of vulnerable individuals.

This bankruptcy bill also stacks the deck against women and children. For example, this bill will make it harder for single mothers to collect the past-due child support they and their children are owed.

I am also disappointed that the Senate rejected the Schumer amendment, which would have assured that those who commit violent crimes at reproductive-health facilities against women and doctors do not escape paying their debts and fines by declaring bankruptcy.

Looking at the big picture, this bill fits a pattern of Republican proposals that turn the tide against average Americans. Last month, Republicans tipped the scales of justice against working families by limiting their ability to seek compensation for a death or injury caused by a company's negligence. On Monday, Republicans rejected a proposal to raise the minimum wage. Taken together, these actions will make life harder for working families and represent a dangerous trend that threatens average Americans.

In the past, I have voted for bankruptcy reform legislation, but today families find themselves in a much different place financially because of the costs of healthcare and military service. Congress should not punish them for things beyond their control with this unbalanced, unfair bill. American families deserve reform, not retribution.

Mr. LEVIN. Mr. President, I cannot vote for this legislation, although I support bankruptcy reform. It is clear that some people abuse the bankruptcy system. However, this bill would make it more difficult for individuals and families who have suffered genuine medical and financial misfortune to get a fresh start. Nearly half of all of those studied in a recent research effort by Harvard Law School said that illness or medical bills drove them to bankruptcy and nine out of ten have faced health problems, job loss, divorce or separation. A letter to the Chairman and ranking member of the Judiciary Committee, signed by nearly a hundred bipartisan bankruptcy law professors from law schools across the country, said, "The bill is deeply flawed, and will harm small business, the elderly, and families with children."

I have in the past supported reasonable bankruptcy legislation. The legislation which is before the Senate today could have been greatly improved by a number of reasonable Democratic amendments which have been offered over the last several days. However, the Republican majority has largely, on a party-line basis, rejected all amendments out of hand.

I am disappointed that we did not add some reasonable flexibility measures to the "means test." The purpose of the means test is to prevent consumers who can afford to repay some of their debts, from abusing the system by filing for chapter 7 bankruptcy. It makes sense to require those who are able to repay their debts to do so. However, there are some situations that warrant an exception to the means test. For example, the Senate defeated an amendment that would have exempted members of the armed services, veterans, and spouses of service members who die while in military service from application of the "means test" provisions of the bill. This would have helped them if their family or their business goes into bankruptcy. That amendment was defeated. Further, an amendment offered by Senator *Kennedy* that would have exempted from the means test debtors whose severe

medical expenses have caused the financial hardship was also defeated. Senator *Corzine* also offered an amendment that would have exempted economically distressed caregivers from the means test, but that amendment was also defeated by a largely party line vote. The Republican majority even rejected Senator *Nelson's* common sense amendment that would have exempted victims of identity theft from the means test.

Further, the Senate defeated amendments that would have protected the homes of our elderly and people forced into bankruptcy after a medical crisis.

I am also disappointed that the Senate defeated several amendments that would have closed loopholes used by wealthy individuals seeking bankruptcy protection.

The Senate had an opportunity to close an increasingly popular loophole where the very wealthy shield millions of dollars before declaring bankruptcy by setting up so-called asset protection trusts. Senator **SCHUMER** proposed an amendment to put an end to this abuse of the tax system by limiting the use of these trusts to shield assets only up to \$125,000. The amendment was defeated 39 to 56.

The Republicans also rejected an amendment offered by Senator *Durbin* to curtail the abusive practices of executives at companies like Enron and WorldCom who received millions of dollars in compensation shortly before the companies filed for bankruptcy protection. The chamber also defeated an amendment proposed by Senator *Akaka* that would have provided credit card users with information to assist them in making more informed choices about their credit card use and repayment. This amendment would have helped consumers understand the consequences of their financial decisions, such as making only minimum payments, so that they can avoid the kind of financial pitfalls that lead to bankruptcy. Sadly, this amendment was also rejected.

The Schumer amendment, which in the past has been strongly supported on a bipartisan basis by the Senate, was stripped from the bill this year. The amendment, which provides that debts arising from violence and threats of violence could not be discharged in bankruptcy proceedings, should have been adopted by the Senate.

We do need bankruptcy reform, and I wish that the Senate had taken this opportunity to pass equitable reform. This bill does not achieve that goal and therefore I cannot support it.

Mr. GRASSLEY. Mr. President, I rise to urge my colleagues to vote for final passage of the bankruptcy reform bill. I have been working on this piece of legislation for a long time, and I am pleased to see that we are nearing the end. This bipartisan bill has been maligned by many, and I want to set the record straight. What we are trying to do is fix a bankruptcy system that has gone awry, where individuals who have the ability to repay their debts don't do so, and the rest of us are left holding the bag.

