

CONSUMER BANKRUPTCY REFORM
ACT OF 1998

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1301, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1301) to amend title 11, United States Code, to provide for consumer bankruptcy protection, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Lott (for Grassley/Hatch) amendment No. 3559, in the nature of a substitute.

Feingold/Specter amendment No. 3602 (to amendment No. 3559), to ensure payment of trustees' costs under chapter 7 of title 11, United States Code, of abuse motions, without encouraging conflicts of interest between attorneys and clients.

Feingold/Specter amendment No. 3565 (to Amendment No. 3559), to provide for a waiver of filing fees in certain bankruptcy cases.

Mr. GRASSLEY addressed the Chair. The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, we are now, as I understand it, on the bankruptcy bill. As the Republican manager for this legislation, I want to speak to an amendment which was offered Friday by the Senator from Wisconsin, Mr. FEINGOLD, but also to speak generally about the behavior of the bankruptcy bar as it relates to the amount of bankruptcies that are being filed, which were at a historical high of 1.4 million last year. That was a 30-percent increase. There was probably a 25-percent increase in 1996 over 1995. As we all know, there is an explosion of filings for consumer bankruptcy.

I have blamed some of that on the law of 1978. That is why we have this bill before us, to change the law so it is not so easy to go into bankruptcy.

In 20 years, I have had hundreds of people talk to me about it being too easy to go into bankruptcy. It ought to be harder, in their judgment. I have not had one person say to me that it ought to be easier to go into bankruptcy, and I have had people who have gone through bankruptcy tell me how easy it is to get into bankruptcy.

I think the law of 1978 is at fault to some extent. I think the situation we have with Congress with 30 years of deficit spending, that Government doesn't have to live within its income, sends a signal to people in this country that it is all right for individuals to live beyond their income and avoid paying for it.

We have had a general lack of shame or personal responsibility that used to be associated with paying bills or not paying bills and the filing of bankruptcy. That is no longer the situation, although that can be somewhat to blame for Government not setting a good example in this area.

I also think there is more than just the downfall of personal responsibility. We have heard lots of speeches about how the credit industry, particularly the credit card industry, has not been

very careful in the number of requests they have granted for bankruptcy, or the willy-nilly approach—I know they will say it is not willy-nilly. There is a very careful study they have of who ought to be mailed a credit card or not mailed a credit card. But as a practical matter, they have been pretty darn fluid with the number of credit cards that have been going through the mail.

All of these are reasons why we have this legislation before us. All of these are reasons why this bill was voted out of committee on a vote of 16 to 2. All of these are reasons why a very strong bill passed the House of Representatives by a veto-proof margin. And all of these, I think, are reasons that, hopefully, on Tuesday or Wednesday of this week we will pass this bill by a very substantial margin.

As I indicated, we have as one of the amendments that we will be voting on tomorrow an amendment offered by the Senator from Wisconsin.

In my earlier statements on the Senate floor, I have alluded to the role of the overly aggressive bankruptcy lawyers plague in fomenting the current crisis in our bankruptcy system. Last Friday, Senator FEINGOLD offered an amendment which will insulate bankruptcy lawyers from fines when they encourage bankruptcy abuse.

As reported by the Judiciary Committee, the Consumer Bankruptcy Reform Act fines—in other words, penalizes—bankruptcy lawyers who steer high-income people who can repay their debt into chapter 7. Under the bill, in the narrow circumstance where a chapter 7 trustee is successful in getting a chapter 7 case dismissed or converted to chapter 13, the lawyer for high-income bankruptcy will be fined if his or her case is not substantially justified. That is our bill.

This fine will reimburse the chapter 7 trustee for expenses incurred while detecting abuses of the bankruptcy system. I think any reasonable person will say that lawyers who file bankruptcy cases which are not substantially justified ought to be required and will be required to help defray the costs of these frivolous cases. That is all this bill does. Senator FEINGOLD wants to cut this reasonable effort to control a bankruptcy bar which is seriously out of control.

