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No. 3

## House of Representatives

The House was not in session today. Its next meeting will be held on Thursday, January 27, 2000, at 12 noon.

## Senate

WEDNESDAY, JANUARY 26, 2000

The Senate met at 11 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

### PRAYER

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

Gracious Lord, inside each of us is that sacred sanctuary of the soul, the port of entry for Your Spirit, the place You live in each of us, and the portion of us that determines the development of our characters and direction for our lives. We join with the psalmist's longing for You to heal our souls with Your forgiveness, to uplift our souls with Your inspiration, to quiet our souls with Your peace, to sustain our souls with Your patience, and to calm our souls with Your pacing and timing. May the soul of the matter for us today be to express what You have placed in our souls. And so we say with the psalmist: "Bless the Lord, O my soul, and all that is within me bless His holy name! Bless the Lord, O my soul, and forget not all His benefits. . . ."—Psalm 103:1-2, Lord God of hope, be with us yet, lest we forget! Amen.

### PLEDGE OF ALLEGIANCE

The Honorable TIM HUTCHINSON, a Senator from the State of Arkansas, 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 able Senator from Utah is recognized.

### SCHEDULE

Mr. HATCH. Mr. President, today the Senate will immediately resume consideration of the bankruptcy bill under the previous order. There are several amendments in order. Therefore, I encourage all Members to work with the bill managers on a time to debate their amendments. Votes ordered with respect to the bankruptcy bill will occur on Tuesday, February 1. Consequently, no votes will occur during today's session, and the next time the Senate will be conducting rollcall votes will be on Tuesday of next week. In addition, the Senate will recess today between the hours of 12:30 p.m. and 2:15 p.m. in order for the weekly party caucuses to meet.

I thank my colleagues for their attention.

### RESERVATION OF LEADERSHIP TIME

The PRESIDING OFFICER (Mr. HUTCHINSON). Under the previous order, the leadership time is reserved.

### BANKRUPTCY REFORM ACT OF 1999

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

The assistant legislative clerk read as follows:

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

Pending:

Hatch/Torricelli amendment No. 1729, to provide for domestic support obligations.

Wellstone amendment No. 2537, to disallow claims of certain insured depository institutions.

Wellstone amendment No. 2538, with respect to the disallowance of certain claims and to prohibit certain coercive debt collection practices.

Feinstein amendment No. 1696, to limit the amount of credit extended under an open end consumer credit plan to persons under the age of 21.

Feinstein amendment No. 2755, to discourage indiscriminate extensions of credit and resulting consumer insolvency.

Schumer/Durbin amendment No. 2759, with respect to national standards and homeowner home maintenance costs.

Schumer/Durbin amendment No. 2762, to modify the means test relating to safe harbor provisions.

Schumer amendment No. 2763, to ensure that debts incurred as a result of clinic violence are nondischargeable.

Schumer amendment No. 2765, to include certain dislocated workers' expenses in the debtor's monthly expenses.

Dodd amendment No. 2531, to protect certain education savings.

Dodd amendment No. 2753, to amend the Truth in Lending Act to provide for enhanced information regarding credit card balance payment terms and conditions, and to provide for enhanced reporting of credit card solicitations to the Board of Governors of the Federal Reserve System and to Congress.

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



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Hatch/Dodd/Gregg amendment No. 2536, to protect certain education savings.

Feingold amendment No. 2748, to provide for an exception to a limitation on an automatic stay under section 362(b) of title 11, United States Code, relating to evictions and similar proceedings to provide for the payment of rent that becomes due after the petition of a debtor is filed.

Schumer/Santorum amendment No. 2761, to improve disclosure of the annual percentage rate for purchases applicable to credit card accounts.

Feingold amendment No. 2779 (to Amendment No. 2748), to modify certain provisions providing for an exception to a limitation on an automatic stay under section 362(b) of title 11, United States Code, relating to evictions and similar proceedings to provide for the payment of rent that becomes due after the petition of a debtor is filed.

Mr. HATCH. Mr. President, I notice the distinguished minority whip is here. If he has any comments, I certainly defer to him.

Mr. REID. Mr. President, the minority is ready to proceed on this legislation. We have Senators who are ready to speak on this as soon as the acting leader completes his remarks, and we hope to complete this legislation when all the amendments are debated. We have structured time to complete this bill, and we look forward to full debate on all the issues.

Mr. HATCH. I thank the Senator. I thank my colleagues.

