we believe you should have more than the $500-per-child tax credit because we know how much it costs to raise a family. So we would double that to $1,000 per child.

A $1,000-per-child tax credit isn't nearly enough to offset the costs of raising children. We know that. But we do not have children to get tax credits; we have children because we love them and we want them to be strong, to continue the great heritage that we have in this country. But we should give tax relief that is focused on helping families raise their children in as conducive an environment as we can possibly give them.

That is our tax relief plan. It is our stewardship of tax dollars to give more money back to the people who earn it, and to pay down the debt at the most rapid rate that we possibly can. Over 10 years we will have paid down the debt to the absolute minimum. And to help people with prescription drug benefits, to rebuild our national defenses, and to make bigger investments in public education, we are saving $1 trillion back from the surplus. And last, and most important, we are keeping Social Security totally intact. That is good stewardship of our tax dollars.

I am proud to support a tax relief plan that saves Social Security, and keeps it secure, that adds spending where we need it, and makes absolutely sure that we give back to the people who earn it more of the tax dollars they deserve to keep in their pocketbooks, rather than sending it to Washington for decisions to be made that they will probably never realize.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

BANKRUPTCY REFORM ACT OF 2001—Resumed

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 420, which the clerk will report.

The bill clerk read as follows:

A bill (S. 420) to amend title 11, United States Code, and for other purposes.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I am pleased to be here today to support S. 420, the Bankruptcy Reform Act of 2001. I know this bill has cleared the Senate on at least three different occasions, as I recall, and with large majorities. I know a number of people have amendments they would like to offer.

As a courtesy to the Members who had concerns about the legislation, Majority Leader LOTT allowed the bill to go to the Judiciary Committee. We had amendments and debate there for a good bit of time. It is now on the floor. It is appropriate for amendments that are to be offered to be offered now.

I urge my fellow Senators who have amendments they would like to offer to this legislation to bring them to the floor. This is the time that has been set aside and announced for that purpose. It certainly would not be courteous to the work of this body if people have amendments and don't take advantage of the chance to bring them forward.

I see the chairman of the Judiciary Committee, Senator HATCH, has arrived. Perhaps he will have some opening remarks at this time. If he does, I would be pleased to yield to Senator HATCH. Senator GRASSLEY had asked that I start this off. I believe we have a good piece of legislation that has been examined. Every jot and tittle of it has been looked at. Compromises and improvements have been undertaken time and again. I believe the act will withstand scrutiny. It will eliminate a number of the abuses that have been occurring under the new modern-style bankruptcy.

The time has come, and I am confident that as this debate goes forward, this bill will pass and become law.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I am happy to be here and finally get this bankruptcy bill underway. We have done it year after year after year. It certainly is time to pass this bill. I hope there won't be any frivolous amendments or amendments trying to kill the bill or amendments trying to make points rather than solve the problems we have regarding bankruptcy.

As I have indicated before, the bankruptcy reform legislation we are considering today, is the same legislative language that was contained in the conference report passed by the Senate in December by a vote of 70–28. In addition, the language was marked up in the Judiciary Committee, and has added several provisions sought by Democratic members of the committee.

I am asking that Members recognize and respect the compromises and agreements that have already been made with respect to this bill. While I do not believe that further amendments are necessary, I recognize that it is the right of any Member to offer amendments. It is my sincere hope that Members will exercise reasonableness in the offering of any amendments.

This being said, If Members do have amendments, I ask them to come down and offer them now, so that we can avoid any further undue delays and move forward.

While we are waiting for them, let me talk about the bankruptcy reform proconsumer provisions. This bill requires extensive new disclosures by creditors in the area of reaffirmations and more judicial oversight of reaffirmations to protect people from being pressured into agreements against their interests.

It includes a debtor's bill of rights with new consumer protections to prevent the bankruptcy mills from preying upon those who are uninformed of their legal rights and needlessly pushing them into bankruptcy.

It includes new consumer protections under the Truth in Lending Act, such as new required disclosures regarding minimum monthly payments and introductory rates for credit cards. It protects consumers from unscrupulous creditors with new penalties on creditors who refuse to negotiate reasonable payment schedules outside of bankruptcy.

It provides penalties on creditors who fail to properly credit plan payments in bankruptcy. It includes credit counseling programs to help people avoid—we go that far—the cycle of indebtedness. It provides for protection of educational savings accounts, and it gives equal protection for retirement savings in bankruptcy.

S. 420 contains improvements over current law for women and children. We have heard people complain that the bankruptcy laws do not take care of women and children. We have tried to do that in this bill, and we have accomplished it.

It gives child support first priority status, something that has not existed up until now. 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. It includes a key provision that makes staying current on child support a condition of getting a discharge in bankruptcy. It makes debt discharge in bankruptcy conditional upon full payment of past due child support and alimony.

It makes domestic support obligations automatically nondischargeable without the costs of litigation. It prevents bankruptcy from holding up child custody, visitation, and domestic violence cases. It helps eliminate administrative roadblocks in the current system so kids can get the support they need. These are all valuable additions and changes in the bankruptcy laws that this particular bill makes. It is in the best interests of women and children to pass this bill.

That is not all. Let me cite a few more improvements over current law for women and children. The bill makes the payment of child support arrears a condition of plan confirmation. It provides better notice and more information for easier child support collection. It provides help in tracking down deadbeats. It allows for claims against a deadbeat parent's property. It allows for payment of child support with interest by those with means. It facilitates wage withholding to collect child support from deadbeat parents.

All of that is critical. All of that amounts to needed changes in the bankruptcy laws that we have worked very hard to bring about.

As I have said before, the compromise bill we passed 70–28 was an effective compromise among Democrats and Republicans, among conservatives and liberals and independents. It was a bill that basically brought almost everybody into the picture. Even after having done that, having introduced that bill this year in the committee, we made some additional compromises to satisfy our colleagues on the other side. Those compromises were difficult to make, but we have made them. We have made every effort to try and bring as many people on to this bill as we possibly can and to try and resolve the various conflicts and difficulties that have existed in the past.

It is a very good bill. It is time we pass it. I hope people will come and bring their amendments to the floor so we can begin the amendment process and get this bill passed.

With that, 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. 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.

AMENDMENT NO. 13

(Purpose: To provide priority in bankruptcy to small business creditors)

Mr. LEAHY. Mr. President, the Senate last night voted for a resolution of disapproval of the new ergonomics regulations. Supporters of the resolution said the ergonomics rules would hurt small businesses and would cost millions in revenues each year. In fact, some claimed it would actually force them out of business.

I disagreed with that analysis of the ergonomics rule, but I do agree with the underlying principle that the Senate should be passing legislation to foster small businesses across the country. I am going to offer an amendment to protect small business creditors from losing out in the bankruptcy reform process. I assume all those who are speaking strongly in favor of small businesses would be supportive of this.

The bankruptcy bill today puts the multibillion-dollar credit card companies ahead of the hard-working small business people from Utah, Alabama, Nevada, Kentucky, or Vermont in collecting outstanding debt from those who file for bankruptcy. My amendment corrects that injustice by giving small business creditors a priority over larger businesses when it comes to distribution of the bankruptcy estate. The amendment provides a small business creditor has priority over the larger for-profit business creditor.

My amendment does not affect the bill's provision giving top priority in bankruptcy distribution to child support and alimony payments, but we should be helping small businesses navigate through the often complex and confusing bankruptcy process. Small businesses cannot afford the high-priced bankruptcy lawyers corporate giants can afford. Small business creditors need some kind of priority just to keep even with the big companies. Small businesses are the backbone of this Nation's economy.

Take a look at this chart. The total number of businesses nationwide is 5,541,918. Of those 5.5 million businesses, almost 5 million are small businesses, or 90 percent of all businesses in this country are small businesses.

Small business, for the purpose of this report, incidentally, is defined as a company with 25 or fewer full-time employees. That is the same definition of small business used in my amendment, which is very similar to the Leahy Press and Printing business in Montpelier, VT.

In full disclosure, my family sold that business when my parents retired. It is gone. This was a small printing business. We actually lived in the front of the store. Our house was in the front. The printing business was in the back, but it was typical of small businesses that are the backbone of my own State of Vermont.

In Vermont, we have 19,000 businesses. Almost 17,000 of them are small businesses, again following the national model.

In virtually every State, 90 percent of the businesses are small. The bill, as it is written, will help the huge multibillion-dollar credit card companies, and they have far more of a priority than these small mom-and-pop stores.

We can do right. It is not fair for us to ask these small businesses, again, to hand over everything they have to the lawyers and accountants of these huge megabusinesses when it comes to collecting outstanding debt. Large credit card corporations have thousands of employees. They rake in billions of dollars of profit every year. Small businesses struggle every day just to pay their bills and their employees' salaries.

Let us put these small businesses on an equal footing with big businesses by adopting the Leahy small business amendment.

In that regard, I appreciate what our distinguished majority leader, Senator LOTT, said on the floor last Wednesday. He spoke about the hardships his parents suffered when they tried to run a small business. His parents ran a furniture business, and most of the business was done on credit. One of the reasons they were forced to leave that business was that some people just would not pay their bills, according to the majority leader.

I mentioned earlier Leahy Press in Montpelier. My parents did an awful lot of business on credit. I know they faced some of the same problems the majority leader's parents did. I have always remembered that. It is not easy for a small business owner to make an honest living, whether during our parents' time or today, and it is not fair now to allow large corporate giants to grab their share first in this bankruptcy bill ahead of hard-working small businesspeople.

Many of the most controversial proposals in this bankruptcy bill are to benefit the credit card industry and then to use taxpayer money to help them support their debt collection of billions of dollars, but they also want tax dollars to help them in the collection of their debts.

Business Week recently reported that Dean Witter estimated this bill would boost the earnings of credit card companies by 5 percent a year. In other words, we as taxpayers would increase the credit card companies' business by 5 percent. One credit card company alone, MBNA, will make a net profit of $75 million a year more if we, on behalf of the taxpayers in this country, pass this bill as it is written.

Across the industry, credit card company after credit card company will reap millions of dollars in profits because of the changes this bill makes to the bankruptcy code.

I understand credit card companies are worried about collecting debts because their credit extended is typically unsecured, especially when they send credit cards, in some instances, to somebody's dog—I know of that happening—or send a credit card to someone's 4-year-old child with an unsecured credit line.

