

SENATE—Tuesday, March 8, 2005

The Senate met at 9:45 a.m. and was called to order by the Honorable LISA MURKOWSKI, a Senator from the State of Alaska.

PRAYER

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

Let us pray.

Our Lord and Ruler, Your Name is wonderful. We see Your glory in the heavens above and in the beauties of the Earth. Give us this day our marching orders. We seek Your wisdom. Guide our priorities so that we glorify Your Name. May even our thoughts be acceptable to You. Help our words and actions to be strengthened by Your precepts. Give us enough humility to acknowledge our dependence on You, for even our heartbeats are borrowed.

Strengthen our Senators for today's journey. Listen to their longings and give them Your peace. Protect and sustain their loved ones. We pray in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable LISA MURKOWSKI, a Senator from the State of Alaska, 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 8, 2005.

To the Senate:

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

TED STEVENS,
President pro tempore.

Ms. MURKOWSKI 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. Madam President, this morning the Senate will resume debate on the bankruptcy legislation. Under the order, at 10:15 this morning we will begin 2 hours of debate on Senator SCHUMER's amendment related to abortion clinics. That vote will, therefore, occur at 12:15 today. Following that vote, the Senate will recess until 2:15 for our weekly policy luncheons to meet. When we return to session at 2:15, the Senate will proceed to vote on invoking cloture on the underlying bankruptcy bill. I hope and expect the Senate will be able to invoke cloture this afternoon so that we will be able to vote on passage this week. We will have germane amendments to consider postcloture and, therefore, additional votes can be expected.

BANKRUPTCY REFORM

Mr. FRIST. Madam President, we have made tremendous progress on the bankruptcy bill over the last 2 weeks. Republicans and Democrats have stood together to support a bankruptcy reform package that the House will pass and the President will sign into law. The Senate has resisted attempts to renegotiate hard-fought compromises and legislate on unrelated issues. I do thank my colleagues, our colleagues, for staying focused on the bankruptcy bill.

There have been many attempts to sidetrack the Senate on this bill. But let me just take a moment to reiterate why we need bankruptcy reform and what this bill really does.

The bill before us establishes a means test based on a simple, fair principle: those who have the means should repay their debts. Personal bankruptcies are skyrocketing, and wealthy debtors are walking away from debts that they had the ability to repay. Opportunistic debtors who have the means to repay use the law to evade personal responsibility.

This abuse does not hurt the creditor only, it hurts all who pay higher fees and prices as a result. Every bill that you and I pay, that our families pay, includes a "bankruptcy tax" of about \$400 a year per household. That tax is figured into every bill, every phone bill, every electric bill, every mortgage payment, every furniture purchase or car loan we pay. Interest rates are higher, downpayment requirements are larger, grace periods become shorter, late payment penalties become astronomical—all because some people are shirking their debt obligations.

This legislation is targeted to ensure that wealthy debtors who can pay their

debts do so. It specifically exempts anyone who earns less than the median income in their State, and it also allows every consumer to show special circumstances if they cannot handle a repayment plan.

We know that one reason people file for bankruptcy is because of unexpected medical emergencies. Consequently, this legislation allows every filer to deduct 100 percent of their medical costs. We also know that education is a big outlay for many families. Under bankruptcy reform, parents can deduct private school tuition to protect their children's educational opportunities.

In addition, 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 practice 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.

There remain, however, some misconceptions about this bill that should be dispelled. The first regards our protections for Active-Duty military personnel and veterans. Some opponents of the bill charge that we do not adequately address the needs of our combat men and women who suffer financially.

Madam President, it should go without saying that the Senate and the American people deeply honor our men and women in uniform. Every day, these young soldiers sacrifice to protect us and to defend the freedom we enjoy. We are indebted to them for the dangers they face on the field, and we are indebted to their families they leave in order to fight for that freedom.

That is why last Tuesday we passed the Sessions amendment to help clarify protections for our military and others under a safe harbor in the bill. This provision, which passed with 63 votes, makes explicitly clear that Active-Duty military and low-income veterans are protected by the safe harbor. In addition, it also protects debtors with serious medical conditions.

On this issue, the other side has created a red herring designed to score political points and shift the debate away from bankruptcy abuse. Another red herring is the charge that the bankruptcy bill sacrifices consumers to benefit credit card companies. The truth is that the bill before us includes several carefully negotiated amendments that expressly protect credit card holders.

Among its beefed-up consumer protections are increased disclosure requirements for credit card statements and mandates that credit card companies assist borrowers in determining how long it will take to pay off their credit card balances, additional disclosures to borrowers buying and refinancing their homes, and additional disclosures regarding credit card introductory rates and new disclosures related to credit card late fees.

These protections are the result of lengthy and careful negotiation. Additional measures should be properly addressed in the Banking Committee. As Senator SESSIONS has pointed out, we are debating a bankruptcy bill designed to create a fair and commonsense process in the Federal courts.

