

AMENDMENT NO. 2651, AS MODIFIED

Mr. CRAIG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. CRAIG] proposes an amendment numbered 2651, as modified.

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

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

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . PROPERTY NO LONGER SUBJECT TO REDEMPTION.

[(a)] Section 541(b) of title 11 of the United States Code is amended by adding at the end the following—

“(6) any interest of the debtor in property where the debtor pledged or sold tangible personal property [or other valuable things] (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money, where—

“(a) *the tangible personal property is in the possession of the pledgee or transferee;*

“(b) [(i)] the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price, and

“(c) [(ii)] neither the debtor nor the trustee have exercised any right to redeem provided under the contract or state law in a timely manner as provided under state law and Section 108(b) of this title.”

Mr. HATCH. Mr. President, following Senator CRAIG's amendment No. 2651, as modified, I ask unanimous consent that Senator MURRAY be recognized for 10 minutes to speak, and I ask that Senator SESSIONS be given 10 minutes.

Mr. REID. Reserving the right to object, the ranking member of the Judiciary Committee wants to come and speak on this at some time.

Mr. HATCH. Whenever the ranking member wants to speak, we will, at a convenient time, interrupt and allow him to do so.

Finally, we will go to Senator WELLSTONE's amendment after Senator SESSIONS speaks.

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

The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I understand that my amendment, as modified, has been accepted on that side.

I guess I am at risk, as we are anytime a Senator comes to the floor and says, “This is a simple amendment” But in fact that is exactly what this amendment is. It corrects a very small but very real problem. We are talking about property that is pawned by a debtor.

This amendment deals with the question of when that pawned property is legally out of the reach of a debtor's bankruptcy estate.

This amendment would allow pawned tangible personal property to be excluded from the bankruptcy estate, so long as the debtor has no legal obligation to repay the money or redeem or buy back the property and the contract or statutory redemption period has expired on the pawned property. And, of course, it is that expiration date that is clear and important as it relates to the period of redemption, and that is where the courts have found themselves in the last several years.

This amendment incorporates the general position of the courts that pawnbrokers should be allowed to have complete and clear title to the pawned personal property of a person in bankruptcy once the redemption period has expired and the debtor or trustee has not exercised the right of redemption.

This amendment allows the pawnbroker to sell the pawned property without burdening the courts with unnecessary actions seeking relief from the automatic stay provision of the bankruptcy code.

Courts have found that unredeemed, pawned, tangible personal property cannot be treated as property of the bankruptcy estate because once the statutory redemption period has run, and the pawned goods have not been redeemed, the debtor forfeits all rights and title to the pawned property. The cutoff date for inclusion of the bankruptcy estate is the end of the redemption period. I am referencing Dunlap, a 1993 case in Maryland and Tennessee, 158 BR 724.

In the circumstances outlined by this amendment, the property doesn't belong to the debtor anymore. Once that redemption period has run out and they have not exercised it, it is out of his possession and out of his right to control. It is only common sense that when it is no longer his property, it cannot be pulled into the bankruptcy estate. That is what the courts have said, and that is what this amendment says.

All too often, however, pawnbrokers are pulled in and ultimately they have to go through the expense of hiring attorneys and doing all of those kinds of things even though it is very clear that the property redemption period has expired and the courts ultimately ruled in favor of the pawnbroker.

So we are clarifying that with this amendment, and I hope my colleagues will accept it and be consistent in this law with what the courts have been saying now over the last period of years.

Mr. President, I relinquish the floor.

Mr. HATCH. Mr. President, I rise in support of the amendment offered by my good friend, the Senator from Idaho. This amendment is needed to clarify that if an individual has pledged his property for money and is not obligated to redeem it, and indeed does not redeem the property within the time he

or she agreed to redeem it, then the bankruptcy laws are not abused to attempt to get that property back.

What this amendment does is basically recognize and respect the right of individuals and businesses to be able to pledge property for money for an agreed period of time. Essentially, those businesses engaged in this type of transaction, namely pawnbrokers, provide cash loans to people in exchange for a pledge of personal property. The pawnbroker charges interest on the loan, but the customer is under no obligation to redeem the pledged property. When the individual does not redeem the pawned item within the contractual period, the property becomes part of the pawnbroker's inventory for sale. It does not continue to be the property of the individual.

Some debtors have attempted to subject their pawn transactions to the operation of the bankruptcy code's automatic stay, after the time under the contract for redeeming the property has expired. Most courts that have considered the matter have held that if the debtor or the trustee does not redeem the property within a typical period of 60 days from the date of filing for bankruptcy, then full title to the property vests with the pawnbroker. This is the sensible result, because the debtor has no obligation to redeem the property.

This is a sensible clarification amendment, without which, certain individuals could abuse the system to the detriment of other consumers who use and need the pawnbroker's services. Let's close this loophole and support this amendment.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Thank you, Mr. President.

(The remarks of Mrs. MURRAY pertaining to the introduction of the legislation are located in today's RECORD under “Statements on Introduced Bills and Joint Resolutions.”)

**BANKRUPTCY REFORM ACT OF
1999—Continued**

Mr. SESSIONS. Mr. President, it is great to be back in session this morning and see my chairman, Senator HATCH. I know today he made a big announcement. He has given his heart over the last several months and offered himself to the American people as our next President. He did so with integrity. Throughout the year, he chaired the Judiciary Committee. We never slacked in our committee hearings. He was here and missed hardly any votes. So many of our candidates seem to give up their responsibilities in the House or the Senate, but he did not do so. He regularly cast his votes day after day. This is the first real business of the Senate, a day in which he made an announcement. I know it was very important to him that he

would not continue his seeking of the Presidency, and he is introducing and leading the fight for a very important and historic bankruptcy reform bill that is long overdue.