If one were cynical, one might say that some of this problem is of their own doing, but we should understand most small businesses face this peril. It is not fair to carve out a special exemption for the multibillion-dollar credit card companies but leave the small businesses of Provo, UT, or Middlesex, VT, to fend for themselves. That is why I am offering this amendment to put small business owners at least on an equal footing with large credit card companies.

Mr. President, I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY] proposes an amendment numbered 13.

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

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

The amendment is as follows:

At the end of title IV, add the following:

SEC. 446. PRIORITY FOR SMALL BUSINESS CREDITORS.

(a) CHAPTER 7.—Section 726(b) of title II, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)'';

(2) by striking ''paragraph, except that in a'' and inserting the following: ''paragraph, except that—

''(A) in a''; and

(3) by striking the period at the end and inserting the following: ''; and

''(B) with respect to each such paragraph, a claim of a small business has priority over a claim of a creditor that is a for-profit business but is not a small business.

''(2) In this subsection—

''(A) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that—

''(i) has fewer than 25 full-time employees, as determined on the date on which the motion is filed; and

''(ii) is engaged in commercial or business activity; and

''(B) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

''(i) a parent corporation; and

''(ii) any other subsidiary corporation of the parent corporation.''.

(b) CHAPTER 12.—Section 1222 of title 11, United States Code, is amended—

(1) in subsection (a), as amended by section 213 of this Act, by adding at the end the following:

''(5) provide that no distribution shall be made on a nonpriority unsecured claim of a for-profit business that is not a small business until the claims of creditors that are small businesses have been paid in full.''; and

(2) by adding at the end the following:

''(e) For purposes of subsection (a)(5)—

''(1) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that—

''(A) has fewer than 25 full-time employees, as determined on the date on which the motion is filed; and

''(B) is engaged in commercial or business activity; and

''(2) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

''(A) a parent corporation; and

''(B) any other subsidiary corporation of the parent corporation.''.

(c) CHAPTER 13.—Section 1322(a) is amended—

(1) in subsection (a), as amended by section 213 of this Act, by adding at the end the following:

''(5) provide that no distribution shall be made on a nonpriority unsecured claim of a for-profit business that is not a small business until the claims of creditors that are small businesses have been paid in full.''; and

(2) by adding at the end the following:

''(f) For purposes of subsection (a)(5)—

''(1) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that—

''(A) has fewer than 25 full-time employees, as determined on the date on which the motion is filed; and

''(B) is engaged in commercial or business activity; and

''(2) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

''(A) a parent corporation; and

''(B) any other subsidiary corporation of the parent corporation.''.

On page 67, line 4, strike ''inserting ''; and'' '' and insert ''inserting a semicolon''.

On page 67, line 13, strike the period and insert ''; and''.

On page 69, line 13, strike ''inserting ''; and'' '' and insert ''inserting a semicolon''.

On page 69, line 22, strike the period and insert ''; and''.

Amend the table of contents accordingly.

Mr. LEAHY. Mr. President, we owe the millions of small business owners across America, who are the backbone of our economy, adequate protection from unforeseen bankruptcy losses. I urge my colleagues to support the Leahy small business amendment to provide small business creditors with a simple priority in bankruptcy proceedings. They deserve it.

Remember what this does: It gives small business creditors priority over larger for-profit business creditors in the order of distribution under chapters 11, 12, and 13 of the bankruptcy code. It defines small business as any business with 25 or fewer full-time employees. That same definition of small business is already used in the bill for small business creditors. It does not affect the bill's provisions giving top priority in bankruptcy distributions to child support and alimony payments.

Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. Mr. President, we have an amendment on which we are prepared to vote. I mention this only because I have heard constantly on the other side how anxious they are to move this bill forward. I brought this amendment up, proposed it, and am ready to go to vote all within 7 or 8 minutes. I don't want anyone to think we are trying to hold anything up. Frankly, I think this whole bill would have been finished this afternoon if we had not been interrupted for the ergonomics.

Mr. HATCH. Mr. President, we are looking at the amendment. It is the first time I have seen it. We will look at it and see if this is an amendment we can support. We would like to continue to call up amendments and stack them.

There is Habitat for Humanity and a funeral today, but we will stack the votes and this will be the first vote.

Mr. LEAHY. Mr. President, I was not aware of the funeral.

Perhaps this is a plea the Senator from Utah would join; that if other Senators from both sides have amendments that are available, we urge them to get down here. The Senator from Utah and I will work to the extent that people are here, probably go back and forth with amendments and start voting soon.

On our side of the aisle, I urge all Democrats who have amendments to get to the floor, show them to the Republican side and this side, and start moving on amendments.

Mr. HATCH. I agree with the Senator. We will stack the amendments until we can have a reasonable chance of getting Members here to vote. We would like to move ahead on amendments and vote on them later today.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURNS). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

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

Mr. REID. Mr. President, we now have an amendment that is pending on which the yeas and nays have been ordered. I know there is some urgency in moving this bill along. The Senator from Utah and the Senator from Vermont have worked on this bill for years.

I know there are a couple of Senators who have gone to a funeral; the Governor of their State died. I think we have to start moving legislation. If going to a funeral is not an excuse for missing a vote, there isn't much we can do to make an excuse for missing it. I don't think we have to have everybody here to have a vote. If we are going to move this legislation along, my experience dictates the way to get it moving is you have to have something voted on. It seems to stimulate interest in legislation.

I hope the leadership will allow us to move forward and vote on this amendment. We can place in the RECORD that the Senators are not here, that they are attending a funeral. If that were ever used against them in an adversarial way in a campaign, that it was wrong to miss votes to go to a funeral, I would be happy to say that was wrong—and it would not be done anyway.

I hope we can move this legislation along by voting on this amendment. We have Senators who, I understand, are coming over to offer other amendments, but I repeat, my experience indicates the way to move legislation is to start voting on amendments. Probably by the time this is over we will have 15 or 20 amendments offered and we will have to vote on them. The longer we wait, the more time we will take.

As I indicated when we opened business in the Senate this morning, we have a very important meeting where Senators and House Members are traveling together to Colombia where we appropriated lots of money. These are members of the Intelligence Committee. They have reasons for going that are within the confines of the Intelligence Committee—I don't know why they are going. But there are other things that will hold up this legislation.

I say to my friend from Utah, I hope we can get permission to go ahead and start voting on this legislation. The fact that there are two Senators who have a valid excuse—they are attending a funeral for one of their colleagues who died, the Governor of the State—this amendment, while an important piece of legislation, is not going to be determined by these two Senators who are not here today. I hope we do not have a requirement in the Senate that every Senator has to be here to be able to vote on amendments.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. If the Senator will yield, I do not disagree with my good friend and colleague from Nevada. I think we need to find out who is here. We know a lot of Senators are working in the Habitat for Humanity Senate home they are building, and I surely have to get some time for that. We also will try

to be fair to our colleagues who had to be necessarily absent to go to a funeral.

On the other hand, we do have one amendment up. We are prepared to vote on that. I think we probably will before the afternoon is up. We should stack the other amendments. I am requesting that those who have amendments get here and let's argue the amendments and then stack them and we will vote at the earliest convenience, and hopefully we will be able to move this bill forward.

Mr. President, let's get over here and offer our amendments, debate them, and do the orderly legislative process. Then we will vote at our earliest possible convenience. We are working on just when those votes will start because of the inconveniences to a wide variety of Senators right now. We will try to start those votes as soon as we can, but we can stack them and debate them right now and not waste this time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

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

Mr. HATCH. Mr. President, I do request Senators get over here. As far as I know, there may be one or two amendments on this side. Most of the amendments are on the Democrat side. We can move this quickly if they will get here and offer their amendments.

I am requesting Republicans, if there are any Republican amendments—I am only aware of one on the Republican side. I am aware of probably 27 on the Democratic side. So I am requesting Republicans and Democrats, if they have amendments, to get over here and let's get it done. But I only know of one on this side.

Mr. REID. Will the Senator yield?

Mr. HATCH. I am happy to yield.

Mr. REID. The Senator is right; there are a number of amendments to be offered on this side. Senator WELLSTONE has five amendments, maybe more. He is trying to get here. He is in an Education markup. He told us this last night.

Mr. HATCH. I understand he is at a markup—here he is.

Mr. REID. I say the same thing the Senator from Utah says. We need to move this along. I see my friend from Minnesota has arrived. I will suggest the absence of a quorum——

Mr. HATCH. If the Senator will withhold, I appreciate the Senator's comments. I note the presence of the distinguished Senator from Minnesota. As he prepares to offer his amendments, I suggest the absence of a quorum to give him a little bit of time to do so.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, I apologize to the chairman of the Judiciary Committee, my friend from Utah, Senator HATCH, for delaying my arrival. We have a markup in the Committee on Health, Education, Labor, and Pensions on the pension education bill. I have a number of amendments. That is the reason I did not come earlier. I am going to lay down an amendment in a moment.

Mr. HATCH. Mr. President, if the Senator will yield, we should lay the Leahy amendment aside so the Senator may call up his amendment.

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

Mr. WELLSTONE. Mr. President, I also know Senator DODD wants to speak on this amendment, and other colleagues may want to speak as well.

This amendment says if you file for bankruptcy because of medical bills, none of the provisions of this bill will affect you. This is a very simple and straightforward amendment.

AMENDMENT NO. 14

Mr. WELLSTONE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 14.

Mr. WELLSTONE. 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 (No. 14) is as follows:

(Purpose: To create an exemption for certain debtors)

On page 441, after line 2, add the following:

(c) EXEMPTIONS.—

(1) IN GENERAL.—This Act and the amendments made by this Act do not apply to any debtor that can demonstrate to the satisfaction of the court that the reason for the filing was a result of debts incurred through medical expenses, as defined in section 213(d) of the Internal Revenue Code of 1986, unless the debtor elects to make a provision of this Act or an amendment made by this Act applicable to that debtor.

(2) APPLICABILITY.—Title 11, United States Code, as in effect on the day before the effective date of this Act and the amendments made by this Act, shall apply to persons referred to in paragraph (1) on and after the date of enactment of this Act, unless the debtor elects otherwise in accordance with paragraph (1).

