PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

I commit my way to the Lord
And trust also in Him
And He shall bring it to pass
rest in the Lord and
Wait patiently for Him.—Psalm 37:5,7.

Blessed God, Your omniscience both comforts and alarms us. You know all about us: our strengths and weaknesses, our hopes and hurts. So often, instead of waiting patiently for You, we wait to commit our needs to You. Here we are at the end of another work week. There is work to be done before we can break for the weekend. Help us to believe that what we commit to You will come to pass if You deem it best for us. We need to experience the peace of mind and body that comes when we do what You guide us to do and leave the results to You.

Bless the Senators with the profound peace that comes from giving You their burdens and receiving Your resiliency and refreshment. May this be a great day because they, and all of us who work with them, decide to rest in Your presence and wait patiently for Your power to strengthen us. Through our Lord and Savior. Amen.

PLEDGE OF ALLEGIANCE

The Honorable CONRAD BURNS, a Senator from the State of Montana, 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.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The Senator from Montana is recognized.

SCHEDULE

Mr. BURNS. Mr. President, today the Senate will resume consideration of the bankruptcy reform legislation under the previous agreement. As a reminder, all first-degree amendments must be relevant with the exception of those specified in the agreement and must be filed by 5 p.m. today. The leader has announced that votes are possible during today's session on amendments to the bill or on finalizing the appropriations process. The leader also announced that there will be votes on Monday at 5:30 p.m. as well as on Tuesday morning at 10:30 a.m. The Tuesday morning votes will be on or in relation to the issues of minimum wage and business costs.

I thank my colleagues for their attention.

MEASURE PLACED ON CALENDAR

Mr. BURNS. Mr. President, I understand that there is a joint resolution at the desk due its second reading.

The PRESIDENT pro tempore. The clerk will read the resolution the second time.

The bill clerk read as follows:

A joint resolution (S.J. Res. 37) urging the President to negotiate a new base rights agreement with the Government of Panama in order for United States Armed Forces to be stationed in Panama after December 31, 1999.

Mr. BURNS. Mr. President, I object to further proceedings on this resolution at this time.

The PRESIDENT pro tempore. Objection is heard. Under the rule, the joint resolution will be placed on the calendar.

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

The PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

(Mr. BURNS assumed the chair.)

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

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

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

BANKRUPTCY REFORM ACT OF 1999

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 625, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 625) to amend title 11, United States Code, and for other purposes.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, what is the parliamentary situation on time, or is there a time limitation?

The PRESIDING OFFICER. The Chair knows of no time limits.

Mr. LEAHY. That is my understanding.

Mr. President, I see my good friend, the Senator from Iowa, on the floor. I will speak in my capacity as ranking member of the Senate Judiciary Committee. I know Senator HATCH has spoken in his capacity as chairman of the committee. I know the Senator from Iowa, Mr. GRASSLEY, is here as chairman of the appropriate subcommittee, and Senator TORRICELLI of New Jersey will be here as ranking member of that subcommittee.

This is an important issue. It is safe to say every American agrees with the basic principle that debts should be repaid. It certainly is a principle I was brought up to believe and one my fellow Vermonters share. In fact, this country is blessed with prosperity, and the vast majority of Americans are able to meet their obligations. But for those who fall on financial hard times, bankruptcy should be available in a fair and balanced way. In fact, our country's founders believed the principle was so important they enshrined it in the Constitution, one of the few such specific reliefs enshrined in the Constitution.

Article I, section 8, of the Constitution explicitly grants Congress power to establish uniform laws on the subject of bankruptcies throughout the United States.

We in Congress have a constitutional responsibility to oversee our Nation's bankruptcy laws. Unfortunately, more and more Americans are filing for bankruptcy. In fact, 1.4 million Americans filed for bankruptcy last year. That was an increase in the number of filings from 1997, and in 1997 there was an increase in the number of filings from 1996. I find this trend extremely disturbing because the economy is doing so well. Even this morning, we hear of unemployment at an all-time low, inflation is steady, and the economy is booming. The unemployment rate keeps going down, inflation remains low, and the Nation's personal bankruptcies keep going up.

Vermont has traditionally had one of the lowest rates of bankruptcy per capita in the Nation. But in my home State of Vermont, personal bankruptcies have increased in each of the last 4 years, with annual personal bankruptcies more than doubling since 1994. I said this has occurred even though we have kept our low ranking compared to other States in the number of personal bankruptcy filings per capita. We will be able to keep that ranking because personal bankruptcy rates have gone up far more dramatically in other States.

If the rise in personal bankruptcy is caused in part by some Americans abusing the bankruptcy system, then we in Congress should move in a major, balanced way to correct our bankruptcy laws. Working together, we saw a way we could do this. We did last year. Democrats and Republicans molded a bill that corrected abuses by debtors and creditors, and it preserved access to the bankruptcy system for honest debtors.

The distinguished senior Senator from Illinois, Mr. DURBIN, who worked with the distinguished Senator from Iowa, Mr. GRASSLEY, did yeoman's work on last year's bill. They produced a bipartisan bill. As I recall—my colleague from Iowa can correct me if I am wrong—I believe it passed the Senate with something like 97 votes and only 1 or 2 votes against it. It is pretty amazing to have that strong support when we have a piece of legislation that balances such contrasting, sometimes conflicting, interests around the country. It is a credit to the two Senators who crafted it. They balanced the competing interests of debtors and creditors to put together a bill that is fair to all.

I am on the floor today because I have a concern that the bill before us strays from the blueprint of last year's balanced reforms in the Senate. For example, today's bill requires the means

testing of debtors to complete chapter 7 filings based on expense standards that are formulated by the Internal Revenue Service.

Last year, Congress was exposing the IRS as an agency out of control in its enforcement of the Internal Revenue Code, but now we say we will trust the IRS with enforcement of the bankruptcy code. We were saying last year they could not enforce the Internal Revenue Code, the area of their own expertise, but now we say we will let them help enforce the bankruptcy code, an area in which they have no expertise or jurisdiction. In my State, we say that lacks common sense.

This means testing severely restricts a judge's discretion to take into account individual debtors' circumstances. As a result, it has the potential to cause an unforgiving and inflexible result of denying honest debtors access to a postbankruptcy fresh start and would go against basically the way the bankruptcy code has been followed since the beginning of this country.

I believe most Americans, perhaps not all but most Americans, who file for bankruptcy honestly need relief from their creditors to get back on their feet financially. We have recent research that shows stagnant wages and consumer credit card debt are the primary reasons for the rise in bankruptcy filings. If there are abuses in the credit industry, then we should move in a major and balanced way to correct them.

I believe last year's Senate consumer bankruptcy reform bill, which, as I said, passed this Chamber by a near unanimous vote of 97–1, provides us with a blueprint for balanced reforms.

Moreover, the latest study by the nonpartisan American Bankruptcy Institute found that only 3 percent of chapter 7 filers could afford to repay some portion of their debt. To force the other 97 percent of chapter 7 debtors to submit to this arbitrary means test in trying to reach 3 percent lacks common sense and poses an additional burden on the 97 percent for something that does not apply to them. The Congress seems to be stepping on people it should not.

To the credit of the Senator from Iowa and the Senator from New Jersey, they are working to moderate the bill's arbitrary means testing provisions, and I commend them for working together to improve the underlying bill. I also commend the Senator from Illinois, Mr. DURBIN, and the Senator from New York, Mr. SCHUMER, for their leadership on this issue. I hope we can significantly improve the bill's means test provisions in the coming days, and we can if we want to work at it.

I am also concerned that today's bill, at least as it is now, prior to any amendments, is missing a key ingredient from last year's balanced reforms in the Senate: consumer credit information and protection.

Last year's Senate-passed bill required the disclosure of information on credit card fees and charges and also protection against unjustified credit industry practices. As the Department of Justice stated in its written views on the bill:

> The challenge posed by the unprecedented level of bankruptcy filings requires us to ask for greater responsibility from both debtors and creditors. Credit card companies must give consumers more and better information so they can understand and better manage their debt.

The administration has made it clear that for the President to sign bankruptcy reform legislation into law, it has to contain strong consumer credit disclosure and protection provisions. I agree with that. The credit card industry has to shoulder some responsibility for the nationwide rise in personal bankruptcy filings.

Last year, credit card lenders sent out 3.4 billion solicitations—3.4 billion. There are only 260 million people in this country, from the child born this morning on through. We are talking about 12 credit card solicitations per year for every man, woman, and child in America.

I constantly hear from parents that their 10-year-old child may receive a letter: You have been preapproved for credit; X number thousands of dollars. Here is your credit card.

I am not as concerned about the 10-year-old because usually the parent will grab that. I am a little bit concerned about the 16- or 17-year-old who has been eyeing a stereo set, or whatever, and they get the credit card preapproved. How about the college kids who get four or five of those in the mail: You have been preapproved. Suddenly they say: Wow, I'm worth $75,000. I have it right here in plastic. Unfortunately, when they spend it, they have to pay it back. We need a little more responsibility on this.

Do we want to send a 10-year-old down to the store with $3,000 worth of credit in their credit card? I would think not. But I also don't want the credit card companies crying when they do this and then the bills do not get paid. A little bit of effort should be made first to make sure you know who you are preapproving.

I add, there are times when somebody's pet has been preapproved. My eldest son has two beautiful Labrador retrievers—nice dogs, friendly dogs but, as most labs, probably more friendly than bright. I am not sure I want to give them credit cards. And for all the Labrador retriever owners who might have heard that and will call my office, please understand, I do like those dogs, but I am still not going to give them a credit card.

Clearly, the billions of credit card solicitations that are sent to Americans every year have contributed to an era of lax credit practices. That, in turn, contributes to the steep rise in personal bankruptcy filings. I am hopeful we can add credit industry reforms to this bill in the coming days.

Senators TORRICELLI and GRASSLEY have prepared a managers' amendment that incorporates many credit industry reforms proposed by Senators SCHUMER, REED, DODD, and others. I commend these Senators for working together on these bipartisan credit card reforms. I am pleased, actually, to cosponsor the amendment I have just referred to because it adds more balance to the bill.

Another area where we can add needed balanced reform to this legislation is in the homestead exemption. You have States—Florida and Texas, for example—where debtors are permitted to take an unlimited exemption from their creditors for the value of their home. We understand the policy reasons for protecting one's home. But I think the policy was determined when you think of the average home. Unfortunately, this exemption has led to wealthy debtors abusing their State laws to protect multimillion-dollar mansions from their creditors.

I do not think we intend somebody to be able to run up millions of dollars of debt, have a multi-multimillion-dollar mansion and say: Wait a minute. I need my humble home.

Home may be where the heart is, but it is not necessarily where the bankruptcy protection should be. This is a real abuse of bankruptcy's fresh start protection.

The distinguished Senator from Wisconsin, Mr. KOHL, has been a leader in trying to end homestead bankruptcy abuses. He has, again, prepared a bipartisan amendment to cap any homestead exemption at $100,000. I hope the full Senate will adopt the Kohl amendment to place reasonable limits on homestead exemptions.

The distinguished Senator from Massachusetts, Mr. KENNEDY, plans to offer an amendment to increase the minimum wage over the next 2 years from $5.15 to $6.15 an hour. I am proud to be a cosponsor of this amendment, as I have been before.

It is more than appropriate to help working men and women earn a living wage on a bill related to bankruptcy. These minimum-wage workers are some of the same Americans who are struggling to make a living every day and might be forced into bankruptcy by job loss or divorce or other unexpected economic event.

More than 11 million workers will get a pay raise as a result of a $1 increase in the minimum wage. We ought to agree to help millions of hard-working American families live in dignity.

I plan to offer an amendment that would save the taxpayers millions of dollars in wasteful spending and improve the bill by revising the requirement for all debtors to file with the court copies of their tax returns for the past 3 years. If the requirement was in effect last year, the 1.4 million Americans who filed for bankruptcy would have produced at least 4.2 million copies of their tax returns.

It might sound like a great idea, but the Congressional Budget Office estimates it will cost taxpayers about $34

million over the next 5 years for the courts to store and provide access to more than 20 million tax returns. It is a pretty big expense for very little benefit.

Every time we do something with one of these mandates, it may sound great, but we ought to ask ourselves, what does this cost? What do we get out of it? My amendment makes more sense. It does what the original amendment wanted to do but without the cost. It would strike the requirement. It would, instead, permit any party in interest—a creditor, judge, trustee or whoever—to request copies of a debtor's tax returns once the bankruptcy is filed. It is a targeted approach, targeted to verify a debtor's assets and income. I think it is workable and efficient because most bankruptcy cases involve debtors with no assets and little income, thus no need for the review of tax returns and no need for the taxpayers to spend $34 million to store paper nobody is ever going to look at.

So let's not pile up millions and millions and millions of these pieces of paper, hire hundreds and hundreds of people to store them, and then have something nobody is ever going to look at anyway.

I have consulted with our bankruptcy judge and trustee in Vermont. I will continue to do so. They caution that we remember the purpose bankruptcy serves: a safety net for many of our constituents. Those who are using it are usually the most vulnerable of America's middle class. They are older Americans who have lost their jobs or are unable to pay their medical debts. They are women attempting to raise their families or to secure alimony or child support after divorce. They are individuals struggling to recover from unemployment.

As we move forward with reforms that are appropriate to eliminate abuses in the system—and we should eliminate such abuses—we need to remember that people use the system, both the debtors and the creditors. We need to balance the interests of creditors with those of middle-class Americans who need the opportunity to resolve overwhelming financial burdens.

On a personal note, I welcome the distinguished Senator from New Jersey, Mr. TORRICELLI, who is the new ranking member of the Administrative Oversight and the Courts Subcommittee, to the challenges this matter presents. I know he and his staff have been working hard in good faith to improve this bill.

As the last Congress proved, there are many competing interests in the bankruptcy reform debate that make it difficult to enact a balanced and bipartisan bill into law. Unfortunately, overall, the Congress failed to meet that challenge last year, even though I believe we met it here in the Senate, in the Grassley-Durbin bill, which passed 97 to 1. I was pleased and proud to be a supporter of that. The mistake came in the conference. It broke down into a partisan fight, as though there is a difference between a Republican or a Democrat who is seeking bankruptcy relief or a difference between a Republican or a Democrat creditor whose interests have to be protected in bankruptcy.

This is an American issue. We handled it as such in the Senate a year ago. We should do it again. I hope we can set, again, the standard, Republicans and Democrats in the Senate working together to pass and enact into law balanced legislation that will correct abuses by both debtors and creditors in the bankruptcy system. We are going to be better off for it. I hope that is what we can do.

Mr. President, I yield to the distinguished Senator from Iowa.

Mr. GRASSLEY. Mr. President, before the Senator from Vermont leaves the floor, I want to thank him for his comments. He has expressed very well some statements about parts of the bill on which he has questions. I want to assure him, most of those—in fact, the way the Senate works, probably all of those—will have to be addressed in some way through the various amendments which are likely to be adopted. We do have a very close working relationship, even at this point, on some of those things with people on the Senator's side of the aisle. We will try to do that.

If I could also make the Senator from Vermont aware of a study he referenced, the study done by the American Bankruptcy Institute on the utility of chapter 7 debtors to repay their debts—the Senator may not know this, but we have had the General Accounting Office look at this study; in fact, all the studies on this question. The General Accounting Office has concluded that this specific study by the American Bankruptcy Institute was flawed. In fact, it understated the repayment ability in a very significant way.

I do not expect the Senator to accept that right now, just because I have said it. I hope he will be able to take a look at that and see if there are any remaining questions that he might have which we could address, and if we can't do that and the Senator might be considering some amendments that are a direct result of the American Bankruptcy Institute study, that we would have an opportunity to talk about it before he might move in that direction.

Overall, his statement is very accurate, stating some disagreements, some questions he has. Hopefully, we will be able to address those questions.

Mr. LEAHY. Mr. President, I appreciate the words of the Senator from Iowa. He and I have been here for a long time. We have worked on an awful lot of issues, from defense matters to agricultural matters. Over those years, I have always enjoyed working with him. We will continue on this. I realize there will not be votes today, but I think this would be a good time for Senators who are trying to reach areas of accommodation and agreement to do so. Either I or my staff will be here to work with the staff of the Senator from New Jersey and the Senator from Iowa in any way we can be helpful.

I yield the floor.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I know Senator TORRICELLI is expected to come to the floor to make a statement. While we are awaiting his arrival, I will address the Senate on a small but very important part of this legislation. That is the one that deals with chapter 12, making it permanent, as part of the bankruptcy reform legislation, so we do not have to, every 4 or 5 years or, as has been the case in the last 12 months, since it has sunsetted, had to reauthorize it two or three times on a short-term basis.

We are all in agreement it should be made permanent. People who have opposed making it permanent as a separate bill have thought it was necessary to do it at the same time as we offer the overall bankruptcy reform legislation. Hopefully, with this bill, S. 625, being adopted, we will never in the future have to deal with a separate reauthorization of a sunset chapter 12 because why should we have to sunset chapter 12, a provision that is made specifically for farming, when we don't do it for chapter 13, that is made specifically for individuals or small businesses, or chapter 11 that works very well for major corporations in America.

I want to visit with my colleagues about some very important provisions in the bill before us that are vital to family farmers in the Midwest generally, in Iowa in particular, as well as the country as a whole. Agriculture, wherever it is, is something unique and different from a lot of businesses in their situations, where sometimes they have a decline not only in income that might make bankruptcy be considered but also a decline in value of real estate that, previous to chapter 12, made it very difficult to keep up with the needs of a chapter 11 bankruptcy procedure.

As we all know from the recent debate we had within the last month on the emergency Ag appropriations bill, many of America's farmers are facing financial ruin. We have some of the lowest commodity prices in 30 years. Pork producers have lost billions of dollars in equity, not just in income but billions of dollars of equity, with the lowest prices of pork in 60 years that we had just 12 months ago. Pork producers have not only lost, but the price of corn is currently well under the cost of production. The cash market for soybeans has reached a 23-year low. This is all in addition to poor weather conditions in parts of the United States, particularly the drought of the East Coast, the drought of Texas, the fires in Florida, and flooding in various parts of the Midwest.

These circumstances have sent many farming operations in a tailspin. Clearly, we need to make sure family farmers continue to have bankruptcy protection available to them and a protection that satisfies the uniqueness of farming, as we have had other sections of the code try to be written to meet the uniqueness of other business arrangements within our society and our economy.

Particularly, chapter 12 is going to be needed in good times as well as bad times—maybe not used in good times, but it needs to be there to meet the different arrangements of the different segments of the country and also the different drought and flooding conditions that happen from time to time, as well as the unpredictability of the economy, particularly the international economy, when the Southeast Asian financial crisis brought a downturn in our exports and squeezed the farmers' income at this particular time.

Title X of S. 625 of this bill makes chapter 12 permanent and makes several changes to chapter 12 to make it more accessible for farmers and to give farmers new tools to assist in reorganizing their financial affairs.

Back in the mid-1980s when Iowa was in the midst of another devastating farm crisis, I wrote chapter 12 to make sure family farmers would receive a fair shake when dealing with the banks and the Federal Government. At that time, I didn't know if chapter 12 was going to work or not, so it was only enacted on a temporary basis.

Chapter 12 has been an unmitigated success. As a result of chapter 12, many farmers in Iowa and across the country are still farming and contributing to America's economy. With a new crisis in farm country now, just 15 years from the last one, we need to make sure chapter 12 is a permanent part of Federal law, and this bankruptcy bill does exactly that.

As was the case with the dark days of the mid-1980s, some are predicting that family farms should consolidate and we should turn to corporate farming to supply our food and agricultural products. As with the 1980s, some people seem to think family farms are inefficient relics that should be allowed to go out of business. This would mean the end of an important part of our Nation's economy and a certain heritage that is connected with it. And it would put many hard-working American families—those who farm and those whose jobs depend on a healthy agricultural sector—out of work.

But the family farm didn't disappear in the 1980s, and that crisis was very bad as well. It was not only an income crisis, as is the situation now, but there was a tremendous drop in equity at that particular time.