Mr. President, I am pleased that we have finally reached an agreement to complete floor consideration of the bankruptcy reform legislation. It was my intention that we finish consideration and pass this bill tonight, but we cannot get it done so we will do it next Tuesday. To that end, I hope any Member who intends to offer an amendment under the agreement comes down and begins debating it as soon as possible.

First, I commend everyone who has worked hard to make this agreement a reality. It took a lot of effort and cooperation to come together and get to where we are today. My staff, the majority and minority leadership and floor staffs, Senator LEAHY's and Senator REID's staffs, Senator GRASSLEY's staff, and Senator GRAMM's staff all worked literally the whole day yesterday to craft the agreement we are operating under. We have a lot of work still ahead of us. We not only have the 13 amendments we must consider today, but we have a number of major issues to resolve in conference. This bill is far from becoming law at this point, but I am optimistic that we can work together as we have done in the past to have a fair and balanced reform bill that the President can sign.

Mr. President, I have stood here on the Senate floor many times and professed the need for reforming our bankruptcy system. I stand before you again today and say that the Senate has enjoyed a lengthy deliberative process. Along with my Senate colleagues, I have debated the legislation and many of its amendments at great

length over the past several years. The Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts, chaired by my good friend Senator GRASSLEY, has held numerous hearings on the issue of bankruptcy reform, gaining insights from literally dozens of witnesses.

I am optimistic that we will restore fairness and integrity to our bankruptcy system. I am encouraged by what has transpired in the House of Representatives with respect to bankruptcy reform: the House bill is more stringent in terms of reform than the bill we are considering here in the Senate, and it nonetheless passed by an overwhelming, veto-proof margin of 313 to 108.

Not long ago in our Nation's past, there was an expectation that people should repay what they have borrowed. Hand in hand with this expectation was a stigma that attached to those who filed bankruptcy. The bankruptcy system, as it was originally envisioned, was truly a last resort. It was intended to give those who needed it—those in serious financial difficulty, with no way out of their hard times—a fresh start. As our bankruptcy system has evolved over the years, this original mission has become lost.

Our current system, I am sorry to say, allows some people who are able to repay their debts to avoid doing so. It does this by treating income as irrelevant, and by allowing people to exploit various loopholes. When I talk with the hardworking folks both from my state of Utah, and more recently all across this great Nation, I simply cannot defend the current system. I cannot find an adequate explanation for why our current laws let people who have the capacity to repay their debts use bankruptcy as a financial planning tool. I cannot justify the more than \$400 hidden tax our current bankruptcy system imposes on every American family every year.

It is no mystery that when someone borrows money or buys something on credit, and then files a bankruptcy of convenience, someone does not get paid back. This is true whether the creditor is a large lending company in which a retiree's pension funds may be invested, or a small family business. Under the current system, when bankruptcies of convenience are filed, everyone loses except for the unscrupulous person who games the system. Studies have been conducted that show that between 6 and 15 percent of filers are using bankruptcy as a financial planning tool, running up debts and erasing them without any noticeable impact on their lifestyle. When we look at the daunting number of bankruptcy filings we have seen in recent years, these abuses are a major problem. In 1998 alone, 1.4 million Americans filed for bankruptcy. As I have pointed out before, more Americans filed bankruptcy than graduated from college,

were on active military duty, or worked in the post office. During these days of great economic prosperity, these record filings are outrageous.

We must put an end to the system that allows people to live high on the hog.

The bill also puts the brakes on an abuse known as "loading up," when debtors take out large cash advances on their credit cards and buy luxury goods on the eve of their filing for bankruptcy.

The bill is also designed to enhance consumer protections by imposing penalties on creditors who overreach. Penalties are imposed on creditors who refuse to negotiate in good faith with debtors prior to declaring bankruptcy, who willfully fail to properly credit payments made by the debtor in a chapter 13 plan, and who threaten to file motions in order to coerce a reaffirmation without justification. The bill also contains provisions designed to eliminate abusive reaffirmation practices.

The bill protects debtors by imposing requirements on lawyers who represent debtors in bankruptcy. These provisions are intended to target the practices of so-called bankruptcy mills, which aggressively promote bankruptcy to people with financial problems when bankruptcy may not be in their best interests.

I am particularly proud of the advancements this bill makes in helping people to avoid bankruptcy and avoid repeating financial problems. The bill provides for education for debtors with respect to their alternatives to bankruptcy, along with financial management education and credit counseling.