What we have tried to do with this bill is inject some fairness into the system, whereby people who have assets and the ability to repay back their debts go into a chapter 13

repayment plan, and people who do not have any means and no ability to repay go into chapter 7. We've kept the safety net of full chapter 7 bankruptcy discharge for those who truly need it, and channeled others that can pay their creditors into a repayment plan.

This is done through a means test, which is fair and flexible enough to take into account all the unique circumstances a debtor and his family face. The means test takes into account all reasonable and necessary expenses for a debtor and his family. We provide for a court to consider "special circumstances", so that a debtor can show that he doesn't have the ability to repay, and should stay in chapter 7. The bill excludes from the means test poor people, those individuals who are below the median income. So if individuals can pay and they really don't have the ability to pay, they will continue to have their debts fully discharged in chapter 7 bankruptcy, while those who do have assets cannot hide them from their creditors and escape repayment.

Let me mention a couple of things this bill does not do. This bill doesn't put the credit card companies first or leaves hard working families out to dry, as some of the bill's detractors have claimed. In fact, the bill helps women and children and improves their situation when someone files for bankruptcy because it provides new priorities and tools so that child support and alimony will be collected before other creditors. We move child support up in priority, up to number one from number seven in line, and that means that they will be paid before a lot of other creditors, including the credit card companies. The bill makes staying current on child support a condition of discharge. We provide that debt discharge in bankruptcy is made conditional upon full payment of past due child support and alimony.

Domestic support obligations are automatically non-dischargeable, without the costs of litigation. The bill also makes payment of child support arrears a condition of plan confirmation. The bill provides better notice and more information to facilitate child support collection, and tracking down deadbeat parents. Further, the bill protects the name of a debtor's minor children from public disclosure in a bankruptcy case.

This bill also doesn't help credit card companies and other lenders take advantage of honest consumers, as some have alleged. In fact, the bankruptcy bill contains some new real and significant consumer protections. The bill requires credit card companies to make new disclosures that benefit customers and prohibits deceptive advertising of low introductory rates. It requires credit card companies to provide key information about how much money people owe and how long it will take to payoff their credit card debt by only making a minimum payment. The bill requires lenders to prominently disclose when late fees will be imposed, the date on which introductory or teaser rates will expire, and what the permanent rate will be after that time. The bill also prohibits lenders from canceling an account because the consumer pays the balance in full each month to avoid finance charges.

The bill also provides that consumers will be given a toll-free number to call where they can get information about how long it will take to payoff their own credit card balances if they only make minimum payments on their balance. This will educate

consumers about their financial situations. In addition, the bill allows for more judicial oversight of reaffirmation agreements, to protect consumers from being pressured into onerous agreements.

The bankruptcy bill also includes a debtor's bill of rights to prevent bankruptcy mills from preying upon those who are uninformed of their rights. The bill provides for penalties on creditors who refuse to renegotiate reasonable payment schedules outside of bankruptcy. The bill provides for penalties on creditors who fail to properly credit plan payments in bankruptcy. The bill strengthens enforcement and penalties against abusive creditors for predatory debt collection practices. Finally, the bill contains credit counseling programs to help consumers avoid the cycle of indebtedness.

So with the bankruptcy bill, we've tried to close loopholes in the system and eliminate abuses. We've created new consumer protections. We've made chapter 12 permanent. We've made sure that financial markets are not subject to risk. Although the bill doesn't contain everything I would have liked to include, it is a good start to putting an end to the abuses.

It has been a long haul, but I think we are finally seeing this bill through to the end. And there are many people that I'd like to thank because they've been instrumental in getting us to this point. I've been quite busy lately as chairman of the Finance Committee, working on social security, medicare and tax reform. I take that responsibility very seriously. Because of Finance Committee markup and hearing conflicts, I have had to rely on my colleagues to manage this bill on the floor. But the job has been in very good hands.

In particular, I appreciate Senator **HATCH** and the diligence that he has shown towards this bill. On more than one occasion, he made sure that the bankruptcy bill made it through the committee process so that we could have it considered on the floor. He has stepped up to the plate many a time to manage the bill, work on compromises, and keep the engines running. Senator **HATCH** is a good friend and colleague, and I respect his perseverance as well as his legal expertise. I'm glad to see that all his hard work during the years has finally come to fruition. Senator **HATCH** has been a true stalwart through the years, and I thank him for his dedication to bankruptcy reform. I also want to thank his able staff, Perry Barber, Kevin O'Scanlin and Bruce Artim for all their help on this bill.

I especially want to thank Senator **SESSIONS** for being a tireless champion of bankruptcy reform here in the Senate. I have relied on his intellect and legal prowess for the last eight years that we've been working on this bill. I believe that Senator **SESSIONS** has brought a unique perspective to the bankruptcy bill with his dedication to eliminating abuses in the bankruptcy process. He is a firm believer that if you borrow money, you have to pay it back. So I truly am thankful for all the work that Senator **SESSIONS** has done, especially in managing this bill on the floor. He is one sharp lawyer, and I am honored to have him as my friend. I also want to thank his staff for their

excellent work, in particular his talented Chief Counsel William Smith, Cindy Hayden, Amy Blankenship and Wendy Fleming.