Mr. WELLSTONE. Mr. President, I have been working with my colleague, Senator DODD. I will not include him as an original cosponsor because I want to hear from him. But I believe he will be down here debating this amendment.

One of the reasons I started out with this amendment—I will need to give this amendment some context—is that the proponents of this bill made the argument that we need to have ''bankruptcy reform'' because you have all of these people gaming the system. I will cite a number of different independent studies, including the American Bankruptcy Institute, that say it is maybe 3 percent of the people.

This amendment says, wait a minute; we know that about 50 percent of the people who file for bankruptcy do so because of medical bills that put them under. They are not gaming the system, so some of the really onerous provisions of this legislation should not apply to these families.

It will take me some time to give this amendment some context. I think, if this amendment should pass, it would make this piece of legislation a much better piece of legislation and far less harsh and far less imbalanced.

Let my right away give this some context. I have, perhaps among Senators, been strong and vociferous in my opposition. I want to have an opportunity to lay out the reasons why. I will talk about this bill, and then we will go to the amendment.

First of all, I think this piece of legislation is—I know it sounds strong. I hate to say it because I like my colleague from Utah so much. It has nothing to do with a dislike or a like. It has to do with policy issue. I think it will have a very harsh effect on a whole lot of people and a whole lot of families who are not able to file chapter 7, for whom the bankruptcy law has been a major safety net—not just low-income families but middle-income families as well.

I find it bitterly ironic that this legislation is coming on the heels of the vote for a resolution that overturned 10 years of work for an ergonomics rule to provide protection for working men and women, mainly women in the workplace, for what has become the most widespread disabling injury—repetitive stress injury.

Yesterday we did that. The Senate did it with no amendment, with limited debate; it overturned that rule.

Today we say if you are working—believe me, trust me. I will say it on the floor of the Senate, and if my colleagues prove me wrong I will be delighted to be proven wrong—there will not be a substantial rule or any substantial piece of legislation providing people with protection at the workplace for repetitive stress injury for a long time.

Basically what we are doing is saying OK, there won't be the protection. Now you are injured. Now you are disabled. Now you are not able to work. Now you have earned little income. Now you come to file chapter 7 because you find yourself in very difficult circumstances, and you are not going to be able to do so.

But your home could be foreclosed. Your car could be repossessed. And a lot of people are going to get ground into pieces, in my opinion.

It says a lot about the priorities of the majority party—that the first

major piece of legislation we bring to the floor is an unjust, imbalanced bankruptcy bill which is great for the big banks and it is great for the credit card companies. I am sure Senator FEINGOLD will have more to say about this.

There was a piece in Business Week, which is not exactly a bastion of liberalism about, I guess, one of the largest credit card issuers, MBNA Corporation. By the way, I cannot make the assumption that because Senator HATCH or anyone else disagrees with me they are doing it because of campaign contributions. I refuse to make the one-to-one correlation. You can't do it. But you can say at the institutional level some people have certainly a lot more clout than other people, and it just so happens that the people who find themselves in terrible economic circumstances through no fault of their own—major medical bills, they have lost their jobs, or there has been a divorce—it is my view as a former political scientist and now a Senator for the State of Minnesota that those people do not have the same kind of clout that MBNA Corporation has, which, by the way, contributed $237,000 to President Bush, according to the Center for Responsible Politics; and on the soft money side, MBNA chipped in nearly $600,000, about two-thirds going to the GOP, and the other part going to the Democratic Party. There are a whole lot of heavy hitters and well-connected folks who are for this.

We have an unjust and imbalanced bankruptcy bill that is great for big banks, and great for credit card companies, with hardly a word about any accountability calling for these companies to stop their predatory lending practices.

I am going to have an amendment on payday loans. I hope we can adopt it. There is not a word about the ways in which they pump the credit on our kids in such an irresponsible way, but it is very harsh. When it comes to many working families—low- and moderate-income families—it says a lot about our priorities. It says that a special interest boondoggle, a bailout for big banks and credit card companies, is ahead of education, is ahead of raising the minimum wage, is ahead of providing affordable drug coverage, prescription drug coverage for seniors, and is ahead of expanding health care coverage for people.

Remember, 50 percent of the people who file for bankruptcy do it because of major medical bills. But this bankruptcy bill —perfect for big banks and credit card companies—comes ahead of all those priorities.

I believe what the majority party is trying to do is to sort of say: Look, here are the differences between President Clinton, who vetoed this bill, and President Bush, who said he will sign it.

I hope the bill does not get to President Bush's desk in its present form. I think the odds of my succeeding with some of my amendments, and other Democrats and other Republicans perhaps succeeding with their amendments, are not good. But we will try.

I say to my colleagues I welcome the contrast. I say what a difference an election makes. The civil rights community, the labor community, children, women, consumers, all have said this bill is too harsh and this bill is too one-sided. President Clinton stood up for them. He stood up for ordinary people. I give him all the credit in the world, as a Senator who has not always agreed with former President Clinton. Indeed, the differences do make a difference.

I have no doubt that President Bush will sign this bill. In many ways, the financial services industry, the credit card companies, are part of his constituency.

My question is, What about unemployed taconite workers in northeast Minnesota? My question is, What about struggling family farmers in greater Minnesota? My question is, What about a lot of low- and moderate- and middle-income people in Minnesota who, through no fault of their own—especially as the economy begins to take a turn downward—may find themselves in these difficult circumstances?

I am interested in representing them. That is why I am out here today. That is why I am fighting this legislation. That is why I have been fighting this legislation for 2½ years or more.

Let me talk a little bit about the history of this legislation. First of all, this bill was negotiated by only a small group of Members, out of the public eye. Second of all, up until this year, it had never been here in an amendable fashion. Third of all, until a hearing was held by the Judiciary Committee on February 8, there had been no hearings on this legislation. In fact, the Senate had not conducted its own hearing on bankruptcy since 1998. Finally, we had a hearing.

So I see a compelling reason for some lengthy and important statements and debate on this bill. The bill deserves scrutiny. It should be held up to the light of day so that citizens can see what an ill-made, misshapen attempt at reform this legislation is.

Colleagues in this body need to understand what bad legislation really is, how terrible an impact a piece of legislation such as this can have on America's most powerless families, and what a complete giveaway this piece of legislation is to banks, to credit card companies, and to other lenders.

Bankruptcy ''reform'' is not being taken up out of any kind of urgency. Indeed, while the supporters of this bill have cited the high number of bankruptcy filings in recent years as a reason to move forward with this so-called reform, there has been a dramatic drop in the last 2 years in the number of bankruptcies. Over the past 2 years, any pretense that this legislation is urgently needed has evaporated. The number of bankruptcies has fallen steadily over the past year. Charge-offs on credit card debt are significantly down, and delinquencies have fallen to the lowest level since 1995.

Proponents and opponents agree that nearly all debtors resort to bankruptcy not to game the system but, rather, as a desperate measure of economic survival, and that only a tiny minority of chapter 7 filers—as few as 3 percent—could afford any debt repayment. But through this legislation, we are going to make it well nigh impossible for families in our country to rebuild their economic lives.

But the true outrage is that now the bankruptcies are projected to increase because of a slowing economy and high consumer debts that are overwhelming families. Proponents of this bill are using this as an excuse to curb access to bankruptcy relief. Because there will be more economic misery, because there will be more financial stress, because more American families will succumb to their debts, the proponents of this measure argue we should make it harder for them to get a fresh start. Let me make that clear. That is what this is about.

Now the economy is going to turn down. We know there is high consumer debt. We know there is going to be more people struggling. We know there is going to be more financial distress. We know there is going to be more economic misery. And the proponents of this bill are now arguing that we need this measure to make it harder for these families in Minnesota and this country to get a fresh start. I reject that proposition. We are trying to address yesterday's headlines.

But I have already stated that this really shouldn't be any wonder. The credit card industry wants this bill. They want to be able to protect the risky investments they have made, and so the Senate does their bidding. They want to be able to pump credit out there. They want to be able to engage in irresponsible lending practices. They are not held accountable at all. They want to make sure that people, in one way or another, are squeezed and squeezed and squeezed, so they can get as much money back as possible. This is a carte blanche blank check for the credit card industry.

I have been proud to fight this bill. I am proud of the fact that it has taken many years for this bill to get through, and still it is not through yet. I hope we will be able to stop it or make it significantly better.

Let me outline some of my reasons for opposing this bill, and then I will move to our first amendment.

First of all, this legislation rests on faulty premises. The bill addresses a crisis that does not exist. Increased filings are being used as an excuse to harshly restrict bankruptcy protection, but filings have actually fallen in the last 2 years.

In addition, the bill is based upon the myth that people feel no stigma; that they find it easy to declare bankruptcy, and there is widespread fraud

and abuse. By the way, if you think there is widespread abuse, then you should be all for the amendment I am going to offer which says when people are going under because of medical bills, they should be exempt from the provisions of this legislation.

Two, abusive filers are a tiny minority. Bill proponents cite the need to curb ''abusive filings'' as a reason to harshly restrict bankruptcy protection. But the American Bankruptcy Institute found that only 3 percent—if my colleagues have other data, they can present it—only 3 percent of chapter 7 filers could have paid back more of their debts. Even bill supporters acknowledge that, at most, 10 to 13 percent of filers are abusive. Surely you would want to support this amendment that says when people have to declare bankruptcy because of major medical bills, they should be exempt because they could not be in any Senator's category of people who have been dishonest or have abused the system.

Three, the legislation falls heaviest on the most vulnerable. This troubles me. The harsh restrictions in this bill will make bankruptcy less protective, more complicated and expensive to file. This will make it much more difficult for low- and moderate-income people to be able to effectively file. Unfortunately, the means test and safe harbor will not be a shield from a majority of those provisions that have been written in such a way that they will capture many debtors who truly have no ability to pay off any significant debt. As a result of this legislation, they are going to be put under.

Four, the bankruptcy code is a critical safety net for America's middle class. Low- and moderate-income families, especially single parent families, are those who most need the fresh start that is provided by bankruptcy protection. This bill will make it much more difficult for people to get out from under the burden of crushing debt. That should matter to us. I know these folks don't have a lot of clout. I know they don't lobby every day. I know they are among the most vulnerable citizens. I know they don't have a lot of income, but they should matter.