This bill also protects our children. Anyone who knows my record in the Senate knows I have been a strong advocate for children for many years. It is not surprising that this is a particularly important aspect of the bill. From the time this bill was being drafted and through the process of committee markup and floor consideration, I made it a top priority to ensure that the bill included provisions to prevent deadbeat parents from using bankruptcy to get out of paying child support and alimony. Under my provisions, the obligation to pay child support and alimony is moved to a first-priority status, as opposed to its current place at seventh in line, behind attorney's fees and other special interests. If you really want to know the truth, my measures make improvements over current law in this area that are too numerous to mention here at this time, but they work to facilitate the collection of child support and alimony and effectively prevent deadbeats from getting their obligations discharged.

I am also proud that one of my provisions on S. 625, which is supported by

AARP and many other important organizations, ensures that retirement savings will be treated equally in bankruptcy so that schoolteachers and church workers will no longer be at a disadvantage relative to people with retirement savings that happen to fall into other categories.

I also made sure that education was protected in this bill. Under my education savings amendment, already accepted as part of S. 625, which I developed with the help of Senators GREGG, DODD, and others, contributions made for educational expenses to education IRAs and qualified State tuition savings programs will be protected in bankruptcy. I believe protecting these savings accounts is important because college savings accounts encourage families to save for college and increase access to higher education. My amendment ensures that the ability to use dedicated funds to pay the educational costs of children and grandchildren will not be jeopardized by the bankruptcy of a parent or a grandparent. At the same time, I have included conditions on the protection of these accounts to prevent fraud and abuse.

In effect, this bill tightens up the bankruptcy laws to ferret out abuses on all sides, from the unscrupulous debtor to the overreaching creditor to the dishonest lawyer. At the same time, it works to stop the cycle of indebtedness through education. It makes sure that children, our retirement savings, and access to education are all protected.

It is wrong for this country to have a system that makes honest, hard-working, bill-paying citizens foot the bill for those who have the ability to pay but who choose not to. A recent study shows that 76 percent of all Americans believe individuals should not be allowed to erase all of their debts in bankruptcy if they are able to repay a portion of what they owe. I am pleased to say that that is precisely what S. 625 would accomplish. This study is heartening to me because it indicates that this country hasn't lost sight of the principle that individuals should take responsibility for their own actions.

We are enjoying a wonderful period of economic prosperity. To the people who, despite their high levels of income, choose a bankruptcy of convenience, I say the game is over. No longer will the hard-working people of my State of Utah and in the rest of the country foot the bill for the people who are abusers of the system. The American people deserve better. With passage of the bankruptcy reform bill, the bankruptcy system will again return to the last resort for those who truly need it.

In closing, I urge my colleagues to urge colleagues to come down here sooner rather than later to debate amendments, or let us know if they don't intend to offer them. It is my and the leader's intention, and I believe the intention of Senators LEAHY and

DASCHLE, that we debate these amendments in a timely manner today and vote on final passage next Tuesday. I hope we can get through all these amendments today, and next Tuesday we will have a full day of voting.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

AMENDMENT NO. 2651, AS MODIFIED

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. CRAIG] proposes an amendment numbered 2651, as modified.

Mr. CRAIG. 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 the bill, insert the following new section:

**SEC. . PROPERTY NO LONGER SUBJECT TO REDEMPTION.**

[(a)] Section 541(b) of title 11 of the United States Code is amended by adding at the end the following—

“(6) any interest of the debtor in property where the debtor pledged or sold tangible personal property [or other valuable things] (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money, where—

“(a) *the tangible personal property is in the possession of the pledgee or transferee;*

“(b) [(i)] the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price, and

“(c) [(ii)] neither the debtor nor the trustee have exercised any right to redeem provided under the contract or state law in a timely manner as provided under state[.] law and Section 108(b) of this title.”

Mr. HATCH. Mr. President, following Senator CRAIG's amendment No. 2651, as modified, I ask unanimous consent that Senator MURRAY be recognized for 10 minutes to speak, and I ask that Senator SESSIONS be given 10 minutes.

Mr. REID. Reserving the right to object, the ranking member of the Judiciary Committee wants to come and speak on this at some time.

Mr. HATCH. Whenever the ranking member wants to speak, we will, at a convenient time, interrupt and allow him to do so.

Finally, we will go to Senator WELLSTONE's amendment after Senator SESSIONS speaks.

