

**SENATE—Tuesday, March 1, 2005**

The Senate met at 9:45 a.m. and was called to order by the Honorable TOM COBURN, a Senator from the State of Oklahoma.

**PRAYER**

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.  
 Infinite spirit, we praise You for Your mighty deeds. Everything You do is right and no other god compares with You. You alone work miracles and You have let nations see Your mighty power.

Be with our Senators and their staffs. Give them the wisdom to trust You and to follow Your precepts. Make the future bright for them and their loved ones as they seek first to live for You. Give them hearts that refuse to forget those who live on life's margins: The lost, the lonely, and the least. Open their eyes to see the pain in our world. May the words they speak bring life and peace.

Only You, Lord, are our mighty rock. We place our hope in You, for You rule the Earth with justice. Amen.

**PLEDGE OF ALLEGIANCE**

The Honorable TOM COBURN led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

**APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE**

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,  
 PRESIDENT PRO TEMPORE,  
 Washington, DC, March 1, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TOM COBURN, a Senator from the State of Oklahoma, to perform the duties of the Chair.

TED STEVENS,  
 President pro tempore.

Mr. COBURN thereupon assumed the Chair as Acting President pro tempore.

**RECOGNITION OF THE MAJORITY LEADER**

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

**SCHEDULE**

Mr. FRIST. Mr. President, this morning, following leader time, we will proceed to a period of morning business for up to 60 minutes. That time is divided for the majority for the first 30 minutes and the minority in control of the second 30 minutes. At approximately 11:30 a.m. the Senate will resume consideration of the bankruptcy bill.

Yesterday, we began debate of the bankruptcy bill with several opening statements and made great progress. Today, we expect to begin the amendment process. I understand Senator DURBIN may be able to offer an amendment when we resume the bill this morning.

We will recess from 12:30 until 2:15 today for the weekly policy luncheons.

With respect to the voting schedule, it is my expectation to have votes this afternoon on bankruptcy-related amendments. Most probably we will not vote after 7 o'clock tonight, but as the schedule proceeds we will be able to make those announcements. We will have votes this afternoon.

Given the compressed workweek, I hope to make great progress on the bill this week, spending Monday, Tuesday, Wednesday, Thursday, and Friday on this bill. Hopefully we can complete it this week.

**BANKRUPTCY REFORM**

Mr. FRIST. Mr. President, I will address my leader comments this morning to the bill S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. This legislation was passed with bipartisan support in the Judiciary Committee on the 17th. Over the last 7 years, it has repeatedly passed this Senate and the House with bipartisan majorities. Yet we still do not have a bill as law. That is the goal in this Congress.

Both sides of the aisle recognize the current system is calling out for reform. Personal bankruptcies are skyrocketing and, at the same time, wealthy debtors are walking away from debts that they have the ability to repay. This abuse does not just hurt the creditor they owe, but it hurts all who end up paying higher fees and higher prices as a result of the system that is out of control.

It is fitting that a Senator from Tennessee is talking about this issue. As it happens, a city in my home State of Tennessee, Memphis, has come to be known as the bankruptcy capital of America. Memphis ranks No. 1 in personal bankruptcy filings if you com-

pare Memphis to 331 metropolitan areas. The total bankruptcy filing rate in Memphis in 2004 was roughly 26 people for every 1,000 residents. That is well over three times the national average.

Bankruptcy has become so common that it has lost the stigma it had even a short generation ago. Today it is just another method for getting out of debt, a tool just to get out of debt. Some folks have even been known to plan their bankruptcy. They buy a house or they buy a car or furniture or whatever else they need and then file a bankruptcy form. They figure they can get the big ticket items upfront, and for everything else they will use cash.

It is not altogether an accident that the Memphis bankruptcy system is what one attorney calls a "well-oiled" machine. It was Memphis's very own U.S. Representative, Walter Chandler, who established a chapter of bankruptcy law with the 1938 Chandler Act. His motivation was simple. America was going through the Great Depression. Times were tough for everyone. Debtors wanted to pay back what they owed, and local businesses needed to stay afloat. Congressman Chandler reformed the system to help those in dire financial trouble go to the courts and work out, appropriately, a payment plan.

Congress has passed, and the 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."

And the Supreme Court has stated:

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

Unfortunately, however, we veered away from this original positive, constructive, good intent. Bankruptcy filings were low during the early part of the 20th century. They were generally tied to whatever the business cycle might have been. In the past two decades, the number of bankruptcies have skyrocketed, actually accelerating during the economic boom, speeding up during the boom of the 1980s and the 1990s. The total number of bankruptcies more than doubled during the 1980s and then doubled, once again, from 1990 to 2003.

For too many people, bankruptcy is no longer a last resort. It has become a first stop. Opportunistic debtors who have the means to repay use the law to evade personal responsibility.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Unlike in Memphis, where filers typically use chapter 13, the overwhelming number of filers nationally—over 70 percent—opt for chapter 7 so they can walk away from their debt.

Where does all this leave us? It leaves us at an historic high of over 1.6 million filings per year. Personal bankruptcies outnumber business bankruptcies by a multiple of more than 45 to 1. Among those filings, we see an increasing number which are fraudulent. In fact, the FBI estimates at least 10 percent of all filings involve fraud of some type. In most of the fraud cases that are identified, the filer in some way hides or pushes their assets over to the side. For example, a debtor would file chapter 7, claiming to have no assets of any kind, but they still drive a luxury sedan, may have a boat in the driveway, and even sport expensive jewelry and clothing.