I want to thank Chairman **SPECTER** for placing this bill at the top of the agenda in the Judiciary Committee, and for moving it so quickly and ably in this Congress. His staff, Harold Kim, Mike O'Neill, Ivy Johnson, Hannibal Kemmerer, Tim Strachan, Brendan Dunn and Ryan Triplette have been extremely helpful in getting the job done. I want to thank Majority Leader **FRIST** and his staff, Allen Hicks, Eric Ueland, Sharon Soderstrom and Dave Schiappa, as well as Senator **MCCONNELL** and his staff, John Abegg, Kyle Simmons, Malloy McDaniel and Brian Lewis.

I would be remiss if I didn't thank our friends on the House side, and in particular Chairman **SENSENBRENNER** and his staff, Phil Kiko, Susan Jensen and Ray Smietanka. Chairman **SENSENBRENNER** has really been a leader on bankruptcy reform, and a true driving force behind this legislation. I look forward to additional collaborations with him.

In addition, I want to thank Senator **CARPER**, Senator **NELSON**, Senator **BIDEN** and Senator **JOHNSON**. This is truly a bipartisan bill, and it couldn't have gotten done without their help.

Finally, I thank my own staff, my Finance Committee Chief of Staff and Legislative Director Kolan Davis and my Judiciary Committee Chief Counsel Rita Lari Jochum, for their hard work on the bill. I also want to thank my former staffer John McMickle, for his expertise and advice on this important piece of legislation. Good staff is hard to find, and I am proud to say that my staff is probably the best in town.

Mr. NELSON of Nebraska. Mr. President, today, I am pleased to see the passage of S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. This bill has been under consideration in Congress since before I was elected to the Senate. Since my arrival, I have been a proponent of the goals it strives to attain to ensure that abuse of America's bankruptcy laws is curtailed and that Americans who find themselves in unanticipated financial duress and have legitimate reasons to seek bankruptcy protections will have the opportunity to do so.

The goal of the bill is to prevent certain abuses of the bankruptcy system. It includes more than five hundred pages of new and reformed law, but key provisions include the following.

First and foremost, the bill will curb abuse of the bankruptcy system by implementing a means test to ensure that those who can afford to repay some portion of their unsecured debts are required to do so. Bankruptcy petitioners with relatively high incomes could be required to file under chapter 13 instead of chapter 7, and repay some of their debt out of future income. The means test takes into account the petitioner's income, debt burden, and allowable living expenses, which can vary significantly according to the debtor's

place of residence and particular circumstances. Filers who cannot afford to repay at least \$6,000 will be given unfettered access to chapter 7 liquidation proceedings.

The bill has a safeguard that will allow judges to consider extenuating circumstances in each bankruptcy case. After determining this means test calculation, the judge can then take any "special circumstances" into consideration before making a decision to shift the debtor into chapter 13. This will allow judges to consider cases where catastrophic illnesses or other unexpected financial calamities that have impacted a family or individual to the point where their debts are too heavy a load to carry. This provision made many of the amendments considered on this bill redundant.

The bill implements an important safeguard for family farmers by making permanent the extension of chapter 12 bankruptcy rules. Chapter 12 has expired every year, necessitating the need for an extension. Last year, Senator *Grassley* and I worked in a bipartisan fashion to secure the chapter 12 extension. The bill also bumps the exemption level for family farmers from \$1.5 million to nearly \$3.24 million, which will be adjusted periodically for inflation.

The bill includes an important provision to safeguard our children. It contains provisions that strengthen the ability of women and children to collect child support and marital dissolution obligations. This provision will enable some families to continue to provide for the needs of their children.

Consumers also benefit from protection measures in this bill. By requiring new minimum payment and introductory rate disclosures for credit cards, consumers will be protected from surprise fees and unexpected rate fluctuation. It also contains a 'debtor's bill of rights' requiring that bankruptcy attorneys and petition preparers disclose their services and fees for those services to consumers.

It is important to note that no American will be denied access to the bankruptcy system under these reforms. However, those trying to shield their assets while abandoning their financial responsibilities will find it much more difficult to abuse the system and leave their debts for other Americans to cover through higher interest rates and fees.

As I mentioned earlier, there were many amendments to this bill offered for consideration. As I considered each of these amendments, I measured the intended impact of each amendment on the bill. In voting against many of the amendments I did so knowing that the groups of individuals singled out by the amendments, such as veterans, individuals with chronic health problems, or military personnel, were already adequately protected in the underlying bill.

I carefully considered each amendment offered to the bill on a case by case basis to determine if the amendment improved the bill. Because I believe the bill already covered most of the issues presented in the amendments, it was my determination that many of the amendments did not improve the bill and thus, I voted against them.