Five—and this should bother all of my colleagues—the banking and credit card industry gets a free ride. Why is there not more balance in this bill? The bill, as drafted, gives a free ride to banks and credit card companies that deserve much of the blame for the high number of bankruptcy filings because of their loose credit card standards.

Any of us who have children know the kind of stuff that gets sent to them in the mail. Lenders should not be rewarded for reckless lending. That is what we are doing in this bill. We are just giving them a blank check.

Six, this legislation may cause increased bankruptcies and defaults. Several economists have suggested that restricting access to bankruptcy protection will actually increase the number of filings and defaults because banks will be more willing to lend money to marginal candidates. Indeed, it is no coincidence that the recent surge of bankruptcy filings began immediately after the last major ''procreditor reforms'' were passed by Congress in 1984.

I say to the Senator from California: I have sent an amendment to the desk which says we ought to go after people who are gaming the system, but if a family is filing for bankruptcy, chapter 7, because of a major medical bill, they should be exempt from the provisions of this legislation. I am now putting this in a broader context.

I welcome discussion by any other Senators on the floor, and I do not intend to monopolize. It will take me some time to go through the amendment.

Mrs. BOXER. Mr. President, will my friend yield?

Mr. WELLSTONE. I am pleased to yield.

Mrs. BOXER. Let me first assure my friend that I was not intending to take any time. I want to thank him for his work on this issue. We know in this country one of our biggest problems is lack of health care and the fact that the burden of disease sometimes falls on the family to an amazing extent. If they are hit by hard times, it could well be because of these medical bills. People are driven into bankruptcy because of that. Then to have the double horror of having that not be exempted from the eventual resolution would be a real disaster for people.

I thank the Senator not only for this amendment but for the many amendments that I will be supporting that he will be introducing to make this a bill that has at least a semblance of fairness.

Right now, it hurts people. I am really waiting with anticipation for a moment when we do something that helps people. So far I haven't seen one thing we have done to help people.

Yesterday, we repealed a measure that would have protected people in the workplace from repetitive motion illness.

Does the Senator know when we are finally going to get something done, such as an education bill, that helps people? I haven't seen anything to date that actually does.

Mr. WELLSTONE. Mr. President, I had said earlier that I find it bitterly ironic that on the heels of yesterday's action by the Senate, where in 10 hours we overturned 10 years of work to provide some protection to the workforce—men and women, mainly women—for the most serious disabling injury right now, repetitive stress injury, we now turn to the first major piece of legislation in this 107th Congress, a bankruptcy bill which is so imbalanced and so harsh in its effect, especially on middle income, low- and moderate-income people, many of whom, again, are women and children. It speaks volumes about our disordered priorities, which we will speak to.

I ask unanimous consent to go into a quorum call for 30 seconds, and then I will regain the floor and go forward with the amendment.

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

The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. WELLSTONE. 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. WELLSTONE. Mr. President, I have much more to say about the bill, but I will get to the first amendment I want to introduce today, which I think goes to the heart of what is a fundamental problem with this legislation. This legislation purports to go after abuse in the bankruptcy system, but it casts a wide net that captures all debtors who file for bankruptcy, regardless of their circumstances. This is a simple amendment. This is what it says. If you file for bankruptcy because of medical bills, none of the provisions of this bill will affect you.

I know Senator DODD has been working on a very similar amendment, and he and Senator CHAFEE have been working on an amendment. I think as the debate goes forward, we will probably join forces.

The reason I introduce this amendment—and other Senators also are interested in the same kind of amendment—is, in the vast majority of cases, the people who file for bankruptcy do it because of desperate financial circumstances and do it because they are overburdened by debt. Specifically, we know that nearly half of all debtors report that high medical costs force them into bankruptcy. This is an especially serious problem for the elderly. Just think about prescription drug costs and the increased medical bills one has as they become older.

A medical crisis is a double whammy for a family. First, there are the high costs associated with the treatment of a serious health problem, costs that may not be covered by insurance. Certainly, for some 40 million people in the country who have no health insurance whatsoever, it can put them under. And please remember, anyone who has spent one second in any coffee shop back in their States knows that the health care crisis is not just people with no health insurance at all. It is also people who are underinsured. They have some coverage, but it is by no means comprehensive.

The other thing that happens is, if it is a serious accident or illness, then for a time, if you are the primary earner in the household, the income is not coming in. And even if it isn't the person who draws the income, a parent, if I am working and my child is very ill, you know what—many of us know this now—or if your parent is very ill, then you may need to be caring for that elderly parent. This means a loss of income. It means more debt and more of an inability to pay back the debt.

I am kind of surprised, frankly, that the proponents of this legislation did

not at least have some sort of clear exemption and, if you will, some compassion for people who end up filing for bankruptcy because of a major medical illness that has put them under.

Are the people in our country—the families in Minnesota —who were overwhelmed with medical debt or sidelined with an illness and therefore they can't work, are they deadbeats? This bill assumes they are. For example, it would force them into credit counseling before they could file for bankruptcy, as if a serious illness or disability is something that can be counseled away. Colleagues, that is not what it is about.

Both of my parents had Parkinson's disease. My father had severe Parkinson's disease. I believe, ultimately, it is the reason my dad passed away. We helped take care of him, and I saw him struggle. I can assure you that the cost of the drugs to treat those diseases is not something that can be counseled away. It has nothing to do with these citizens and these families being bad managers of their budget. It is, ''There but for the grace of God go I.'' People, through no fault of their own, are stricken with illnesses and disabling injuries and, therefore, major medical bills can put them under. When these families need to file for bankruptcy, they should be exempt from the harsh and restrictive provisions of this bill.

A study published in May of 2000 by professors Melissa Jacoby, Teresa Sullivan, and Elizabeth Warren determined that:

> Hundreds of thousands of middle class families declare bankruptcy each year in the financial aftermath of an encounter with the American health care system.

The study goes on to note:

> The data reported here serve as a reminder that self-funding medical treatment and loss of income during a bout of illness or recovery from an accident make a substantial number of middle class families vulnerable to financial collapse. They also demonstrate that the American social safety net is composed of interwoven pieces, including government subsidies for medical care, private insurance and personal bankruptcy. For middle class people, there is little government help, so that when private insurance is inadequate, bankruptcy serves by default as a means for dealing with the financial consequences of a serious medical problem.

Let me translate that into ordinary language. There are many people in our country, families in our States, who are either not old enough for Medicare—and even if they are, it doesn't cover prescription drug costs, catastrophic expenses—or they are not poor enough for Medicaid and they are not fortunate enough to be working for an employer where they have any coverage, or for an employer that gives them comprehensive coverage that is affordable. Therefore, when the private insurance is inadequate and people are faced with a major medical catastrophe, bankruptcy serves by default as a safety net, a way in which these families can deal with these medical consequences. This piece of legislation takes that support away.

Again, this is the point I have been trying to make over and over again in this debate: Bankruptcy is a critical safety net for middle-class Americans. Yet we have a bill which rolls the safety net back.

A study conducted by Ian Domowitz and Robert Sartain found that the presence of medical debt had ''the greatest single impact of any household condition in raising the conditional probability of bankruptcy . . . households with high medical debt exhibit a filing probability greater than 28 times that of the baseline.''

Come on. A lot of people who file for chapter 7 bankruptcy do it because of major medical bills. This amendment says exempt them.

The figures I have cited so far speak to all bankruptcies. But the statistics become even more troubling if you look specifically at seniors or single women with children who file for bankruptcy. Single women with children are 50 percent more likely to file because of medical bills than single men. You know what. There is a reason for that. Unfortunately, in many families—maybe 50 percent now—there is a divorce, and quite often in the large percentage of the cases the single parent who has the most responsibility for taking care of the children is the woman. That is one of the reasons why so many of the women's organizations and children's organizations are adamantly opposed to this legislation.

There was another way we could have gone after this problem because for these folks the problem isn't the bankruptcy system; it is the health care system. I will concede that to my good friend from Alabama. It is a shame that this has to be the way in which people can get some support for major medical bills.

The United States of America is the only advanced economy in the world that does not have some form of universal health care coverage.

The United States paid a third more per capita for health care than any other nation, and we spend a greater percentage of our gross domestic product—14 percent—and we get far less for our money, according to the World Health Organization report.

There are about 44 million people in our country who have no health insurance whatsoever, and there are about the same number of people who are underinsured.

We could have gone after this problem in another way. I could be on the floor right now—I would love it—advocating for senior citizens and, for that matter, other working families, saying we ought to have affordable prescription drug coverage. But that is not our priority. We have to consider this bankruptcy bill. I could be out on the floor arguing for health security for all citizens, that we could, as a national community—in fact, maybe this will be one of the amendments. Maybe I can have a vote on the following amendment, a sense of the Senate that the people we represent should have as good a health care coverage as we have. We could be out here talking about health security for every citizen. We could be talking about the ways in which we can agree nationally on a package of benefits as good as what we have and that there should be patient protection.

The Presiding Officer was one of the first people in the Senate to talk about patient protection. We could be talking about how we can make it affordable for families. We could be talking about how to get to universal coverage. We could talk about how we could decentralize health care so the different States can make a lot of decisions about cost containment and delivery of care. That would be a way of dealing with this problem. We could be talking about expanding the children's health care plan to include their parents. We could be talking about more support for community health care clinics.

But that is not what we are doing. You might ask, PAUL, why is this amendment even necessary given what the author of the bill, my friend, Senator GRASSLEY from Iowa, said just recently:

> So that I am crystal clear, people who do not have the ability to repay their debt can still use the bankruptcy system as they would have before.

On the one hand, PAUL, if you are telling me this bill is incredibly harsh and will punish working families who need a fresh start, but the proponents of the bill say this bill will not affect people who are gaming the system, how do you explain that?

If you listen carefully to their statements, you will hear that they only claim such debtors will not be affected by the bill's means test. Not only is that claim, I think, subject to much debate—the means test and the safe harbor have been written in a way that will capture working families who are filing for chapter 7 relief in good faith—but it ignores the vast majority of this legislation which will impose needless hurdles and punitive costs on all families who file for bankruptcy, regardless of their income. Nor does the safe harbor apply to any of these provisions.