Mr. President, in order for my colleagues to understand the importance of imposing some reasonable controls on the conduct of bankruptcy lawyers, I want to give a little background on the conduct of bankruptcy lawyers.

Today, many lawyers who specialize in bankruptcy view bankruptcy as an opportunity to make big money for themselves. This profit motive causes bankruptcy lawyers to promote bankruptcy as the only option even when a financially troubled client has an obvious ability to repay his or her debts. In other words, this profit motive creates a real conflict of interest where bankruptcy lawyers push people into bankruptcy who don't belong there simply

because they want to make a quick buck.

As one of the members of the National Bankruptcy Commission noted in the Commission's 1997 report, many who make their living off the bankruptcy process have forgotten that declaring bankruptcy should have a moral dimension.

As I have already said, the Consumer Bankruptcy Reform Act contains reasonable penalties for lawyer misconduct. These penalties will cause lawyers to think twice before they willy-nilly cart their client off to bankruptcy court and pocket a nice profit. Bankruptcy lawyers get paid ahead of anybody else if there are assets or, obviously, they charge before they are going to help you.

Some lawyers, in their rush to turn a profit, operate what are known as bankruptcy mills. These bankruptcy mills are nothing more than processing centers for bankruptcy. There is little or no investigation done as to whether an individual actually needs bankruptcy protection or whether or not a person is able to at least partially repay some of his debt.

Recently, one of these bankruptcy attorneys from Texas was sanctioned in bankruptcy court. According to the court, this attorney had very little knowledge of bankruptcy law, but advertised extensively in the Yellow Pages and on television. Apparently, his advertising worked, because he filed about 100 new bankruptcy cases a month. Most of the work was done by legal assistants with very limited training. The court concluded that the attorney's services "amount to little more than a large scale petition preparer service for which he receives an unreasonably high fee."

The practices of these bankruptcy mills are so deceptive and sleazy that last year the Federal Trade Commission went so far—our Federal Trade Commission—as to issue a consumer alert warning consumers of misleading ads promising debt consolidation.

Mr. President, I think there is a widespread recognition that bankruptcy lawyers are preying on unsophisticated consumers who need counseling and help in setting up a budget and who do not need to declare bankruptcy. Bankruptcy lawyers are the fuel which makes the engines of the bankruptcy mills run. It is not surprising that bankruptcy lawyers are leading the charge against this bankruptcy reform legislation.

I want to point to some other evidence of lawyers playing a prime role in this effort to get people into bankruptcy and to avoid the payment of debt.

We have previously heard complaints from some on the Senate floor about whether our bill does enough to protect child support and also to protect alimony during bankruptcy proceedings. I

have already spoken to that topic on a previous occasion, but for now, I want to point out that some bankruptcy lawyers actually advertise that they can help deadbeat dads get out of their child support and other marital obligations. One bankruptcy lawyer has even written a book entitled, as you can see, "Discharging Marital Obligations in Bankruptcy," by James P. Caher, Esquire.

I think it is outrageous, Mr. President, that bankruptcy lawyers are helping deadbeats to cheat to force spouses out of alimony and to cheat children out of child support. That is a recipe for promoting poverty and human misery. Those who want to help the collection of child support during bankruptcy proceedings should join me in rejecting the Feingold amendment to protect bankruptcy lawyers. Those who are concerned about protecting child support should join me to ensure lawyers who engage in predatory conduct are subject to stiff fines.

Those who are concerned about protecting child support should join me in moving child support from No. 7 in the bankruptcy priority list to No. 1. This is the only way to get people's attention. This is the only way to restore professionalism to the bankruptcy bar.