Senator HATCH and Senator GRASSLEY have worked exceedingly hard to make this bill a reality. We are on the verge of it becoming a reality. It has been frustrating. The last time we passed this bill in the last hours of the last Congress, it had over 95 votes and only 1 or 2 opposing votes. It came out of committee last year 16-2, with almost that many votes this time in Judiciary Committee.

It is a bill whose time has come. I am glad we are bringing it up. I thank the majority leader, Senator TRENT LOTT, for saying we need to bring this to a conclusion and calling it up for debate at the beginning.

There has been some suggestion and some comments recently about a decline in bankruptcy filings this past year. One full-page ad—I suppose designed to influence this body—was in one of the local Washington papers. The headline was, “The Incredible Disappearing Bankruptcy Problem.”

Let’s talk about the numbers. Chairman HATCH mentioned those earlier. In 1980, when we had an economy that was weaker than it is today, there were only 287,000 bankruptcy filings. In 1998, less than 20 years later, with the economy one of the strongest we have ever had, the number of personal bankruptcy filings has skyrocketed to 1,398,000—a 386-percent increase. That is a stunning fact.

In 1999 when the economy was even stronger—we had an even stronger economy last year than in 1998—we had a modest 7-percent reduction in bankruptcy filings. Some are saying we don’t need to have any bankruptcy reform, that it is a disappearing problem. I hardly think anybody can believe that a 7-percent reduction, after a 386-percent increase, suggests in any way that we don’t continue to have a bankruptcy problem.

The Consumer Federation of America, which is really hard left in my view, issued a press release saying the crisis is over. That certainly is not the fact. In 1997, the National Bankruptcy Review Commission, with Federal judges and bankruptcy experts on it, issued a report that stated the most visible and disturbing fact about consumer bankruptcy has been the extraordinary increase in filings in the last two decades. Since 1980, the rate of consumer bankruptcies has risen nearly threefold. These are the words of the official report of the Commission. Certainly nothing has happened since that report was issued in 1997 to indicate we have had any significant permanent reduction.

In 1996, the number of consumer bankruptcy filings was 1.1 million. In 1999, the estimated number of filings is

1.3 million. Thus, since the Bankruptcy Review Commission complained about the alarming number of filings, the filings have increased 16 percent. So since the official report’s conclusion criticizing and complaining and expressing concern about the large number of filings, it has increased 16 percent since then.

I believe we do have a problem. We have a deep problem of abusive and repeat filers, people whose lawyers tell them clever ways to beat their legitimate debts. There are a lot of abuses in this system. So while we are happy we have had a modest decrease in filings, we have not dealt with the fundamental problem. The reason we have a bankruptcy reform bill is not because there are a large number of filings. The reason we have this bankruptcy reform bill is that the system is not working fairly. Too many people with high incomes—\$70,000, \$80,000, \$90,000—are filing bankruptcy and are not paying their debts when they could easily do so. The moral question arises because the person they owe may have far less income than they do—maybe it is their neighborhood garage mechanic who worked on their car. They may have greater income than the people they owe, who they are not repaying.

So we want to make sure the historic principle of bankruptcy is alive and well: That a person can wipe out his debts and start over again and not be burdened with unpayable debts. But when a person can reasonably pay a substantial part of those debts, we believe he ought to do so. That is what we will be talking about today.

The purpose of bankruptcy reform is—hopefully, we will have some reduction in filings. I do not expect we will have much of a reduction as a result of this reform, but our basic goal in bankruptcy reform is to have a system that works better to reduce litigation, to reduce the cost. We make it so you do not have to have a lawyer to represent yourself on a matter in bankruptcy court. We required that persons be at least knowledgeable of and have an opportunity to talk with a credit counseling agency. They are in every locality in America. They help people deal with their financial crises, short of declaring bankruptcy on many occasions. Sometimes they will tell them, “You cannot handle it, you have to go to bankruptcy.” Or they may say they need to have a budget and get the family in and deal with the fundamental problems, where they are in debt, and start first paying the debts off with the highest interest rates.

Our goal is not primarily to reduce bankruptcy filings. Our goal primarily is to end abuses and problems that have made themselves clear over the past 30 years since we last reviewed bankruptcy. The lawyers have learned how to work the system well. We need to create a legal system that has integ-

rity and efficiency and that everyone can respect.

Mr. HATCH. Mr. President, I thank my colleague from Alabama for his kind remarks about me. I want to mention what a great service he has done on the Judiciary Committee helping with this bill. He is one of the truly knowledgeable people in this area. I express my regard for him.

Mr. SESSIONS. Mr. President, I don’t think I mentioned about Senator HATCH, when he came to Alabama, and there were 2,000 delegates there at a State convention voting for President, he came within a few votes of being the winner. He had a great showing in our home State of Alabama.

Mr. HATCH. I thank the Senator. I did not do the same in New Hampshire and Iowa. I appreciate his kind remarks and appreciate his strong efforts on this bill. He has done a great job and deserves a lot of credit on this bill.