Again, this bill includes a safeguard for judges to consider ``special circumstances" like medical bills, deployment to war and other circumstances. In addition to this safeguard, I supported an amendment to the bill that clarified the circumstances that might be considered by a judge. That language provided specific examples a judge might consider including ``a serious medical condition or a call to order to active duty in the armed forces." I voted for this amendment because it provided an improvement, in the form of clarity on special circumstances.

It is important that creditors, retailers, and small businesses who in good faith provide people with credit do not bare the brunt of the cost when debtors find themselves unable to pay. It is also critical that we protect consumers who have found themselves in unanticipated situations where their inability to meet their debts is beyond their control. And it is important to safeguard consumers against predatory lending practices.

I worked hard to find the correct balance among these competing goals on this bill and feel that the Senate did a good job in accomplishing that overriding principal. I am pleased to support this bill because I believe it provides needed improvements to our bankruptcy protection laws that will benefit every American.

Mr. AKAKA. Mr. President, I am in opposition to the bankruptcy legislation.

The financial services industry has become increasingly complex with new technology, products, and services. However, this dated legislation has not had significant changes made to it since the 107th Congress.

Predatory lending has surged since the initial development of this bankruptcy legislation. In the early 1990s, there were fewer than 200 payday lenders nationwide. Now, there are more than 20,000. Payday lenders made 100 million loans in 2003. These loans represent more than \$40 billion. Most alarmingly, according to the Consumer Federation of America, interest rates on these loans begin at 390 percent.

Yet, Congress has failed to act to prevent the exploitation of working families that are short on cash due to unexpected medical expenses or other needs. I am afraid that the passage of this legislation will further reduce the risk for predatory lenders, and as a result, they will aggressively market their products even more. We must act to protect consumers from these unscrupulous lenders. I remain committed to restricting all forms of predatory lending, including payday loans, and to providing consumers with alternative affordable short-term loans.

Access to credit has increased significantly and household debt has skyrocketed as a result. Revolving debt, mostly compromised of credit card debt, has risen from \$54 billion in January 1980 to more than \$780 billion in November 2004. A U.S. Public Interest Research Group and Consumer Federation of America analysis of Federal Reserve data indicates that the average household with debt carries approximately \$10,000 to \$12,000 in total revolving debt. This legislation tightens the grip that creditors

have on consumers, but it fails to restrict the aggressive marketing practices of credit card companies.

In addition, this bankruptcy bill fails to provide adequate, timely, and meaningful disclosures for consumers. As we make it more difficult for consumers to discharge their debts in bankruptcy, we have a responsibility to provide additional information so that consumers can make better informed decisions. S. 256 includes a requirement that credit card issuers provide a generic warning about the consequences of only making the minimum payment. This provision fails to provide the detailed information for consumers on their billing statements that my amendment would have provided. My amendment would have given consumers the detailed personalized information necessary for them to make better informed choices about their credit card use and repayment. It would have required companies to inform consumers of how many years and months it would take to repay their entire balance and the total cost in interest and principal, if the consumer makes only the minimum payment. The amendment would also have required consumers to be provided with the amount they need to pay to eliminate their outstanding balance within 36 months. Finally, my amendment would have required that creditors establish a toll-free number so that consumers can access trustworthy credit counselors. Unfortunately, this amendment was defeated.

I appreciate the willingness of the Chairman of the Banking Committee, Senator *Shelby*, to continue to work with me on this very important consumer awareness issue.

I also proposed an amendment that would have required credit card companies to make concessions to individuals in debt management plans so that credit counseling could be a viable alternative to bankruptcy. Unfortunately, that amendment was also defeated.

I fear that this bill will end up significantly harming families that have suffered financially due to illnesses, the loss of a job, or the death of a loved one. I supported other reasonable amendments intended to protect low-income families, the elderly, and other vulnerable populations from this overly restrictive legislation. However, these amendments also failed.

Instead of making improvements to the legislation, an old, outdated bill has been approved by the Senate. It is low-income working families that will be hardest hit by this anti-consumer legislation. After passage of this legislation, we will need to take additional steps to prevent further exploitation of consumers by unscrupulous lenders and to improve relevant and useful information about credit to consumers. I will continue to fight to protect working families from predatory lenders and overly aggressive creditors.

Mr. KERRY. Mr. President, I strongly believe that reform of our bankruptcy laws is necessary. Too often, bankruptcy is used as an economic tool to avoid responsibility for unsound decisions and reckless spending.

Last year Americans paid interest on about \$690 billion in revolving debt. Most of that debt is credit card debt. According to a Consumer Federation of America study, the

average household carries between \$10,000 and \$12,000 in credit card debt and has nine credit cards. Consumers pay an average interest rate of 12.4 percent or approximately \$85 billion annually in credit card debt interest.

Let me point out that during both the 105th and 106th Congress, I supported legislation to reform bankruptcy laws and end the abuse of the system.