Let me tell you, Mr. President, how far these practices have gone. First, I ask unanimous consent to have printed in the RECORD an article from the Consumer Bankruptcy News dated June 18 of this year.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Consumer Bankruptcy News, June 18, 1998]

BANKRUPTCY REFORM PRESENTS MARKETING OPPORTUNITY FOR DEBTORS' COUNSEL

By now, you are well aware of the proposed bankruptcy amendments and how they could affect the relief available to consumers. But how aware of these changes is the general public, especially those people who consulted with you and decided to not file for bankruptcy at that time?

James P. Caher, who represents debtors in Eugene, Ore., suggests that you go through your files to check for cases in which you might have recommended that a client wait before filing for bankruptcy, such as if there was recent credit card use or preferential payments to be preserved. Those debtors might be able to discharge their credit card debts in Chapter 7 today, but will they even be eligible for Chapter 7 relief a month from now?

Caher recommends that you send them a letter like this one that he recently sent to about 150 people who had consulted with him.

POSSIBLE CHANGES IN BANKRUPTCY LAW

My records show that you discussed your financial problems and bankruptcy options with me on _____.

During the last few months, lobbyists for the credit card companies have been incredibly successful in pushing their idea of bankruptcy "reform" through Congress. Bills have been recommended by the judiciary committees of both Houses of Congress and a vote is possible as soon as next month.

I fear that some versions of these "reforms" will pass, and, if it does, bankruptcy

will be much more difficult, more expensive and probably embarrassing.

If you've been able to solve your financial problems without the need for bankruptcy, congratulations. However, if you are still considering that option, you should keep an eye on what's going on in Congress, and consider filing before this new restrictive legislation passes.

Many of the people who received Caher's letter are trying to do the right thing by paying their bills and avoiding bankruptcy. It would be ironic if legislation that is intended to dissuade debtors from filing for bankruptcy actually encouraged it.

Caher acknowledged that there would be some satisfaction in seeing the bills backfire on the credit card industry that has spent so much time and effort in pushing them, but he added that he—like his clients—would much rather see the bills go away.

Mr. GRASSLEY. In this article, bankruptcy lawyers are advised to send out letters to anyone who has visited them recently asking about bankruptcy. This form letter encourages people to declare bankruptcy because if Congress passes bankruptcy reform, "Bankruptcy will be much more difficult, more expensive and probably [even] embarrassing."

I hope this bill does make bankruptcy more embarrassing—and more difficult. In fact, I plead guilty that that is a motive behind our legislation. The American people want people who voluntarily incur debts to pay those debts as agreed. Bankruptcy should be difficult, and the moral stigma that used to be associated with bankruptcy ought to be resurrected.

Do we say that never is anybody entitled to a fresh start? No, you never say "never." We have not in 100 years. The bankruptcy code, the national bankruptcy code, is 100 years old—when it was first passed. There has always been a concept that, maybe because of natural disaster, maybe because of a lot of illness, maybe even in some cases because of divorce, but things beyond your control, that you ought to have a fresh start. And we do not detract in this legislation from that 100-year tradition.

But we do say no to bankruptcy lawyers who advise this way or bankruptcy lawyers who send out notices that say, "You had better file for bankruptcy right now because Congress might pass a bill and make it more difficult to do it." Or we respond positively to the FTC sending out a warning to people: "Beware of people in the bankruptcy bar who are not acting in a responsible manner."

I will give you another example of what is wrong with our bankruptcy system. A few weeks ago, the Washington Times quoted a local bankruptcy attorney advising his clients, "... anybody who's going to file better do it now. Get in while the getting's good."

What has happened to the notion of bankruptcy then as a last resort? What has happened to any sense of personal responsibility? How can anyone describe filing bankruptcies as "getting in while the getting's good"? Mr. Presi-

dent, the getting may be good for the lawyers when someone else files for bankruptcy, but the rest of us have to pay the price—a \$40-billion-a-year cost, \$400 per family of four. That means any family of four is paying \$400 more every year for increased costs of goods and services, because there is no free lunch when it comes to bankruptcy; somebody pays. The consumers of America are paying. It is a hidden tax.