I believe chapter 12 is a major reason for the survival of many financially troubled family farms. We have an Iowa State University study prepared by the outstanding Professor Neil Harl. He found that 84 percent of the Iowa farmers who used chapter 12 were able to continue farming. Those are real jobs for all sorts of Iowans in agriculture and in industries that depend upon agriculture. According to the same study, 63 percent of the farmers who used chapter 12 found it helpful in getting them back on their feet. In short, I think it is fair to say chapter 12 worked in the mid 1980s and it should be made permanent so family farmers in trouble today can get breathing room and a fresh start if that is what they need to make it.

But the most obvious reason for having it is that chapter 11, written for corporate America, does not fit the needs of agriculture or the economics of agriculture.

The Bankruptcy Reform Act before us doesn't just make chapter 12 permanent. Instead, the bill makes improvements to chapter 12 so it will be more accessible and helpful for those in the agricultural community. First, the definition of the family farmer is widened so that more farmers can qualify for chapter 12 bankruptcy protection. Second, and perhaps most important, my bankruptcy bill reduces the priority of capital gains tax liabilities for farm assets sold as part of a reorganization plan. This will have the beneficial effect of allowing cash-strapped farmers to sell livestock, grain, and other farm assets to generate cash flow when liquidity is essential to maintaining a family farm operation. These reforms will make chapter 12 even more effective in protecting America's family farms during this difficult period.

So it is really imperative that we keep chapter 12 alive. Before we had chapter 12, banks held a veto over reorganization plans. They would not negotiate with people in agriculture, and the farmer would be forced to auction off the farm, even if the farm had been in the family for generations. Now, because of chapter 12, the banks are willing to come to terms. We must pass S. 625 to make sure America's family farms have a fighting chance to reorganize their financial affairs.

Before I yield the floor, I see my good friend and coworker on this legislation, the Senator from New Jersey, Mr. TORRICELLI, has come to the floor to make some remarks. As I said last night and I want to say today, because he wasn't able to be here last night, I really appreciate that from day 1 of our even visiting about the possibility of putting together a bipartisan bill, as we had done in the previous Congress, because he was new to the committee and to this effort, not participating at the committee level in the efforts I had with Senator DURBIN of Illinois during the previous Congress on a bill that just about made it through—not knowing those things could work out, we sat down and visited about that possibility.

That initial visit brought us to putting together the legislation that is before us, legislation as introduced with the idea that he and I may not have agreed to everything down to the last jot and tittle with that legislation, but that we would be able, through the ensuing months, to work out differences and come to an agreement and get a bill out of committee. He has kept his word, and he has worked with us.

I don't know whether people who don't participate in the legislative process know how much easier that is, such a better environment in which to write legislation and to make public policy. I don't see that often enough. I see it in this legislation through the cooperation of Senator TORRICELLI. Obviously, that sort of cooperation is two ways: He gives; I give. People who look to him for leadership—he has to carry some water for colleagues of his who want him to work things out. I have to do the same thing. But whether it is as a water carrier for our colleagues or whether it is for the individual philosophy of Senator TORRICELLI or myself, we have been able to bring this together. I thank him for that cooperation.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. TORRICELLI. Mr. President, I thank Senator GRASSLEY for what has been a valuable partnership in crafting what I believe to be extremely important legislation. It would be fair to conclude that without the tenacity of Senator GRASSLEY, this Senate would not be considering bankruptcy legislation. Without his reasonableness in reaching some of these provisions, it would not be the kind of progressive legislation that I believe is before us today.

I also note that I am a successor to Senator DURBIN who, like Senator GRASSLEY, has invested not months but more than a year in crafting this legislation. Senator DURBIN's contributions are on virtually every page. Working with Senator DURBIN and, indeed, with Senator GRASSLEY has not only been a pleasure; it has been a productive exercise. For that, I am very grateful.

These are unusual times in our country, such an extraordinary combination of economic circumstances. Unemployment is low, home ownership is at record levels, and, for the first time in years, the Federal Government is operating with a surplus. This would lead many to believe these are not only good economic times but perfect economic times. This, of course does bear closer scrutiny.

There are several troubling aspects with the modern American economy. They are not unrelated. One is a rapidly declining rate of personal savings—indeed, in the last quarter, the lowest savings rate by American families in our history.

The second is the rapid, almost inexplicable rise in consumer bankruptcies. In 1998 alone, 1.4 million Americans sought bankruptcy protection. This represented a 20-percent increase since 1996 and a staggering 350-percent increase since 1980.

We can differ on the reasons. We can have our own theories. But something is wrong. That ''something'' is not only jeopardizing the economic security of American families, it is providing a staggering financial burden on small businesses and American financial institutions.

It is estimated 70 percent of the these bankruptcy situations were filed in chapter 7, which provides relief for most unsecured debt. Just 30 percent of these petitions were filed under chapter 13, which requires a repayment plan.

There are, obviously, disagreements about what has caused this dramatic increase. It is probable there is no one reason but a confluence of problems. Some suggest that culturally the stigma of bankruptcy has been removed and people no longer feel any inhibition in admitting their financial circumstances and seeking total relief from personal obligations. Others believe it is simply abuse of a system in which it is too simple to avoid responsibility. Others argue that a reliance on debt and a decrease in personal savings has left record numbers of Americans vulnerable to this change and leading to these extraordinary levels of bankruptcy.

Obviously, in the complexities of modern life—with low savings rates, high levels of debt, attentions of our current culture, unexpected events, divorce, a health crisis, given the enormous cost of health care in the Nation, the loss of a job or the loss of job skills because of changes of technology—any one of them, no less a combination of them, can take an American family who believes it is living with financial security and force them under a crushing debt into bankruptcy.

The reality, of course, is a majority of these bankruptcies are hard-working American people, low- or middle-class families, who largely, through no fault of their own, sometimes due to these circumstances that I have outlined, find themselves with overwhelming financial problems and they simply cannot deal with the crushing blow. For all the abuses, the fact remains that accounts for most of these bankruptcies.

At the same time, in a recent study the Department of Justice has found that 13 percent of all those debtors filing under chapter 7, or an incredible 182,000 people, can afford to repay a significant amount of this debt. This would mean to creditors, family-owned businesses, small retailers, and important financial institutions, an incredible $4 billion that could be returned to creditors but is avoided through what I perceive to be a misuse of the bankruptcy system.

These are the factors, the statistics, and the concerns that led Senator GRASSLEY and I to offer this comprehensive bankruptcy reform.

The bill before the Senate strikes a balance making it more difficult for the unscrupulous to abuse the system, while ensuring that bankruptcy protection for families who need it will find it available.

These abuses which result in this $4 billion loss to creditors is not paid by some distant institution off our shores separated from the realities of American life or our economy. This is money avoided through the unscrupulous use of the bankruptcy system that is added onto every piece of clothing you buy in the store, every automobile you purchase from a show room, every credit card you use, and every bank loan that you take.

Those hard-working Americans who pay their bills are forced, through bankruptcy, through no fault of their own, to share these costs. That is what brings us here today.

At its core, the Grassley-Torricelli bill is designed to assure that those with the ability to repay a portion of their debts do so by establishing clear and reasonable criteria to determine repayment obligations.

It provides judicial discretion to ensure that no one genuinely in need of debt cancellation will be prevented from receiving a fresh start. Recognizing that a fresh start and an ability to have a new life have been at the core in this country, that has been the reason for bankruptcy protection since the establishment of the Republic. We believe in second chances in life. We also don't believe in people escaping obligations they can meet or misusing the legal system.

It is because, however, of our concern that vulnerable people who genuinely use the system for a new start in life would have their position jeopardized by our legitimate efforts to find those who are abusing the system that we have designed a flexible means testing system in the bankruptcy bill for the first time. Under current law, virtually anyone who files for complete debt relief under chapter 7 will receive it.

The Grassley-Torricelli bill creates a needs-based system by establishing a presumption that a chapter 7 filing should be either dismissed or converted to a chapter 13 when the debtor has sufficient income to repay at least $15,000, or 25 percent of their outstanding debt. That is the essence of the needs-based system. It is a simple presumption. You can pay $15,000, or 25 percent. It is not closed to you. There is no prohibition. But there is a presumption that you can pay. You need to meet that presumption only for those individuals.

I believe this is a flexible yet very efficient screen to move debtors to the ability to repay a portion of their debt into a repayment plan, while at the same time ensuring judicial discretion and a fair review given the debtor's individual circumstances.

In addition, the bill contains several important consumer safeguards to prevent unfair harassment by creditors. It requires the Attorney General and the FBI Director to designate one prosecutor and one agent in every district to investigate reaffirmation practices that violate Federal law.

This is an important element of this bill to ensure that individual creditors do not seek their own remedy outside of the law, forcing people who cannot repay or should not be repaying, given their individual circumstances and income, to do so.

It penalizes creditors who refuse to negotiate reasonable repayment schedules prior to bankruptcy.

The emphasis remains on settlement through negotiations—not litigation and conflict.

Importantly, the bill also does everything possible to guarantee that child support payments in bankruptcy are not jeopardized, are a priority, and continue.

This was the priority in the Judiciary Committee—that we would reform this system, we would provide new opportunities for debtors to collect, new safeguards for people in bankruptcy, but that child support payments and family obligations will remain paramount.

I believe in the balance that is achieved in this legislation, and that Senator GRASSLEY and I have met that objective. It was critical to do so because more than one-third of bankruptcies in the United States involve spousal or child support orders. This bill will not be a vehicle for people escaping their family obligations.

In half of these cases, women are creditors trying to collect court-ordered support from their former husbands. These support orders are a lifeline for these families. I believe this legislation has protected it, recognizing the vulnerability of these families, and why this was a priority in the legislation.

Mr. President, 44 percent of single parent families with children under the age of 18 had incomes below the poverty line in recent years. The child support amounting to an average of nearly $3,000 is often the only thing that keeps a single parent and a dependent child off public assistance. Senator GRASSLEY and I have achieved this protection and I believe this fair provision of protecting these families by elevating child support from its current place as seventh on the repayment priority list to first place. This is critical for Members of the Senate to understand. Currently, these child support payments are seventh on the list of priorities. Under the Grassley-Torricelli legislation, it will now be first priority. No bank, no insurance company, no credit card company, no retailer—no one—will have higher priority than the children or the spouses involved in these cases.

There were other concerns in the Judiciary Committee which needed to be addressed, other balances that have been achieved that the Senate should recognize. First, the managers' amendment that will be offered incorporates the language offered by Senator FEINGOLD to remedy a provision in the bill carried over from the legislation of a previous year which would have made

debtors' attorneys responsible for costs and fees. That provision would have made it impossible for many middle-income people, people of modest means, to ever get an attorney. In cases where there is any judgment to be reached, any questions on the merits, it would have been impossible to get an attorney, disenfranchising many Americans from the entire bankruptcy system. A motion brought by the trustee to move the debtor from chapter 7 into chapter 13 and the original filing was, we found, not substantially justified. Those costs would have been incurred by the attorney. The managers' amendment will protect against this provision.

Second, the managers' amendment will include a safe harbor, exempting every debtor with income below the median income from the means test. This provision will ensure low-income people with no hope of prepaying their debts are not swept into the means test.

A final point I raised that is resolved by the managers' amendment is the use of IRS standards in the bill. Currently, the bill uses living expense standards formulated by the IRS in determining what portion of their debts an individual has the ability to repay. These standards were not formulated with bankruptcy in mind and provide virtually no flexibility to account for the debtor's actual expenses. They were, therefore, not appropriate. The managers' amendment will clarify the Justice Department and Treasury have the authority to draft bankruptcy appropriate standards and not use the IRS standards previously used.

For each of these provisions and their incorporation in this legislation, we are very indebted to members of the Judiciary Committee: Senator FEINGOLD, for his efforts in recognizing the possible abuses of putting these costs on to bankruptcy attorneys if the cases were lost; and Senator DURBIN, at his insistence and my own, we provided for an appropriate means test; and for the Department of Justice coming up with its own means test standards. Senator DURBIN, in particular, was very helpful with these provisions. Senator GRASSLEY, recognizing their merits, has brought them into the legislation. It is, therefore, far better legislation because of each of these provisions.

There is, however, one final area which also must be addressed to ensure the bill is both balanced and bipartisan. It is critical the bill not only address the debtor's abuse of bankruptcy but also overreaching and sometimes abusive practices of the credit industry. Any American who gets their own mail understands some change is taking place in the American economy—the extraordinary solicitation of customers, by the 3.5 billion individual efforts by the credit card industry to get new customers. This represents 41 mailings for every American household every year; 14 for every man, woman, and child in the Nation. No one disputes both the right and the advisability of the credit card industry seeking solicitation of new customers who are creditworthy, have incomes and the need for available consumer credit. It is right and an important part of our economy. That is not the objective of this legislation.

Our concern in balancing provisions dealing with consumer abuse of the bankruptcy laws with credit industry abuse of consumers focuses instead on people of modest incomes who are offered credit they could never afford, debt they will incur that they can never deal with, young people and the elderly, in credit obligations they do not even understand. The situation, indeed, has become so serious with students that 450 colleges nationwide have banned the marketing of credit cards on their campuses. Low-income families are being targeted with the same frequency as students—the endless solicitation of debt they cannot meet and should not incur.

Since this decade began, Americans with incomes below the poverty line have doubled their credit usage. The result is entirely predictable. Mr. President, 27 percent of families earning less than $10,000 have consumer debt that is more than 40 percent of their income. Modest-income families, sometimes high school students, often people on public assistance, receiving hundreds if not thousands of credit solicitations by companies that should recognize with any due diligence that is fully available to the industry that these debts can never be paid. I have granted to the industry that unfortunate changes in our culture, abuses of the bankruptcy laws, and a host of other reasons have led to needed changes in the bankruptcy laws to avoid these abuses. No one can credibly argue there is not some need of the industry to do so as well.

In this legislation we offer the consumers must be given information about the consequences of their debt: fair disclosure if only the minimum debt is paid as required by the credit card company or the bank; how long will it take for repayment to be made; and what will it cost, information that should be made available to every consumer, people believing if they make the minimum payments they will actually ever be out of debt. We want them to recognize the years and the enormous costs of doing so.

Senator GRASSLEY, working with Senator SCHUMER, Senator DURBIN, and others, has reached an accommodation that I think is fair to the industry but will provide real consumer protection through disclosure. The adoption of that amendment is as vital to a balanced bill as the protection of child support, the moving of people into repayment schedules, and a means test.

This is an extraordinary piece of legislation. It is a challenge to all those who believe this Senate cannot operate on a bipartisan basis. There will be opposition to bankruptcy reform. It may be 5, 10, 15 or 20 votes, but it will be a small minority. This is genuinely bipartisan legislation. It can be adopted without rancor after months, if not years, of effort by Senators from both sides of the aisle. It is fair; it is balanced for the credit card industry and consumers.

I end as I began, expressing my gratitude to Senator GRASSLEY and members of the Judiciary Committee, and I compliment the Senate on what I believe will be a worthwhile and informative debate as we adopt this comprehensive bankruptcy reform.

I yield the floor.

Mr. GRASSLEY. Mr. President, there does not appear to be an effort on the part of Members to consider this bill which is up for discussion. It will take a few days to get through all the amendments. Given the lateness of the year as far as the total legislative session is concerned and considering all the other work that needs to be done to wind up this legislative session, there may not be an appreciation of all the amendments we have to deal with on this bill. I encourage Members who have amendments to come here on the floor to offer their amendments. This bill is very complex. Some of the amendments are also going to be very complex. So please come here and offer your amendments.

AMENDMENT NO. 1730

(Purpose: To amend title 11, United States Code, to provide for health care and employee benefits, and for other purposes)

Mr. GRASSLEY. Mr. President, I call up amendment No. 1730 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative assistant read as follows:

The Senator from Iowa [Mr. GRASSLEY], for himself, Mr. TORRICELLI, and Mr. LEAHY, proposes an amendment numbered 1730.

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

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. GRASSLEY. Mr. President, we have a situation now in which several nursing home chains, maybe even some independent nursing homes, are going into bankruptcy. When this happens, we do not have public policy in place to guarantee the economic and accounting decisions that the bankruptcy involves take into consideration the needs of the residents of these nursing homes.

If a hospital goes bankrupt, the basic question then is, What happens to the patients? The moving of elderly patients, particularly those who have been in a single nursing home for a long period of time, is a very traumatic experience. Many times, the trauma that results from that removal leads to almost immediate death. I suppose a more accurate statement would be that under any circumstance, patients' welfare varies from case to case.

If a bankruptcy trustee is thinking about patients, he may act to protect them. If he is not thinking about the patients, they could end up on the street. This has happened before, and it could happen again. The amendment I am offering today with Senator TORRICELLI and Senator LEAHY would modify our bankruptcy laws to deal with the failures of health care businesses. Our intent is simply to protect patients in a system that is not designed to protect them.

The fate of patients caught in business failures does not always make headlines. But when it does, the stories can be quite moving. The Los Angeles times on September 28, just 2 years ago, described the terrible consequences of a sudden nursing home closing:

> It could not be determined Saturday how many more elderly and chronically ill patients may be affected by the health care company's financial problems. Those at the Reseda Care Center in the San Fernando Valley, including a 106-year-old woman, were rolled into the street late Friday in wheelchairs and on hospital beds, bundled in blankets, as relatives scurried to gather up clothes and other personal belongings.

As horrifying as this example is, it could easily be repeated. What happened at the Reseda Care Center, less than 2 years ago, could happen again and again across the country.

The Nation's bankruptcy laws are geared towards creditors and debtors. One purpose of the bankruptcy system is to ensure that creditors receive what debtors owe them. To this end, bankruptcy trustees concentrate narrowly on the bottom line. They try to maximize the amount of money returned to creditors. In a system so focused on finances, the human toll is often merely an ancillary concern.

Unfortunately, the poor financial conditions that led to the Reseda Care Center's collapse are increasing. Large portions of the health care industry are financially ailing. Almost one-third of our hospitals could face foreclosure. At least two of the Nation's largest nursing home chains are in deep financial trouble and may file for bankruptcy. We have had some chains already do that. Two large nursing home chains that declared bankruptcy, before they declared bankruptcy, had already cut 10,000 jobs. An increasing number of home health agencies are shutting their doors. All in all, health care business failures were up 15.5 percent between 1996 and 1997.

Thousands of patients tie their fate to health care providers. They have no alternative. Yet Federal law shows absolutely no consideration for patients' well-being during the process of bankruptcy. While the State of California has tried to prevent any more surprise nursing home evictions, each Federal bankruptcy judge decides whether any State law applies in an individual case. No Federal law protects patients in bankruptcy cases. With simple changes to the bankruptcy code, our amendment will fill this very dangerous gap in patient protection.

Specifically, one section covers the disposal of patient records. It provides clear and specific guidance to trustees who may not be aware of State or Federal requirements for maintaining these records, or confidentiality issues associated with patient records. Another section of our amendment makes the cost of closing a health care business, such as transferring patients to another health care facility, a top priority debt. This ensures these expenses will actually be paid.

In the ideal situation, though, we want to even keep these patients from being moved if that is possible, and I think it is possible. In fact, we have had the assurances of some of these chains that have gone into bankruptcy already that they are providing for the continuing care of their patients.

But perhaps the heart of this amendment, as I point to the third and main part of it, is the requirement that the bankruptcy judge appoint an ombudsman to act as an advocate for patients of health care businesses in bankruptcy. This ensures judges are fully aware of all the facts when they guide health care providers through bankruptcy. Prior to a chapter 11 filing, or immediately thereafter, the debtor may employ a consultant to help in its reorganization effort. The first step is usually cutting costs. Sometimes this step may result in a lower quality of patient care. An ombudsman, under our amendment, would provide an institutional voice for the patients to help ensure an acceptable level of patient care.

Our amendment also requires a trustee to make the best effort to transfer patients to another facility in the face of a health care business closing. This is designed to prevent a trustee from putting patients out on the street.

Our amendment provides a tremendous benefit for patients with a minimal impact on creditors and debtors. As policymakers, we must eliminate the possibility of midnight evictions at bankrupt nursing homes and hospitals. We must ease the fear of abandonment in individuals who are at a very vulnerable stage in their lives.