However, I am unable to support the Bankruptcy Reform Act before us today because I believe it is unfair and unbalanced, does far too little to help consumers and curb creditor abuses, and includes an inflexible "means test" that will harm many debtors who are genuinely in need of the protections and the "fresh start" that bankruptcy is intended to provide.

The Bankruptcy Code currently offers two alternatives for individuals: chapter 7, under which a debtor's assets are sold and the proceeds are divided among creditors, and chapter 13, under which debtors who have a regular income develop a repayment plan for a portion of the debt. In many cases, debtors filing under chapter 13 repay a greater proportion of their debt than those filing under chapter 7.

The Bankruptcy Reform bill creates a "means test" that will make it more difficult for individuals earning above the median income level to erase debts under chapter 7, forcing them to file under chapter 13, which would require them to repay a greater portion of their debt. I believe that those who can afford to repay a greater portion of their debts during the bankruptcy process should be required to do so.

A narrowly targeted reform bill designed to reduce abuse of the system would provide bankruptcy judges with the discretion to dismiss or convert a case to chapter 7, but would not mandate it. It would have provided creditors the opportunity to ask for a dismissal or conversion without putting the burden on every filer to prove that he or she deserves the protections of chapter 7.

However, the "means test" included in the bill is inflexible, and it provides no room for a bankruptcy judge to determine whether the circumstances that led to the debtor's financial situation warrant treatment under chapter 7. A parent with a sick child bankrupted by medical bills is treated the same way as a reckless spender who ran up debt on luxury items. That's simply not right.

Again and again, Senators offered amendments that sought to increase the flexibility of the "means test" and offered other changes to improve many aspects of this legislation. Unfortunately, in almost every case, these amendments were defeated.

The Senate voted against giving any relief to families forced into bankruptcy by devastating health care costs. One million men and women each year turn to bankruptcy protections in the aftermath of a serious medical problem--and three-quarters of them have health insurance. Senator *Kennedy* offered amendments to exempt from the means

test debtors who have incurred large medical expenses and other reasonable considerations. Both his amendments were defeated.

The Senate voted against relief for children caught up in their parents' bankruptcy. And it voted against relief to help military families who are struggling with the burdens in Iraq and around the world.

The Senate defeated critical consumer protections that would simply give consumers more information and might help end some of the abusive and deceptive practices of some credit card companies. The industry pushes out an incredible 5 billion solicitations every year. Under current regulations companies can change interest rates at almost any time. They market aggressively and, I believe for some, deceptively. Only last year, the Office of the Comptroller of the Currency issued an advisory letter warning national banks that engaged in deceptive credit card marketing and account management practices that they would face compliance and reputation risks.

Remarkably the bill does protect the wealthiest Americans by allowing them to continue hiding their assets from creditors during bankruptcy and never making good on their debt. Senator *Schumer* offered an amendment to eliminate and end this abuse, and it was defeated. And it does not stop corporate executives from looting their companies and leaving workers, stockholders, and creditors holding the bag. How can we target middle-class families and ignore the wealthiest Americans as they hide their assets?

This bill is needlessly punitive to families. It is as if we have gone out of our way to harm and not help them. For example, when a debtor receives a bankruptcy discharge, the legislation sets up new classes of nondischargeable debt that will compete for payment along with child and family support. Senator *Dodd* offered an amendment to enable parents to better meet the needs of their children during bankruptcy. Unfortunately, it was defeated. The credit card companies beat the kids on that vote.

This bill is not only detrimental to consumers, but it also hurts our small businesses. This effort to reform our bankruptcy laws will make it more difficult for entrepreneurs to start a small business and imposes additional regulations and reporting requirements on small businesses who file for bankruptcy.

I believe we must do everything possible to ensure the viability of small businesses and to assist in fostering entrepreneurship in our economy. Regulatory and procedural burdens should be lowered for small business wherever possible. However, the bill fails to meet this challenge. Instead, this legislation promotes additional red tape and a government bureaucracy. It imposes new technical and burdensome reporting requirements that are more stringent on small businesses that file for bankruptcy than they are on big business. Further, the bill will provide creditors with greatly enhanced powers to force small businesses to liquidate their assets.

Any big business would have difficulty complying with these new burdensome reporting requirements. But think of the difficulties an entrepreneur or a mom-and-pop

grocery store will have in complying with this dizzying array of new and complex requirements. These small businesses are the most likely to need, but least likely to be able to afford, the assistance of a lawyer or an accountant to comply with these new requirements. I cosponsored an amendment offered by Senator *Feingold* to strike many of the small business provisions in the bill because they would increase reporting requirements on small businesses and make it easier for creditors to force liquidations of small business during the bankruptcy process. Unfortunately, that amendment was not adopted.

