

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 2½ 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 3½ 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.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 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	Bayh	Boxer
Baucus	Bingaman	Byrd