This is the amendment. We have had about 6 months pass since the first talk of bankruptcies by some major chains in the United States took place. I happen to also be chairman of the Senate Aging Committee. In that capacity, I consulted with HCFA when these first threats of bankruptcy came forth and we did not have the bankruptcy protection for the patients that our amendment proposes. I asked HCFA about plans for this, or what plans each of the States had for States that would have nursing homes in bankruptcy. We found a total vacuum of either Federal concern or Federal policy and, also in most States, that to be the situation.

Last spring, I asked the Health Care Financing Administration to start instituting a process that the States will go through as they license nursing homes. They should be concerned with the quality of care in nursing homes and have an interim plan for those nursing homes that go into bankruptcy, pending adoption of our legislation.

HCFA has carried out that responsibility very well. We now have word that each of the States have such a plan in place. We want to make sure this is a permanent part of the consideration of bankruptcy courts and, hence, the necessity of our legislation which goes beyond what the Federal Government, through HCFA, and the States through their licensing and quality control departments, has a responsibility to do. They now have in place a plan to deal with nursing home bankruptcies.

Mr. TORRICELLI. Will the Senator yield?

Mr. GRASSLEY. I yield.

Mr. TORRICELLI. Mr. President, I congratulate Senator GRASSLEY on offering the amendment. I am proud to offer it with him.

We could not do comprehensive bankruptcy reform without dealing with the crisis in the health care industry. Last year, bankruptcies by health care providers were up 15 percent. One nursing home company alone, which has 300 nursing homes, left an estimated 37,000 people without beds when it filed for bankruptcy. One, the Doctors Network in California, when it went into bankruptcy, left 1.3 million people without health care.

As the Senator pointed out in his remarks, the bankruptcy laws are designed for creditors and they are designed for people who are debtors, but the customers, in this case the patients, are not provided for.

One of the worst cases in the country was when the HIP health care plan in New Jersey went bankrupt leaving 194,000 subscribers without clear health care provisions. Indeed, it has left New Jersey hospitals, almost all of them, in the red this year because their bills were not being paid.

I am very grateful we have been able to join together in offering this amendment to ensure there is an ombudsman; that there is help in getting people into new plans; that their records are protected in privacy. I believe we made a real contribution to helping in these difficult moments in the health care industry, and we will have a better bankruptcy reform bill because of it. I am very happy to work with Senator GRASSLEY and grateful for his leadership.

Mr. GRASSLEY. Mr. President, this is one more example of the bipartisan cooperation we have had on this bill. I hope my colleagues will look at this amendment and that it will not become controversial and we can adopt it. When the overall bankruptcy legislation becomes law, we will have appropriate protection, beyond the protection we give to creditors and debtors in this legislation, for the needs of patients as well.

We should not have these traumatic experiences that happened in Reseda

Nursing Home in San Fernando Valley and the over 100,000 patients who were in jeopardy in the example of the Senator from New Jersey.

I yield the floor.

Mr. LEAHY. Mr. President, I am pleased to join Senator GRASSLEY and Senator TORRICELLI in offering the ''Nursing Home Patients Protection Act'' to S. 625, the Bankruptcy Reform Act of 1999. Our amendment protects nursing home patients in a business liquidation in three fundamental areas: patient privacy, patient rights and prompt transfers to new facilities.

PATIENT PRIVACY

First of all, our amendment ensures patient privacy when a hospital, nursing home, HMO or other institution holding medical records is involved in a bankruptcy proceeding that leads to liquidation. Medical privacy is an issue very important to me, and ensuring that the confidentiality of patients records is maintained should be of paramount importance.

DEFENDING PATIENTS RIGHTS

We have ensured that patients rights are defended as well. Cost cutting is always an issue in the health care system and that can translate into lower patient care quality—a fear to all health care patients. Our amendment establishes an ombudsman to provide a voice for all health care patients, making sure that judges are aware of all the facts in balancing the interests between the creditor and the patients.

NEW NURSING HOME TRANSFER

Finally, our amendment requires that the bankruptcy trustee make all reasonable efforts to transfer all of the bankrupt nursing home's patients to a nearby health care business. The prompt transferring of patients to a new health care facility must be addressed properly during a business liquidation under our legislation.

Mr. President, in my home State of Vermont, two nursing homes in Burlington recently made news due to a bankruptcy proceeding. Birchwood Terrace Healthcare and the Staff Farm Nursing Center are two very excellent nursing home facilities. Each has a corporate connection to the Vencor Corporation, a nationwide healthcare and nursing home provider that recently filed for protection under Federal bankruptcy protection under Chapter 11 of the Bankruptcy Code. While Vencor has pledged these Vermont nursing homes will not be affected by its plans to reorganize while in bankruptcy, I am sure that many Vermonters are alarmed at the prospect of a nursing home with their loved ones filing for bankruptcy. Our amendment should reassure Vermonters that even if a nursing home files for business liquidation under our bankruptcy laws, their loved ones will be protected.

I have been working on the overall issue of medical privacy for many years and I am particularly pleased that our amendment adds new protections for patient medical records for nursing homes in bankruptcy liquidation.

Of course, in the best case scenario any institution holding patient health care records would continue to follow applicable state or federal law requiring proper storage and safeguards. The fact is, however, under current law during a business liquidation an individual would have to wait until there has been a serious breach of their privacy rights before anyone stepped in to ensure that patient privacy is protected. Under current law it is questionable what protection these most sensitive personal records would have during a liquidation.

The reality of this situation and the practical questions of what recourse an individual would have if their personal medical records were not properly safeguarded against a business that is going out of business makes this provision essential. Our legislation would set in law the procedure that an institution holding medical records would have to follow during a liquidation proceeding.

The bottom line is that we do not want to have to wait until there has been a breach of privacy before steps are taken to protect patient privacy. Once privacy is breached—there is nothing one can really do to give that back to an individual.

I urge my colleagues to support our amendment to make sure that nursing home patients privacy and rights are protected during a bankruptcy proceeding.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I am fortunate the remarks I am about to make follow the remarks of my colleagues from Iowa and New Jersey in talking about nursing homes because I want to take a few minutes to talk about another aspect of how the elderly are getting ripped off in this country and what has happened with HCFA, the Health Care Financing Administration, and what they have been trying to do to stop this. What the Senate is doing and what the House has done recently is going to turn the clock back on our attempts to cut out waste, fraud, and abuse in Medicare.

I have been working for over a decade to identify and eliminate waste, fraud, and abuse in the Medicare system. It is a big problem. The Office of Inspector General estimates that last year, Medicare lost nearly $13 billion—that is with a B, billion dollars—to waste, fraud, and abuse in Medicare.

A few years ago, it was over $23 billion a year. So we have made some progress. It is still a huge annual waste of our tax dollars. I call it the Medicare waste tax, and we need to cut the Medicare waste tax.

Since 1989, I have held hearing after hearing, released report after report documenting unnecessary losses to the Medicare program. I commissioned the Office of Inspector General and the General Accounting Office to research and review these unnecessary payments and to make recommendations. On July 28 of this year, I introduced S. 1451, the Medicare Waste Tax Reduction Act of 1999 which incorporates many of these GAO and IG recommendations. If enacted, it would save Medicare and our taxpayers billions of dollars every year.

Medicare fraud is what we hear the most about, some egregious cases where a scam artist has found yet another way to skim millions from the Medicare trust fund. Those are the cases that make the headlines. But my years of investigation and review of this problem indicate that by far the greatest losses to Medicare are not in fraud, but they are due simply to waste and abusive practices. These losses are often directly due to or are encouraged by wasteful Medicare payment policies and practices and a laxity in oversight, as well as weaknesses in the Medicare law that restrict the program's ability to get the best deal possible when purchasing goods and services.

To examine this further, in 1996, my staff and I undertook a study of Medicare payments for medical supplies. This followed a study by the GAO that I had requested earlier on the same topic. We compared Medicare's payment rates for 18 commonly used medical supply and equipment items with what the Veterans' Administration paid. Then we compared it to the wholesale rate and the retail rate.

What we found was startling. This is a chart that depicts what we found. For example, an irrigation syringe—a small syringe like this little one right here, these little plastic syringes—we found that Medicare is paying $2.93 for each one. The Veterans' Administration is paying $1.89. The wholesale price was $1.10. The retail price was $1.95. One can walk into a drugstore and buy one for $1.95. Medicare was paying $2.93 for each one. The potential savings from that alone, if we base it on the wholesale price, is $4.4 million every year just on little plastic syringes.

We had a walker. The Medicare purchase price was 75 bucks. The VA price was $25 for the walker. The wholesale price was $39, and the potential savings was about $17 million a year.

Again, this is not an elaborate device. This is just a simple aluminum holding walker. Medicare was paying $75 each. The wholesale price was $39.

This is a commode chair. This is even more egregious. The commode chair was being paid for by Medicare at the rate of $99.35 each. The VA was paying $24.12 each. The potential savings was $30.6 million a year. This is a commode chair; we have all seen them. A lot of people use them in hospitals and nursing homes.

Potential savings: If Medicare just paid the VA price, not the wholesale price, just what the Veterans' Administration is buying them for, there would be a savings of $30 million a year just for the commode chair.

Those are some of the items we found were being grossly overpaid for by the Medicare system.

So, armed with this information, we began to work to cut this waste. First, I pushed an idea I have advocated for over a decade: Competitive bidding. Competitive bidding, that is how the Veterans' Administration gets the rates it does—good old-fashioned American free enterprise; put them out there for competitive bids.

While Medicare pays bloated prices based on historical charges, the VA, which has much less purchasing power than Medicare, puts out bids that provide for both quality and cost control.

So I wanted to get through competitive bidding. But all we could get through the Congress was a demonstration on competitive bidding.

I do want to point out one of the items on which we were successful in reducing the price on this idea of competitive bidding. One of the demonstration programs we did was oxygen. We found that for oxygen, Medicare was paying more than 50 percent more than the Veterans' Administration. So we had a debate here about reducing the Medicare rate for oxygen. We had a compromise. We cut the rate by 30 percent. That was in the Balanced Budget Act of 1997. We said we were going to reduce the oxygen payments by 30 percent and put it out for competitive bids.

We just got the first bids in on the competitive bidding demonstration for oxygen. Guess what. The suppliers bid to provide home oxygen for about 25 percent less than the 30-percent cut we put in. On top of the 30-percent cut, the bids came in at 25 percent less than that. They are still making money. And they will still be providing regular servicing of equipment, doing it for that much less.

Let me get this straight. A lot of the oxygen suppliers said they could not do this because they would lose money. We did not listen. We went ahead and put through the 30-percent cut. Then we put it out for competitive bids. They then cut it 25 percent more than that.

So look at it this way. If the home oxygen people were making 50 percent more off Medicare than they were making off the Veterans' Administration, and we cut it by 30 percent, put it out for competitive bids, and they came in 25 percent even lower than that, that means they are now 5 percent under the Veterans' Administration. They were making money off VA before, and now they are even less than what VA is on competitive bids. And you know darn well they are not going to bid that unless they are making money on it. They are not going to put a bid out there to lose money.

That is just an indication of how much waste and abuse there is in the Medicare system and why competitive bidding ought not to be a demonstration project but it ought to be the norm, the standard for all of our purchases for Medicare.

We got the demonstration program. However, as a part of the Balanced Budget Act of 1997, we did succeed in giving Medicare a modest version of another waste-fighting weapon I have been pushing for a long time. We provided HCFA, the Health Care Financing Administration, with enhanced ''inherent reasonableness'' authority to reduce Medicare payments when it is clear that current Medicare payment levels are ''grossly excessive.'' In other words, Medicare, HCFA, has an ''inherent reasonableness'' clause. We enhanced that to say they could reduce Medicare payments when they were clearly grossly excessive. I would have liked to have done much more—obviously, put it out for competitive bids—but it is a step in the right direction.

Specifically, what this does is provide Medicare with the authority to reduce payments by up to 15 percent a year for items where Medicare believes there are gross overpayments. That was 2 years ago. After 2 years of prodding, HCFA has finally begun the process of using its new authority to make Medicare a more prudent purchaser. They published a notice of proposed rulemaking on August 13 of this year. This followed an extensive investigation reviewing retail prices, wholesale prices paid by payers other than Medicare, and, of course, the payment amounts made by the Veterans' Administration.

HCFA and their intermediaries then came up with an initial list of 12 items of durable medical equipment and 1 prosthetic device for which Medicare currently pays a grossly excessive amount. HCFA recommended reducing these exorbitant rates, and they projected over a 5-year period, just making these modest adjustments, it would save Medicare and the taxpayers over $487 million—just in the next 5 years.

This chart will begin to show some of these items.

For example, the items here: Lancers, enteral nutrients, eyeglass frames, catheters, test strips, albuterol sulfate; the overpayments are: 36 percent, 16 percent, 21 percent, 24 percent, et cetera. This chart shows the 5-year savings we would get off them. Then this chart shows the overpayment for the folding walkers I just talked about, the commode chairs, and others, for another $120 million. It is a total 5-year savings of almost half a billion dollars just from these items alone.

Let me make it clear, we are only talking about the right of HCFA to reduce grossly excessive payments. Excessive pricing is not determined by comparing prices paid by Medicare to wholesale prices. That is not how we determine excessive pricing. HCFA, in its proposed rule, takes the Veterans' Administration price—what the VA is paying for these same items—and then it adds 67 percent.

Keep this in mind. I will get my commode chair back out here again. For an item such as this commode chair, what the HCFA has said is: We will see what VA is paying for it, not what the wholesale price is. What is the Veterans' Administration paying for it? Then we will add 67 percent over that. That is what we will now pay for that commode chair.

Keep in mind, the companies making these commode chairs are not losing money in the VA system. They would not be selling them to the VA if they were losing money. So you know they are making money off the VA.

Now HCFA says: OK, they were so grossly overpriced before, we are now going to cut it; we are only going to allow a 67-percent markup. Wouldn't you like to have that guarantee in everything you sell the Government?

I see no reason we should pay more than the VA. Medicare is the largest purchaser of medical supplies and equipment in the Nation. Because of this purchasing power, it ought to be able to demand better prices than anyone else. Medicare should not pay any more than any other Federal program does, whether it is VA, CHAMPUS, the Federal Employees Health Benefits Program, or others.

Now, guess what. Even with the 67-percent markup over the VA rate, Medicare is currently paying even more. It is hard to believe.

Now, here are the folding walkers. The VA payment on those is $30.24. The proposed Medicare payment is $50.50. That is with a 67-percent markup. So if they are making money on VA, they are making a killing off of Medicare. Here is the commode chair. VA is paying $37.64; the Medicare payment is $62.85. What a deal. And this is a result of us saying they shouldn't pay grossly exaggerated prices. Evidently paying $62.85 for a commode chair for which the VA is paying $37 is not grossly exaggerated. I think it is. There are a lot of other things, folding walkers and everything else. Here is a folding walker that has a wheel on it. The VA is paying $45.94; the proposed Medicare payment, $75.88.

Even with that, HCFA is moving ahead, barely, to save Medicare and taxpayers a lot of money. We need to do more, and we need to do more rapidly.

If my colleagues think that is bad news, get ready for the really bad news. With almost no discussion, last week the House Ways and Means Committee added a little special interest provision to the Medicare Balanced Budget Refinement Act of 1999. This provision would indefinitely delay cutting this wasteful spending. It would deny Medicare and the taxpayers $½ billion of savings. It does this simply by stopping HCFA from moving ahead. It stops Medicare, its intermediaries and carriers from using this inherent reasonableness authority until the Secretary has published a new rule and those rules are finalized.

Medicare says this would mean a delay of maybe 18, 22, 24 months, another a couple years. If their track record is any indicator, the delay would be a lot longer than that.

I suppose a lot of people on that House Ways and Means Committee got a lot of phone calls from the people who make walkers and commodes and these syringes who said do something about this. It is in the House Ways and Means Committee bill. It would block just these modest attempts to safeguard Medicare. We would still allow them to make 67 percent more than what they are making from VA. That is not enough for them. So they got a little provision slipped in that House bill. Talk about special interest legislation and a rip-off of our elderly and a rip-off of our taxpayers.

What did the Senate do? Well, they tried to do the same thing. The Senate counterpart to that bill, called the Medicare, Medicaid and SCHIP Adjustment Act of 1999, would prohibit use of this inherent reasonableness authority until 90 days after the Comptroller General of the United States releases a report of its proposed impact. That would delay this implementation probably for another year. So the House, if we took the best case scenario, probably would delay it for 2 to 3 years. The Senate bill would delay it for at least a year. I am sure a compromise will be made leaning towards the House side, when this bill goes to conference, by members of the Finance Committee. I want members of the Finance Committee to know we are watching. We want to know what they are going to do to start reducing these exorbitant prices people pay for medical equipment. It is not right to stop or further delay HCFA from implementing at least these modest savings.

We gave HCFA the authority in 1997; 2 years later, they just started to act on this. You can see how long it takes them to do something. Just when they are getting ready to make these cuts, to put more reasonableness in the amounts of money we pay, the Congress says, no, stop; put on the brakes. We can't do this. The Congress is standing by—let me rephrase that. The Congress is not standing by. The Congress, under the bills in the Senate Finance Committee and the House Ways and Means Committee, is actively stopping the progress and the process by which we will save taxpayers billions of dollars, an added tax not only on our taxpayers but on our elderly.

We can do something about it. We have shown we can do something about it. We have shown how much we can reduce costs in oxygen and these other items. But now there are elements in this Congress who say, no, we can't do that.

Well, we are going to watch. We will see what the Ways and Means Committee and the Finance Committee do to stop this rip-off of our taxpayers. We have grappled with ways to reduce Medicare expenditures. We passed this limited provision 2 years ago, giving them the authority just so they wouldn't pay grossly exaggerated prices. HCFA said: OK, we are not going to pay grossly exaggerated prices; we will just pay 67 percent more than VA. That is grossly exaggerated. But even to that modest amount of reduction, the House Ways and Means Committee says no.

We all remember the Pentagon and the $500 toilet seats the Pentagon was buying some years ago. It is great news for all of us that the Pentagon isn't buying them anymore. Unfortunately, Medicare is. Taxpayers don't deserve to be ripped off and to have all of their money go for this gross waste and abuse in the Medicare system. Again, I know it is the waning hours of the Congress. We are all going to be getting out of here, I guess next week, they tell us. There is going to be a balanced budget amendment fix. We are going to look to see whether or not the special interests have gotten their way once again to rip off the taxpayers of this country and the Medicare system.

I may not have the opportunity to take the floor after that is done. We may be recessed or adjourned until next year. But we will be back, as will the taxpayers of this country and the elderly people and their families who have been getting ripped off for far too long. We will be back to make sure we get competitive bidding once and for all to save our taxpayers a lot of money.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DURBIN. Mr. President, before us is S. 625, a bill relating to bankruptcy. It is a bill with which I have some knowledge and experience because last year I was a member of the Senate Judiciary Committee and a member of Senator GRASSLEY's subcommittee. We spent a great deal of time preparing this bill for consideration on the floor of the Senate. I enjoyed very much working with Senator GRASSLEY on the bill. He has become not only a trusted colleague but a good friend in the process. We have had our disagreements, but we have tried to resolve them amicably and in the best interest of the legislation.

I also salute a number of staff people who have been at this task for a long time: John McMickle, a member of Senator GRASSLEY's staff; Kolan Davis; Jennifer Leach, who now works for Senator TORRICELLI on the Democratic side; Darla Silva, a member of my staff who is with me today on the floor; her predecessor, Victoria Bassetti, now legislative director for Senator JOHN EDWARDS. All of these staff people have put in so many hours that we could not calculate it to consider this significant revision of the bankruptcy law in the United States of America.

As this bill comes to the floor, I still have many concerns about it. I think most honest critics would suggest this was not a bill that came from the demands of our mailbag or the American people. I scarcely find any members of the bar living in the State of Illinois who are begging me for a big change in the bankruptcy law. No, this law was inspired and has been pushed for several years by the credit industry. The credit industry was becoming increasingly concerned that more and more people were filing for bankruptcy. As these people filed for bankruptcy and are discharged from their debts, their creditors and credit card companies receive less money. So they came to Congress and said: We want to change the law and make it more difficult for people to file for bankruptcy.