I am pleased that an amendment sponsored by Senator *Collins* and myself which will extend chapter 12 bankruptcy protections to our family fishermen, has been included in the bill. The small, family-owned fishing businesses are in serious trouble. We are making progress in rebuilding stocks; however, the cost of this progress has been carried by fishermen working Georges Bank and the Gulf of Maine. The Collins-Kerry amendment will help ensure that fishermen have the flexibility under chapter 12 of the Bankruptcy Code to wait out the rebuilding of our commercial fish stocks without back tracking on our conservation gains to date. It will help preserve the rich New England fishing heritage in Massachusetts.

Despite some provisions, which I do believe improve the system, overall this bill does not provide bankruptcy reform. Inexcusably, this bill helps creditors without helping consumers. It will let the very rich continue to hide money in homes and trusts. It gives no relief to families hit by medical bills or other financial hardship. It even puts credit card companies ahead of children when debt is allocated to creditors. I will vote no.

Mr. SESSIONS. Mr. President, today, for me, marks the culmination of 8 long years of hard work, and I am glad we have finally reached this point, where we will not only pass this bill, but the House will do so as well and the President will sign it into law. I believe that we have eliminated some abuses with this bill. I wish we could have accomplished more, but we could not let the perfect be the enemy of the good. Let me say to my colleagues, that there are some issues like homestead and asset trusts that will come back, and I look forward to working on those, but make not mistake about it, this is a good bill and I am excited to see it pass.

The policy questions we have been addressing are these:

(1) whether bankruptcy is a necessary and permitted way to recover from overburdening debt; and

(2) when is bankruptcy being abused and used as an escape valve for individuals capable of repaying some, if not all, of their debt.

The goal of this bill has never been to create additional burdens for those who have over-extended themselves for one reason or another, but to help them achieve financial responsibility after bankruptcy, so that they can avoid similar setbacks in the future.

It is clear to me that when you have statements from debtors that they are using bankruptcy to ``[take] advantage of one of the opportunities the

Government offers," that the responsibility for slowing down the 1.6 millions consumer bankruptcy filings per year lies with Congress.

As we approached this bill, our goal was not to punish those who legitimately need the fresh start that bankruptcy offers. However, our goal was to disallow people from filing bankruptcy simply for the sake of taking advantage of a financial opportunity provided by the government. People who can afford to pay all or a part of their debts over a limited period of time should not get off Scot free.

Let me just for a moment, talk about the concept of bankruptcy. The term derived from the medieval Italian phrase ``broken bench." Merchants would sell their wares in the marketplace from benches. If the merchant ever reached a point where he could not pay his debts, his creditors would seize all of his wares and divide it among themselves. They did not stop with the seizing of wares, however. The creditors would break the merchants' bench, to bankrupt the merchant from reopening.

Our goal under this legislation was not and we did not ``break the bench." Instead of trying to prevent merchants or individuals from having a second opportunity, we accomplished just the opposite. People who need a fresh start under this bill will get one. The people who can pay some of their debts back will have to do that. Let me just highlight a few of the benefits in this bill.

First, S. 256 requires that individuals receive credit counseling prior to filing for bankruptcy. This counseling will help an individual decide if bankruptcy is the appropriate mechanism to remove debt and will help the individual understand what filing bankruptcy actually means. In many instances, the deceptive and fraudulent advertising practices of bankruptcy mills lure consumers into bankruptcy unnecessarily. Debtors should know that there are many ways to get back on their feet financially--such as entering into voluntary repayment arrangements.

To curb the practice of preying upon debtors, S. 256 establishes the Debtor's Bill of Rights. The Bill of Rights requires that debt relief organizations disclose the nature of the services they offer, explain the alternatives to filing bankruptcy, disclose the rights and obligations of debtors who file for bankruptcy, and explain the consequences of filing for bankruptcy.

Second, S. 256 establishes a means test to help determine whether people are capable of paying back a meaningful portion of their debts. This test might help the debtor avoid a Chapter 7 filing, where creditors will liquidate the individuals assets and where the debtor will have a very hard time getting creditors to extend credit to them in the future. If a debtor files under Chapter 13 and learns how to manage money under a structured repayment plan that requires some discipline, the debtor learns financial responsibility and should be able to avoid future financial turmoil. Chapter 13 bankruptcies allow

debtors to keep their assets and pay back a portion of their debts over a 5 year period. In exchange, the remaining portions of their debt are discharged and the debtor gets a fresh start.

Third, S. 256 creates new protections for consumers, especially in the area of credit cards. We require credit card companies to disclose the dangers of making only a minimum payment and we prohibit deceptive practices like advertising low introductory rates--rates used to bait and switch the credit card holder. We also require that a toll-free number be provided to consumers, where they can obtain information on how long it will take to payoff their credit card balances.

The consumer benefits of this bill are enormous. Instead of breaking the bench, this bill promotes financial responsibility. The bill vastly improves the current situation in bankruptcy for certain categories of individuals. For example, it provides special benefits to women and children, through child support and alimony, and provides parents the ability to deduct expenses such as school tuition. Make no mistake about it, while the bill provides some increased protection for unsecured creditors, it provides more protection for consumers.