Do not take my word for it. Here is how an article in the conservative Wall Street Journal on February 22 characterized this bill:

> In most cases, the bill, which is almost identical to the one that President Clinton vetoed, will make filing for bankruptcy more costly and more of a hassle. That's the point: It will increase lenders leverage to pressure consumers to pay bills instead of going to court to void them.

That is exactly right. The article concludes on this point:

> The bill is so full of hassle-creating provisions, some reasonable, some prone to abuse by aggressive creditors trying to get paid at the expense of others. In a thicket of compromises, Congress risks losing sight of the goal: making sure that most debtors pay their bills while offering a fresh start to those who honestly can't.

That is what this amendment does: to make sure we offer a fresh start for those people put under by medical bills who honestly cannot pay back.

Again, this is the Wall Street Journal, hardly a bastion of populist sentiment, but that is the net effect of the bill: to make it harder for families who have hit financial ruin, who have hit financial bottom to get a fresh start. That is what is wrong with this legislation.

The proponents of this bill have said that all these provisions are necessary to curb abuse. OK, let's take them at their word. If that is true, then I assume the proponents of this bill will support this amendment.

If the proponents mean what they say, that the whole point of this legislation is to curb abuse, then my colleagues will want to support this amendment because this amendment just exempts those families who are filing for bankruptcy because of major medical bills. They are not slackers. They are not cheaters. They have not gamed the system.

If the sponsors are serious about just taking on deadbeats, not ordinary Americans who file bankruptcy because they simply have no other choice to rebuild their lives, then they should be rushing to the floor to cosponsor this amendment.

I repeat that. If the sponsors are serious about going after the deadbeats but making sure ordinary people, hardworking people who file bankruptcy because they have no other choice, are going to be able to rebuild their lives, then they should be rushing to the floor to cosponsor this amendment.

I hope I will get support from my colleague from Utah. Surely no one will argue that families that are drowning in debt as a result of medical bills are gaming the system. These are the people who need the safety net the most. These are the people who need to make a fresh start.

Here are a number of examples of what I am talking about:

The prebankruptcy credit counseling requirements at the debtor's expense is a requirement that people have to go to prebankruptcy counseling. The debtor pays for it, as if, again, people who have been put under because of cancer, diabetes, or some kind of horrible injury, can counsel away these conditions. They are not in financial difficulty because they need credit counseling.

New limits on repeat filings, again, regardless of personal circumstances; revocation of automatic stay relief for failure to surrender collateral; changes to existing cram-down provisions in chapter 13, making it more difficult for debtors to keep their car; the new presumption of abuse of credit card if the debt is incurred within 3 months of the bankruptcy.

We have all of these new burdens, all of these hurdles. Why do we want to make it so horrible difficult for people who find themselves in horrible financial circumstances because of a major medical illness, a major medical bill, to file chapter 7 and rebuild their lives? They are not slackers. They are not gaming the system.

This amendment says let us have a good bill, and one of the ways to do it is to at least have an exemption for these families.

Again, some of these onerous hurdles, requirements, that I mentioned might be useful to get the deadbeats or go after the irresponsible people—I am all for that. The problem is that all of these changes also affect working families who file for bankruptcy through no fault of their own. Should a person who files because of medical bills be treated with the same presumption of abuse as wealthy slackers? That is what this bill does.

I repeat that. Should a person who files because of major medical bills be treated with the same presumption of abuse as wealthy slackers who are gaming the system? That is what this bill does.

I cite two specific examples of how this bill will hurt debtors who file for medical reasons, and I hope my colleagues on the other side of the issue will come to the floor—I know the distinguished Senator from Utah is here—to refute this, if they can. Both of these families were talked about in an excellent Time magazine story last year which was called ''Soaked by Congress.'' My colleagues may remember this.

Allen Smith is a resident of Delaware, which has no homestead exemption. In other words, he cannot shield his home from his creditors. Ironically, under this bill, wealthy scofflaws can shield multimillion-dollar mansions from their creditors with little planning, but not Mr. Smith. It is 2 years in advance. If you know you are facing trouble and you are a multimillionaire, you can hire your lawyers and then buy your real estate in Florida or wherever.

There is no such break for Mr. Smith. As a result, when the tragic medical problems described in the Time article befell his family, he could not file a chapter 7 case without losing his home. There was no homestead exemption. Instead, he filed a chapter 13 case which requires substantial payments in addition to his regular mortgage payments for him to save his home. Ultimately, after his wife passed away and he himself was hospitalized, he was unable to make all these payments and his chapter 13 plan failed.

Had Delaware had a reasonable homestead exemption and had Mr. Smith been able to simply file a chapter 7 case to eliminate his other debts, he might have been able to save his home. He lost his home.

Mr. Smith's financial deterioration was caused by unavoidable medical problems. Before he thought about bankruptcy, he went to consumer credit counseling to try to deal with his debts. However, it appears he went to consumer credit counseling just over 180 days before the case was filed, and he did not receive a ''briefing.'' The new bill would have required him to go again. This would have been very difficult considering his medical problems. In fact, his attorney demonstrated a dedication to his client that sharply contrasts with the creditor propaganda picture of bankruptcy lawyers just out to make a buck. He made several home visits to Mr. Smith and his wife, who was a double amputee. The new bill would also have required a great deal of additional time and expense for Mr. Smith and his attorney, through new paperwork requirements and a requirement that he attend a credit education course. Such a course would have done nothing to prevent the enormous medical problems suffered by Mr. Smith and his wife.

He did not get into financial trouble through failure to manage his money. He is 73 years old and had never before had any debt problems. The bill makes no exceptions for people who cannot attend the course due to exigent circumstances. Mr. Smith might never have been able to get any relief in bankruptcy under the new bill.

Under the new bill, this bill, Mr. Smith would also have had to give up his television and VCR to Sears which claimed a security interest in the items. Under the bill, he would not be permitted to retain possession of these items in chapter 7 unless he reaffirms the debt or redeemed the items. Sears may demand reaffirmation of his entire $3,000 debt under the bill, and to redeem, Mr. Smith would have to pay the retail value. After his wife died and her income was gone, Mr. Smith did not have the money to pay the amounts to Sears. Since he is largely home bound, loss of these items would have been devastating.

Sadly, this is a real person, about real people. Mr. Smith's medical problems continue. Under current law, if he again amasses medical and other debts he cannot pay, he could seek refuge in chapter 13 where he would be required to pay all he could afford. Under the new bill, Mr. Smith cannot file a chapter 13 case for 5 years, when he is 78 years old.

The time for filing a new chapter 7 has also been increased from 6 to 8 years. What will happen to people such as him?

Charles and Linda Trapp were forced into bankruptcy by medical problems. Their daughter's medical treatment left them with medical debts well over $100,000, as well as a number of credit card debts. Because of her daughter's degenerative condition, Linda Trapp had to leave her job as a mail carrier about 2 months before the bankruptcy case was filed to manage her care. Before she left her job, the family's annual income was about $83,000 a year or $6,900 per month.

Under the bill, close to that amount, $6,200, the average monthly income from the previous 6 months is deemed

their current monthly income, even though their gross monthly income at the time of filing was only $4,800. Based on the fictitious deemed income, the Trapps would have been presumed to be abusing the bankruptcy code since allowed expenses under the IRS guidelines amounted to $5,339. The difference of $850 per month would have been deemed available to pay unsecured debts and was over the $6,200 a month, triggering a presumption of abuse. The Trapps would have had to submit the detailed documentation to rebut this presumption, trying to show their income should be adjusted downward because of special circumstances and that there was no reasonable alternative to Linda Trapp leaving her job.

Because their current monthly income, although fictitious, was over the median income, the family would have been subject to motions for abuse, filed by creditors who might argue Linda Trapp should not have left her job and that the Trapps should have tried to pay debts in chapter 13. That is the same problem for taconite workers.

I will be proposing an amendment I hope will get 100 votes that will say LTV, the large company that laid off 1,400 workers, if they file for bankruptcy, chapter 7, should not be able to walk away from their health care obligation to retirees. The working men and women are out of work. You will do their average income over a 6-month period and then determine whether or not they are eligible for chapter 7. How are they able to rebuild their lives? They will not be able to do it. Their average income over the last 6 months might look pretty good. That doesn't do you much good if you were laid off 2 months ago. Where in the world does this test come from?

The Trapps wouldn't have been protected by a safe harbor. The Trapps would have paid their attorney to defend the motion, and if they could not have afforded the $1,000 or more it would have cost, the case would have been dismissed and they would not have received relief. If they prevailed, it is unlikely they would recover attorney fees from a creditor who brought the motion, since recovery of fees is permitted only if the creditor's motion was frivolous and could not arguably be supported by any reasonable interpretation of law.

That is a much weaker standard than the original Senate bill. In fact, we have had better bills. This bill has gotten worse and worse. We once had a bill that passed 99–1. I was the only Senator opposing it.

Because the means test is so vague and ambiguous, any creditor could argue it would simply make a good faith attempt to apply the means test which created a presumption of abuse.

Mrs. Trapp's medical problems continue and are only getting worse. Under current law, if the Trapps amass medical and other debts, they could seek refuge in chapter 13 where they would be required to pay all they could afford. Under the new bill, the Trapps could not file a chapter 13 case for 5 years. Even then the payments would be determined by the IRS expense account and they would have to stay in the plan for 5 years rather than 3 years required under current law. The timing for filing chapter 7 would be increased by the bill from 6 to 8 years.

What does this bill do to keep people who undergo these wrenching experiences out of bankruptcy? Nothing. Zero. Tough luck. Instead, this legislation just makes the fresh start of the bankruptcy harder to achieve. This doesn't change anyone's circumstances. This doesn't change the fact that these folks don't earn enough any longer to sustain their debt. There is not one thing in this bankruptcy ''reform'' bill that would promote health security in working families.

I conclude this way: I came to this issue almost by accident. I am not on the Judiciary Committee. I am not a lawyer. My colleague from Utah, Senator HATCH, is a very able lawyer. It is complicated. With all of the fine print and all of the detail, the more you go through it, the more you are able to realize this piece of legislation lacks some balance. This amendment gives this legislation badly needed balance. What this amendment says is, go ahead, let's not let anyone game the system. Whether it is the 3 percent the American Bankruptcy Institute or the 10 to 13 percent that others talk about, don't let people game it. Don't let people be slackers. Don't let people get away with murder. When people go under—50 percent of the bankruptcy cases are because of a major medical illness—give them an exemption from the onerous requirements, give them the opportunity to rebuild their lives. They didn't ask for the illness. They didn't ask for the major medical bill. They didn't ask for the disabling injury. They didn't ask to be put under.