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

The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I understand that my amendment, as modified, has been accepted on that side.

I guess I am at risk, as we are anytime a Senator comes to the floor and says, “This is a simple amendment” But in fact that is exactly what this amendment is. It corrects a very small but very real problem. We are talking

about property that is pawned by a debtor.

This amendment deals with the question of when that pawned property is legally out of the reach of a debtor's bankruptcy estate.

This amendment would allow pawned tangible personal property to be excluded from the bankruptcy estate, so long as the debtor has no legal obligation to repay the money or redeem or buy back the property and the contract or statutory redemption period has expired on the pawned property. And, of course, it is that expiration date that is clear and important as it relates to the period of redemption, and that is where the courts have found themselves in the last several years.

This amendment incorporates the general position of the courts that pawnbrokers should be allowed to have complete and clear title to the pawned personal property of a person in bankruptcy once the redemption period has expired and the debtor or trustee has not exercised the right of redemption.

This amendment allows the pawnbroker to sell the pawned property without burdening the courts with unnecessary actions seeking relief from the automatic stay provision of the bankruptcy code.

Courts have found that unredeemed, pawned, tangible personal property cannot be treated as property of the bankruptcy estate because once the statutory redemption period has run, and the pawned goods have not been redeemed, the debtor forfeits all rights and title to the pawned property. The cutoff date for inclusion of the bankruptcy estate is the end of the redemption period. I am referencing Dunlap, a 1993 case in Maryland and Tennessee, 158 BR 724.

In the circumstances outlined by this amendment, the property doesn't belong to the debtor anymore. Once that redemption period has run out and they have not exercised it, it is out of his possession and out of his right to control. It is only common sense that when it is no longer his property, it cannot be pulled into the bankruptcy estate. That is what the courts have said, and that is what this amendment says.

All too often, however, pawnbrokers are pulled in and ultimately they have to go through the expense of hiring attorneys and doing all of those kinds of things even though it is very clear that the property redemption period has expired and the courts ultimately ruled in favor of the pawnbroker.

So we are clarifying that with this amendment, and I hope my colleagues will accept it and be consistent in this law with what the courts have been saying now over the last period of years.

Mr. President, I relinquish the floor.

Mr. HATCH. Mr. President, I rise in support of the amendment offered by my good friend, the Senator from Idaho. This amendment is needed to clarify that if an individual has pledged

his property for money and is not obligated to redeem it, and indeed does not redeem the property within the time he or she agreed to redeem it, then the bankruptcy laws are not abused to attempt to get that property back.

What this amendment does is basically recognize and respect the right of individuals and businesses to be able to pledge property for money for an agreed period of time. Essentially, those businesses engaged in this type of transaction, namely pawnbrokers, provide cash loans to people in exchange for a pledge of personal property. The pawnbroker charges interest on the loan, but the customer is under no obligation to redeem the pledged property. When the individual does not redeem the pawned item within the contractual period, the property becomes part of the pawnbroker's inventory for sale. It does not continue to be the property of the individual.

Some debtors have attempted to subject their pawn transactions to the operation of the bankruptcy code's automatic stay, after the time under the contract for redeeming the property has expired. Most courts that have considered the matter have held that if the debtor or the trustee does not redeem the property within a typical period of 60 days from the date of filing for bankruptcy, then full title to the property vests with the pawnbroker. This is the sensible result, because the debtor has no obligation to redeem the property.

This is a sensible clarification amendment, without which, certain individuals could abuse the system to the detriment of other consumers who use and need the pawnbroker's services. Let's close this loophole and support this amendment.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Thank you, Mr. President.

(The remarks of Mrs. MURRAY pertaining to the introduction of the legislation are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

#### BANKRUPTCY REFORM ACT OF 1999—Continued

Mr. SESSIONS. Mr. President, it is great to be back in session this morning and see my chairman, Senator HATCH. I know today he made a big announcement. He has given his heart over the last several months and offered himself to the American people as our next President. He did so with integrity. Throughout the year, he chaired the Judiciary Committee. We never slacked in our committee hearings. He was here and missed hardly any votes. So many of our candidates seem to give up their responsibilities in the House or the Senate, but he did not do so. He regularly cast his votes day after day. This is the first real business of the Senate, a day in which he made an announcement. I know it was very important to him that he

would not continue his seeking of the Presidency, and he is introducing and leading the fight for a very important and historic bankruptcy reform bill that is long overdue.