With that, I relinquish the floor to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, before I go on in this debate on this bankruptcy bill, since I have a very different position on this piece of legislation than my colleague, Senator HATCH from Utah, I say to him I think all of us in the Senate, even when we do not agree with him, like to see him on the floor. He is a Senator with a tremendous amount of dignity. He is a very, very fine Senator. So we welcome him back.

Mr. President, I will start out talking about a couple of amendments. The first amendment I want to make reference to—then I want to talk about this bill to give some context for these amendments—is an amendment which would curb a form of predatory lending which targets low- and moderate-income families.

One of my criticisms of this bill is it is very one sided and does not deal with these kinds of unscrupulous lending practices. This amendment, which is called the payday loan amendment, would prevent claims at bankruptcy on high-cost transactions in which the annual interest rate exceeds 100 percent such as payday loans and car title pawns.

I say to my colleague from Utah and other colleagues in the Senate, this is an outrageous practice. As long as we are talking about bankruptcy reform, we ought to make it clear this kind of predatory lending practice means these folks cannot have claims in bankruptcy. Let me give some examples, and I will go into this more next week.

First, on payday loans, what we are talking about is the situation of a family where maybe the car breaks down. These are people who do not have a lot of money. Maybe it is an illness, a medical bill. It is called a payday loan. They seek a 2-week loan; maybe it is

\$200, maybe it is \$100. What happens is the lenders, these credit companies that are involved in these payday loans, will say we will make the loan to you and you write out a check to us, and also here is going to be the fee we are going to charge, which equals high interest, then 2 weeks from now you pay us back. It turns out quite often people cannot pay back the loan because these people are under the gun, in which case they roll it over again and again and again, which is exactly what the payday lenders want, to the point where, for example, a \$15 fee on a 2-week loan of \$100 equals an annual interest rate of 391 percent. There are some instances where the actual interest rate is 2,000 percent.

I think a lot of people in the lending industry are not happy with this practice at all—I want to give some credit where credit is due, no pun intended. Additionally, what these pay day lenders do is use a coercive practice where they say to very hard-pressed families: We have the check you made out to us and if you don't pay us back, we are going to go ahead and bounce the check and then you will be subject to criminal prosecution. They use that as a threat. They don't follow through, but they intimidate people.

Let me go on to talk about car title pawns. This is unbelievable, American people. It is hard to get people's attention on this bankruptcy bill. I think people ought to know some of the practices that go on in the country.

In this particular case, you have a double whammy. People are hard pressed. If they were not hard pressed and had nowhere to go, if they were big customers with big banks, they would have no problem. We are talking about hard-working, poor people, low-income people in Arkansas, Minnesota, Utah, desperate for money. What are they going to do?

In this particular case with the car title pawns, they get a \$100 loan and the creditor puts a lien on the car and says you have to pay us back with the fee, high interest. If you don't pay them back—literally quite often they require the key to the car as part of the condition for granting the loan—they take the car. They sell the car and in some states they don't even have to give back to the original owner the additional money they make beyond what the loan was. They keep all the money. Can you believe it? Can you believe it? This is exactly what goes on.

One of my amendments, that I am going to spell this out in greater detail next week, will say that there is some predatory lending which clearly targets hard-pressed low- and moderate-income families, which we find obscene. We intend to have some kind of ground rules here, some kind of accountability. Basically what we are saying is—this is the proposition—we

are not going to let you make a bankruptcy claim where you have had a credit transaction in which the annual interest rate exceeds 100 percent. If we are going to talk about bankruptcy reform, I am hoping to see my colleagues out here with a good, strong affirmative vote.

I will briefly talk about the second amendment because I will have more time to lay this out later. I will cooperate with the manager. I will begin to lay out my case. This is an important consumer amendment which will require big banks with more than \$200 million in assets to offer low-cost, basic banking services to their customers if, again, they wish to make claims against debtors in bankruptcy proceedings.

We have talked about the responsibility of the consumers—hard-pressed people. What about the responsibility of banks and lending institutions to offer inexpensive means to conduct financial transactions and to save money? What happens is, they say you have to have a minimum balance of \$1,000 in your account. If you do not, you have to pay an exorbitant fee, which could result in hundreds of dollars a year. These low-income people cannot afford it. There are some 12 million Americans who do not have the same kind of service that we have. As a result, then, they end up having to deal with unscrupulous kinds of dealers, like the payday lenders that I just described.

Our community banks in Arkansas and Minnesota went out of their way with low- and moderate-income people who live within their communities to make sure they were able to access low cost accounts. But now, with this consolidation and these mergers, a lot of these big branch banks do not see it the same way. So what we are simply saying is, we want these consumers to be able to have an affordable checking account, one that does not require a large minimum balance or costly access fees. That is what is going on. This amendment will speak to that.

But context for this. Again, I say to my colleagues, believe me, I am just absolutely amazed, when I look at some of the practices that take place in this country, that we are not, in this piece of legislation, dealing with it. But let me give some context for these amendments. I am a little bit surprised, frankly.

I say to my colleagues, since we are in disagreement on this, as I have already said to Senator HATCH, how good it is to see him here, and what a fine Senator he is. I think everybody in the Senate agrees with that.

Mr. HATCH. If the Senator will yield, I express my gratitude to my good friend for the kind comments he has made. I really appreciate them.

With that, I yield back.

Mr. WELLSTONE. I thank the Senator from Utah.

I would not say it if it were not true. That is the way the Senator is.