In other words, when you are down and out and cannot pay your bills, when your income is such that you cannot meet your obligations, when you have tried everything and you have given up hope and you finally have said, ''We have no choice but to declare bankruptcy and to try to start over,'' this law is going to say, stop, we may not let you do it because there are two different kinds of bankruptcy at issue. One is the so-called chapter 7 bankruptcy, where you walk in and, after a court proceeding and all the evidence is presented, the final act of the court is to clear your debt and to say now you can start over. Of course, you start over with very few assets and with that specter of having filed for bankruptcy over your head.

The alternative is something called chapter 13. Chapter 13 says, stop, we won't let you declare bankruptcy, we won't clear off all of your debts, and we are going to make you pay all or part of those debts over a lengthy period of time.

Those are two different outcomes. With one, the slate is wiped clean and the other the slate is still filled with many debts that have to be paid off. This bill attempts to define which people belong in which category, which Americans should be so down and out and up against it that they are allowed to have their debts wiped out completely and those who will continue to pay. It is no surprise that the credit industry is determined to keep as many people as possible on the hook and paying off these debts for a lengthy period of time.

Now, in some cases this is warranted. In some cases, people file for bankruptcy when they have assets and they have the means by which they can pay off at least a substantial portion of their debt. As this bill addresses that problem, I applaud it. I think they are right. People who are gaming the bankruptcy system to avoid paying their honest debts are, frankly, a burden on all of us as consumers, as those who are debtors as well. Those people should be excluded from the process. Life should be difficult for them, no matter how good their attorney, if

they try to walk away from a debt they can pay. But that represents an extraordinarily small minority of those in bankruptcy court. The vast majority of those who walk through the doors of bankruptcy courts in America are in big trouble; they need help and need it quickly.

Unfortunately, this lengthy bill will create a process where some families who are absolutely out of options and have nowhere to turn have to walk through a new process of proof before they will even be considered to be discharged in bankruptcy.

Bankruptcy is an interesting concept, not new to the United States. It has been discussed at length throughout history. The history of the relationship between those who borrow and those who loan goes back to ancient times. Throughout history, those who borrow have not always been treated fairly. Under early Roman law, creditors who were unable to collect the debts owed to them were permitted to cut up the debtor's body and divide the pieces, or leave the debtor alive and sell him into slavery.

Thank goodness things have improved. In America, the delegates of the Constitutional Convention gave Congress the power to establish uniform laws on the subject of bankruptcy. Only one delegate to America's Constitutional Convention objected—Roger Sherman of Connecticut. It is said he was concerned that they didn't make it clear that if you file for bankruptcy, you would not be subjected to the death penalty. That is how onerous debt and collection was in those days. Mr. Sherman observed that bankruptcy was in some cases punishable by death under the laws of England, and he did not choose to grant a power by which that might be done in the United States. In response, Gouverneur Morris said he would agree to a bankruptcy clause because he saw no danger of abuse of power by the legislature of the Government of the U.S. I hope Gouverneur Morris' trust was not misplaced.

I have a statement from a bankruptcy judge in Chicago by the name of Joan Lefkow. Judge Lefkow, when she was inducted to be a part of the bankruptcy judiciary, gave an extraordinary statement about the history of this subject. She talked about Charles Dickens and his Pickwick Papers, of the ''Old Man's Tale About the Queer Client.'' It is a story of a man who is cast into debtors prison by his father-in-law and left by his own father to languish in desperation, while his wife and child starved. Dickens wrote: ''It was no figure of speech to say that debtors rotted in prison.''

In a twist of fate, in this story, the debtor's father, although he had ''the heart to leave his son a beggar,'' put off arranging it until it was too late. Thus, the man was freed from prison and provided a means by which he could exact revenge on the father-in-law who cast him into prison. He hired a lawyer to drive his father-in-law into bankruptcy so he could suffer the same fate as the son-in-law. He directed the lawyer, ''Put every engine of the law in force, every trick that ingenuity can devise and rascality execute; aided by all the craft of its most ingenious practitioners, ruin him! Seize and sell his lands and goods, drive him from house and home, and drag him forth a beggar in his old age to die in a common jail!''

Those were the good old days when a debt led to a big problem when people could end up literally rotting in prison.

We decided in the United States to take a different course of action and to establish a bankruptcy procedure so that American families and businesses faced with that awkward and painful and embarrassing moment might have recourse. Our bankruptcy system is part of it.

But bankruptcy has become extremely technical and convoluted. During the course of this debate, we talk about cram-downs and reaffirmations and panel trustees and automatic stays, nonchargeable debt, prior debt, secured debt, and even something known as ''supper discharge.''

The bankruptcy code is a delicate balance. When you push in one area to create greater rights, or take rights away, it has an impact on another area. That is because no matter how hard you try at bankruptcy court, there is a very limited pie. All we can do is increase the fighting over that small pie, and usually no one wins that fight.

Mr. President, I note that my colleague from Wisconsin is on the floor. I believe he is prepared to offer an amendment. I ask permission of the Chair to yield the floor to my colleague from Wisconsin, and I ask consent that after he has completed his statement, I reclaim my time and continue.

The PRESIDING OFFICER (Mr. BENNETT). Without objection, it is so ordered.

Mr. KOHL. I thank Senator DURBIN very much.

Mr. President, I rise to offer an amendment with Senator SESSIONS to eliminate one of the most flagrant abuses of the bankruptcy system—which is the unlimited homestead exemption. This bipartisan measure will cap the homestead exemption at $100,000, which is more than generous. Last year, the full Senate unanimously went on record in favor of the $100,000 cap and emphasized that ''meaningful bankruptcy reform cannot be achieved without capping the homestead exemption.'' I am proud that Senator GRASSLEY—the underlying bill's lead sponsor—is a cosponsor of this measure. Our proposal closes an inexcusable loophole that allows too many debtors to keep their luxury homes, while their legitimate creditors—like children owed child support, ex-spouses owed alimony, State governments, small businesses, and banks—get left out in the cold. Currently, a handful of States allow debtors to protect their homes no matter how high their value. And all too often, millionaire debtors take advantage of this loophole by moving to expensive homes in states with unlimited exemptions like Florida and Texas, and declaring bankruptcy—and then continue to live in a style that is no longer appropriate. Let me give you a few of the literally countless examples:

The owner of a failed Ohio S&L, who was convicted of securities fraud, wrote off most of $300 million in bankruptcy claims, but still held on the multimillion dollar ranch he bought in Florida. A convicted Wall Street Financier filed bankruptcy while owing at least $50 million in debts and fines, but still he kept his $5 million Florida home—with 11 bedrooms and 21 bathrooms. And just last year, movie star Burt Reynolds wrote off over $8 million in debt through bankruptcy, but he still held onto his $2.5 million Florida estate.

Sadly, those examples are just the tip of the iceberg. We asked the GAO to study this problem and, based on their estimates, 4 homeowners in Florida and Texas—all with over $100,000 in home equity—profit from this unlimited exemption and each every year. And while they continue to live in luxury, they write off annually an estimated $120 million in debt that is owned to honest creditors.

My favorite GAO example is a Texas bankruptcy attorney who boasts of refusing representation to anyone who piles up credit card debt on the eve of filing bankruptcy. For that stand against abuse, she deserves credit. But when her own finances went sour, she took a dramatically different view: she wrote off $1.2 million in debt, while holding onto her $400,000 home.

Mr. President, this is not only wrong, it is unacceptable. As you can see, while the unlimited homestead exemption may not be the most common abuse of the bankruptcy system, it is clearly the most egregious. If we really want to restore the stigma attached to bankruptcy—as this bill purports to do—then these high profile cases are the best place to start. Mr. President, we need to stop this high living at the expense of legitimate creditors. But the pending bill falls short. Instead of a cap, it only imposes a 2 year residency requirement to qualify for a State exemption. And while that's a step, it will not deter a savvy debtor who plans ahead for bankruptcy and it will not do anything about in-state abusers such as Burt Reynolds. This $100,000 cap will stop these abuses, without affecting the great majority of States, two-thirds of which responsibly cap the exemption at $40,000 or less.

Let me make one additional point, and respond in advance to the most spurious—of the many spurious—arguments made by the other side: that this issue is really about States rights. Mr. President, that is pure hokum. Anyone who files for bankruptcy is choosing to invoke Federal law in a Federal court to get a uniquely Federal benefit—a

''fresh start'' through a huge debt write-off. In these circumstances, it's only to impose Federal limits. And just because something is in a State ''constitution'' doesn't make it sacrosanct. A cap is not only the best policy, it is sends the best message: That bankruptcy is a tool of last resort, not just a tool for financial planning. And it gives credibility to reform by going after the worst abusers, no matter how wealthy they are. So honestly, this amendment should be a no-brainer. Indeed, if we want to apply antiquated bankruptcy laws, maybe we should resurrect ''the debtors' prison.'' At least then we would be punishing the worst offenders, rather than rewarding them.

AMENDMENT NO. 2516

(Purpose: To limit the value of certain real or personal property a debtor may elect to exempt under State or local law)

Mr. KOHL. Mr. President, I ask unanimous consent to set aside the pending amendment, and I send an amendment to the desk.

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

The clerk will report.

The bill clerk read as follows:

The Senator from Wisconsin (Mr. KOHL), for himself, Mr. SESSIONS, and Mr. GRASSLEY, proposes an amendment numbered 2516.

Mr. KOHL. 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 title III, insert the following:

SEC. 3 . LIMITATION.

Section 522 of title 11, United States Code, as amended by sections 224 and 307 of this Act, is amended—

(1) in subsection (b)(3)(A), by inserting ''subject to subsection (n),'' before ''any property''; and

(2) by adding at the end the following:

''(n)(1) Except as provided in paragraph (2), as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that exceeds in the aggregate $100,000 in value in—

''(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

''(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

''(C) a burial plot for the debtor or a dependent of the debtor.

''(2) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of that farmer.''.

Mr. KOHL. Thank you, Mr. President.

I thank the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois, under the previous order, is recognized.

Mr. DURBIN. Thank you, Mr. President.

I fully support the amendment offered by Senator KOHL and Senator SESSIONS. This gets to the heart of it. This would be a real test as to whether or not we are going to close one of the major loopholes in the bankruptcy law, a homestead exemption loophole where a person goes into the bankruptcy court and says: I am broke. I can't pay my debts.

The court says: Well, I guess we will have to discharge these debts. You can't pay them. But, of course, you keep your home.

Different States define how much value there could be in that home. We have seen in case after case where some have received a lot of publicity and we have people who are holding back homes that are worth hundreds of thousands if not millions of dollars under this homestead exemption and keeping that out of court. This is a ruse. It is a fraud.

I thank Senator KOHL and Senator SESSIONS for their leadership in introducing this amendment. I hope it passes.

Incidentally, this same amendment was defeated in the House of Representatives in the last session. I am not sure if they voted directly on it in this session. But it gives you an indication that some in the House who pound the table for reform in bankruptcy are the last in line when it is going to stop the fattest of cats from protecting themselves from bankruptcy by buying these huge homes and ranches.

I hope Senator KOHL is successful. I will be supporting him in every way I can.

Let me tell you one of the reasons I am here today to discuss this bankruptcy code. It is because of the increase in filings over the last several year. It is true that more people have gone into bankruptcy court.

It is an interesting thing that as our economy improves more people file for bankruptcy. Logic would argue just the opposite. But apparently people get into a frame of mind where they are so optimistic that they get strung out with too much debt. They never think they are going to lose a job.

They never think they will face a divorce. They never anticipate the possibility of medical expenses for which they cannot pay.

Mr. SESSIONS. Will the Senator yield?

Mr. DURBIN. I yield for a question.

Mr. SESSIONS. I ask if I might offer briefly a second-degree amendment to this and then return the floor to the Senator from Illinois.

Mr. DURBIN. I am happy to yield to the Senator for that purpose, with consent I reclaim the floor.

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

AMENDMENT NO. 2518 TO AMENDMENT NO. 2516

(Purpose: To limit the value of certain real or personal property a debtor may elect to exempt under State or local law)

Mr. SESSIONS. Mr. President, I send a second-degree amendment to the KOHL amendment to the floor.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alabama [Mr. SESSIONS], for himself, Mr. KOHL, and Mr. GRASSLEY, proposes an amendment numbered 2518 to amendment No. 2516.

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

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

The amendment is as follows:

In the amendment strike all after the first word and insert the following:

3___. LIMITATION.

(a) EXEMPTIONS.—Section 522 of title 11, United States Code, as amended by sections 224 and 307 of this Act, is amended—

(1) in subsection (b)(3)(A), by inserting ''subject to subsection (n),'' before ''any property''; and

(2) by adding at the end the following:

''(n)(1) Except as provided in paragraph (2), as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that exceeds in the aggregate $100,000 in value in—

''(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

''(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

''(C) a burial plot for the debtor or a dependent of the debtor.

''(2) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of that farmer.''.

(b) ADJUSTMENT OF DOLLAR AMOUNTS.—Section 104(b) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking ''522(d),'' and inserting ''522 (d) or (n),''; and

(2) in paragraph (3), by striking ''522(d),'' and inserting ''522 (d) or (n),''.

Mr. SESSIONS. I yield the floor.

Mr. DURBIN. Mr. President, as I mentioned earlier, there has been a dramatic increase in filings for bankruptcy over the last several years—30 percent in some years.

People ask, How can this be? Of course, I think it is overoptimism. Folks in a good economy don't think anything will go bad; sometimes they do, and people who thought they had the world by the tail end up in bankruptcy court.

There is another factor at work here, as well. As Senator TORRICELLI of New Jersey, the Democratic minority spokesman on this committee, noted earlier, everyone who has a mailbox knows what is going on when it comes to credit cards. There is scarcely a day that goes by in my home in Springfield, IL, that there is not another solicitation for another credit card. In fact, some of the solicitations come in the name of my daughter who married years ago and hasn't been at that address for a long time. Some group has captured her name and address and continues to offer her credit cards on a monthly basis.

I asked my staff how many of them had been solicited likewise. It turned out everybody has received these solicitations. In fact, one of my staffers sent me a recent offer for a credit card that was sent to my godson. He is about 6 years old. I don't think he is creditworthy yet, but obviously some

companies have taken a hard look at him and are considering whether or not Neil Houlihan needs to have a MasterCard at the age of 6. I hope that isn't an indication of what is happening across America.

I think we all know that part of the reason so many people end up in bankruptcy court is because we are flooded with easy credit. Easy credit has a good side and a bad side. Easy credit says to a person who traditionally could not qualify for credit that they now have a chance. I am told historically a waiter or waitress was unlikely to get a credit card because they didn't have a steady and predictable income. Those days have changed, thank goodness. People in those professions and occupations are given that opportunity for credit.

The bad side is that it extends credit, easy credit, to people who are already in over their heads. It doesn't parse out those who deserve credit and who can use it responsibly from those who are just going to dig a deeper hole and find themselves in short order facing a bankruptcy court judge. That, I think, is an indication of why so many people are starting, or did start, to use the bankruptcy courts.

The latest statistics for filings in bankruptcy have started to trail off. What appeared to be a national growing trend has changed. This year, second quarter filing reports show a drop in 42 States, including double-digit decreases in 14 States. We have to ferret out those people who abuse the bankruptcy system, but not at the expense of those families and businesses that need it.

The sad but obvious fact is that the people who declare bankruptcy are poor. The average income of a person who declares bankruptcy is $17,652. In 1981, the average income was $23,254. People in our bankruptcy system are just getting poorer. One would not believe that to be the case listening to the debate, the suggestion that so many people are coming into the bankruptcy court who are loaded with money, who, through crafty attorneys and their own ingenuity, are able to avoid their responsibility.

However, statistics tell a different story. By and large, the people showing up in bankruptcy court are poor people, with $17,652 as the average income of a person filing bankruptcy. If memory serves me, average indebtedness is roughly $25,000. These people have more than a year's income in debt before they finally show up in bankruptcy court.

As distasteful as bankruptcy is, the fact remains: We need the system. We shouldn't change it radically. By and large, it works. Let me give a few examples of people who are filing.

The three major reasons for filing bankruptcy are employment, health care costs, and divorce. Older Americans are less likely to end up in bankruptcy than their younger counterparts. But when they do file, a larger fraction of senior citizens—nearly 40 percent—give medical debt as the major reason for filing. Think about it: A catastrophic illness catching a family by surprise, particularly a senior with limited income and fixed resources, ends up in bankruptcy court because there is no place else to turn.

The second category is women raising families. Both men and women are likely to declare bankruptcy following divorce. Collectively, the bankruptcy sample has 300 percent more divorced people than the population in general. Families already stuck with consumer debt cannot divide their income to support two households and survive economically. Divorced women file bankruptcy in greater proportion than divorced men.

Before being elected to Congress, I was a practicing attorney in Springfield, IL. I was an attorney in hundreds of divorce cases. Almost without fail, the woman at the end of the divorce case had less money to try to meet the needs of her children and herself. Sometimes they are pushed too far. Many times, they end up in bankruptcy court.

Keep in mind as we debate these bills and whether we are going to run people through a means test with all sorts of questions to be answered and, if they miss an answer, thrown out of court, we are talking about older Americans and divorced women who are struggling to keep their family together.

Unemployed workers: More than half the debtors who file for bankruptcy report a significant period of unemployment preceding their filings. For single-parent households, a period of unemployment can be devastating.

Let me comment on this current bill. I favor the bill we passed last year. I think the Senate favored the bill we passed last year by a vote of 97–1. It is pretty odd in this Chamber to have 97 Senators agree on a bankruptcy bill. I think it was a better bill, better than the bill now before the Senate. I hope we make changes in this bill to bring it closer to last year's bill.

The changes should center around three themes: First, ensure fairness to women and children while ensuring that wealthy debtors pay their fair share. This can be accomplished by Senator KOHL's amendment, which Senator SESSIONS has cosponsored, which establishes a cap on the homestead exemption of $100,000 and ensures as well that women are not competing with credit card companies in collecting child support after the bankruptcy is over. This is a critical point that has been raised by Elizabeth Warren of Harvard as well as some 82 different bankruptcy professors across the United States who have written to Members of the Senate and asked them to be very sensitive to the fact that what we do in this law could make life more difficult, if not impossible, for women trying to raise their children after a divorce.

Alimony and child support payments oftentimes are a major part of the income on which they live. When we allow credit card companies and finance companies to grab more in bankruptcy and hang on to more after bankruptcy, it lessens the likelihood that the divorced woman trying to raise a child is going to be able to have any pot of money to draw from for help. It is just the bottom line. This is a pie of limited proportions after a bankruptcy. If the credit card companies can stay there, taking the money away from that former husband who filed for bankruptcy, many times it will be at the expense of his children and his former wife. That is a fact. It is a cruel fact. It is one that has not been overcome to date by anything suggested in this bill or on the floor.

Merely changing the priorities in the bankruptcy system, making the alimony and child support payments a higher priority, takes care of what happens in court, but after bankruptcy, then we have a problem. The same mother of the children trying to draw money from what is left after bankruptcy and income finds she is competing with credit card companies and others that have been given more rights under this bill to claim more money after the bankruptcy has been initiated.

Second, this bill needs to be more cost effective and less expensive for taxpayers. This can be accomplished by providing a safe harbor for means testing for a below-median debtor and streamlining the tests for debtors above the median income to eliminate needless paperwork.

A cliche I learned as a kid, as everybody learned, I am sure, over and over again: You can't draw blood from a turnip. In some cases, people in bankruptcy court, no matter how hard we try or how hard we look, are never going to have the money to pay off the debt. It is more sensible for us to step back and say, let's focus on those who are abusing the system rather than adding more paperwork requirements on those who will never be able to pay off their debts.

