

The bankruptcy court shall not be asked to interfere in the complicated process of making credit underwriting decisions. This is particularly true when current underwriting practices are quite successful, with an average of 95 to 97 percent of consumer credit extended today repaid on time.

Mr. President, this amendment permits new uncontrolled and virtually unlimited inquiries into creditor conduct. It encourages complicated and involved discovery and burdensome court proceedings. It introduces unwarranted defenses to strong enforcement of the needs-based provisions of S. 1301, this bill.

The amendment permits a debtor to avoid repaying all his creditors by attacking the good faith of any creditor who brings a motion to enforce the needs-based provisions. And the amendment has no standard for what is good faith. So this is a killer amendment.

Moreover, S. 1301 already contains numerous provisions to make sure creditors are acting appropriately. As I have noted in my previous remarks, this is a well balanced bill that is a combination of months and months of deliberations and cooperation between Senators GRASSLEY and DURBIN and other members of the Senate Judiciary Committee. They, along with other members of the Judiciary Committee, have done a fine job in ensuring that this bill is a fair bill. This balanced and broadly supported legislation not only curbs abuses of the bankruptcy system but also provides unprecedented consumer protections.

Let me begin by saying being a creditor and winding up in bankruptcy court to collect unpaid bills is not a desirable situation for any creditor. Creditors who deal with debtors in bankruptcy, even in the best of circumstances, are likely to recover only pennies on every dollar they are owed.

In any event, S. 1301 already contains nine provisions with rather severe penalties to creditors for improper behavior. We have given due consideration to these concerns.

First, if a creditor brings a motion to dismiss a chapter 7 case and fails, the debtor gets attorney's fees and costs if the creditor was not substantially justified or if the creditor filed the motion in an effort to coerce the debtor.

Second, if a creditor unreasonably refuses a debtor's offer to work out a repayment schedule, the creditor is barred from asserting any claim of nondischargeability or any claim of denial of discharge.

Third, if a creditor willfully violates the automatic stay, the creditor pays the debtor's attorney's fees, actual damages, and punitive damages, if appropriate. We have really gone a long way here.

Fourth, if a creditor fails to comply with the requirements for a reaffirmation agreement, the court can order heavy sanctions and penalties.

Fifth, the legislation will make it much harder for creditors to get deter-

minations of nondischargeability. Only false representations by a debtor that are considered "material" will be actionable. If a creditor makes an unsuccessful claim of nondischargeability or denial of discharge, the creditor is liable for the debtor's attorney's fees, costs, and punitive damages, if the creditor's claim is not substantially justified. The reverse is not true. If the creditor wins the nondischargeability proceeding, the debtor does not have to pay the creditor's attorney's fees. So it isn't reversible.

Sixth, if a creditor willfully violates the postdischarge injunction, the creditor is liable for minimum damages of \$5,000 and attorney's fees and costs, with the possibility of treble damages.

Seventh, if a creditor fails to comply with Truth in Lending Act requirements for certain mortgage loans, the creditor's claim will not be recognized or paid in bankruptcy. For instance, if a creditor does not provide for certain disclosures, or fails to meet the requirements of the act, even if it is a technical violation, the creditor's claim will be denied in bankruptcy. In other words, the debt, both principal and interest, will be completely forgiven. These new penalties are in addition to those penalties already present in the Truth in Lending Act itself.

Eighth, if a creditor willfully fails to credit payments to a bankruptcy plan, the creditor is liable for minimum damages of \$5,000 and attorney's fees and costs, with the possibility of treble damages.

And ninth, if a creditor's proof of claim is disallowed or reduced by 21 percent or more, the debtor gets attorney's fees and costs, and so forth.

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

Mr. HATCH. As you can see—I hope we can vote down this amendment—a lot of hard work has been put into this.

Mr. President, I move to table and ask for the yeas and nays.

The PRESIDING OFFICER. There is time remaining.

Mr. REED. How much time is remaining?

The PRESIDING OFFICER. Two minutes 6 seconds.

Mr. REED. Thank you.

I applaud all the consumer protections that the Senator from Utah has listed, but I would like to add one more. I would like to add, along with the Consumers Union and the Consumer Federation of America, the protection of looking at the good-faith operation of a creditor who is demanding that a debtor be placed from chapter 7 into chapter 13.

With respect to the standard, my standard is as equally well defined as the bad-faith standard that exists today within the legislation, because good faith and bad faith are something that the banking judge should be able to determine, and it does not require an elaborate searching through of underwriting policies and looking through documentation and going around the country.

What it does require is that that trier of fact, that bankruptcy judge, determine whether or not the creditor has abused the relationship, either by intimidation or deceit. All these things would rise to the level of a lack of good faith. I suggest very strongly the bankruptcy judge can do that, and should do that in this context.

Mr. President, I yield the remainder of my time to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. How much time is remaining?

The PRESIDING OFFICER. Fifty-two seconds.

Mr. DURBIN. I rise to support this amendment because I think it makes a good bill even better. We are trying to stop the abuses in bankruptcy. We say if you want to file for bankruptcy and you do not have good cause, we are going to throw you out of court. We might penalize you, and we are going to do the same thing to your attorney. So from the debtor side—the person who owes the money—it is a pretty tough standard.

What the Senator from Rhode Island says is, let's have a standard as well for the collection agencies and the creditors who are not treating people fairly. I think we want to eliminate all abuses in the bankruptcy court, not just by the debtors and their attorneys, but by the creditors, too. What the Senator from Rhode Island suggests is fairness and balance. It gives the court the ability to look at strong-arm tactics used by collection agencies and creditors to the detriment of debtors who are trying to get out of debt.

VISIT TO THE SENATE BY MEMBERS OF THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE

Mr. LOTT. Mr. President, during this vote, I would like to urge Members of the Senate to go to the back of the Chamber and visit with our special guests we have here—the Prime Minister of the Republic of Singapore, Goh Chok Tong, the Foreign Minister, and their Ambassador to the United States. We welcome them to the United States and to the Senate Chamber.

[Applause.]

CONSUMER BANKRUPTCY REFORM ACT OF 1998

The Senate continued with the consideration of the bill.

AMENDMENT NO. 3610

The PRESIDING OFFICER. All time has expired.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?