But this piece of legislation is fundamentally flawed. It contains numerous provisions which are harshly punitive to those citizens who are the most vulnerable in our country. It addresses a crisis that no longer exists and that appears to be self-correcting. It rewards predatory and reckless lending by banks and credit card companies, which fed the crisis in the first place, and does nothing to actually prevent bankruptcy or to promote economic security for working families.

I do not see anything in this legislation that deals with the crisis of medical costs, that deals with what happens to people when they cannot get a job at a decent wage. I do not see anything in this bill that deals with housing costs. But what I see is a fundamentally flawed piece of legislation.

I am amazed that it has sailed through the way it has. I am amazed there is not more opposition, which is punitive toward those people who are the most vulnerable in our society. This purports to address a crisis which does not even exist.

Professor Lawrence Ausubel of the University of Maryland notes that the peak increase in bankruptcy filings came and went in 1996. In fact, the filings in 1998 were barely an increase over 1997. We know now that there were 112,000 fewer bankruptcies in 1999 than there were in 1998—a nearly 10-percent decline.

Perhaps most startling, given what some of my colleagues have stated, is that credit card lenders have seen their chargeoffs—loans which are uncollectible—decline over the past 2 years.

So I ask my colleagues, is this a crisis? Despite the decrease in filings, there are still too many bankruptcies in America. I agree with that. However, this bill does not do anything to reverse this. It is going to make matters worse. The nonexistent crisis is being used to justify harsh restrictions on bankruptcy relief, which will harm those citizens who are most in need of its protection.

Colleagues, let me quote from the September 30, 1999, issue of *The American Banker* magazine. The title of the article is "Bankruptcies Down; Enthusiasm for Reform Wanes." I quote from the article:

A retreat in bankruptcy filings from their record highs is causing precious little jubilation in the lending community. Lenders, who persistently point to the high rate of filings as one of their top business problems, may be concerned that a turnaround will undercut their effort to reform bankruptcy laws and make it easier to collect on poor credits.

Bankruptcy does not occur in a vacuum. We know, in the vast majority of cases, it is a drastic step taken by families in desperate financial circumstances and overburdened by debt. The main income earner—he or she—

they have lost their job. There is a sudden illness. There is a terrible accident. All of us know that could happen to us. The bankruptcy system is supposed to allow a person or a family to climb back up after they have hit bottom, to have a fresh start.

There is no point in continuing to push a person and a family once their resources are overmatched by debt. That is what we are doing in this legislation.

The bankruptcy system simply allows families to regroup, to focus resources on essentials, such as home, transportation, and meeting the needs of their dependents. Sometimes the only way this can occur is to allow the debtor to be forgiven of some debt. In most cases, this debt would never be repaid because of the debtor's financial circumstances.

In fact, in over 95 percent of bankruptcy cases, creditors receive no distributions from the filer's assets, not because these folks are able to beat the system but because in the vast majority of the cases the debtor does not have any assets left.

The sponsors of this measure—the megabanks and the credit card companies—they do not like to focus on these situations. They talk about all of the abuses. But let me just cite some evidence here. A study by the American Bankruptcy Institute found that only 3 percent of debtors who file under chapter 7—which is what we are talking about—would actually have been able to pay more of their debt than they are required to under chapter 7. Three percent does not sound, to me, like a percentage of a lot of abuse. Even the Justice Department says the abuse of claims was only between 3 and 13 percent.

But what this legislation is going to do is, it is going to channel many more debtors into chapter 13 bankruptcy, where the debtor enters a 3- to 5-year repayment plan where very little debt is forgiven. As a matter of fact, under current law, 67 percent of the debtors in chapter 13 cannot fulfill or cannot live up to their repayment plan, often because they do not get enough relief.

So what are we doing?

Why is this so punitive and why is it so one sided? Why aren't we also addressing the predatory practices of these credit companies, of these lenders? This is apparently not obvious to many of my colleagues, but with all due respect, debt involves both the borrower and the lender.

I gave examples of some egregious practices with which I will deal in my amendments. As high-cost debt, credit cards, retail charge cards, and financing plans for consumer goods have skyrocketed in recent years—and so have many bankruptcy filings; we all know that—and are pumped on our children, our neighbors, as the consumer credit card industry has begun to aggres-

sively court the poor and vulnerable, bankruptcies have risen. There is no question about it. Credit card companies brazenly dangle literally billions of dollars of credit card offers to high debt families every year. With this legislation, we are giving them a blank check to do even more. They encourage credit card holders to make low payments toward their credit card balances, guaranteeing that a few \$100 in clothing or food will take years to pay off. The lengths to which these companies go to keep their customers in debt is ridiculous.

I already gave an example, when I was talking about what happens with these car title pawn companies and these payday loan companies. It is absolutely unbelievable. People get charged anywhere from 100 percent up to 2000 percent in interest by these unscrupulous dealers. All you have to do to enter into this is to have no conscience. People are desperate. You give them a \$100, \$200 loan. You basically roll it over when they can't pay it. Pretty soon they have to pay 300-percent interest on an annual basis. You take title to their car. They can't pay back \$100. These are poor people; they are desperate. They had to come to you for that reason. Then you repossess their car, and you keep the money beyond anything they owed you. There is no accountability.

Yet in this bankruptcy reform bill, I don't see any discussion or any kind of rules or any kind of accountability or any kind of protection for consumers when it comes to these unscrupulous practices. I am amazed this piece of legislation has been sailing through. I think the President should veto this.