Our bill will never do away completely with that hidden tax, but this legislation will reduce that hidden tax and hopefully be a small step towards the reestablishment of the principle of personal responsibility.

So the rest of us have to pay the price. This kind of attitude about bankruptcy represents some of what is wrong with our bankruptcy laws and why the current laws need to be changed. Not only do the current practices of bankruptcy lawyers do a disservice to their clients, they also cheat society as a whole. The integrity of the bankruptcy system depends in part upon the honesty and the competence of bankruptcy lawyers.

The Consumer Bankruptcy Reform Act makes necessary changes to correct abuses of the system by bankruptcy lawyers. It requires that attorneys investigate the financial resources of their clients. The bill holds attorneys responsible if they do not honestly determine that their clients really need bankruptcy protection.

In other words, we are just asking that lawyers do what they are trained to do, and that is to counsel people, counsel people in a responsible way. And just willy-nilly putting people into bankruptcy through some bankruptcy mill is not that sort of responsible jurisprudence.

If we want to keep bankruptcy available to those who really need it—in other words, the fresh start that for 100 years people have been entitled to—we have to address these misuses of the system by bankruptcy lawyers. This bill does exactly that. And in order for this bill to work, we need to reject the Feingold amendment and keep the incentives for responsible lawyer conduct currently in the bill.

I yield the floor.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, we have seen a lot of home runs hit lately—McGwire, Sosa, Griffey and company—but I think the Senator from Iowa has hit a home run. He is bringing to this Senate body his deeply held values arising out of his Midwest background about responsibility and integrity, making a system work like it ought to work, and standing up with courage and challenging those who would abuse the system.

I think sometimes Congress passes laws that make it easy for people to abuse the system. Senator GRASSLEY is taking the lead as the prime sponsor for this bill, with Senator DURBIN, to

correct some imbalances. I have been honored to have served on the subcommittee with him and the other members of that subcommittee and to see a bankruptcy bill come forward that actually improves the bankruptcy process while at the same time not denying those who need bankruptcy the right and opportunity to file bankruptcy as is provided for in our Constitution.

With regard to these attorneys' fees and to one of the provisions that would be eliminated by Senator FEINGOLD'S amendment, I would like to make a couple comments.

First of all, the Feingold amendment would say that if somebody filed under chapter 7—that is, straight bankruptcy that wipes out all of your debts—and they were not substantially justified in that circumstance, then the trustee would have to file a motion to object and have a hearing and be paid for out of his funds. And if he prevailed, it would go into chapter 13, where the person filing bankruptcy would at least have to pay back a substantial part of his debts on a monthly basis in a payout plan, which we need more of in this country.

But the point is this. If the lawyer was not substantially justified in filing his client under chapter 7, and we had to conduct a court hearing to get the case transferred to chapter 13 because of his error, then who ought to pay? Under the Feingold amendment, the people who loaned money to the debtor would pay for the cost of getting the case transferred, instead of the lawyer who filed it. It doesn't just say the lawyer was in error. It said he was not "substantially justified" in filing.

The judges know who these lawyers are. They see them come before the courts all the time. The judges are going to give the lawyers a fair shake on these matters. They are not going to hit them every time a case is certified from chapter 7 to 13. But, if the attorney was not substantially justified in filing the case under Chapter 7, the debtor ought to pay. There is no free lunch. Somebody will pay.

I think the Senator from Iowa is correct. The Feingold amendment does undermine the integrity of the system. It takes the burden off of the lawyer, allows him to freely file wherever he wants. There is no burden on him to file it under the right act.

Once again, this is a historic bill and a good bill. I wish we could do some additional things which I believe are important. However, it does many, many things that are important and will improve a bankruptcy system that is out of control. It is to Senator GRASSLEY'S credit that at a meeting with Members of the other party he agreed to a long list of amendments to be debated; I think 16. We need to move this bill. I thought we were down here this afternoon for people to offer amendments; they would offer them and debate them so we could vote on them and get on with this bill.