Let me give an illustration from the same law school professors who wrote to every Member of Congress about a recently completed study. Since last year's debate on bankruptcy reform, a study was funded by the independent, nonpartisan American Bankruptcy Institute. They found that less than 4 percent of consumer debtors could repay even 25 percent of their unsecured nonpriority debts, even if they could dedicate every penny of income to a repayment plan for a full 5 years. In short, for about 96 percent of consumer debtors, chapter 7 bankruptcy is an urgent necessity.

The fact that most debtors cannot pay more does not mean this means test will not affect them, though. Mr. President, 96 percent of those who file in bankruptcy court cannot pay more, according to the study. They are really up against it. They need to file for bankruptcy. Yet we find in this law the

requirement that they still go through this rigorous standard of means testing and examination to question whether or not they can file for bankruptcy. I hope we will adopt the House standard at least, which says those at median income will be absolved from going through this lengthy test in bankruptcy court. People making median income in this country, filing for bankruptcy, are not likely to be able to pay off many of their debts.

Further, we ought to require that those earning up to 150 percent of median income should be subject to a reasonable screening to determine if it is possible they could pay back some of these debts. But to make every single person who walks into that court go through this process is unfair, it is burdensome, and it is not of any benefit to taxpayers or, ultimately, to creditors.

In addition, this bill needs to acknowledge the credit industry's role in increasing the number of bankruptcy filings. In order for this bill to be balanced, we have to enact additional disclosures on credit cards to allow debtors to make an informed choice about their credit. I had a lengthy list of disclosures included in last year's bill. Some have survived; some have been changed; some will be offered again on the floor. But is it unreasonable for us to say to these credit card companies that shove these credit cards at us faster than we can put them in our wallets, that they at least have to give us an honest monthly statement which tells us a few basic things? Isn't it reasonable to look at that statement, where it lists ''minimum monthly payment,'' and then say: If you make the minimum monthly payment, it will take X months to pay off the balance, and when you pay off the balance, you will have paid X dollars in interest and X dollars on principal?

That is not a tough calculation in the world of computers. The people who send us the bills have all sorts of information they want us to read and absorb. Shouldn't we at least know the bottom line? We may be too deep in debt. Maybe another credit card is not a good idea. That is not an outrageous suggestion where I live. But when we suggested that to the credit industry, they blanched and said: Oh, never can we do that; we cannot make that kind of disclosure.

They certainly can. The question is whether they will. That question will be answered by the Senate when it decides whether the consumers deserve more information so they can make informed credit choices. This is not a question of rationing credit. It is a question of informing debtors and informing those who are going to buy the credit cards as to what their obligations are going to be.

Let me give one example on a chart which is an illustration of the credit card debt in America charted against bankruptcy cases. I think this chart tells the story about why we have more bankruptcy cases in the United States. If you will notice the blue line here, it represents bankruptcy cases from 1962 to 1995. The red line indicates debt-to-income ratio.

Do you want to know why there are more cases being filed in bankruptcy court? People are getting deeper in debt; they have more credit cards. That is what it is all about. When we had the first hearing on the subject, some of the people from the credit industry came in and said:

> American families just don't think there is a moral stigma attached to bankruptcy any longer. They are filing for bankruptcy without really feeling bad about it.

I take exception to that. I am sure there are some who are gaming the system and trying to figure out how to win, but the folks I have run into, filing for bankruptcy was a sad day when they finally had to concede they just hadn't handled things right, or faced a problem they couldn't manage, and had to go to bankruptcy court. It wasn't a proud day for the family. You don't hold a party when you go into bankruptcy court.

When it comes to moral stigma, I said to the people in the credit industry: You say folks are taking bankruptcy more lightly these days. Let me ask about the credit cards you are sending college kids and kids who have virtually no income and no credit history, with no questions asked? And what about those ATM machines at the casinos. You are talking about moral stigma. Is your industry sensitive to the mores of America in the way you offer credit and money to people regardless of whether it is a good idea or not?

I think there are two sides to the story. I think, unfortunately, this bill only addresses one side of it. According to the Federal Reserve Board, there are 429.2 million Visa and MasterCards in circulation in the United States. The number of cards per cardholder increased in 1998 to a total of 4.2 credit cards per person.

In addition to the solicitations we receive in the mail, telephone calls are made. In fact, 1998 was a banner year for solicitations for credit cards. The credit industry sent out 3.45 billion direct mail solicitations during 1998, an increase of 15 percent from the 3 billion in the previous year, and 2.4 billion in 1996.

Interestingly enough, there are only 78 million creditworthy households in the United States. Yet, as you can see by the numbers, there were 3.45 billion credit card solicitations. That is why your mailbox is full at home.

We even have proof the credit industry is targeting people in bankruptcy. Let me show you this. Talk about moral stigma. This is a solicitation offered by FirstConsumers National Bank in Portland, OR, and Beaverton, OR. To whom do they send this solicitation? People who file for bankruptcy. They want them back in debt. Let's get them back into debt.

In case you think it is easy to file for bankruptcy and pick up a credit card, they generously offer you an annual percentage of 20.5 percent, and if you stumble, it goes up to 25 percent interest. So the credit card companies that talk about the morality of the situation are quick to jump on the folks coming out of bankruptcy court and give them a very expensive credit card. That is not much of a fresh start as far as I am concerned.

Why is this occurring? We often debate these issues and don't get down to the bottom line. Why is the credit card industry so intent on reducing the number of people in bankruptcy courts who can discharge their debts? Why do they want to keep people paying on the debts? There is money to be made.

Between 1980 and 1992, the rate at which banks borrowed money fell from 13.4 percent to 3.5 percent. During the same period, the average credit card interest rate rose from 17.3 percent to 17.8 percent. Notice the spread. It used to be you had credit card interest rates of 17.3 percent when the banks were borrowing money at 13.4 percent. Now the credit card interest rate average goes up to 17.8 percent and the banks are borrowing the money they give to you at 3.5 percent. This is a big winner for these credit card companies. They want to keep people getting credit cards as they walk out of the bankruptcy courts. There is money to be made. It is a profitable business. The aggressive marketing campaign is going to continue as long as there is money to be made.

Of course, it is going to mean people are going to get in over their heads. You basically cannot have it both ways. You cannot recklessly offer credit to financially vulnerable people without increasing the number of bankruptcies. The credit industry knows this and so do a lot of conservative magazines. The London-based Economist, in a recent editorial about the reckless marketing of credit cards, wrote:

> Given its readiness to hand out money with almost no questions asked, the credit card industry's demands that Congress stop the rapid increases in filings for personal bankruptcy ring hollow.
>
> No doubt many people have benefited from the credit revolution that gave them an ability to borrow they have been denied in the past. And certainly, borrowers unable to meet their obligations bear some responsibility for their woes.
>
> Yet it is pure hypocrisy for credit card firms to complain that personal bankruptcy has lost its traditional stigma. For they have been deliberately directing their sales efforts at people on the edge of financial distress.

The rise in bankruptcies tracks consumer debts, and that is a fact. So in these times it is even more important for people to be fully informed about and careful about the credit card debt they rack up. That is why this legislation, which gives the consumer as much information as possible, is more important than ever.

I am confident we can approve this bill on a bipartisan basis. I pray we will

not have the same experience as last year. We passed a bankruptcy bill in the Senate by a vote of 97–1. It went to the conference committee, and I was a part of and assigned to that conference committee. We had an introductory session where we smiled at one another, shook hands, and left the room. That was the only meeting of that conference committee.

Within a matter of hours, that same conference committee, with only one political party represented—not my own—came back with a bill and said: Take it or leave it. Thank goodness the Senate said leave it. It was a bad bill. If this bill is going to escape a similar fate, it needs to be negotiated in good faith on a bipartisan basis.

I am offering an amendment designed to penalize a growing category of high-cost mortgage lenders who lead vulnerable borrowers down a rose garden path to foreclosure and bankruptcy. These lenders prey with shame on low-income elderly and financially unsophisticated people, jeopardizing their lifelong investments and hard work in home ownership.

The number of older Americans who are so financially vulnerable that they end up going to bankruptcy court to deal with overwhelming debt is considerable. In 1998, more than 280,000 Americans age 50 or older filed for bankruptcy. The number of Americans age 55 and older filing has grown by more than 120 percent since 1991. Those age 50 and 55 is the fastest growing age group in bankruptcy.

Last year, during the Senate Judiciary's Committee debate on bankruptcy, I offered an amendment designed to curtail one terrible practice that plagues senior citizens: predatory high-cost mortgage loans targeted to the low-income elderly and financially unsophisticated. The amendment was part of the bill that passed 97–1. My colleagues may already be aware of the problems that are cropping up in the home mortgage industry. Let me explain.

In recent years, there has been an explosion in subprime high-interest loan markets. In the Chicago area, these lenders made 50,000 loans in 1997. This map shows foreclosures on subprime loans in Chicago in a 12-month period of time.

In the Chicago area, there were more than 50,000 loans in 1997, 15 times as many as in 1991, when they originated 3,137 loans. Even more dramatic than the increase in subprime loans has been the increase in foreclosures. Subprime lenders foreclosed on 30 loans in the Chicago region in 1993, 2 percent of the foreclosures that year.

In June of 1998 to June 1999, the subprime lenders foreclosed on 1,917 loans, 30 percent of the year's total foreclosures. Why is the growth of this industry of concern? Two reasons: First, these companies use reprehensible tactics and predatory lending practices to conduct their business and, second, because of the vulnerable victims—senior citizens and low-income people—whom they target.

I will tell a story that demonstrates the problem. In Decatur, GA, a 70-year-old woman named Jeannie McNab, retired, living on Social Security benefits, in November 1996 with the help of a mortgage broker obtained a 15-year mortgage loan from a large national finance company in the amount of $54,300. Her annual percentage rate on this mortgage loan was 12.85 percent, and under the terms of the loan, she would pay $596.49 a month until the year 2011 when she then would be required to make a total final payment of $47,599. Think about it: 15 years from now, when this woman is 85 years old, she will be saddled with a balloon payment that she can never possibly make and face the loss of her home and her financial security, not to mention her dignity and her sense of well-being.

She paid a mortgage broker $700 to find and fund this unconscionable loan, a mortgage broker who, to add insult to injury, collected a $1,100 fee from the mortgage lender.

Unfortunately, Mrs. McNab is a typical target of high-cost mortgage lenders. She is an elderly person living alone on fixed income, just the type of person who may suddenly encounter a financial obstacle and turn to this type of loan for assistance.

According to a former career employee of the subprime mortgage industry who testified anonymously last year before Senator GRASSLEY's Special Committee on Aging—this may sadden you:

> My perfect customer would be an uneducated woman who is living on a fixed income, hopefully from her deceased husband's pension, and Social Security, who has her house paid off, living off credit cards but having a difficult time keeping up with credit card payments.

The perfect target, according to this anonymous witness before Senator GRASSLEY's committee. This industry professional candidly acknowledged that unscrupulous lenders specifically market their loans to elderly widowed women, blue-collar workers, people with limited education, people on fixed income, non-English speaking people, and people who have significant equity in their homes. With lump sum balloon payments and terms that cannot be rationalized, they ensnare these folks and take away the only asset they have left on Earth—their home.

When that occurs, these people should not be able to go into court, once that person has defaulted on this mortgage, and recover. They have defrauded the individual who has borrowed the money. They are guilty of predatory loan practices and they should not receive the same treatment as an honest creditor who comes to court looking for compensation.

The amendment which I will offer will do several things. When a person such as Jeannie McNab goes to bankruptcy court seeking help from overwhelming financial distress the lenders caused her, the claim of the predatory home lender is not going to be allowed. If a lender has failed to comply with the requirements of the Truth in Lending Act for high-cost second mortgages, the lender will have absolutely no claim against the bankruptcy estate. The unscrupulous high-cost mortgage lender will not recover the fruits of their ill-gotten gain.

This amendment has been opposed by a lot of mortgage companies and banks that ought to know better. They are standing in defense of these predatory lenders who are taking advantage of vulnerable people and saying: We cannot treat them any differently; we cannot treat them harshly even if they abuse the system.

That is a sad commentary on the credit industry and it is a sad commentary on the mortgage industry that they will not join me and the Members of the Senate in ferreting out those who are exploiting people across America with these second mortgages and subprime mortgages which ultimately are indefensible—absolutely indefensible—as we found time and again. If the credit industry wants to defend those loans, it casts a real question and suspicion and doubt as to their sincerity in dealing with borrowers across America. I hope they will change their point of view and support this amendment.

I made some changes in the amendment to accommodate the industry to make it clear we are not going to deal with technical violations to disqualify those who try to collect in bankruptcy court. We are going after the bad guys.

I added a materiality requirement so the violations must be a material violation in order for the claim to be invalid. The amendment will apply to situations where a lender engages in the practice of lending based on home equity without regard to the borrower's ability to repay, or a lender makes direct payments to a home improvement contractor instead of to the borrower, or when the lender imposes illegal fees, such as prepayment penalties or increased interest rates at default, or imposes a balloon payment due in less than 5 years.

These illegal practices are not technical violations. I ask my colleagues to join me in this effort to protect the elderly by stopping predatory lending practices by adopting this amendment.

I send my amendment to the desk.

The PRESIDING OFFICER (Mr. ROBERTS). The amendment will be filed.

Mr. DURBIN. I thank the Chair.

The PRESIDING OFFICER. The distinguished Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I am pleased to have the opportunity to speak generally on the bankruptcy legislation that is now before the Senate.

First, I praise my friend and colleague from Illinois who has, on all issues, been extremely dedicated, hard-working, and effective on this bankruptcy issue. This is an important

issue and a complex area of the law that has an impact on millions of Americans and, of course, on businesses all across the country.

This is an important debate, and I expect we will be on the floor for some time, because many of us have serious concerns about this bill and expect to offer quite a number of amendments to try to improve it.

As I said, the issues raised by bankruptcy legislation are extremely complicated. The stakes are high. The different viewpoints are passionately expressed by all of the players involved, from the different types of creditors to bankruptcy judges, trustees, and practitioners, to consumers and potential debtors.

We have a long legislative history to contend with here. We have been working on bankruptcy reform legislation for some time now, beginning with the appointment of the National Bankruptcy Review Commission in 1994, and the issuance of the commission's report in 1997. In the last Congress, the Senate passed reform legislation by an overwhelming margin. That bill was itself a compromise among the various interests. But a conference committee sent a much different, much more one-sided bill back to us, and I am happy to say, that bill died at the end of the session.

My view is that the legislation before us is only slightly less objectionable than the legislation that came out of conference last year. S. 625 is not a balanced piece of legislation. It tilts the scales too far in favor of certain types of creditors, and denies reasonable protections of the law not just to those trying unfairly to evade financial obligations they really can afford to meet, but also to honest hardworking families and single parents, who have come upon hard times and need the fresh start and breathing room that our bankruptcy system offers to give them a chance to survive. In too many cases, I am afraid, that will hinder families' ability to meet other obligations, particularly their obligations to their own children and to local taxing authorities.

In many ways, this is a bill at war with itself. Many of the provisions are designed to shift more money into the hands of unsecured creditors, while other provisions are designed to shift that same pot of money back to car lenders and different unsecured creditors. The bill is supposedly intended to move more debtors from the complete discharge of debts available under chapter 7 of the code into chapter 13 repayment plans. But chapter 13 trustees and others have testified that many provisions in the bill will decrease the success of chapter 13 repayment. The bill supposedly increases personal responsibility, and yet it would favor people who have two new cars over people who own older cars or who take public transportation. And the bill is said to be aimed at deadbeats and abusers of the system, not honest but financially troubled low-income people, and yet it penalizes renters, as opposed to homeowners. And whereas we often try to promote small business entrepreneurship in legislation, in this bill we sometimes seem to impose stricter rules on small businesses than we do on large businesses.

So, does the Senate really want to endorse these policies? Is it really our goal to send these mixed messages? I urge my colleagues to pay close attention to this very important debate. We do a lot in this body that in the end seems to just be symbolic. This bill is not symbolism. We cannot simply pass this bill and say we have struck a blow for personal responsibility. Because this bill will have real consequences in the real lives of real people. And I fear that in too many cases those consequences will be very damaging.

I do want to comment for a moment on the process that has brought us here. I mentioned before that the Senate considered bankruptcy legislation in the last Congress. But in this Congress, we didn't have a single hearing on this bill. Let me repeat that because it is so disturbing for a bill of this magnitude and complexity. The Senate Judiciary Committee did not have a single hearing on bankruptcy reform or S. 625—not one.

Now, to be fair, there was one joint hearing that was held over at the House with two subcommittees of jurisdiction—one hearing. And it occurred on a day that Senators happened to be involved in a very long series of votes—I believe it was one of our so-called ''vote-arama'' sessions—which meant that none of the Senators on the subcommittee could take advantage of the lone opportunity for public discussion of this bill. Other than that one hearing, the Senate of the United States had no hearings whatsoever on bankruptcy reform this year.

I did not understand the rush to report this bill from committee without hearings, and I still don't. Why didn't we hear from the bankruptcy judges, and the trustees, and the disinterested academics, and the practitioners about how and whether this bill will work? Why didn't we get their views in a formal and considered way, and try to address their concerns?

To say that this bill is just a repeat of last year's bankruptcy debate is just not right. This legislation is far too complicated and far too reaching to make that facile claim. This bill is actually different from last year's Senate bill in more ways than it is similar. In many ways, it is a brand new piece of legislation for this body. Last year's Senate bill was almost exclusively consumer bankruptcy oriented. This bill not only takes a different approach to consumer bankruptcy, but it has dozens of provisions affecting a variety of tax issues, municipal bankruptcy cases, single asset real estate cases, small business cases, and health care cases, in addition to a host of changes to general chapter 11 bankruptcy that may dramatically change the rules governing the reorganization of our Nation's largest businesses. We never discussed most of these issues at the committee level. We have received many warning signs from those who understand the bankruptcy system far better than any of us do. I am afraid to say, what is being done here is actually irresponsible.

Why has this happened? Well, the sad truth is that all of us know why. A very wealthy and powerful industry has pushed and pushed and pushed for this bill, and so far the Congress has ignored the experts and done the industry's bidding. The credit card industry wants this reform because it wants protection from its own excesses. You see, the industry has flooded the mailboxes, and the phones, and the e-mail in boxes of America with offers of easy credit. Americans received over 3.45 billion credit card solicitations in 1998. Anyone can get a credit cared, even children, even people who have just filed for bankruptcy.

I favor empowering citizens and broadening their options using credit to bring more convenience to their lives as consumers. But the industry has been irresponsible in extending credit to those who cannot handle it. And now the industry has come to Congress for help. Now the industry wants the bankruptcy system to protect it. I say to you, Mr. President, that is not right.

The industry hasn't come to us hat in hand, however. It has come with an open checkbook. As you know, Mr. President, from time to time on the floor in recent months, I have noted that contributions of different players in the legislative process that seek to influence our work here with campaign contributions. This bill is a poster child for the ''Calling of the Bankroll.''

Like so many issues, bankruptcy reform has been transformed from a policy debate to a vehicle for a special interest agenda. The key ingredient in that transformation is money, plain and simple.

In the last election cycle, according to the Center for Responsive Politics, the members of the National Consumer Bankruptcy Coalition, an industry lobbying group made up of the major credit card companies such as Visa and MasterCard and associations representing the Nation's big banks and retailers, gave nearly $4.5 million in contributions to parties and candidates.

How can a single mother in West Allis, WI, for example, who faces overwhelming debt from medical bills and the loss of child support, compete with the might and financial power of this industry? Her family, and her future will be affected by this bill every bit as much as the credit industry, yet she is not represented in the campaign finance game. And I am afraid that this bill in its current form very much reflects her lack of power.

Some of the campaign contributions from these companies seem to be carefully timed to have a maximum effect.

It is very hard to argue that the financial largess of this industry has nothing to do with its interest in our consideration of bankruptcy legislation. For example, on the very day that the House passed the conference report last year and sent it to the Senate, MBNA Corporation gave a $200,000 soft money contribution to the National Republican Senatorial Committee.

In connection with the joint hearing that was held earlier this year, I submitted a written question to Bruce Hammond, the chief operating officer of MBNA. I asked him about the $200,000 contribution to the NRSC in October 9, 1998, just days after the conference committee reached agreement on a version of this bill that everyone agreed was more favorable to the credit card companies than the bill that the Senate had passed.