I will take some time to give context to this. A March 31, 1990, edition of the Detroit Free Press reported on a woman who sent a check to her credit card company to pay her entire credit card balance of \$4,000. I know the Presiding Officer would say that is the way it should be done. She had the money. She could do it. A few days later, she got a call from the company offering her a lower interest rate for 6 months if she would let the credit card company rip up her check and keep the \$4,000 balance on her card. Fortunately for her, this woman made the right decision and refused this insane offer. But if credit card companies are using these tactics to keep folks in debt, do they have any right to preach about financial responsibility?

Why is this piece of legislation so one sided? Why are we not talking about their unscrupulous practices and how to also make sure they live up to some kind of standard of responsibility?

I will quote a few lines from an L.A. Times feature called the Money Savvy Weekend. It is a column about money management. I would like my colleagues to hear how the author of the piece advises credit card holders to deal with card companies.

She starts out by saying:

Your credit card issuer is not your friend, or even your most trusted business partner, so if you've been thinking along these lines, stop now.

I say to my colleagues, if people think their credit card company is their friend now, they will know differently when this bill passes, when they see how their right to a fresh start has been eroded. This bill just gives these credit card companies everything they want, provides no protection for poor people, provides no protection for single parents, no protection for senior citizens. What in the world has happened to the Senate? What has happened to Democrats? Why are we letting this bill go by without amendments? Why aren't we standing up and taking on this piece of legislation?

Continuing on from the L.A. Times feature, the author goes on to say:

Instead, start thinking of your credit card issuer as a slightly sleazy and overbearing salesman who controls one product you want, but who wants to trick you into buying the store. That salesman does not have your best interests at heart. . . .

Then in the same column:

Last week, a San Francisco law firm filed a law suit against Provident Financial Corp., alleging that the firm delayed postings (of payments), hid terms of its card agreements, and made it seem like a fairly useless \$12.95-per-month credit protection plan was a requirement when it wasn't. The city's prosecutors are investigating the firm.

I could go on but here is the question. I talked about payday loans. I talked about repossessing cars. When we read S. 625, it is a clear indication of who has clout in the Nation's capital. There is not one provision in this bill that holds the consumer credit industry responsible for their lending habits. There is not one provision in this bill that holds the consumer credit industry responsible for their lending habits. I have spent time on two deplorable practices on which I will have amendments. We will have votes on it next week. But there is nothing in this piece of legislation that has a word to say about any of this. With all due respect, it is not all that surprising why.

Who do you think the people are who have to rely on payday loans? Who do you think the people are who have to rely on these car pawn loans? Who do you think the people are who by and large file chapter 7? You will come up with some abusive examples, but I have given you study after study that shows there is very little abuse. Most of the people who do this are hard-pressed people, poor people. You lose your job. You don't have a family you can go to who can help you out. Your car breaks down. You have an illness. You had no health insurance in the first place. Now we have this punitive piece of legislation that targets these citizens, the most vulnerable citizens, but gives the credit card industry all they want.

I think this is a sad reflection of who gets to the table and who doesn't and whose voice is heard and whose voice is not.

Mr. LEAHY. Mr. President, if the Senator will yield for a moment without yielding his right to the floor.

Mr. WELLSTONE. I will.

Mr. LEAHY. The distinguished senior Senator from Minnesota has been one of the hardest working Members on this whole bankruptcy issue, one of the most passionate and articulate. I hate to interrupt. I wonder if he would allow me a few minutes, without losing his right to the floor, in my capacity as ranking member to say a few comments.

Mr. WELLSTONE. Mr. President, I would be pleased, if my colleague needs more time. I would like to make sure that I have the floor after the Senator speaks.

Mr. LEAHY. I ask unanimous consent that upon completion of my remarks that the floor revert to the Senator from Minnesota and his original time.

The PRESIDING OFFICER (Mr. BURNS). Is there objection?

Mr. HATCH. Reserving the right to object, could I ask how much longer the distinguished Senator will hold forth?

Mr. WELLSTONE. Mr. President, I will need some additional time. I was intending to try to finish before 12:30 because that is when we go into conference. My idea would be that I would then come back with these amendments, finish up right before we vote.

Mr. HATCH. Mr. President, I ask unanimous consent that the Craig amendment be laid aside so the two amendments of the distinguished Senator from Minnesota can be put forward.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The Chair warns Senators that we have to deal with the unanimous consent request the Senator from Vermont put forward.

Mr. LEAHY. I will withhold that for a moment, if the Senator from Utah wishes to make another request.

Mr. HATCH. I ask the distinguished Senator from Minnesota, has the distinguished Senator laid down his two amendments?

Mr. WELLSTONE. What I am intending to do is call up my amendments. My understanding, originally, was we were going to perhaps vote today. We are not going to vote. Therefore, I was trying to accommodate my colleagues. I said I wanted some time to talk about the context of these amendments and that I would come out here today. I would lay out my case. Then, when we come back next week and vote, I want a final hour for the two amendments. Then we would vote.

Mr. HATCH. I ask the distinguished Senator a favor, that he do his debate

today on his amendments, because we are going to move to table, and then we will have at least 10 minutes equally divided for each amendment on Tuesday. We have to get rid of these amendments.

Mr. WELLSTONE. Mr. President, I say to my colleague from Utah, I would have to respectfully decline. Originally, I had not agreed to any time agreement on these amendments. I said I would not agree. Then I was told that if I would come out today, try to speak before conference, and then reserve the final hour, agree to a time agreement next week for a final hour on two amendments, I would have an hour and whatever time I need. I said I would do that. I have given up on limited time.