Senator HATCH and Senator GRASSLEY have worked exceedingly hard to make this bill a reality. We are on the verge of it becoming a reality. It has been frustrating. The last time we passed this bill in the last hours of the last Congress, it had over 95 votes and only 1 or 2 opposing votes. It came out of committee last year 16-2, with almost that many votes this time in Judiciary Committee.

It is a bill whose time has come. I am glad we are bringing it up. I thank the majority leader, Senator TRENT LOTT, for saying we need to bring this to a conclusion and calling it up for debate at the beginning.

There has been some suggestion and some comments recently about a decline in bankruptcy filings this past year. One full-page ad—I suppose designed to influence this body—was in one of the local Washington papers. The headline was, "The Incredible Disappearing Bankruptcy Problem."

Let's talk about the numbers. Chairman HATCH mentioned those earlier. In 1980, when we had an economy that was weaker than it is today, there were only 287,000 bankruptcy filings. In 1998, less than 20 years later, with the economy one of the strongest we have ever had, the number of personal bankruptcy filings has skyrocketed to 1,398,000—a 386-percent increase. That is a stunning fact.

In 1999 when the economy was even stronger—we had an even stronger economy last year than in 1998—we had a modest 7-percent reduction in bankruptcy filings. Some are saying we don't need to have any bankruptcy reform, that it is a disappearing problem. I hardly think anybody can believe that a 7-percent reduction, after a 386-percent increase, suggests in any way that we don't continue to have a bankruptcy problem.

The Consumer Federation of America, which is really hard left in my view, issued a press release saying the crisis is over. That certainly is not the fact. In 1997, the National Bankruptcy Review Commission, with Federal judges and bankruptcy experts on it, issued a report that stated the most visible and disturbing fact about consumer bankruptcy has been the extraordinary increase in filings in the last two decades. Since 1980, the rate of consumer bankruptcies has risen nearly threefold. These are the words of the official report of the Commission. Certainly nothing has happened since that report was issued in 1997 to indicate we have had any significant permanent reduction.

In 1996, the number of consumer bankruptcy filings was 1.1 million. In 1999, the estimated number of filings is 1.3 million. Thus, since the Bankruptcy Review Commission complained about the alarming number of filings, the fil-

ings have increased 16 percent. So since the official report's conclusion criticizing and complaining and expressing concern about the large number of filings, it has increased 16 percent since then.

I believe we do have a problem. We have a deep problem of abusive and repeat filers, people whose lawyers tell them clever ways to beat their legitimate debts. There are a lot of abuses in this system. So while we are happy we have had a modest decrease in filings, we have not dealt with the fundamental problem. The reason we have a bankruptcy reform bill is not because there are a large number of filings. The reason we have this bankruptcy reform bill is that the system is not working fairly. Too many people with high incomes—\$70,000, \$80,000, \$90,000—are filing bankruptcy and are not paying their debts when they could easily do so. The moral question arises because the person they owe may have far less income than they do—maybe it is their neighborhood garage mechanic who worked on their car. They may have greater income than the people they owe, who they are not repaying.

So we want to make sure the historic principle of bankruptcy is alive and well: That a person can wipe out his debts and start over again and not be burdened with unpayable debts. But when a person can reasonably pay a substantial part of those debts, we believe he ought to do so. That is what we will be talking about today.

The purpose of bankruptcy reform is—hopefully, we will have some reduction in filings. I do not expect we will have much of a reduction as a result of this reform, but our basic goal in bankruptcy reform is to have a system that works better to reduce litigation, to reduce the cost. We make it so you do not have to have a lawyer to represent yourself on a matter in bankruptcy court. We required that persons be at least knowledgeable of and have an opportunity to talk with a credit counseling agency. They are in every locality in America. They help people deal with their financial crises, short of declaring bankruptcy on many occasions. Sometimes they will tell them, "You cannot handle it, you have to go to bankruptcy." Or they may say they need to have a budget and get the family in and deal with the fundamental problems, where they are in debt, and start first paying the debts off with the highest interest rates.

Our goal is not primarily to reduce bankruptcy filings. Our goal primarily is to end abuses and problems that have made themselves clear over the past 30 years since we last reviewed bankruptcy. The lawyers have learned how to work the system well. We need to create a legal system that has integrity and efficiency and that everyone can respect.

Mr. HATCH. Mr. President, I thank my colleague from Alabama for his kind remarks about me. I want to mention what a great service he has done