The bitter irony is that just yesterday we passed a motion that emasculated 10 years of work to get a rule to provide protection for people, many of them women, against repetitive stress injury, disabling injuries, in the workplace.

Now we turn around today and say, and you know what, not only don't you have the protection—and I said earlier, I made the prediction we will not see an ergonomics standard passed by this Congress for years now. If I am wrong, I will be pleased to be wrong. Now what we say is there is not the protection and now, if you have a disabling injury and now you do not have the income coming in and now you are in a desperate financial situation, we are going to make it impossible for you to file chapter 7 and rebuild your life.

It is not a good week for working people, not a good week for ordinary citizens. What we could have done—and I conceded this point earlier in the debate. I really apologize that chapter 7 in bankruptcy is one of the ways people can deal with major medical bills because, frankly, it is a pretty poor excuse for what we should be doing. We should not have 44 million people without any coverage. We should not have at least that number of people who are underinsured. We should be able to have comprehensive health care reform.

I think one of the amendments I should offer is to make sure all the people we represent have as good health coverage as we have. We should be doing that, but we are not. Instead, we are going to make it impossible for some good, honest people to rebuild their lives when they find themselves in desperate financial circumstances through no fault of their own.

I hope there will be support for this amendment that just says if you file for bankruptcy because of major medical bills, none of the provisions in this bill will affect you.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, listening to my colleague, I wonder if he has read this bill because most of what he said is untrue. I have respect for him as a former professor of political science, but on the other hand, this bill has been around for a long time; we have worked on it with virtually everybody in the Congress, everybody in the Senate.

We provide for people right and left and provide the means of taking care of women and children. We have made it so that people who owe their debts and who can pay really ought to; the game is over.

Sometimes I get the impression some of our colleagues on the other side think the Federal Government is the last answer to everything and it is the only answer to everything. It is the last answer sometimes, but it is not the only answer. I have to tell you, this amendment of the distinguished Senator is unnecessary.

Let me just say one thing about ergonomics. I distinctly stayed away from the debate yesterday because we had plenty of good people on both sides arguing that debate. The distinguished Senator from Minnesota, his side lost. The reason they lost is that anybody who has any brains at all knows we do not need to create a Federal welfare system or Federal workers compensation system. Everybody who has any brains knows the minute you start doing that, there is going to be a plethora of people who will take advantage of it. It is just human nature.

We do need to come up with a really workable, nonbudget-busting, ergonomic-stress-related bill that I think will work. Certainly that regulation was way out of line and should not have been supported. I was amazed there were as many Democrats who supported it as did. It was a bipartisan rejection of those regulations.

If the Senate of the United States had any guts or any consideration for its own power at all, that is what had

to be done. We just can't let bureaucrats go do whatever they want to regardless of what the law says, and that is why we came up with that particular act, to provide a means whereby we can get rid of regulations such as that, that really are improperly written, way excessive in their tone and their delivery and in their practicality. It is, frankly, very detrimental to the country in the long run. They would cause a lot of difficulty.

The thing I can remember that best reminds me of that kind of legislation was the catastrophic bill a few years ago—just take care of everybody's catastrophic illness. It was wonderful to hear that and find out the Federal Government was going to take care of everybody, until the people found out they had to pay for it. Then they were jumping on top of Danny Rostenkowski's car, the chairman of the Ways and Means Committee, because they weren't about to pay the kind of rates that would have been required of them to have the kind of catastrophic coverage we Members of Congress were going to give them because we know it all.

Let me say, this amendment is unnecessary, the amendment of the distinguished Senator from Minnesota. There is a means test in S. 420 that takes care of it and already accounts for 100 percent of a person's medical expenses. Thus, if their medical expenses prevent them from being able to repay their debts, they don't have to under the means test. It takes care of the truly poor. We have taken great pains to take care of the truly poor.

But there are some people in our society who are using the bankruptcy rules, the bankruptcy laws, the current laws, to get around debts for which they are very capable of paying. Or they run up huge bills and then expect society to pay for them. It is costing the average family $550 a year because of the inadequacies of our current bankruptcy laws which this bill cures.

The means test takes care of the poor. But if the Senator gets his way and this amendment is agreed to, let me tell you who will benefit from it. Donald Trump is going to benefit from it. Bill Gates will benefit from it. Anybody who is wealthy who goes into bankruptcy and has medical bills, they are going to be able to avoid those; they will not have to pay them.

The way I read this, if a wealthy person files for bankruptcy and the reason they filed was to extinguish their debts from medical expenses, then the means test will not apply to them even if they are fully capable of paying their medical expenses, paying their debts. What this provision of the distinguished Senator from Minnesota does is it puts hospital creditors at the head of the line. That is not what we want to do.

The amendment says the entire act and amendments do not apply if you file for bankruptcy because of medical expenses. This means the new protections in the bill for women and children don't apply—or don't apply to them. Credit counseling provisions don't apply that we have put in here. Homestead provisions don't apply.

I know the distinguished Senator is trying to do right here, and I know he is well intentioned. I respect that. But we thought of these problems, and I think we have solved them, cured them in this bill. This bill does an awful lot to cure the problems of our country in bankruptcy. It does an awful lot to stop the fraud that is going on in bankruptcy. It does an awful lot to reduce the annual cost of every family in America—now estimated at $550 a year. It does a lot to alleviate those problems and reduce those costs of every American citizen. It does an awful lot to help people be more responsible for their debts. It sends a message to everybody that you must be responsible, even if you are having trouble paying your debts. We provide all kinds of mechanisms so that they can pay their debts—maybe not in full but at least can get discharged in bankruptcy after having made a good-faith effort to live up to the terms of the law we would pass.

I sometimes get the impression that our colleagues on the other side believe that Government is the last answer to everything. I know not all of them do, but it just seems as though more and more that seems to be the argument, that only the Government can take care of health care, only the Government can take care of savings and investment, only the Government can take care of education—only the Federal Government, that is. We all know the Federal Government's share is only about 6 percent or 7 percent of the total cost of education in this society. Yet they can come up with this idea that only the Federal Government has the last answers and can solve all these problems.

The Federal Government isn't any brighter than the State governments. I have to say the State and local governments are closer to the people and, as a general rule, do a better job than we do. But we can do a good job. This bill is a very good bill. Is it perfect? I have to say I have never—well, maybe not never but hardly ever—seen a bill around here that is perfect because we have to satisfy 535 people, and more; we have to satisfy the administration. We have to satisfy a lot of people out there. This bill takes care of a lot of problems in the current bankruptcy system that need taking care of. We can argue these matters until we are blue in the face, but it is time to vote on it.

Frankly, I respect anybody for their sincerely held opinions. I know the opinions of the distinguished Senator from Minnesota are sincerely held. He is a very bright man, and he raises some interesting issues from time to time. But on this one, he is just dead wrong.

Very frankly, the only people who are going to benefit from this amendment are the rich who can afford to pay for their medical expenses because we take care of those who are poor under the means test. This particular bill resolves that problem.

I wonder if we can go on to another amendment. I suggest we stack this amendment behind the Leahy amendment and go to the next amendment. I hope our colleagues are prepared.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I also want to explain to my colleague from Utah what I said earlier this morning is that we have a markup. My understanding from Senator LEAHY is that other Senators will come down with amendments. I have a markup also going on at the same time with amendments in committee. I will have to go back and forth.

First of all, when my colleague from Utah says there has been an adjustment in the means test for medical bills, I hope Senators' staffs will take a look. When my colleague says, Wait a minute, we have taken care of problems with major medical bills, we don't do an adjustment to the means test. This is the part of the bankruptcy bill that deals with that. Here is the whole bill.

There are lots of other very harsh provisions in this bill that go way beyond this. I am talking about the whole bill. There are prebankruptcy credit counseling requirements at the debtor's expense. Why in the world do you want people who have been put under because of a major medical bill to have to go to credit counseling? What kind of presumption do you make? Then they have to pay for their counseling. What is that doing in here? You think people can credit counsel their way out of having to deal with cancer and the bill they incur?

Again, my colleague from Utah talks about one little part of the bill.

The revocation of the automatic stay relief from failure to surrender collateral is another provision. Now at least when you file for bankruptcy, there is some time that goes by. This means that Sears can come and repossess. There is no time.

There are changes to existing cramdown provisions in chapter 13, making it more difficult for debtors. You end up paying for the full loan, not the value of the car.

How about this one? You can't file a new chapter 7 case for 8 years or a new chapter 13 case for 5 years—again, making it more difficult.

What happens if a family is put under with a major medical bill and then there is another illness? You say this period of time has to go by? You have to go 7 or 8 years from 6 years in chapter 7, and from 6 years under chapter 13 to 5 years. There is no limit under current law.

There are lots of provisions in this piece of legislation that are very harsh. I do not understand.

I think this is a very challenging vote for Senators. I say to the Senator

from Iowa and other Senators who are on the floor right now that this amendment concedes the point that we certainly ought to have some legislation that deals with people who game the system—again, I think it is about 3 percent—people who really game the system, people who really do not need to file chapter 7. But surely with this bill there are many harsh provisions, and we would want to at least have an exemption for people who go under because of major medical bills.

Let's just concede the point that people in Minnesota, Iowa, Nebraska, and around the country who are having to file for chapter 7 because of a major medical bill that put them under ought to be exempt from all of these loopholes.

Talk about bureaucracy, and ways of discouraging people from filing, and making it difficult for people to get relief. Why wouldn't you at least have an exemption?

I have opposed this bill with all my might for several years. I find it interesting that there are articles in Business Week and the Wall Street Journal. There was a piece last night on ABC News; Time magazine, a long piece—all of which say—I don't think this is necessarily the tradition of blaming liberal media—that this bill is imbalanced and it is a dream come true for the credit card industry and for the financial services industry. There is no question about it. But it is too harsh for many ordinary citizens in the country.