The PRESIDING OFFICER. Objection is heard.

Mr. HATCH. I am not objecting.

The PRESIDING OFFICER. Is there objection to the request as presented by the Senator from Vermont? Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I should say to all Senators, both sides of the aisle and the two leaders who have worked on this, that I am pleased we reached a reasonable unanimous consent agreement to proceed to debate and vote on the few remaining amendments of the Bankruptcy Reform Act. We worked very hard on this before we broke for the Christmas recess.

Mr. WELLSTONE. Mr. President, as long as Senator LEAHY is speaking, I ask unanimous consent, because I do want to finish up and accommodate everyone, that when we come back, I do have a final hour to speak on my two amendments on Monday or Tuesday.

Mr. HATCH. I have to object.

The PRESIDING OFFICER. Objection is heard.

Mr. HATCH. Mr. President, we want to be able to finish next Tuesday. We want to resolve this.

Mr. LEAHY. Mr. President, I wonder if the Senator from Utah and the Senator from Minnesota and I can work together during the break and see if we can reach an area of agreement.

During the last few days of the session, the distinguished Senator from Utah and I, the distinguished Senator from Iowa, Mr. GRASSLEY, and the distinguished Senator from New Jersey, Mr. TORRICELLI, worked very hard to whittle down the numbers. The distinguished Senator from Nevada, the Assistant Democratic Leader, was his usual indefatigable self in working, cajoling, pleading, and, when all else failed, threatening to break arms to get rid of amendments. I knew we were successful when I saw so many Members going down to see the orthopedic surgeon in the Capitol physician's office after having a meeting with the Senator from Nevada.

I am also pleased to see my friend from Utah, the distinguished senior Senator, ORRIN HATCH, back on the

Senate floor. The Senator is not only one of the most gifted legislators in Congress but one of the best known. More important, to me, though, he is one of the closest friends I have had in my 25 years in the Senate. He is such a good friend that while he was campaigning in Iowa, I offered to go out and either speak for or against him, whichever would help the most. Trust me, Mr. President, I have plenty of material either way on that.

I say to Chairman ORRIN HATCH, it is good to have you back here.

Mr. HATCH. I thank the Senator.

Mr. LEAHY. Mr. President, one of the reasons I am so happy to have him back is that the Senator from Utah and I, even though we bring different political philosophies to so many issues, know that on so many issues before the Judiciary Committee we have a responsibility to try to bring both sides of the aisle together and to span a wide philosophical gap among the 100 Senators. When we work together, as we have on many issues, we find that those issues pass the Senate overwhelmingly. That is why, I might say, as we start this new action in this new millennium, how much better it is, instead of having a cloture vote, that we are letting the Senate process work—something both he and I have seen for a couple of decades here work the way it should.

Last year, the Democrats entered into a unanimous consent agreement to limit our rights to offer only three nonrelevant amendments and to file relevant amendments by November 5. We entered into this agreement to work in a bipartisan manner to improve the bill. We made bipartisan progress. I don't know how many Senators realize it, but we adopted 37 amendments to the underlying bill—amendments of both Democrats and Republicans. We worked that out on a consent basis. We cleared amendments. We set up rollcall votes. In fact, from a total of 320 amendments filed by Senators on both sides of the aisle on November 5, 1999, Senator TORRICELLI and I, working with the Senator from Nevada, Mr. REID, narrowed down the remaining Democratic amendments on this bill to a handful. The remaining amendments from our list are all relevant. We are ready to debate and work on them.

I am proud to cosponsor Senator SCHUMER's amendment on debts incurred through the commission of violence to health service clinics. The amendment makes sense. Under our unanimous consent agreement, we will have an up-or-down vote on it. Under our unanimous consent agreement, Senator LEVIN from Michigan will also have an up-or-down vote on his amendment on firearm-related debts. He is willing to limit the time on his amendment to 2 hours. Senator SCHUMER will have 40 minutes on his amendment. These are reasonable time limits.

There is another important amendment by Senators SARBANES and DURBIN to clarify the credit industry reforms in the bill. Millions of credit card solicitations made to consumers have caused, in part, the rise in consumer bankruptcy filings. The credit card industry should bear more of the responsibility. So the Sarbanes-Durbin amendment improves the Truth in Lending Act by requiring more disclosure of credit information so consumers may better manage debts and avoid bankruptcy altogether.

In the last Congress, the Senate bankruptcy reform bill was fair and balanced because it included credit industry reforms. We passed that bill by 97-1 vote in 1998. The 1998 Senate-passed bill should be a model here in the year 2000.

Many Democratic Senators have offered short time agreements of a half hour or less on their amendments. The Democrats are prepared to debate and vote on these amendments. That is the way the Senate works best. I commend my colleagues for working to get this agreement. I look forward to a fair and full debate.

Mr. President, I am actually delighted to be back. It is nice for people in Washington to provide weather that looks like we have in Vermont—with one notable exception: With this little bit of snow on the ground, our government offices in Vermont would all be open.

In fact, all other offices would be open. I note that because we had a couple of calls from incredulous Vermonters who couldn't believe that the Federal Government had been closed down 2 days in a row for the kind of snow we might get in a morning. I want to assure them that the office of the senior Senator from Vermont is open. I suspect the offices of the other two Members of the Vermont delegation are open. I guess the one nice thing about it is there is no traffic going in and out. There is not much snow on the road either.