This is what I asked him:

(A) As CEO, are you involved generally in the decisions to make soft money contributions to the political parties?

(B) Were you involved in the decision to make this particular donation?

(C) How are decisions on soft money contributions made in your company? Who participates in such decisions? What criteria are followed in making such decisions?

(D) Why did MBNA make a $200,000 donation to the NRSC on October 9, 1998?

Mr. Hammond's written response to the questions was very illuminating. Basically, he decided to ignore these direct and simple questions about the soft money donations of his company, and instead wrote the following:

I find the premise for this question troubling, I hope there is no intention to place bankruptcy reform in a partisan political context. All of us who have worked in support of these legislative reforms have been pleased by the support, cooperation and encouragement we have received on both sides of the political aisle. It has been particularly pleasing to note that in this Congress both the House and Senate bills have had as their original co-sponsors prominent and respected Members of Congress from both political parties.

With all due respect, Mr. Hammond has made my point for me. As I noted, the soft money contributions of this industry have gone to both parties. Actually, MBNA Corp. has only given to the Republican party committees in the last few cycles. But other big lenders, such as Visa USA, BankAmerica Corp., and Citigroup, are giving to both parties. That is what is so insidious about these contributions. They aren't about politics, they are about policy. These companies don't just want to influence elections, they want to influence legislation directly.

So the premise of my questions to the chief operating officer of MBNA Corp. was not to suggest that this bankruptcy bill was partisan, it was to get at the bipartisan problem of soft money and its insidious relationship to the legislative process. I'm sorry that Mr. Hammond decided not to answer my questions directly. I suspect that one of the reasons that he didn't is that direct honest answers to these questions would not be something he would want in the legislative history of this legislation. So he chose to simply ignore the questions. That is unfortunate.

Mr. President, in the current Congress we are seeing another influx of campaign contributions from banks and lenders seeking to influence this bill.

Incredibly, PAC contributions from National Consumer Bankruptcy Coalition members totaled $227,000 in March of this year alone. That's a full 20 months before the next election. But guess what. March 1999 was a month during which the Judiciary Committees of both the House and the Senate were considering the bill. Members of the coalition gave nearly $1.2 million in PAC and soft money contributions in the first 6 months of 1999. During that time period, MBNA Corp. gave $85,000 in soft money to the Republican Party committees, while Visa USA Inc. gave $30,000.

Now I want to be clear here once again. Republicans are not alone in taking in hundreds of thousands of dollars from banks and lenders in this election cycle: During the first 6 months of 1999, the Democratic party committees took in more than four times the soft money from banks and lenders than they did during the first 6 months of the last presidential election cycle in 1995. Soft money contributions overall are up by about 80 percent, but the banks and credit card companies have quadrupled their contributions to my party.

Mr. President, we need to keep in mind as we debate this bill, and the many amendments that will be offered, the extent to which bankruptcy reform has come to be seen as a gift to special interests, particularly the credit card companies. In light of that, we bear an even heavier burden to make sure that we are serving the public interest with this kind of far reaching legislation.

We must open our minds to the recommendations of nonpartisan experts in this field. We haven't done that yet, although some progress certainly has been made between the time this bill left the Judiciary Committee and today. I am pleased, for example, that the requirement that debtors attorneys bear personal financial responsibility for the trustee's cost and fees if the debtor loses a motion to convert a chapter 7 filing to chapter 13 has been eliminated. That provision would have had the result of denying many honest American families adequate legal representation, making them even more subject to abusive and predatory practices by creditors.

But we have a long way to go to make this a balanced bill, rather than a wish list for credit card companies. If we don't do that, we will have filed in our duty to the public and will come to regret our actions.

I sincerely hope that once again we can work together to develop a product that will win a near unanimous vote in the Senate as last year's bill did. A bankruptcy reform bill should be the product of a considered and well-informed debate, not a political dance, where money calls the tune.

AMENDMENT NO. 2522

(Purpose: To provide for the expenses of long-term care)

Mr. FEINGOLD. Mr. President. In a moment I am going to offer an amendment to address one of the many unfairnesses of the means test in this bill. This amendment is focused particularly on expenses that a family might incur because it is paying for medical care for a non-dependent family member.

These kinds of expenses often are referred to in our discussions as expenses for long term care. Long-term care, and particularly fundamental long-term care reform, has been a special focus of mine since I was first elected to the Wisconsin State Senate in 1982.

As I discovered when I began working on this many years ago, long-term care is greatly misunderstood. Even today, when people hear long-term care many think of nursing homes and the elderly.

But that is not the whole story.

According to the Long-Term Care Campaign, while the majority of the over 11 million severely disabled Americans needing long-term care services are elderly, nearly half are either working-age adults or children.

And while many do receive their long-term care services in a nursing home, the vast majority of those needing long-term care receive that care at home.

Long-term care touches many more than just those needing services.

Nearly 6 of every 10 Americans have already experienced a long-term care problem in their own family or through a friend, and more than half of these have provided care to someone who needs services.

The National Family Caregivers Association estimates that between 80 and 90 percent of all long-term care is provided by families.

Caregiving can be an enormous burden on families—physically, emotionally, and financially.

As we found in Wisconsin two decades ago, that burden not only takes its toll on families, but on government budgets and taxpayers since all too often the reason an individual enters a nursing home is not due to their condition, but because the family member caregiver is simply no longer able to care for them.

Though I will not speak at length today about the reforms we need to make to our long-term care system, I do want to note this critical point—we need to build on the informal long-term care that families already provide, not only to allow those needing long-term care services to remain where they prefer, at home with their family, but also because the alternative places a huge burden on State and Federal budgets.

Families that provide personal assistance and other forms of care to

loved ones not only help that loved one, they help the taxpayer.

Families provide an estimated $200 billion in long-term care services every year—services that help keep loved ones at home, and out of expensive institutional settings.

But when families are no longer able for physical, emotional, or financial reasons to care for that loved one, changes are that individual will end up in a nursing home on the joint State-Federal program Medicaid.

When taxpayers pick up the Medicaid tab for nursing home care, it isn't cheap.

According to the Long-term Care Campaign, nursing homes cost an average of $46,000 a year, and for those with severe disabilities or dementia, the costs can be even greater.

Mr. President, much as I might like to, we can't use this bankruptcy bill to reform our long-term care system. But at the very least, we should not be making the current long-term care crisis worse than it already is. And that, I fear, is exactly what the bill in its current form does.

In particular, we should not be discouraging families from caring for a disabled or chronically ill loved one. If a family facing financial difficulties can continue to care for a loved one at home, and keep them out of more expensive taxpayer-funded settings, all of us will benefit.

It is for that reason that I offer this amendment—to make sure that a family's ongoing expenses to provide care for a loved one will be recognized as reasonable and legitimate living expenses for purposes of calculating how much a family is capable of contributing toward repayment of debt.

The means test in the bill provides that a debtors are ineligible for a Chapter 7 discharge if they can supposedly repay 25 percent of their debts or $15,000, which ever is less, over a period of 5 years. Basically, the trustee has to analyze the ability of debtors to repay their debts, looking at their monthly income and their monthly expenses. But the expenses are not actual expenses, they are the expenses set out in IRS standards designed for a wholly different purpose. And these standards do not include as necessary expenses amounts paid for the care of non-dependent family members.

So people who file for bankruptcy are presumed to have abused the system if they don't meet the means test using the IRS standards. And they can rebut that presumption only by showing special circumstances that justify additional expenses.

To do so, they have to provide documentation and ''a detailed explanation of the circumstances that makes the expenses necessary and reasonable.'' So under this bill, debtors with significant long term care expenses are deemed abusers of the system, and they may have to litigate to prove that they are not spending too much to care for their family. The bankruptcy courts are going to be called on to pass judgment on whether the expenses for long term care are reasonable. Some people may be forced to forgo bankruptcy because they cannot afford to both hire a lawyer to fight the presumption of abuse and continue to care for their family members.

This is only one of many examples of how use of the IRS standards makes the means test draconian and unfair. I hope as we debate and amend this bill we will make major changes in how this means test operates. And we should start here, with long term care expenses. This amendment simply provides that the monthly expenses to be analyzed under the means test may include the continuation of actual expenses paid by the debtor for the care of household or immediate family members who are not dependent.

Let's think about the alternative for a moment. Imagine a scenario where someone is in the position of filing for bankruptcy and has significant long term care expenses of a aging parent that are for some reason deemed to be not reasonable. If that individual is prevented from filing for bankruptcy, the need for the long term care doesn't go away. It stays. It may be the reason that the person has to file for bankruptcy in the first place, because the additional burden of the long term care expenses makes it impossible to make ends meet and keep up with payments on accumulated debt.

What choice does this person have if the protection of the bankruptcy laws is unavailable? No choice at all. The care must stop, and the person being cared for goes into a public institution with higher costs to the taxpayers and, more important, untold damage to the family.

I challenge my colleagues to tell us how the simple exception to the rigid IRS standards set out in this amendment will lead to abuse. Are people going to go out and arrange for unreasonably extravagant care for their family members in order to file for bankruptcy and get out of debt? I don't think so. In fact, I think it is insulting.

No, the millions of Americans who selflessly care for their loved ones make a sacrifice that we should honor and encourage. Passing this amendment would be a small step toward recognizing that crucial service to our country that they provide. I urge my colleagues to step back from the misery that this bill might very well inflict and adopt this amendment.

Mr. President, I ask unanimous consent that the pending amendment be set aside so I may offer this amendment.

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

Mr. FEINGOLD. Mr. President, I send my amendment No. 2522 to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] proposes an amendment numbered 2522.

Mr. FEINGOLD. 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:

On page 7, line 15, strike ''(ii)'' and insert ''(ii)(I)''.

On page 7, between lines 21 and 22, insert the following:

''(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor for care and support of a household member or member of the debtor's immediate family (including parents, grandparents, and siblings of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case) who is not a dependent.

Mr. FEINGOLD. Mr. President, I ask unanimous consent to set aside the pending amendment and offer Senator DURBIN's amendment No. 2521, which he discussed and filed this morning, and that the Durbin amendment No. 2521 then be immediately set aside.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 2521

(Purpose: To make an amendment with respect to allowance of claims or interests and predatory lending practice)

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

The PRESIDING OFFICER. The clerk will report.

The legislative assistant clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD], for Mr. DURBIN, proposes an amendment numbered 2521.

Mr. FEINGOLD. 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:

On page 29, after line 22, add the following:

SEC. 205. DISCOURAGING PREDATORY LENDING PRACTICES.

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) the claim is based on a secured debt, if the creditor has materially failed to comply with any applicable requirement under section (c), (d), (e), (f), (g), (h), or (i) of section 129 of the Truth in Lending Act (15 U.S.C. 1639).''

On page 201, line 3 strike ''period at the end'' and insert ''semicolon''.

Mr. FEINGOLD. Mr. President, I yield the floor.

Mr. SESSIONS. Mr. President, I thank the Senator for his amendment and the remarks he made. There are some good questions. We do want to help those who are in nursing homes and so forth.

I am somewhat nervous and troubled by the breadth of the language because economics is a fairly crystal science in a lot of ways. This just says you want

to help a dependent. In effect, what he is saying by this amendment is that a debtor who owes people who he has gotten benefits from and promised to pay them money, he won't pay them; he will be able to take money they should get and apply it to the family members to whom he wants to give it.

I don't know whether that is a good proposal for this bill or not. As he said, maybe we can't fix health care in the bankruptcy bill. Maybe not. We will be glad to review that, and I am sure Senator GRASSLEY will.

I wish to make a number of points about some of the issues that have been raised because I do so strongly believe this piece of legislation is good. I believe it is going to make a major step forward in improving bankruptcy and having more fairness, eliminating these complaints that all of us are, in fact, hearing from people in our States who have been abused by the process in bankruptcy. Many times they blame the lawyers, and sometimes so do I. But the truth is, lawyers are using the laws we pass. It is our responsibility, if the law isn't working, to come to this floor and present legislation to fix it.

Over 70 percent of the people believe we need to reform bankruptcy law. This isn't a special interest piece of legislation. But I will say this: There is no doubt that banks and others who regularly go to bankruptcy court see what is going on there on a daily basis. They have every right to call to our attention what they see are problems and injustices. We have a responsibility, if that is so, to fix it. That is fundamental. That is what American law is all about. What we are doing with the bankruptcy bill is trying to reform and improve bankruptcy law, which has had no real analysis since 1978. We have had more than double the filings in bankruptcy since 1978. Indeed, we have had a virtual doubling of bankruptcy filings since 1990, during that period of time.

Larry Summers, the present Secretary of the Treasury, stated that bankruptcy does, in fact, increase interest rates. Businesses have to charge more when more people are bankrupting and not paying back their debts. It raises the interest rates. The present Secretary of the Treasury understands that, and any economist would.

Senator HATCH, chairman of our Judiciary Committee, has pointed out the average cost per family of the debts wiped out in bankruptcy per year is $400. What that means is that somebody is not paying their debt and, in fact, is shifting the burden to other people to pay them for them. Sure, bankruptcy is a historic part of American law. It is something we never want to eliminate. We want to protect that right. It is mentioned in the Constitution but not provided for in detail. Our Founding Fathers recognized we ought to have a bankruptcy system. It has always been a part of the Federal court system, and we, as the Congress, have the responsibility to analyze it periodically to see what abuses and problems are occurring and, where there are problems, to fix them and see if we can't make the system work better.

Now they say we want to talk about credit cards. That is an issue we may want to talk about.

But this piece of legislation was designed to deal with the bankruptcy court system. We have banking committees and others that are dealing with these credit disclosure acts and the kind of bank loans and interest rates credit cards ought to utilize.

In fact, the chairman of the Banking Committee is not happy we are down here amending banking law on a bankruptcy bill that has nothing to do with banking law. Rightly, he should be. I don't think we need to distract ourselves on that. Frankly, I think we ought to just confront this issue that is being raised.

Bankruptcy is the fault of all of the credit card companies, and they are giving too much money to people who are marginal credit risks. They are allowing them to have credit cards—horrible things they are doing, allowing a poor person to have a credit card. That is bad.

We just had a banking bill that almost went down over a debate among those liberals in this body who wanted to ensure that the banks lend more money to at-risk, high-risk borrowers. That is a good thing, not a bad thing. If they weren't lending money to poorer people, weren't allowing them to have credit cards, then they would be much condemned for it, and rightly so. Ninety-nine percent of people who have credit cards pay their debt—99 percent. The banks are not lending substantial sums of money to people who can't pay their debt.

But I will tell you this. If you are living on a fixed income, you have a $25,000-a-year income, you have a family, you are trying to do things, and the tire blows out on your car, you are glad you have a credit card so you can pay for it to be fixed, so you don't have to sit it on the blocks, or you can get your momma, or somebody, to lend you the money to fix the tire. And it allows you to pay it back over a period of time.

It is an odd thing to me that people who think and claim they care about the poor are going to be complaining because credit card companies allow them to have credit cards so they can borrow money when they need to. It becomes a critical thing for them.

Then there is a complaint that somehow this legislation is unfair to women and children. That is a stunning event. From day 1, Senator HATCH and Senator GRASSLEY made a commitment to make a historic change in the way bankruptcy treats child support and alimony. There is a list of things that have to be paid first when you pay off your debts in bankruptcy. They call them priorities. Child support and alimony used to be seventh on that list. From day 1—this bankruptcy bill has proceeded for over 2 years now—we have raised child support and alimony to No. 1, ahead of lawyer fees. That is historic. They are complaining, too. But we made a commitment that nothing would take priority in bankruptcy court over child support and alimony.

It amazes me. I am astounded that those who want to kill this legislation, for reasons I cannot fathom, come down here and complain that the reason they are against it is that it hurts children. This is a historic move to provide unprecedented protections and priorities for children.

I find that a stunning argument to make.

They argue that this is going to penalize a single woman with a child who has financial troubles and needs to go into bankruptcy, and that somehow that woman with that child would be required to pay back some of their debt when they wouldn't have been required to pay some of their debt under the old law, because fundamentally what this bill says is, if you can pay back some of your debts, you ought to. What is wrong with that? If you can pay back some of your debts, you ought to pay some of them back. That is fairness. That is one of the biggest abuses we have. We have young yuppies making $100,000 a year in income, running up a bunch of debts, and then they just wipe them out and start all over again. That is not right. If they can pay back some of those debts, they ought to pay them.

The question is, Won't this abuse women with children at home who have financial difficulties? Let me explain this simply. If there is a mother and a child, a family of two, the median income in America is $40,000. If they make less than $40,000, they will be able to file bankruptcy just as they always have. If two of them are making $40,000 a year—which is a pretty solid income—or below, they will not be subject to these rules that require those who can pay to pay. If they make over $40,000, the judge will have the responsibility to evaluate their debt, evaluate their expenses, and see if they can pay back some. If they can pay back 25 percent, or 30 percent, or 50 percent, or maybe 100 percent, if their income is $100,000 a year, what is wrong with that?

Should a single woman be given preference over a single man with a child?

We have to have simple rules that are fair and objective. All I am saying is, it would take a family with a substantial income before the principles of law would apply that they would have to pay back any money.

There is a suggestion that somehow because a father is paying alimony and he might pay back some of his debt, he will not be able to pay his child support. But as we know, he is required to pay his child support first. And no plan in bankruptcy can be approved by a bankruptcy judge unless this gives priority to repayment of past due child

support and paying current child support. That is a bogus argument.

This bill requires the judge, before he approves a bankruptcy payback plan, to give priority to the payback of child support and alimony. In fact, it will strengthen the ability of children to receive the alimony payment because instead of walking in and filing bankruptcy under chapter 7 and just wiping out all of his debt and starting fresh, the deadbeat dad will be under the control of the bankruptcy court, under chapter 13, and will have to report his income on a regular basis. If he is not paying that, he can be disciplined through the bankruptcy court.

That is not a good argument, I would suggest.

There is a study by a group of professors who said only 4 percent of the people filing bankruptcy could pay even 25 percent of their debt. In that instance, if that is true—and I doubt that; I think the figure is a good bit higher than that but not a lot higher. I am not saying it is a huge number. Maybe it is 15, 20, or 10 percent. But those 10 percent who can pay it, those 4 percent who can pay their debts, why shouldn't they pay them? That is what we are saying. The law will not make them pay if they can't pay. If their income is below the median income, they won't have to pay back the debts at all.

I think that is not an argument that is important to us today.

There is another complaint about mailing credit cards. I heard a lot of people say, I get credit cards in the mail. They are not getting credit cards in the mail. If they are, they ought to call the Federal State law enforcement because it is illegal to send somebody a credit card they haven't asked for. What they are receiving in the mail from credit card companies are solicitations or offerings for credit cards.

I think that is probably good because I don't like those high interest rates on credit cards. I shop around. I don't like paying 18 percent interest. I hope most people can avoid running up any significant debt because that is a high interest rate. But one of the good things that has happened of late is, credit cards are getting competitive. They are offering us to join up: Convert to our credit card, have no interest for so many months, and you are going to have a lower interest rate than you had before. They are getting some competition in the credit card industry.

We are going to come around now and pass a law in this Congress that says a credit card company can't write you a letter and offer you 15-percent interest instead of your current 17-percent interest? What kind of idea is that? We have some poor economic thinking in this Congress.

By the way, as the Secretary of the Treasury under President Clinton has indicated, defaults on payments in bankruptcy drive up interest rates for everyone. It was suggested we have to make these reforms in amendments because old people are not able to pay their debts. Old people are not the ones filing bankruptcy. The figures cited were older people over 55. Filers over 55 have gone up almost 120 percent since 1990, but during that time all filings have gone up 100 percent. Always the older citizens of the country are the least likely to file bankruptcy. They are the most responsible and keep up with their books and manage their debts well. That is not the biggest problem in bankruptcy. Check the ages and it won't be the people 65 years old and up filing bankruptcy in America today. They are responsible. They have learned how to manage their money.