I say to my colleagues again: We represent people, too many of whom don't have anywhere near the health care coverage we have. We represent people who, through no fault of their own, wind up with a major illness or injury that puts them under financially.

Maybe I feel strongly about it. I think it took my mother and father, as I remember, 20 years to pay off a medical bill in our family. I think it took them 20 years, as I remember. That still remains one of the great fears and sources of insecurity of the people we represent—that there is going to be a major medical bill that puts them under.

We do not come out here on the floor of the Senate and make prescription drugs more affordable. We don't come out here on the floor of the Senate and introduce and debate legislation that would provide more health security for the people we represent and that would make health care coverage more comprehensive and more affordable. We don't come out here in the Senate and dedicate ourselves to the proposition that the people we should represent should have as good a coverage as we have.

I think that would be a good amendment to vote on, on this bill. Then we take what is a safety net, given the fact that we haven't done any of that in public policy and given the fact, therefore, that over 50 percent of the people who file for bankruptcy do it because of major medical bills, and we tear the safety net apart.

I will tell you, I have some good friends on the other side of the aisle on this issue. One of them is about to speak. I have said publicly that whatever the Senator from Iowa says and whatever he advocates is what he honestly believes. Political truth can be elusive. One person's solution can be another person's horror. People in good faith can disagree.

So what I am about to say now is not directed personally. But again I finish this way at least for the moment. I will tell you, I don't like the feel of this at all. I don't like the feel of this bill at all. I think when you look at the lobbying coalition and the campaign contribution, because there is not one Senator—I need to say some of us aren't good at this if we aren't careful. We can't make a one-to-one correlation because a Senator received one contribution. That is not fair to do. But what you can say is that the families I talked about, the unemployed Taconite workers on the Range—I say to the Presiding Officer, the Senator from Nebraska, that farmers who are facing the price crisis and barely hanging on—and a whole lot of middle-class families who were doing well, they were doing well. My folks were doing well. I do not know if they were middle class—what definition you would use; they did not have a lot of money—but they were doing fine. But then there was a major medical illness.

I am saying, you should exempt those families who file for bankruptcy from the provisions of this legislation. That way you get the cheaters and you get the slackers, but you do not make it impossible for a lot of people who are in a whole lot of physical pain and a whole lot of economic pain to rebuild their lives.

I cannot understand, for the life of me, why I am not getting colleagues on both sides of the aisle sponsoring this amendment.

I yield the floor.

I am sorry, I saw the Senator from Iowa. I thought he would want to speak.

Mr. GRASSLEY. Is the Senator from Minnesota done?

Mr. WELLSTONE. I am not finished with my final remarks on this amendment, but I always defer to the Senator from Iowa.

Mr. GRASSLEY. If the Senator yields the floor, then I will ask for the floor.

The PRESIDING OFFICER. Does the Senator yield to the Senator from Iowa?

Mr. GRASSLEY. First of all, I think the Senator from Minnesota thinks that he has not made any impact on this legislation over the last 4 years. This bill is a statement of considerable impact that the Senator from Minnesota has made on it because of his hard work. His work goes beyond just improving the bill. He obviously does not want the improved bill to pass.

But the Senator from Minnesota is a legislator. He obviously believes in the legislative process. He knows how to use the legislative process to accomplish good from his point of view. And we have a bill that has changed considerably since the recommendations in the Commission on Bankruptcy report.

Senator DURBIN and I introduced that bill two Congresses ago. It went through the process of subcommittee, full committee, to the floor of the Senate, through the House of Representatives, through conference, through the House a second time but not having enough time to get it through the floor of the Senate that second time to get it to the President.

Then, in the last Congress, it went through the same process: subcommittee, full committee, the floor of the Senate, the House of Representatives subcommittee, full committee, the floor of the House of Representatives, to conference and out of conference, passing the House of Representatives by a veto-proof margin, and through the Senate, passing the Senate by a veto-proof margin, and going to President Clinton for his signature.

Obviously, with veto-proof margins in both Houses, the President knew if he vetoed it, we would be able to override it. The President waited until we adjourned last December, and at that point did what, under the Constitution, is called a pocket veto. We obviously were not in session and did not have an opportunity to override.

But I said: The Senator from Minnesota has had an opportunity to make considerable changes in this legislation. Maybe I do not like all those changes, but I would have to look at this piece of legislation that has my name on it as the principal sponsor, with Senator TORRICELLI of New Jersey, and say this bill has improved a lot in ways that we probably should have recognized when it was first introduced.

But you reach a point, in any legislative process, where you eventually come to the conclusion that perfection in the way we do business in the Government is never a possibility. And you get the best possible vehicle you can to get the job done—the best possible job.

I think the Senator from Minnesota would like to have me yield. I will yield for the purpose of a question.

Mr. WELLSTONE. I just want to thank my colleague. Sometimes a distinguished Senator can go on and on and on, and it is not sincere. I thank the Senator from Iowa for his graciousness. I have never doubted his commitment to this legislation. I have never doubted his conviction on it. And I want to apologize. I have a markup on an education bill, so I am going to leave now. The amendment will be laid aside. I will be back in a while. I did not want to appear to be impolite. I just have to go to the markup.

Mr. GRASSLEY. The Senator from Minnesota does not have to apologize.

There are always demands upon our time. There are four or five places we could be at one time. I did not get a chance to hear all of the Senator's speech because I was chairing the Senate Finance Committee on the issue of giving tax relief to working American men and women, a bill that will probably pass here in the month of May.

Anyway, I plead with the Senator from Minnesota that he has had a tremendous impact upon this legislation, and it is a better bill in the sense that a lot of things that were brought to our attention are now changes in this bill. But you cannot have perfection.

I think the Senator from Minnesota would say he really does not want this bill to pass. So I think it is fair to say he, and other Members who do not want it to pass, will be offering amendments, maybe because they believe in them, but partly it is a process of slowing the legislation down so, again, it may never pass.

But I think, unlike 4 and 2 years ago—or maybe more accurately, 3 and 1 year ago—we are starting out with this bill on the floor of the Senate in the first year of a 2-year Congress, where one or two Members of this body are not going to frustrate the will of almost all 535 Members of Congress. And they do not have a President now that is going to veto the bill. So this legislation is going to become law. President Bush will sign this legislation.

So now, if I could—we do have an amendment before us from the Senator from Minnesota—I want to address that amendment very directly. It brings me to the means test.

By the way, I have a chart here speaking about how flexible this means test is, what it takes into consideration, so that it is not just a quantifiable formula with no humanity to it. There is plenty of humanity involved in this means test, whereby the means test determines whether somebody has the ability to repay some of their debt. And if they do, they then go into chapter 13, and they never get off scot-free.

So I see the amendment from the Senator from Minnesota as gutting the means test, ignoring the means test. That would be very bad. And we have had 70 Senators vote for this bill. By the way, 70 Senators represents a bipartisan vote.

If you believe this bill should be passed, and we should have strong improvements in bankruptcy law, then you will want to keep the means test; you will not want to gut the means test, as Senator WELLSTONE's amendment does.

It sounds very humanitarian to talk about taking medical expenses into consideration as to whether or not you ought to be granted access to having your debts discharged. I have stated before on this floor, that in calculating a debtor's income, under this means test, 100 percent of medical expenses are deducted.

I have also said to my colleagues, including the Senator from Minnesota, that if we offer you a bill where, in determining whether or not you should be in bankruptcy court—and 100 percent of your medical expenses can be taken into consideration in that determination—how much better than 100 percent can we do? If I gave you 101 percent or 102 percent would that be better? But with 100 percent deduction for some expense, I do not know how you can do much better than that.

That is what this means testing formula does. And Senator GRASSLEY does not say that, the General Accounting Office confirmed that. I have a page from the General Accounting Office report in relation to that part of this legislation. This is the title page, if people are interested in the entire book. But it lists what is deductible under the IRS standards, in determining the ability to repay if you go into bankruptcy.

Here, under ''other necessary expenses,'' the description of the IRS guidelines, as stated by the General Accounting Office, includes such expenses as charitable contributions, child care, dependent care, health care, payroll deductions, including taxes, union dues, life insurance. There it is, under ''other necessary expenses,'' health care, 100-percent deductible in making that determination. If you can pay off some portion of your debt under the means test, then you should have to do so. The means test takes into account these reasonable expenses and others than what I listed, including 100 percent of medical expenses.

If one is concerned about whether or not 100 percent of medical expenses is clear enough as to what you can deduct, because the Senator from Minnesota used the term ''catastrophic'' medical expenses, the test also allows, under our legislation, for special circumstances to be taken into account when determining if a debtor can repay his or her debt.

That means that after you have taken the IRS guidelines, as I have stated, the General Accounting Office saying 100 percent of medical expenses—and that is not enough to satisfy the Senator from Minnesota so he talks about catastrophic medical expenses; whether they are catastrophic or minor, 100 percent of medical expenses is 100 percent of medical expenses—but just in case, then under the special circumstances provisions of our legislation, that debtor can go before the judge and plead a case beyond what the IRS regulations allow.

This bill preserves a fresh start for people who have been overwhelmed by medical debt or unforeseen emergencies. The bill thus allows full 100-percent deductibility of medical expenses before examining the ability to repay.

The amendment of the Senator from Minnesota says that if one files for bankruptcy because of medical expenses, then he or she does not have to go through this very flexible means test we are presenting in our legislation. His amendment doesn't take into account whether or not a person can repay or not. Making it possible to go into bankruptcy without some determination of the ability to repay or not is just not right. It means you have a gigantic loophole for somebody to game the system and to do what we are trying to prevent with this legislation—not hurting the principle of a fresh start, but if you have the ability to repay, you are not going to use the bankruptcy code for financial planning. You are not going to get off scot free.

What the Wellstone amendment does is create a loophole for those who can repay their debts. Our bill does it right. We allow all medical expenses, if they are catastrophic or not, to be taken into account. So the amendment offered by the Senator from Minnesota creates this huge loophole in the bill. That is why I have to urge my colleagues to oppose this amendment.

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 (Mr. DAYTON). Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, I would like to proceed on the bankruptcy bill in reference to the amendment offered by the Senator from Minnesota, Mr. WELLSTONE.