I wish all those employees who are having 2 days of vacation because of a little bit of snow have a good time. I hope they spend time with their children, read a good book, shovel their walks, and just be glad they are not living in an area where you would still go to work with an awful lot more snow.

I close again by saying it is good to see my good friend, the chairman of this committee. I look forward to starting the millennium and working well with him.

Mr. HATCH. I thank the Senator.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I thank my colleague from Vermont. He is a dear friend and the ranking member on the Judiciary Committee. We work well together. His comments are very

deeply felt by me. When both he and Senator KENNEDY offered to come to Iowa and New Hampshire to speak against me, I think I made a big mistake by not asking them to do it. I think I would have done much better.

Mr. President, I ask unanimous consent that Senator WELLSTONE call up his two amendments today and that we reserve 1 hour between 9:30 and 10:30 next Tuesday morning for the debate on both of those amendments, including up until 12:30 today.

Mr. WELLSTONE. Mr. President, reserving the right to object—I don't think I will—I ask for an hour to make my case. It is not an hour equally divided; it is an hour that I have divided for my two amendments.

Mr. HATCH. It is my understanding that would be the time for the Senator to talk about his two amendments, and he has the rest of the time until 12:30 today. Then we will set aside his amendments after he calls them up so we can call up amendments.

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

AMENDMENTS NOS. 2537 AND 2538

Mr. WELLSTONE. Mr. President, I want to begin my remarks about the overall bill, but let me call up my amendments.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Minnesota (Mr. WELLSTONE) proposes amendments numbered 2537 and 2538.

The amendments are as follows:

AMENDMENT NO. 2537

At appropriate place, insert the following:

SEC. . DISALLOWANCE OF CLAIMS OF CERTAIN INSURED DEPOSITORY INSTITUTIONS.

Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (8), by striking “or” at the end;

(2) in paragraph (9), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(10) such claim is the claim of an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) that, as determined by the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act)—

“(A) has total aggregate assets of more than \$200,000,000;

“(B) offers retail depository services to the public; and

“(C) does not offer both checking and savings accounts that have—

“(i) low fees or no fees; and

“(ii) low or no minimum balance requirements.”.

AMENDMENT NO. 2538

At appropriate place, insert the following:

SEC. . DISALLOWANCE OF CERTAIN CLAIMS; PROHIBITION OF COERCIVE DEBT COLLECTION PRACTICES.

(a) IN GENERAL.—Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (8), by striking “or” at the end;

(2) in paragraph (9), by striking the period at the end and inserting “; or”; and

(3) by adding at the end of the following:

“(10) such claim arises from a transaction—

“(A) that is—

“(i) a consumer credit transaction;

“(ii) a transaction, for a fee—

“(I) in which the deposit of a personal check is deferred; or

“(II) that consists of a credit and a right to a future debit to a personal deposit account; or

“(iii) a transaction secured by a motor vehicle or the title to a motor vehicle; and

“(B) in which the annual percentage rate (as determined in accordance with section 107 of the Truth in Lending Act) exceeds 100 percent.”.

(b) UNFAIR DEBT COLLECTION PRACTICES.—

(1) IN GENERAL.—Section 808 of the Fair Debt Collection Practices Act (15 U.S.C. 1692f) is amended—

(A) in the first sentence, by striking “A debt collector” and inserting the following:

“(a) IN GENERAL.—A debt collector”; and

(B) by adding at the end the following:

“(b) COERCIVE DEBT COLLECTION PRACTICES.—

“(1) IN GENERAL.—It shall be unlawful for any person (including a debt collector or a creditor) who, for a fee, defers deposit of a personal check or who makes a loan in exchange for a personal check or electronic access to a personal deposit account, to—

“(A) threaten to use or use the criminal justice process to collect on the personal check or on the loan;

“(B) threaten to use or use any process to seek a civil penalty if the personal check is returned for insufficient funds; or

“(C) threaten to use or use any civil process to collect on the personal check or the loan that is not generally available to creditors to collect on loans in default.

“(2) CIVIL LIABILITY.—Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 813 for failure to comply with a provision of this title.”.

(2) CONFORMING AMENDMENT.—Section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)) is amended by striking “808(6)” and inserting “808(a)(6)”.

Mr. WELLSTONE. Mr. President, there are a few of the truly onerous provisions of this bill affecting hard-pressed, working families.

Section 105—someone needs to focus on this—imposes mandatory credit counseling on debtors before they can seek bankruptcy relief, at the debtor's expense. This is regardless of whether the bankruptcy would be the result of simple overspending or something unavoidable such as a serious illness in your family and a medical expense.

Forty-four million people in our country do not have health insurance.

There is no waiver of this requirement if the debtor needs to make an emergency bankruptcy filing to stave off eviction or a utility shutoff. It is amazing. I can't believe this.

Again, you have a situation—I used to do a lot of work organizing with poor people—with a family, and these people are denied. They have to go through mandatory credit card counseling before they can seek bankruptcy relief, even when it is clear it isn't because they just overspent, that it is because something happened to them

that was beyond their control, such as an illness in their family. And there isn't even a waiver of this requirement when the family has to get the emergency bankruptcy filing in order to stave off an eviction or a utilities shutoff.

It is cold outside today in Washington, DC. Do you know what a utility shutoff would mean to family?

Section 311 would end the practice under current law of stopping eviction proceedings against tenants who are behind on rent who file for bankruptcy. What we are saying is if a tenant is filing for bankruptcy right now, they have at least some protection. Section 311 will basically end this protection. You can go on with the eviction proceedings.