One amendment is to crack down on subprime lenders, banks that loan to poor people. We have legislation attacking banks for redlining areas and not loaning to poor people. We had a big fight over it on the banking bill. The people receiving these loans were viewed as vulnerable and preyed upon. Sometimes they can be vulnerable and sometimes I guess they can be preyed upon. However, one doesn't have to take a loan if they don't think it is better. If a person has $10,000 credit card debt at 18-percent interest and they can get a loan at a bank at 12.5 percent to pay it off and they don't have a good credit rating, but 12.5 percent is better than 18 percent. People make those choices daily. I don't know as part of bankruptcy court reform that we ought to try to reform banking law. That ought to be thought through more carefully.

This bill is essentially the bill that passed 97–1 in this body. It is essentially the bill that passed the House last year by a veto-proof majority. It has already passed the House again this year by a veto-proof majority. There is bipartisan support for it. It is beyond me why we can't have a final vote and get it passed. I have only been in this body a little over 2½ years, and I don't see how we have a bill with this kind of support. It is frustrating trying to get a final vote and do what the people of this country want done. We debated it. They said we have not had hearings. We had hearings for years on it. Everybody knows the issues. We have had staff meetings in excruciating detail.

Senator GRASSLEY has been more than generous in working with those who have concerns about the bill. He has met with the staff, met with the White House. My staff is meeting with a representative from the White House today trying to work out the language on one or two issues that we think we can reach an agreement on. There have been great efforts to make some changes. Why some want to spin this as a bill that is unfair is beyond my comprehension. We had this year a joint House-Senate Committee on bankruptcy—the first time in history—to consider those issues.

My vote is not for sale. I am not going to support a bankruptcy bill or any other bill because of any political contribution. I am offended by those who come on the floor and suggest that is what we are doing. I am prepared to debate any issue on this bill on the merits of what is good for public policy in this country. I am getting sick and tired of sanctimonious Senators suggesting they are above all the rest of us and everybody is corrupt—because industry gives political contributions to both parties. That is not right.

Let's talk about what is wrong with this bill. Let's talk about why something in here is unfair, if it is. If it is unfair, we will fix it. I am not happy with that. I think we need to do better.

Mr. President, 70 percent of the people are in favor of this legislative reform. There is overwhelming popular support for a system the reform of which is long overdue. We can do it. I don't blame the people who are in the process of dealing with it every year for being angry. They have a right to be. There are multiple loopholes in this bankruptcy system that we have seen. We have seen how they work and we can fix them.

One of the driving factors behind increased filings of bankruptcy is advertising by attorneys. Watch their ads. They don't say: Come on down and we will file bankruptcy. It says: Got problems with your debts? Come talk to me.

You talk to them and the next thing you know a person who has never been given an opportunity for a different opinion has suggested they can pay a certain fee and file bankruptcy and they will take care of him; all their debts will be wiped out. And the debtor says: You mean that, really? And the lawyer says: Absolutely; that is the law.

We passed that law. We talk about needs-based reform. What we are saying is, if you can't pay your debts, you have an income below the median income in America, $50,000 for a family of four—that is what the median income is—if you can't pay, you can have traditional benefits of chapter 7 and wipe out your debts, if that is what you choose. However, if you make above that, the judge can order you to pay some of the money back. I think that is only fair. I believe that will eliminate some of the abuses in the bankruptcy system.

Another amendment Senator KOHL and I have offered deals with what I consider another abuse in bankruptcy. I have an example from the New York Times article of last year about some people who used and abused the bankruptcy system.

The First American Bank and Trust Company in Lake Worth, Fla., closed in 1989, and its chief executive, Roy Talmo, filed for personal bankruptcy in 1993. Despite owing $6.8 million, Mr. Talmo was able to exempt a bounty of assets.

During much of the bankruptcy proceedings, Mr. Talmo drove around Miami in a 1960 Rolls-Royce and tended the grounds of his $800,000 tree farm in Boynton Beach. Never one to slum it, Mr. Talmo had a 7,000-square-foot mansion with five fireplaces, 16th-century European doors and a Spanish-

style courtyard all on a 30-acre lot. Yet in Mr. Talmo's estimation, this was chintzy. He also owned an adjacent 112 acres, and he tried to add those acres to his homestead. The court refused.

Mr. Talmo, though, now looks back as a more humbled man, ''Bankruptcy is something I don't want to do again,'' Mr. Talmo said. ''Mine is a sad story. I have my home, but otherwise I was wiped out.''

This is the way it works: The former commissioner of baseball—lots of prominent people do this—runs up a big bunch of bills; the business fails; he owes a lot of people money. So you say: What can I do? I can move to Florida; I can move to Texas; I can buy a big mansion, put all my money there on the Atlantic coast or the gulf coast or the Texas coast or wherever, and I will just put everything I have liquid right now in that house. I will claim it as my homestead and they cannot take it.

Then, after I have wiped out all these people I legitimately and lawfully owe, I can sell my multimillion-dollar mansion and live high the rest of my life. That is what this law allows. It is proper and legal in the American bankruptcy system today, and we ought to put a stop to it.

People say it is States rights. Not so. Bankruptcy is totally a Federal court proceeding. It is referred to in the U.S. Constitution. It is totally a Federal court proceeding and we have, as a Federal Congress, the right to set the standards as we choose them for a homestead exemption. In my view, this is an abuse. It allows people to move in interstate commerce and to defeat totally legitimate creditors and live like kings and not pay back people they owe.

I am going to mention one other example in the New York Times article:

Even when residents of Texas and Florida sell their homes and pay off their mortgages during bankruptcy, they can still walk away rich.

Talmadge Wayne Tinsley, a Dallas developer, filed for Chapter 7 bankruptcy in 1996 after he incurred $60 million in debt, largely bank loans. Under Texas law, Mr. Tinsley could keep only one acre of his 3.1-acre estate, a rule that did not sit well with him. His $3.5 million, magnolia-lined estate included a five-bedroom, six-and-a-half-bath mansion with two studies, a pool and a guest house. All that fit snugly onto one acre.

Yet when the court asked Mr. Tinsley to mark of two acres to be sold to pay off his debts, his facetious offer was for the trustee to come by and peel off two feet around his entire property. The court refused, forcing a sale, but by Mr. Tinsley still did rather well for himself.

He sold his house in October for $3.5 million using the proceeds to write a $659,000 check to the Internal Revenue Service and another for $1.8 million to pay off the mortgage. That left $700,000 for Mr. Tinsley after closing costs and other expenses were deducted from the proceeds, according to court officials. About $58 million of his debts were left unpaid.

I believe there are abuses there. I believe the Kohl-Sessions amendment will deal with it. It is not a question of States rights. The Federal bankruptcy courts have allowed States to set the standard, but it has never been a problem, that the Federal court could set a national standard if they chose.

We, by this amendment, say you could only have $100,000 in equity in your home—not the value but in the equity of your home—and be able to keep it; whereas, over two-thirds of the States limit it to $40,000. So we are just moving down some of those States with extreme laws to a reasonable level. I believe that will eliminate one of the most glaring abuses in the bankruptcy system.

I am pleased to be joined now by the distinguished chairman of the Judiciary Committee, Senator HATCH, who has worked hard to bring this legislation to fruition. I am proud to serve on his committee. I yield the floor.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Utah.

Mr. HATCH. Mr. President, I thank my colleague for his excellent presentation and the work he has done on the Judiciary Committee on this very important bill. It is a very important bill.

AMENDMENT NO. 1729

(Purpose: To provide for domestic support obligations, and for other purposes)

Mr. HATCH. I intend to make it even more important by calling up amendment No. 1729 and asking for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative assistant read as follows:

The Senator from Utah [Mr. HATCH], for himself and Mr. TORRICELLI, proposes an amendment numbered 1729.

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

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. HATCH. Mr. President, I am pleased to express my commitment again this year to reforming the bankruptcy laws in order to adequately protect children and ex-spouses that are owed domestic support. I am grateful that S. 625 includes the language I offered last year along with Senators GRASSLEY and KYL, providing extensive reforms to the bankruptcy laws in the area of child support. Also, I introduced additional enhancements to the bill's protection of domestic support obligations at the Judiciary Committee markup, and I accepted further changes by Senator TORRICELLI, with the agreement that we would continue working on the development of even further enhancements to the bill in this important area. I would like to express my gratitude to Senator TORRICELLI for working with me on these important provisions.

I have continued to work with domestic support enforcement groups and Senator TORRICELLI to improve the bankruptcy laws, and I offer this amendment, along with Senator TORRICELLI, to make a series of additional enhancements to the bill so that we can be certain that this important legislation enables women and children to collect the support and alimony payments they are owed.

Current bankruptcy law simply is not adequate to protect women and children. I have been outraged to learn of the many ways deadbeat parents are manipulating and abusing the current bankruptcy system in order to get out of paying their domestic support obligations. I have in front of me a how-to book called ''Discharging Marital Obligations In Bankruptcy.'' This is why we need to reform our bankruptcy laws.

I am proud of the improvements we are making over current law in terms of ensuring that parents meet their child support and other domestic support obligations in bankruptcy.

This chart indicates:

The Support Provisions Of This Bill Certainly Justify The Praise Given Them By The Most Significant National Public Support Collection Organizations In This Country.

That is a statement made by Phillip Strauss, Legal Division of the Family Support Bureau, the Office of the District Attorney of San Francisco on March 18, 1999, in testimony before the House of Representatives.

The bill's improvements over current law have the support of the country's premiere child support collection organizations. As you can see, the bill's child support provisions are endorsed by the National Association of Attorneys General, the National Child Support Enforcement Association, and all of them, and many others, support what we are trying to do today. I would also like to point out that literally dozens of ex-spouses who are owed domestic support obligations have expressed to me their support for these improvements to bankruptcy law.

We have all heard complaints by those who would attempt to politicize this issue that the bankruptcy bill is somehow harmful to families. I have worked tirelessly, provision by provision, both last year and this year to make this a bill that dramatically improves the position of children and ex-spouses who are entitled to domestic support. No one who actually looks at what the bill says can, in good conscience, say that this bill is not a tremendous improvement for families over current law. There may be those who do not want to see bankruptcy reform, but they cannot, with a straight face, argue that this bill is anything other than a huge positive step for our children. I believe that criticizing this bill without regard for what is in it, and using our children as pawns in the process, is shameful.

I challenge critics of the bill to stop with the vague allegations and take a look at what the bill itself actually does.

First, here is what S. 625 does apart from the additional improvements I have offered in the manager's amendment:

The bill prevents the use of the automatic stay from being used to avoid family support obligations: S. 625 stops deadbeat parents from using bankruptcy to avoid family support obligations.

For example, the bill prevents the automatic stay from being used to put a hold on the interception of tax refunds to be used to pay a domestic support obligation.

The bill enables revocation of driver's licenses and other privileges from deadbeats: The bill prevents the automatic stay from being used to prevent the withholding of driver's licenses when debtors default on domestic support obligations. This is a particularly important provision, given recent news reports about the effectiveness of suspending driver's licenses of people who aren't paying their child support. A Maryland initiative has resulted in $103 million in child support collections just since 1996. We do not want our bankruptcy laws to work as an impediment to effective programs like the one in Maryland.

Without these changes, a person could use current bankruptcy law to stave off a driver's license suspension by using the automatic stay, and undermine the effectiveness of these programs at getting child support to the kids who need it.

The bill gives child support first priority status: Domestic support obligations are moved from seventh in line to first priority status in bankruptcy, meaning they will be paid ahead of lawyers and other special interests.

The bill makes debt discharge in bankruptcy conditional upon full payment of past due child support and alimony.

It requires payment of domestic support obligations for plan confirmation:

And, S. 625 makes domestic support obligations automatically non-dischargeable. This lets ex-spouses seeking to enforce domestic support obligations avoid the legal expenses of litigation that they incur under present law.

The bill provides single parents with new tools to help them collect from an ex-partner in the bankruptcy system.

The bill provides better notice and more information for easier child support collection.

The bill provides help in tracking deadbeats. For example, If there is non-payment of child support in a post-discharge situation, other creditors with non-dischargeable debt are required to provide the last known address of the debtor on request, a significant help in locating people who have skipped out on their child support obligations.

And, the bill allows for claims against a deadbeat parent's property.

In addition to these improvements over current law that have been part of the bankruptcy reform bill for months, I have worked with Senator TORRICELLI, the National Women's Law Center, and the National Association of Attorneys General to further enhance the domestic support provisions of the bill. I thank each of them for their commitment to further improving the bill, and I am proud of what we have accomplished.

Our amendment has many enhancements over current law.

For example, the amendment allows for the payment of child support with interest by those with means. The debtor can pay interest under the plan if he has sufficient income after paying all other allowed claims.

The amendment prevents bankruptcy from holding up child custody, visitation, and domestic violence cases. Essentially, the amendment exempts proceedings not involving money from being subject to bankruptcy's automatic stay provisions. These include civil cases regarding child custody or visitation, divorce—unless it involves a division of property—and domestic violence.

The amendment facilitates wage withholding to collect child support from deadbeat parents. It accomplishes this by adding a requirement that the trustee provide to the person owed support and the State child support collection agency the debtor's employer's last known name and address. Also, the amendment simplifies the ability of the person owed support to get information on the debtor's whereabouts from other creditors. These measures will assist greatly in the imposition of wage withholding orders if they are not already in effect.

The amendment helps avoid administrative roadblocks to get kids the support they need. The amendment provides an expanded definition of ''domestic support obligation'' to cover those who have not been officially designated as a legal guardian, but who nonetheless are entitled to collect child support on a child's behalf.

Also, the amendment gives priority to parents over government. It divided the new ''first priority'' status into two sub-parts, giving parents who are not receiving benefits the top priority—whether or not the benefits have been formalistically ''assigned'' to the government for collection purposes—and giving next priority to obligations assigned to and owed directly to the government in exchange for the payment of benefits—such as where parents are liable for the costs of treating a child in a mental facility.

A key provision makes staying current on child support a condition of discharge. The amendment allows for conversion or dismissal of chapter 1, 12, and 13 cases where the debtor is not current on presently accruing domestic support obligations. Two checkpoints are imposed in the case at which the debtor must be current with payments: confirmation and prior to obtaining a discharge. This provides a new way of preventing debtors from not paying their domestic support obligations during the gap period between filing and confirmation.

Moreover, the amendment makes payment of child support arrears a condition of plan confirmation. It provides that the Chapter 13 plan must pay all 507(3) arrears claims (those owed to families not receiving benefits) in full, unless the creditor—that is, spouse or child—agrees otherwise.

The amendment puts responsible debtors over government. It permits the cram down of arrears claims over the objection of a 507(a)(4) government arrears claimant—that is, the government collecting in exchange for paying benefits, in Chapter 12 and 13 cases so long as the debtor agrees to commit all disposable income for a five-year period.

This level of detail would ordinarily not be necessary in discussing provisions in a bill on the Senate floor, but I have done so to put the issue to rest once and for all. Let me be clear: With my provisions in the bill, bankruptcy will no longer be used by deadbeat parents to avoid paying child support and alimony obligations.

If we take the time to look at the actual provisions in the bill, it is clear that the bankruptcy reform bill of 1999 provides enormous improvements over current law. I have had a long history of advocating for children and families in Congress, and I support a bill that moves the obligation to pay child support and alimony to a first priority status under S. 625, as opposed to its current place at seventh in line, behind bankruptcy lawyers and other special interests. I support a bill that requires debtors who owe child support to keep paying it when they file for bankruptcy. I support a bill that prevents debtors from obtaining a discharge from the court until they bring their child support and alimony obligations current. And, I support a bill that provides that if a debtor pays child support right before filing for bankruptcy, the child support payment can't be taken away from the kids. Let's take a stand for our nation's kids and pass the Bankruptcy Reform Act of 1999 out of the Senate.

Again I thank my colleagues for the work they have done, especially Senator TORRICELLI, who has done a remarkable job working with Senator GRASSLEY on this bill as a whole, but in particular working with me on this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. TORRICELLI. Mr. President, I express my gratitude to Senator HATCH for the drafting of the Hatch-Torricelli amendment that is before the Senate. Senator HATCH has reinforced his reputation by a commitment to American families and American children that is almost without peer. This is an extremely important amendment, and it strengthens the provisions of the bankruptcy reform legislation as they deal with families.

In drafting bankruptcy reform, Senator GRASSLEY and I were aware that many people were concerned that changes in the bankruptcy laws would

have the unintended consequences of making spouses or children more vulnerable as people sought protection from their family obligations.

Any change in the bankruptcy code obviously and importantly raises questions about family protection because, indeed, one-third of bankruptcies involve spousal and child support orders. In half those cases, women are creditors trying to collect court-ordered support from their husbands. Therefore, the sensitivity that Senator GRASSLEY and I in the general legislation and Senator HATCH and I now offer in this amendment is extremely important for Members of the Senate to have confidence in this bankruptcy reform.

It should be remembered by the Senate that these support orders for support of children and spouses are lifelines for thousands of families struggling to maintain self-sufficiency and remain off public assistance.

Forty-four percent of single-parent families with children under the age of 18 have incomes below the poverty line. With child support amounting to an average of nearly $3,000 a year, it is too often the only thing keeping families out of poverty and desperation.

With these facts in mind, Senator GRASSLEY and I drafted legislation in the managers' amendment that has a very important provision insisting that child support be elevated to first, rather than seventh, in the list of debts to repay by a debtor in bankruptcy.

Addressing the Senate this morning, I wanted to bring attention to this provision more than any other. Under current law, a child or a spouse is seventh in the list of debts to be repaid. Under our legislation, it will now be first, where it belongs.

The amendment Senator HATCH and I are now offering goes even further. With the help of women's groups and Government enforcement agencies, we have now been able to make several important new additions to this legislation.

Hatch-Torricelli, first, prevents civil cases regarding child custody, visitation, and divorce from being held up by an automatic stay. The automatic stay is designed to protect the debtor from coercion by creditors, not to provide the debtor a tactic for delay in dealing with support issues regarding their own children.

Our amendment will ensure that child custody and visitation issues are not held hostage by the filing of a bankruptcy petition. Bankruptcy petitions are not designed to interfere with or delay child support or other related issues in family disputes regarding children and spouses. We will not permit that to happen. Hatch-Torricelli reinforces the strength of that provision.

Second, the Hatch-Torricelli amendment cracks down on those who seek to avoid payment of child support obligations by requiring the trustee to give the person to whom support is owed and State collection organizations information on the debtor's whereabouts. By this provision, not only are we ensuring that bankruptcy reform not interfere with child support, we are making bankruptcy reform a strengthening provision in finding the whereabouts of those who are seeking to avoid family and child support.

It is a reflection of the reality that many people avoid child support by changing jurisdictions, by hiding from law enforcement. We will use the information in bankruptcy to find those who are responsible in avoiding obligations to their children.

Third, the Hatch-Torricelli amendment requires the debtor to pay all child support arrears before the conclusion of a bankruptcy plan unless the spouse agrees otherwise. Not only will bankruptcy reform not be used to complicate child support, people will meet that support, they will deal with their arrears before their bankruptcy petition is acted upon and completed. This will ensure the child support is paid, and paid in full, before the debtor is released from the bankruptcy system.

Importantly, however, we do have a safety valve. If the offended spouse believes this is not in their interest, they can indeed waive this provision. For example, if more money may be available for payment of support obligations after confirmation of the bankruptcy plan because other debts are discharged, then there can be a waiver.

I believe, though we already have good legislation that Senator GRASSLEY and I have offered which would further protect children and spouses, it is now enhanced by the provisions offered by Senator HATCH. I am very proud to be his cosponsor on this important amendment. I believe we have a better bill because of it. I believe American children and families will be strengthened in the bankruptcy proceedings because of it. I am proud to offer it, Mr. President.

I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I wish to commend, as I did earlier, Senators GRASSLEY, TORRICELLI, KOHL, SESSIONS, DURBIN, FEINGOLD, and HATCH for coming forward very promptly to offer amendments to improve this bill.