The result is pretty clear. Every bill you pay, I pay, that the American people pay includes what is a “bankruptcy tax” that amounts to about \$400 a year for every man, woman, and child in this country—an unnecessary bankruptcy tax of \$400 for every man, woman, and child in this country.

That is what we are addressing on the floor of the Senate this week. For that bankruptcy tax, people say: How do you pay that tax? I was meeting with some Tennesseans earlier this morning. They asked: What do you mean? How do you pay that tax?

The tax is a hidden tax, but you pay it. It is in every electric bill, every phone bill, every mortgage payment you pay, every purchase of furniture, every car loan you obtain—\$400 a year. Interest rates are higher, downpayment requirements are larger, grace periods become shorter, and late-payment penalties are astronomical, all because some people are shirking their debt obligations. The people who are hurt most by all of this are the low-income earners.

Say, for example, you have a dishwasher and the dishwasher breaks. The owner would go to the neighborhood store. But because of the high rate of personal bankruptcies, they could not get credit. The store would no longer give credit. The owner, who has this broken dishwasher, cannot afford to pay for it with cash but is denied that opportunity to purchase because credit cannot be issued. The store cannot make the sale. It is those low-income earners who are disproportionately affected by a system that is out of balance.

Without credit, saving up enough money to buy a couch or to even pay for school clothes can become a real hardship. And high interest rates can make using a credit card, as we all know, risky.

Ultimately, bankruptcy abuse by wealthy debtors disproportionately harms those who can least afford it.

That is why the Bankruptcy Reform Act enjoys strong bipartisan support, strong support from both sides of the aisle.

It establishes a means test that is based on a fair principle, a simple principle, and that is this, that those who have the means should repay their debts. A simple principle: Those who have the means should repay their debts.

It specifically exempts anyone who earns less than the median income in their State. It also allows every consumer to show special circumstances, if they exist, if they cannot handle a repayment plan. We know the No. 1 reason people file for bankruptcy is because of an unexpected health emergency. If you look at all these filings, that ends up being No. 1. Consequently, in the legislation that is on the floor, we allow every filer to deduct 100 percent of their medical costs.

We also know education is a big outlay for many families. Under bankruptcy reform, parents can deduct private school tuition to protect their children's educational opportunities.

The bill does much more. The bankruptcy bill strengthens protections for child support and alimony payments. It protects patient privacy and care during bankruptcy proceedings that involve health care facilities. It protects consumers from deceptive credit practices that can lead to financial distress, and it protects the system that allows America to be one of the most generous countries when it comes to bankruptcy.

We all know sometimes a person simply gets in over their head or they get socked with an unexpected setback. They are overwhelmed by the bills, and for every step forward there are two or three steps back. Most people in this difficult situation want to do the right thing. It is in their heart to do the right thing. They want to pay their debtors, they want to meet their obligations, but they cannot. What they need is a fresh start.

The legislation before us is thoughtful. It is well considered. It is family centered. It closes unfair loopholes so that the system and the people it is designed to help can get that fresh start and get back on track.

I look forward to the debate today, which I know will be robust. We will be debating amendments and voting on the amendments over the course of the day—indeed, over the week. I am hopeful that by working together in a bipartisan way on a bill we know will be to the benefit of the American people, we will make huge progress today, tomorrow, and the next day, so we can soon have a bill on the floor that will receive overwhelming bipartisan support.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER (Mr. CORNYN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that the time of the distinguished Republican leader and the Democratic leader not be charged against morning business today.

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

#### BANKRUPTCY REFORM

Mr. REID. Mr. President, the bankruptcy bill which will shortly be on the floor is a very important piece of legislation. It embodies a principle I agree with: Those who have the means to repay their debts should be required to do so. I believe—I am old-fashioned—that people who borrow money should pay it back.

I supported the bill before, most recently in 2001. I hope to be able to support it again. But a lot has happened in the 4 years since the hearings were held on this bill in addition to the one hearing that was held 2 or 3 weeks ago. There is new evidence—a lot of evidence—about who declares bankruptcy. Medical catastrophes: About half the people who file for bankruptcy file them because of medical emergencies. Also, extended military duty has caused havoc for people who are in the Guard and Reserve, in the State of Nevada especially.

Then, of course, we have the corporate bankruptcies of 2002 and 2003. We still have one of the criminal trials going on with Enron today. The chief executive officer of that company is testifying for the second day. WorldCom was another corporate bankruptcy that created a lot of attention. I believe it should change how we look at bankruptcy.

There are things that have occurred since we last took this piece of legislation up when it passed the Senate overwhelmingly, as I recall with 82 votes. Again, there have been medical emergencies, extended military duty, and corporate bankruptcies. These corporate bankruptcies have left employees without pensions.

Finally, we need to address the ongoing problem of violence. People are trying to say this is an abortion amendment. It is not an abortion amendment. It is about holding individuals who believe they are above the law accountable for their actions when they break the law in a number of instances. I invite everyone to read the amendment. For example, if people commit