Section 312 will make a person ineligible to file for chapter 13 bankruptcy if he or she has successfully emerged from bankruptcy within the past 5 years, even if it was a successful chapter 13 reorganization where the debtor paid off all the creditors. If they have been through it successfully before and paid off all of the creditors, and there is an emergency medical bill or whatever happened—they lost their job—they are ineligible.

This is called reform?

I started out saying before the Chair came that you have this unbelievable practice right now that I am trying to go after with one amendment—these title car pawn loans and payday loans—car title pawn loans, again, where somebody needs \$100, or \$200, and basically they get the loan. The unscrupulous creditor says: We give you the loan. You pay us the high interest. In addition, we want the key to your car. We have a loan on your car.

If they do not pay it back at the end of the week, or after 2 weeks, they take the car key and sell it. Whatever money they make, they can keep, even if it is above and beyond what they owe the debtor. It is unbelievable. We ought to do something about that. This is a ludicrous business. These are hard-pressed people and this is the only place they can go right now.

I talked about these payday loans. In all due respect, again, these folks who do this ought not be covered by this bankruptcy. They ought not be able to collect these payday loans. It is unbelievable. It is the same thing. You need a loan of \$100 for a week or two. You are charged 15 percent interest. They roll over again and again. It can be as high as 300 or 400. There have been some cases where it has been as high as 2,000 percent interest.

We ought to say, in all due respect, if you folks want to be allowed to claim, we ought to put a limit, and if the limit is going to be at 100-percent interest, it seems to me that is pretty high—100 percent interest payments? Maybe we want to say then we prohibit the recovery of loans.

Mr. SESSIONS. Mr. President, will the Senator yield?

Mr. WELLSTONE. I am sorry to say to my colleague that I have been yielding over and over again. I will try to finish by 12:30. Let me finish, and then I will yield.

Mr. President, on this piece of legislation, I started out citing that there are three or four national studies—three or four independent national studies, credible national studies. That is a matter of fact. What is supposed to be a crisis no longer exists, and the trend is that there are going to be fewer bankruptcies.

I then went on to say there are still too many. But the irony is that the reason a lot of people have to file for bankruptcy is because we haven't done a darned thing when people do not have health insurance. We haven't done a darned thing to make sure people find a job with descent wages. We haven't done a darned thing about affordable child care. We are doing nothing about the crisis in affordable housing, including in rural areas. All of this impinges on these families, but instead we have this piece of legislation.

I then went on to argue, and I cited a number of provisions which are draconian, this piece of legislation targets low-income people. The people who are going to be most harshly treated by this are poor people, senior citizens, women, and single parents.

I then went on, and I gave many instances to say that it does nothing about the unscrupulous creditors—nothing at all. There is no accountability there. There was not a call for responsibility on their part.

I will be back next week with two amendments. I will have an hour to argue my case. I hope at least on these two amendments I can receive majority support. I have tried to take some time this morning and I will take more time next week to at least get people in the country, people who watch this debate or people who write about this debate, to understand there are a lot of punitive provisions in this piece of legislation. It hardly can be called "reform."

There are many organizations—consumer organizations, senior organizations, children's organizations, labor organizations—that have raised important questions about this. I think rather than a step forward, this is a very harsh step backward.

I am pleased to yield for a question or comment from my colleague from Alabama.

The PRESIDING OFFICER. Is the Senator aware we are under a previous order to get to recess at 12:30?

Mr. WELLSTONE. I am pleased to debate this subject with my colleague next week.

Mr. SESSIONS. I had a question about the amendment but I don't think it is necessary to pursue it today at this time.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:31 p.m., recessed until 2:16 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mrs. HUTCHISON].

BANKRUPTCY REFORM ACT OF 1999—Continued

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Madam President, I rise today in strong support of S. 625, the Bankruptcy Reform Act. This legislation is urgently needed to address abuses of our bankruptcy laws and help make sure bankruptcy is reserved for those who truly need it.

We have had Federal bankruptcy laws for 100 years, and no one disputes that some people must file for bankruptcy. Some people fall on hard times and have financial problems that dwarf their financial means. They need to have the debts that they cannot pay forgiven, and they need a fresh start.

However, other people who file for bankruptcy have assets or have the ability to repay their debts over time. These people should reorganize their debts. Bankruptcy should not be an avenue for people to avoid paying their debts when they have the ability to do so. People should pay what they can.

The problem is becoming more serious because more and more people are filing for bankruptcy every year. The number of consumer bankruptcy filings has more than quadrupled in the last 20 years. More Americans filed for bankruptcy last year than ever before.

S. 625 addresses the issue by making it easier for judges to transfer cases from Chapter 7 discharge to Chapter 13 reorganization, based on the income of the debtor and other factors. The bill permits creditors to be involved if they believe the debtor has the ability to repay. However, if a creditor abuses that power and brings such motions without substantial justification, the creditor is penalized. Also, the legislation places more responsibility on attorneys to steer individuals toward paying what they can.

The bill makes reforms without jeopardizing the truly needy. For example, the bill has special provisions to protect mothers who depend on child support by making these payments the top priority for payment in bankruptcy.

It is too easy to file for bankruptcy. It is too easy to get the slate wiped clean. We recognize that some people need a fresh start. But a fresh start should not mean a free ride. We must stop this type of abuse.

I urge my colleagues to support this important reform measure.

The PRESIDING OFFICER. The Senator from Missouri.