Logically, there is absolutely no reason to oppose it.

Mr. President, over time, many people have worked on this bill, and I would just like to take a moment to express my appreciation for their work.

First, it has been an honor to work closely with Senators **GRASSLEY** and **HATCH** to make this legislation a reality. I appreciate both of them so much and I believe they both have done yeomen's work on this bill. I thank Senator **FRIST** for making this bill one of his top priorities and I appreciate the leadership of Senator **MCCONNELL**.

I think it is appropriate that we take just a moment to express appreciation to some people who gave extraordinary effort to make this successful conclusion.

First, I note that in my office it has taken three chief counsels to get through this bill. I appreciate the hard work of Kristi Lee, my first Chief Counsel and currently a magistrate judge in the Southern District of Alabama. She did an outstanding job on this bill during the first years that this legislation was in the Senate. I also appreciate the work of my former Chief Counsel Ed Haden, who is currently doing appellate litigation at one of Alabama's outstanding law firms, Balch and Bingham. While I also appreciate the work of my current Chief Counsel, William Smith, and legislative counsels Amy Blankenship and Wendy Fleming for their efforts in this endeavor, my Deputy Chief Counsel Cindy Hayden has really given an extraordinary effort on this bill.

These fine staffers have worked night and day for two weeks to guide this bill to passage. William Smith has given every ounce of his strength to successful passage. He deserves particular praise.

Additionally, I appreciate the work of Lloyd Peeples, a former counsel of mine who has clerked for a bankruptcy judge and now serves as an AUSA in the Northern District of Alabama. He provided invaluable assistance on this bill.

Sean Costello, a former counsel of mine who now works for the Office of Justice Programs at the Department of Justice, provided outstanding work to help make this bill a reality.

Brad Harris, a former counsel of mine who now works for the Burr and Forman firm in Birmingham, never failed in working long hours and providing key assistance in seeing this bill through.

And finally, Brent Herrin, my former counsel who worked hard on cram down and other issues, did outstanding work. Brent practices tax law for the Deloitte Touche firm in Atlanta.

For eight years, these lawyers have all worked on this legislation. I know they are happy to see it come to a conclusion. I am too.

In the past I have thanked the former staffers from other offices that have worked on this bill, I will not name them individually today, save John McMickle who served Senator **GRASSLEY** and played a major role in helping to craft this bill. John believes in the underlying principles in this bill and I appreciate his work.

I also want to thank Rita Lari Jochum, Senator **GRASSLEY**'s current Chief Counsel. I have seen very few staffers with her drive and dedication and she is to be commended for her efforts on this bill. Her good demeanor has been a source of calm in the storm.

I appreciate the work Perry Barber, Brendan Dunn, Kevin O'Scannlain, and Bruce Artim of Senator **HATCH**'s staff, and the work of Harold Kim, Ivy Johnson, Tim Strachman, Mike O'Neill, Hannibal Kemmerer and Ryan Triplette of Senator **SPECTER**'s staff.

I must also thank Dave Schiappa, Allen Hicks, Eric Ueland, Sharon Soderstrom, John Abegg, Kyle Simmons, Malloy McDaniel and Brian Lewis from the Leadership staffs of Senators **FRIST** and **MCCONNELL**, all who have provided tremendous assistance along the way in shaping this bill into its final form.

Mr. President, I also want to thank Chairman **SENSENBRENNER** and his staff for their remarkable work in getting this bill done. Phil Kilko and Susan Jensen did outstanding work on this bill.

I thank the senior Senator from Alabama, Senator **SHELBY**, for his work on this bill. He guarded his banking jurisdiction like a roaring lion.

This is a great day, Mr. President. I thank the Chair and yield the floor.

Mr. FRIST. Mr. President, the Senate will soon vote on final passage of the bankruptcy reform bill. This bill constitutes the most sweeping overhaul of bankruptcy law in 25 years. Like class action, bankruptcy reform curbs abuse of the legal system. I am hopeful that it will pass with a strong bipartisan vote.

Bankruptcy reform has long been in the works. Similar bills have passed the Senate in the 105th, the 106th, and 107th Congresses. Today, in the 109th we will finally deliver a package that restores fairness and personal responsibility to the bankruptcy system.

The House has agreed to take up the legislation, pass it quickly, and send it to the President for his signature.

I thank my colleagues for their hard work and leadership. In particular, I would like to thank: Senator *McConnell*, a good friend and counselor, who has made sure that we have the votes on every amendment and who has helped secure final passage; Senator *Grassley*, the bill's lead sponsor, who has been a tireless advocate for bankruptcy reform for nearly a decade; Chairman *Specter*, who skillfully led the bill through Committee; Senator *Hatch*, who, as a floor manager, has led on the substance of each and every amendment; and Senator *Sessions*, who has led debate on the floor again and again, and who lent his expertise to explain the finer points of the law.