In the 4 hours we have had today, I see six amendments have been called up. On first blush, I think I am probably going to be supportive of some of these amendments, if not all. I think if we can continue to improve the bill at this rate, we may well end up getting the same kind of a vote—the 97–1 vote—we had last year on this bill.

I would note one thing. I hope Senators will look at this: We have been told of all the money the bill is going to save families in America—$400 each—and that the credit card industry will save $5 or $10 billion by the reforms in this bill.

I have a simple question: If we are going to be giving the credit card companies this $5 or $10 billion in savings from this bill, I am just wondering if they are going to do anything to change some of the charges and interest rates they charge consumers—those in a different era we would consider usury, at best.

So my simple question is this: What language in the bill will guarantee that savings from the bill will be passed on to consumers? Is there anything that says the credit card fees or consumer credit interest rates will be reduced by the huge savings that some say will come from the enactment of this bill?

If the consumer credit industry is going to keep several billions of dollars in savings from enactment of the bill, are those savings going to go to credit card consumers? Even some of the savings? I think that is a fundamental question supporters of the bill should ask themselves as we go forward. We know that more and more, many bankruptcies come about following the enormous—enormous—fees and interest rates charged by credit card companies. They are going to get billions of dollars in savings here. Will they pass any of those on?

Mr. President, I understand we have to file amendments by 5 p.m. today. I send an amendment to the desk and ask that it be appropriately filed.

The PRESIDING OFFICER. It is duly noted. The amendment is submitted.

The Senator from Vermont.

Mr. LEAHY. I am going to make a unanimous consent request in a moment. I will wait until the distinguished chairman comes back on the floor to do it.

This amendment is offered to protect victims of domestic violence in bankruptcy proceedings.

I ask unanimous consent that Senators MURRAY and FEINSTEIN be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered. They will be added.

Mr. LEAHY. Mr. President, I offer this amendment to protect victims of domestic violence in a bankruptcy proceeding. I am pleased that Senators MURRAY and FEINSTEIN are joining me as cosponsors.

Unfortunately, domestic violence pervades all areas of our country. Last year, the Department of Justice reported more than 960,000 incidents of violence against a current or former spouse, boyfriend, or girlfriend occur each year, and about 85 percent of the victims are women.

As if those statistics were not disturbing enough, the report went on to say that only half of the incidents of intimate violence experienced by women are reported to the police. That leaves almost 1 million incidents that go unreported every year.

The pain and terror caused by these crimes of violence are all too often also shared by children, as the Justice Department found that more than half of female victims of intimate violence live in households with children under the age of 12.

As our government and community organizations grow more responsive to the needs of victims of intimate and domestic abuse, more victims are leaving their abusive homes seeking safety and assistance. There are a number of programs, including the Rural Domestic Violence and Child Victimization Enforcement Grants, which I authored in the 1994 crime law, that make victim services more accessible to women and children escaping domestic violence.

For some victims, however, escaping domestic violence means starting a whole new life away from danger. It sometimes means permanently leaving one's home to find safe housing. Safe housing could be across town or in another state—and it often means having to purchase or rent a new home.

Escape from domestic violence sometimes necessitates victims to leave their job, which could leave a woman and her children without an income. Recovery from domestic violence could—and often does—also involve long-term medical and counseling services. These are all necessary expenses which the victim must face.

The amendment that I am proposing today would ensure that victims are not penalized for such expenses in a bankruptcy proceeding.

My amendment would ensure that additional expenses and income adjustments associated with the protection of a victim and the victim's family from domestic violence are included in their monthly expenses under the bill's means test.

I believe that we must ensure that we protect the victims of domestic violence if they are forced to file for bankruptcy. I urge my colleagues to support our amendment.

AMENDMENT NO. 2528

(Purpose: To ensure additional expenses and income adjustments associated with protection of the debtor and the debtor's family from domestic violence are included in the debtor's monthly expenses)

Mr. LEAHY. Mr. President, I am advised by the staff of the distinguished chairman that he would have no objection. I now ask unanimous consent to set aside the pending amendment so I may offer the Leahy-Murray-Feinstein amendment on domestic violence and bankruptcy that I just described.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Mrs. MURRAY, and Mrs. FEINSTEIN, proposes an amendment numbered 2528.

Mr. LEAHY. 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:

On page 7, line 22, insert after the period the following:

''In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 309 of the Family Violence Prevention and Services Act (42 U.S.C. 10408), or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court.''

AMENDMENT NO. 2529

(Purpose: To save United States taxpayers $24,000,000 by eliminating the blanket mandate relating to the filing of tax returns)

Mr. LEAHY. Mr. President, I ask unanimous consent to set aside my own amendment in order to offer another amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The Senator from Vermont [Mr. LEAHY] proposes an amendment numbered 2529.

Mr. LEAHY. 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:

On page 115, line 23, strike all through page 117, line 20, and insert the following:

''(iv) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days before the filing of the petition;

''(v) a statement of the amount of projected monthly net income, itemized to show how the amount is calculated; and

''(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of filing''; and

(2) by adding at the end the following:

''(d)(1) At any time, a creditor, in the case of an individual under chapter 7 or 13, may file with the court notice that the creditor requests the petition, schedules, and a statement of affairs filed by the debtor in the case and the court shall make those documents available to the creditor who request those documents.

''(2)(A) At any time, a creditor in a case under chapter 13 may file with the court notice that the creditor requests the plan filed by the debtor in the case.

''(B) The court shall make such plan available to the creditor who request such plan—

''(i) at a reasonable cost; and

''(ii) not later than 5 days after such request.

''(e) An individual debtor in a case under chapter 7 or 13 shall file with the court at the request of any party in interest—

''(1) at the time filed with the taxing authority, all tax returns required under applicable law, including any schedules or attachments, with respect to the period from the commencement of the case until such time as the case is closed;

''(2) at the time filed with the taxing authority, all tax returns required under applicable law, including any schedules or attachments, that were not filed with the taxing authority when the schedules under subsection (a)(1) were filed with respect to the period that is 3 years before the order of relief;

''(3) any amendments to any of the tax returns, including schedules or attachments, described in paragraph (1) or (2); and''.

Mr. LEAHY. Mr. President, I am offering this amendment to make this bill more workable in the real world and to save the taxpayers of this country $24 million over the next five years.

This bankruptcy bill now requires filing of millions of copies of personal income tax returns. Section 315(b) of the bill requires debtors to file with the court copies of their tax returns for the three years preceding their bankruptcy filings as well as tax returns filed while the bankruptcy was pending.

If this requirement was in effect last year, the 1.4 million Americans who filed for bankruptcy would have produced at least 4.2 million copies of their tax returns. More than 4 million copies of tax returns would produce mountains of paperwork and clog the files of most, if not all, bankruptcy courts across the country.

Where are the bankruptcy courts going to put these millions of copies of tax returns? And why do the courts need to keep them? Good questions that the sponsors of this bill have not answered.

Most bankruptcy filers have no assets and little income so there is no reason to review their tax returns. These debtors have no ability to repay their debts and their creditors know it. This blanket requirement to file tax returns for the last three years for all debtors, regardless of the debtor's assets or income, fails to make any common sense. It is simply silly.

Moreover, this blanket requirement to file tax returns ignores the reality that many debtors, just like other citizens, may not have access to their tax returns for the past three years.

For example, a recently divorced mother of two children may not have copies of her past tax returns if the couple's tax returns are kept by her former husband. Or a debtor, just like other citizens, may not have copies of past records such as tax returns. In either case, the debtor would have to contact the Internal Revenue Service to request copies of past tax returns before being able to seek bankruptcy relief.

Depending on the quick service of the IRS is not reassuring to an honest debtor who may honestly need bankruptcy relief. This mandate to keep copies of tax returns for the past three years is unnecessary and unrealistic.

Indeed, this burdensome and unworkable mandate is opposed by the Consumer Bankruptcy Legislative Group, Department of Justice, Administrative Office of the U.S. Courts, Judicial Conference, and National Bankruptcy Conference. Bankruptcy judges, creditor and debtor attorneys and other practitioners know this mandate will not work in the real world.

The Leahy amendment strikes this section of S. 625 and replaces it with the option that any party in interest may request and get a copy of a debtor's tax return after the bankruptcy filing.

Under the Leahy amendment, a creditor, judge or trustee may force a debtor to file copies of tax returns if the facts of the case warrant it by simply asking for the returns. In most cases, a

party in interest will not want to review tax returns if a debtor has no assets or little income. But if a creditor, judge or trustee does want to copies of the tax returns then they simply request it under my amendment and the debtor must furnish past and current tax returns.

This is a common sense approach to verifying debtor income and assets when a creditor, judge or trustee wants verification. The current blanket requirement for all debtors to file copies of their tax returns for the past three years will waste millions of taxpayer dollars.

Indeed, the Congressional Budget Office estimates that it will cost $34 million over the next five years to store and provide access to more than 20 million tax returns. Some experts predict it will take up 20 miles of shelf space to store all these tax returns.

The Leahy amendment saves $24 million over the next five years by striking this mandatory tax return filing requirement, according to CBO.

There are better ways to verify debtor income and assets that are workable, efficient and save taxpayer dollars. Under current law, U.S. Trustees and private trustees may review a debtor's tax returns if the facts of the case warrant it.

In addition, the Leahy amendment permits any party in interest to request a debtor to file copies of his or her past and current tax returns. The party in interest does not have to a hearing or even give a reason for wanting the tax returns.

But in the real world, a creditor or trustee will only want to see the tax returns of a debtor in a few cases—cases where there are actual questions about the debtor's assets or income. This targeted approach will save millions of taxpayer dollars and save the courts from filing millions of pages of unnecessary paperwork.

I urge my colleagues to vote for the Leahy amendment to save U.S. taxpayers $24 million and make this bill far more workable in the real world.

Mr. President, I understand we now have eight amendments pending. I note the latest one is a Leahy amendment. I see my distinguished colleague from Alabama on the floor. If somebody else wants to bring up another amendment, I have no objection to mine being set aside so they could do it. I am just trying to get these on the calendar, as the Senator knows and as Senator TORRICELLI and Senator HATCH and others have earlier today.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I thank the distinguished ranking member for his comments. I have enjoyed working with him on moving this bill.

I thought I would mention a couple of things that are particularly valuable in the bill that may not be that clearly understood by most people.

I had the privilege of offering a credit counseling amendment early on in this process a year and a half ago. I offered that after having spent almost an entire day at a nonprofit credit counseling agency in my hometown of Mobile, AL. I was extraordinarily impressed with what they do.

They have individuals who come to them in financial trouble. They have a rule: They bring in the entire family. They sit down in a nice conference room, and they go over all the debts that are owed and the income that is coming in. They sit down and see if they can't help that family work their way out of the debt in which they find themselves. They have established over the years respect with financial institutions, such as credit card companies and banks. Those institutions will frequently reduce the amount of money they demand that is owed. They will reduce the interest rate that may be paid, if this person will make a good-faith effort to reorganize their finances and pay what they can pay on the debt.

This is working all over America. In fact, there are credit counseling agencies in virtually every town and city in the Nation. They are serving a valuable purpose. They sit down with individuals and find out what is wrong with the family.

It may not be known to everyone, but it is well known in professional circles that financial disputes are probably the most common cause of divorce in America. We know many people are in financial trouble because of alcoholism. Many people are in financial trouble because of gambling. Gambling is driving an increase in bankruptcy in a number of areas in this country. Some people simply have an inability to discipline themselves. One member of the family feels as though the other one is getting an advantage on them in spending, so they spend more and vice versa. They go on a downward spiral of financial management. We have individuals who have mental health problems who are simply not able to be disciplined about their money.

Credit counseling is a tremendous thing. They care about the families with whom they are dealing. They help work with them to discover a way to work out their problems. It is a good thing.

What this bankruptcy bill requires is that someone, before they file bankruptcy, at least go and talk to a credit counseling agency, to meet with them and see if that agency may have the ability to solve their problem short of filing bankruptcy.

Most people do, in fact, want to pay their debts, and they work hard to try to pay their debts. If they are given this kind of option, where a company will reduce their interest or reduce their debt, they work out a payment plan. The family signs onto it, the mother and father, son and daughter. They can restore pride and confidence. They can learn something about how to manage money. They may well receive marital counseling, mental health treatment, Gamblers Anonymous references, or other help.

What happens in bankruptcy today is that somebody is sued for a debt they haven't paid. They don't know what to do. They have seen on the TV, or in the newspaper: Call this lawyer if you have debt problems. So they call the lawyer and he sits down and says: The thing for you to do is file bankruptcy. There will be a $1,000 fee, and you will wipe out all your debts. They will say something like: How am I going to pay you? I don't have $1,000. He will say something like: You won't have to pay any more payments on your credit card. In fact, go buy everything you can with your credit card because we are going to wipe out all those debts when we file, unless they are short-term debts concurrent with the bankruptcy filing. The lawyer will say: You do that and pay me, and we will wipe out everything. That is what you ought to do.

The lawyer has a financial incentive there. He spends no time with the family. Oftentimes, they tell me the paralegals and staff people fill out all the forms and the paperwork; the lawyer hardly even meets the client. He goes down in court and calls out their name and they come up to him, and he introduces them to the judge. They do the bankruptcy and they go home. And nothing has been done about the fundamental problem in that family, or the lack of discipline which is often the case that causes bankruptcy. Many bankruptcies—a substantial percentage—are due to very severe events. But a substantial portion are also caused by a gradual descent into debt, and a lack of discipline, or some sort of emotional or psychological problem.

I believe if we can give them the choice to go through credit counseling and work out ways to deal with their debts as a family, we will do something good for this country. How many would choose this? I don't know. But most people who have been sued or are getting credit calls over debts they owe from all kinds of debtors and creditors get nervous and don't know what to do. They are told file bankruptcy and that is what they do. They think they have no choice. I believe we can do better than that. This bill will lead us in that direction. I believe it will be a historic step for this system.

We also have people who are filing repeat bankruptcies, people who file bankruptcy again and again. This bill will attempt to reduce that. More than 10 percent of the people who file for bankruptcy have previously filed. In some Federal court districts in America, 40 percent of the consumer bankruptcies are repeat filers. They learned the first time it worked, so they do it

again. They haven't learned the discipline and effort that it takes to maintain an honest credit rating.

So one of the things this act requires is that before a person is discharged from bankruptcy, they will have to have some counseling on how to manage their debt, and perhaps they will not come back again. I think that would be a good thing.

We are concerned about fraud in bankruptcy. The forms are basically self-proving. They are accepted by the court. Whatever a person says their income is and their ability to repay is, it is basically accepted and rarely verified. We find that is a problem. So they will have to file documents with their bankruptcy file. It will include a Federal tax return, monthly income and expenses, their actual wage stubs, how much money they are actually making, so it will allow a judge to decide properly what the right procedure is under the circumstances. It allows that a person to whom a debt is owed gets notice—a small businessman, garage owner, furniture store, or a doctors office gets a note from the court that Billy Jones is filing for bankruptcy, and you are notified as a creditor. This says you don't have to have a lawyer, but you can, in fact, go on your own and defend your interests in the bankruptcy court. You may need a lawyer, in which case you can hire a lawyer. But it will clearly make it known that creditors who have clearly proven debt can go down to the bankruptcy court and establish that debt and defend their interest, without having to spend more money on an attorney than perhaps the debt is worth. I think that would be good.

We are dealing with a huge increase in personal bankruptcies—1.4 million, a 94-percent increase, since 1990. In many States in this country, in many Federal bankruptcy districts, many people are filing under chapter 13. When you file under chapter 13, what you do is you go to court and you say: I owe all this money, judge. I have this much income and I would like to work my way out of it. These people are suing me. I am getting phone calls at home. I want you to have a stay, to stop them all from suing me. Take my money and tell me who to pay and I will pay my money, every bit I can, to pay off these debts.

That is a preferable way, in my opinion, for a person to deal with financial difficulties, if they can't pay their bills. Some people are so far in debt that it will be hopeless; straight bankruptcy chapter 7 is for them.

Under the present state of the law, amazing though it might be, there is no standard on that. The debtor himself can choose whether to go into chapter 13 or chapter 7. He can choose whether or not to pay off his debts. In Alabama, I am proud to say, in the northern district of Alabama, over 60 percent of the individual filers choose to file chapter 13 and repay a large portion of their debt. That is something I think reflects well on the people of the northern district of Alabama. The numbers are high in the other districts in Alabama—over 50 percent, choose Chapter 13. But we know in certain other districts in this country, the number of people filing chapter 13 is under 10 percent. Many of these people have high incomes and could, in fact, easily pay off all or part of their debt.

So that is why we have said in this legislation that if your income is above the median income, which for a family of two is $40,000, and for a family of four, over $50,000—if you are making above the median income, then you ought to be considered by the judge for repayment of as much of your debt as you can under the chapter 13 bankruptcy. So for the first time we will have a realistic way for a judge to objectively analyze these debtors, to see if they can pay back some of their debts.

That is why Senator HATCH says the average bankruptcy costs the average family $400 per year. When people don't pay their debts, somebody else has to pay them. It drives up the cost of business, the interest rates at the bank, and it drives up the charges the furniture store is going to make, or that the doctor office has to charge, to come out ahead if people are not paying their debts. It is that simple.

Paying your debt is a big deal. If we ever get to the point in this country where people don't feel like they have to pay debts back and they can wipe them out whenever they want to, we will have endangered the economic strength and commercial vitality of our Nation. Make no mistake about it. Our legal system and our economic system is based on honesty and integrity and responsibility. People pay their taxes based on their own calculations. They add up the numbers and they write that check to the Federal Government. That is why taxes ought to be low because when we ask too much of people they start cheating; they feel justified in cheating. We have relatively low taxes compared to other nations, and we have the lowest amount of cheating in the world.

We are making some important progress with this legislation. It will help us economically because, as the Secretary of the Treasury, Mr. Summers, has said, bankruptcy costs do add to interest rates. Everybody will pay higher interest rates if the bankruptcy filings are up. If bankruptcies are down, interest rates can drop. It will be passed on to the consumer. It ultimately always is.

I wish to express my appreciation to Senator GRASSLEY, who has worked so hard on this legislation. He has listened to everybody concerned. He has spent an extraordinary number of hours with the members of the Democratic leadership and members of the committee on both sides of the aisle. He has worked with them to achieve a bill that is responsive to virtually every complaint that can be thought up.

Essentially this same bill passed this body 97 to 1 last year. It passed the House with over 300 votes. Why we couldn't get it finally passed last time is beyond my comprehension. It was nothing more than a bunch of obstructive tactics. I can't accept the complaint and refuse to accept the argument that women and children are somehow being abused under this act when every objective analysis would indicate that we are making a historic move toward providing the greater protection that has ever been provided to alimony and child support payments. That is absolutely false. Why people tend to want to attack this bill to delay its passage and frustrate us in this effort is beyond me.

I believe we are eliminating abuses in the system. For example, I point out a landlord who leases an apartment to a tenant; that tenant's lease is for 1 year, that year is up, and he owes the landlord money. The landlord seeks to move him out because he is going to rent the apartment to somebody else. That tenant can file for bankruptcy and stay, or stop, any lawsuits for eviction. Months can go by. And the landlord has to hire an attorney to go to bankruptcy court to try to get the ''stay'' lifted—that is what they call it—on filing the eviction notice so they can go forward with it. This bill would say if your lease is up, you can continue with your case. Eventually the landlord always wins, but often it takes months to get a final hearing, and it will cost him a good deal of money and attorney's fees.

There are many abuses such as this in the system. Those kinds of things ought to be eliminated.

We have had the experience of the existing system since 1978. We have not given it the kind of overhaul it needs. We have completed that now. I am proud of this legislation. I know that Senator HATCH, who chairs the Judiciary Committee and has worked extraordinarily hard on it, also shares that view.

I am also pleased to have the support and leadership of Senator TORRICELLI and the ranking member of the subcommittee. He has worked hard for this bill. He understands the economics behind it. He understands that this is going to help those who are in need and at the same time is not going to allow abuses to occur in the system.

We are at a good point. I think we are going to have a vote next week. I am confident that once again we will have an overwhelming vote for this legislation.

MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER (Mr. GORTON). Without objection, it is so ordered.