I have been in this body less than 2 years now, but it seems to me there are people who just don't want anything to pass. They want to go into November and say, "The Republicans don't want to pass any legislation. They have a majority. We can't get legislation passed."

If people have a right to present amendments and won't come to the floor, how will we get the bill up for a vote? It is almost a filibuster in secret—an underground filibuster.

I have been on Senator GRASSLEY'S subcommittee and I care about this bill. We are interested in approving the bill if the amendments are good, and we need to oppose the amendments if they are not good. I think it is time for people who say they want good legislation to improve justice in America to present amendments. Let's get on with this legislation. The House has acted. It is time for the Senate to do our job. The result will be something good for America.

It was not a partisan bill in committee. It had overwhelming support in the subcommittee and came out of the full Senate Judiciary Committee 16-2, Democrats and Republicans alike joining in this amendment. I don't know why we aren't able to proceed and bring it to a vote and pass it. We have the kind of bill that will help this country. We ought not wait any longer. It is time to pass it.

I just note for the record that the Presiding Officer is a member of the Judiciary Committee and has been very supportive of this legislation and helped work hard to improve it. I thank the Chair for his leadership and skill as an attorney to contribute to this debate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. 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. GRASSLEY. Mr. President, I ask to speak for 15 minutes as in morning business.

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

DRUGS AND KIDS

Mr. GRASSLEY. Mr. President, this past month, while we were away for the August recess, there was more bad news on the illegal drug front. It seems like the administration waits until no one is looking to release bad news. The administration waited until late in August and waited until a Friday afternoon to release the data. Needless to say, the President did not discuss this data on his regular radio show. I wonder why that is.

On Friday, 21 August, the annual Household Survey on Drug Abuse made

its appearance. I want to share with my colleagues some of the data from that study. The information is based on a national survey of households in 1997. In this most recent survey, 24,000 people were interviewed, with an expanded survey for California and Arizona. For those of us concerned about drug use among our young, the numbers are disturbing.

Before I go into more detail on these numbers, let me explain something else. In this survey, as in all the others from this administration, there is an attempt to hide the pea. Most of my colleagues will remember the old carnival shell game. In the game, the object was to guess under which of three walnut shells the dealer hid the pea. Keep your eye on the shells.

According to the 1997 survey, 13.9 million Americans were current users of illicit drugs. A current user is someone who reported using in the past month before the survey. The survey notes that this is not a significant increase over 1996 when the number was 13 million. It also notes that this number is half of what it was in 1979, when the number was at its highest. Now, perhaps in someone's book an increase of 900,000 people is not statistically significant. But not in my book. It is even more significant that most of that increase is occurring among 12-17 year olds. The numbers are going up.

In 1992, there were 11 million current users. In 1993, there were 12 million. There are now almost 14 million. And these numbers may not tell the whole truth. Based on preliminary reviews of these household numbers by ONDCP, this type of survey is prone to undercounting. If that is true, then our problem could be very much more serious than we think. In addition, the administration is still trying to hide these numbers in happy talk about the reductions in drug use since 1979.

I am glad that we have not yet returned to the levels of reported use we saw in 1979. But let's remember something about how we got to those high levels then. They were the result of ignoring or making little of the fact that the United States had become a drug-using culture. In the early 1960's, there was no drug problem in this country. Less than 2 percent of the population indicated any regular drug use.

By 1979, that number had increased to over 10 percent, a fivefold increase. Those were the years of arguments that drugs were okay. That they did not hurt anyone. That you could use drugs responsibly. Our popular culture and many in our cultural elite made much of the benefits of using drugs. And who was the target audience for this message? It was kids, mostly aged 16-20. This age group began to experiment with illegal drugs in ever-increasing numbers. What that meant was that the increase in drug use between 1965 and 1979, while only 11 or so percent of the overall population, fell disproportionately on the young. This age group accounted for less than 25 percent of the population but bore most of