Like class action, the bankruptcy reform bill is another example of bipartisan cooperation. Nearly every vote on every amendment has been bipartisan. Our work has been a great example of how thoughtful, bipartisan negotiation can deliver meaningful solutions for the American people.

America has always been a place for second chances. As Americans, we value innovation, reinvention and risk taking. It's part of our national DNA, part of why we are so spectacularly successful. It's also why America has long supported generous bankruptcy law. We recognize that sometimes people get in over their head, or are hit with an unexpected set back, and they need a fresh start, a second chance.

Congress has passed, and courts have upheld, Federal bankruptcy laws for over 100 years. The Constitution gives Congress the express power to "establish uniform laws on the subject of bankruptcies throughout the United States."

As the Supreme Court has stated, "One of the primary purposes of the Bankruptcy Act is to give debtors a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt."

Unfortunately, however, the system has veered away from its original positive intent. In the past two decades, bankruptcies have skyrocketed--actually accelerating during the economic boom years of the 80's and 90's.

Last year, we reached an historic high of over 1.6 million filings per year. The total number of bankruptcies more than doubled during the 1980's and then doubled again

from 1990 to 2003. Personal bankruptcies outnumber business bankruptcies by a multiple of more than 45.

We all pay the price for these bankruptcy filings. Every bill you and I pay includes a hidden ``bankruptcy tax" of \$400 per year per household. That tax is figured into in every phone bill, electrical bill, mortgage payment, furniture purchase, or car loan we pay.

For many people, bankruptcy has become a first step rather than a last resort. Opportunistic debtors who have the means to repay use the law to evade personal responsibility. In some cases, they even plan their bankruptcy, buying a mortgage and running up credit cards and then declaring they're broke.

With this bill, we are putting an end to the abuse. Wealthy debtors who have the means to pay some, or all, of their debt will be required to do so.

The bankruptcy bill establishes a means test based on a simple, fair principle: those who have the means should repay their debts. The legislation specifically exempts from consideration anyone who earns less than the median income in their state. It allows every filer to show ``special circumstances" if they cannot handle a repayment plan.

And it makes clear that active duty military, low income Veterans, and debtors with serious medical conditions are protected by these safe harbor provisions.

But for those individuals who are abusing the system, they will no longer be able to hide behind the law. Nor will they be able to duck their family responsibilities. These new reforms make child support a high priority.

Most people who get into financial trouble want to do the right thing. They want to make good on their obligations and pay what they owe. But they are in over their head and need a fresh start. This legislation will not affect the vast majority of these filers. What it will do is close loopholes that have let unscrupulous debtors slip through.

Today's impending vote is a victory for fairness, compassion and common sense. It took eight years, but we are finally here.

I applaud my colleagues for their leadership. Together with class action reform, we are returning fairness and common sense to the legal system.

When the legal system gets off track, it affects us all, consumers, creators, and innovators alike. Jobs are lost. Prices go up. We pay in big and small ways. By reforming the system, we strengthen our ability to grow. We keep America moving forward.

I look forward to tackling other lawsuit abuse issues including gun manufacturer liability, medical liability, and asbestos reform. I am hopeful that we will continue to work together delivering meaningful solutions to the American people.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. **CLINTON**) is necessarily absent.

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

The result was announced--yeas 74, nays 25, as follows:

[Rollcall Vote No. 44 Leg.]
YEAS--74

Alexander

Allard

Allen

Baucus

Bayh

Bennett

Biden

Bingaman

Bond

Brownback

Bunning

Burns

Burr

Byrd

Carper

Chafee

Chambliss

Coburn

Cochran

Coleman

Collins

Conrad

Cornyn

Craig

Crapo

DeMint

DeWine

Dole

Domenici

Ensign

Enzi

Frist

Graham

Grassley

Gregg

Hagel

Hatch

Hutchison

Inhofe

Inouye

Isakson

Jeffords

Johnson

Kohl

Kyl

Landrieu

Lincoln

Lott

Lugar

Martinez

McCain

McConnell

Murkowski

Nelson (FL)

Nelson (NE)

Pryor
Reid
Roberts
Salazar
Santorum
Sessions
Shelby
Smith
Snowe
Specter
Stabenow
Stevens
Sununu
Talent
Thomas
Thune
Vitter
Voinovich
Warner

NAYS--25

Akaka
Boxer
Cantwell

Corzine

Dayton

Dodd

Dorgan

Durbin

Feingold

Feinstein

Harkin

Kennedy

Kerry

Lautenberg

Leahy

Levin

Lieberman

Mikulski

Murray

Obama

Reed

Rockefeller

Sarbanes

Schumer

Wyden

NOT VOTING--1

Clinton

The bill (S. 256), as amended, was passed.

(The bill will be printed in a future edition of the **RECORD**.)

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

The motion to lay on the table was agreed to.

Mr. HATCH. 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. *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.

END