Moreover, the bill before us has passed this body three times, with overwhelming bipartisan support. In the 105th Congress, it passed by a vote of 97 to 1. In the 106th Congress, it passed 83 to 14. And again in the 107th Congress, it passed by a vote of 82 to 16.

It is time to take action on this much needed reform that is supported by both sides of the aisle.

I am confident that by working together we can get this done in this Congress, this week, and see bankruptcy reform signed into law. I encourage our Members, this afternoon, to vote for cloture so we can bring this bill to fruition, to make it the reality we know the American people deserve.

It is long past time to stop the abuses of the Bankruptcy Code. The legislation before us is thoughtful. It is built on common sense. It offers the opportunity to give the system, and the people it is designed to help, a fresh start. In short, it promises to deliver meaningful solutions that will keep America moving forward.

Madam President, I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 256, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 256) to amend title 11 of the United States Code, and for other purposes.

Pending:

Dorgan/Durbin amendment No. 45, to establish a special committee of the Senate to investigate the awarding and carrying out of contracts to conduct activities in Afghanistan and Iraq and to fight the war on terrorism.

Pryor amendment No. 40, to amend the Fair Credit Reporting Act to prohibit the use

of any information in any consumer report by any credit card issuer that is unrelated to the transactions and experience of the card issuer with the consumer to increase the annual percentage rate applicable to credit extended to the consumer.

Reid (for Baucus) amendment No. 50, to amend section 524(g)(1) of title 11, United States Code, to predicate the discharge of debts in bankruptcy by an vermiculite mining company meeting certain criteria on the establishment of a health care trust fund for certain individuals suffering from an asbestos related disease.

Dodd amendment No. 52, to prohibit extensions of credit to underage consumers.

Dodd amendment No. 53, to require prior notice of rate increases.

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

Harkin amendment No. 66, to increase the accrual period for the employee wage priority in bankruptcy.

Dodd amendment No. 67, to modify the bill to protect families.

Kennedy amendment No. 68, to provide a maximum amount for a homestead exemption under State law.

Kennedy amendment No. 69, to amend the definition of current monthly income.

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.

Kennedy amendment No. 72, to ensure that families below median income are not subjected to means test requirements.

Kennedy amendment No. 71, to strike the provision relating to the presumption of luxury goods.

Kennedy amendment No. 119, to amend section 502(b) of title 11, United States Code, to limit usurious claims in bankruptcy.

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

Feingold amendment No. 87, to amend section 104 of title 11, United States Code, to include certain provisions in the triennial inflation adjustment of dollar amounts.

Feingold amendment No. 88, to amend the plan filing and confirmation deadlines.

Feingold amendment No. 89, to strike certain small business related bankruptcy provisions in the bill.

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

Feingold amendment No. 91, to amend section 303 of title 11, United States Code, with respect to the sealing and expungement of court records relating to fraudulent involuntary bankruptcy petitions.

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. 94, to clarify the application of the term disposable income.

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.

Feingold amendment No. 97, 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.

Feingold amendment No. 98, to modify the disclosure requirements for debt relief agencies providing bankruptcy assistance.

Feingold amendment No. 99, to provide no bankruptcy protection for insolvent political committees.

Feingold amendment No. 100, to provide authority for a court to order disgorgement or other remedies relating to an agreement that is not enforceable.

Feingold amendment No. 101, to amend the definition of small business debtor.

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. 110, to clarify that the means test does not apply to debtors below median income.

Durbin amendment No. 111, to protect veterans and members of the armed forces on active duty or performing homeland security activities from means testing in bankruptcy.

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

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I understand that at 10:15, the Senator from New York is to be recognized to offer an amendment?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. KENNEDY. Madam President, this bankruptcy bill is mean-spirited and unfair. In anything like its present form, it should and will be an embarrassment to anyone who votes for it. It is a bonanza for the credit card companies, which made \$30 billion in profits last year, and a nightmare for the poorest of the poor and the weakest of the weak.

It favors the credit card companies, the giant banks, and the big car loan companies at every turn. It favors the worst of the credit industry—the interest rate gougers, the payday lenders, and the abusive collection agencies. It hurts real people who lose their savings because of a medical crisis or lose their jobs because of outsourcing or suffer major loss of income because they were called up for duty in Iraq or Afghanistan.

It protects corporate interests at the expense of the needs of real people. It does absolutely nothing about the glaring abuses of the bankruptcy system by the executives of giant companies such as Enron, WorldCom, and Polaroid, who lined their own pockets but left thousands of employees and retirees out in the cold.

It favors companies like MBNA, a top credit card issuer, with over \$80 billion in loans, which has contributed \$7 million to Federal candidates, a half a million dollars to President Bush alone, and spent over \$20 million in lobbying, since 1997, when their lobbyists wrote this bill.

On the other side are people like special ed teacher Fatemeh Hosseini on the front page of Sunday's Washington