I know Senator WELLSTONE opposes this bill for any number of reasons, but I think we ought to analyze carefully what he is saying to consider actually what the impact of the amendment he offered would be. I think when we do that, we find it would be a curious thing for him to offer and certainly would not be good public policy.

Basically, the Senator's amendment would say that if a person files bankruptcy because of health care expenses—I believe the words are ''as a result of medical losses or expenses''—he would then be exempted from the new bankruptcy law. I think that is an odd thing to say, and I think it focused more of his concern about people filing bankruptcy as a result of medical expenses than the remedy that he would effect by the amendment.

We know that a number of people do get in financial trouble as a result of medical expenses. But, first, I say without fear of contradiction, those medical expenses will not impact a person in a way that would require him to pay any of those back, unless he or she—the person filing bankruptcy—made below the median income. Probably 80 percent, I would guesstimate, of the people who file personal bankruptcy make below the median income. So they would not be impacted by the means test requirement that they pay back some of the medical expenses that they have incurred.

Also, I think we ought to ask ourselves what expenses is he or she not being required to pay back. Hospital expenses? Now, let's say a person makes $150,000 a year—and people such as that are filing bankruptcy today. They are quite capable of paying back a substantial portion of their debts—maybe all of them. But they can file chapter 7 and wipe out all of their debts, with very little fear of any alternative consequences occurring to them. It is done every day.

As I read this amendment, it basically says that hospitals are the big losers. You don't have to pay them back. If you owe hospitals a big debt, and you are making above the median income, and you could easily pay 25 percent of that back to the hospital, and a judge would require you to do so, Senator WELLSTONE says, no, you can't be made to pay your hospital back. But if you owe some disreputable person—say, your liquor distributor, or somebody who has done those kinds of things—under his amendment they would all be required to be paid back. Just not the hospitals.

I have visited 20 hospitals this year in Alabama. I have talked to administrators, nurses, and doctors. They are having a tough time with their budgets. I am concerned about them. They do not believe in having people try to pay debts. They write off debts every day that people can't pay. It is one of the things they share with me—that bankrupts and others are just not able to pay their debts and they write them off.

The Federal Government has some form to help to compensate for that. Probably not enough. At any rate, the question simply is, Why should a person, if he is capable of paying back some debts, not pay his community hospital? It was a hospital that served him, presumably, or his family, and took care of their health needs; it exists to serve other people in the community—a good, noble, valuable institution. Why should that be the institution that doesn't get paid, when you can pay certain debts?

I think the amendment is rather odd, and it makes it less likely that there would be good health care in the community. There is a concern about, well, if you got continuing medical expenses, and this is going to leave you in debt, well, the way we wrote the bill—and we thought about this very subject—what about a person who had substantial medical expenses on a recurring basis?

How should that factor into your median income or special circumstances? We created two situations that deal with that.

If a family of four has a median income of around $50,000, and if they had $2,000 of recurring medical expenses for some reason and had to pay it every month, under IRS standards, which we adopted in this bill, that $2,000 adds on to the median income. The median income would not be $50,000, it would be $2,000 a month—$24,000 more, $74,000. If the income then was $70,000, the family could wipe out all debts, hospital and otherwise, without any problem because the median income calculated under IRS standards would not prevent them from going straight into chapter 7 and wiping out the debt, rather than being put in chapter 13 where the judge will say you pay back some of the debt as you are able over a period of years.

We also have a provision referred to as ''special circumstances.'' A bankruptcy judge can find special medical hardship or circumstances and exempt it from the bankruptcy.

I do not think this is particularly good. The Senator says just because your bankruptcy filing was a result of medical expenses, you should be exempted from all the law. What does that do? That eliminates the great benefits we placed in this bill for women and children who, under current law, rank down in the list of priority payments of limited debts from the bankruptcy estate. Under this new bill, they go to No. 1.

If the bankruptcy was the result of medical expenses and the bankrupt individual could pay his alimony and child support, it would not be the first priority on the estate like it is under present law. The women and children would lose that benefit.

We have had some discussion about the homestead provisions. There is a much stricter standard under this current law under homestead to stop the abuse of people putting their money into large homesteads in States that have unlimited homestead exemptions. Tightening of that provision would not apply here, leaving other people to lose more significantly.

This amendment is more out of the Senator's frustration over medical care in America. I know he wants the Government to take care of everything that it can in that regard and more. I am willing to debate that under a different circumstance. It does not apply here.

This bill makes provisions for people who have high medical expenses. Indeed, historically the bankruptcy law does not question why someone is in debt. One can be in debt because one made a risky investment. One can be in debt because one messed up on some contract and then was sued. They were wrong, badly wrong, perhaps. One can be in debt because of health care. One can be in debt because of gambling or alcohol. Maybe just a lack of personal discipline drives people into bankruptcy.

We have never, and should not in my view, turn the bankruptcy court into some sort of social institution that starts to evaluate everybody's personal conscience to see whether or not they were justified or unjustified into going into debt.

Remember, what we are crafting today is simply a procedure in a Federal court, a bankruptcy court, by which people who are unable to pay their debts can wipe those debts out all or in part. Basically, the law says that if you are below median income, then you do not have to pay any of them back. If you make above median income and you are able to pay some of those debts back, you should do so.

That is a reasonable approach. The Senator's amendment, whereas it might be well-intentioned, is curious and I do not believe is helpful to this bill. I oppose it.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

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

Mr. DURBIN. Mr. President, I rise today in opposition to the current bankruptcy reform bill, S. 420, as written and reported out of the Judiciary Committee last week. Let me say from the outset that I support many aspects of bankruptcy reform. I support the right of financial service companies to have reasonable protection from spurious claims of bankruptcy, from outlandish loopholes that leave some assets untouchable. I support the right of consumers to have better protection from aggressive credit card solicitations and other offers of easy credit that can easily trap people into massive debt. I support reforms that strike the proper balance—and that is the key word, balance—between the needs of business in America and the needs of consumers. That is why I oppose this bankruptcy bill in its current form. I sincerely hope the Members of the Senate will be open to some of the amendments offered in a good faith effort to make this a better bill.

A little over 4 years ago, I served on the Judiciary subcommittee and was ranking Democrat when my chairman, Senator CHUCK GRASSLEY of Iowa, joined with me in preparing a bipartisan bill which passed on the floor of the Senate with an overwhelming vote. If my memory serves me, over 97 Members voted in support of that bankruptcy reform. I was proud to join in that vote because I believed that the bill was balanced, was honest, would reform the system, and do it in a sensible fashion.

Sadly, the conference committee that was called between the House and the Senate after passage of that bill literally did not allow participation by every Senator. Figuratively, there was a sign outside the door that said, ''Democrats not allowed.'' Then the bill came back from the conference committee with no input from the Democratic side of the aisle, was brought to the floor, President Clinton threatened a veto, and the bill basically languished in the Senate.

Two years later, another effort was made. This time, I was not part of the committee process. Senator TORRICELLI

of New Jersey played that role. He and Senator GRASSLEY also worked on a bill with amendments added that I believed could be supported again. It received a substantial vote on the floor of the Senate, went into the meat grinder of the conference committee, and came out loaded with provisions which, frankly, were unfair to consumers across America. President Clinton threatened a veto of that bill, and it basically sat on the calendar until it was far too late for any action to be taken.

That is an indication of the history of an effort to modify and reform the bankruptcy system but to do it in a bad way. I believe my colleague, Senator GRASSLEY, who is on the floor at this moment, and other Senators have come to this process in good faith. I think we have a chance with this bill, and some good amendments to it, to bring forth a piece of legislation that may not please everyone in the credit industry—it certainly won't please everyone who is fighting for the rights of consumers across America—but tries to strike a balance, a fair balance so both sides give something and ultimately justice is served.

This constant theme has guided me through the years in the bankruptcy debate—balanced reform. I do not believe you could have meaningful bankruptcy reform without addressing both sides of the problem: Irresponsible debtors and irresponsible creditors.

I agree that many people who go into bankruptcy court file to abuse the system, to game the system, to avoid their responsibility to pay their just debts. I believe that is the case, and this is certainly an area in need of responsible reform.

Particularly urgent is the need to address abuses by those who have considerable assets and are using bankruptcy with impunity as a financial shield. I am thinking here of those infamous cases where wealthy homeowners sink their assets into properties that are protected from discharge during bankruptcy, or criminals who declare bankruptcy to escape financial penalties they brought on themselves by their crimes.

But there are abuses and imbalances on the other side of the ledger as well. Financial abuses are certainly not limited just to those who owe money. Those who make it their business to extend credit can step over the line as well: Financial service companies extending credit well beyond a debtor's ability to pay and then expecting Congress to bail them out from their unsound lending practices; special interests who seek protection for their specific piece of the assets pie without considering issues of basic fairness or the need to leave some debtors with enough assets for critical family obligations such as paying child support. I think we are all aware of this situation. I don't believe we should ration credit in America.

I believe that we have a moral and legal obligation to inform consumers of their responsibilities and let them make sensible, well-informed decisions about their credit limits.

Those of us who go home regularly and open mail to find another credit card solicitation understand that this industry literally showers America with billions of solicitations for new credit card debt virtually every year. Many people who are being offered credit cards, frankly, shouldn't take another credit card. They are in over their heads. Many of these companies that are trying to lure them into their credit operation don't think twice about it. They, frankly, don't care how many credit cards you have. They would like to see you take another two credit cards and pile them on their own credit card, even if you had a turn of bad events—lost your job, went through a divorce, or maybe incurred some medical bills you never expected.

Financial predators praying on the most vulnerable members of society using deceit to lure them into usurious transactions should not be rewarded in this law.

Central to the debate on this issue must be the question, What are we really trying to solve? If the problem is the increase in filing of personal bankruptcies, then we ought to take a look at the numbers. Perhaps this problem is starting to resolve itself.

When we began the bankruptcy debate several years ago, bankruptcy filings were not only up but they had reached record-setting levels.

When the credit industry first came to me with their issue, they said: We just can't understand why we are having 25 or 30-percent increases of bankruptcy filings every year. In a situation where the prosperity of this country is well documented, why are so many people going to bankruptcy court? Many of them should not. There were 1.44 million bankruptcy filings in calendar year 1998, of which 1.39 million, or 96.3 percent, were consumer bankruptcies.

Let me see if I can find the chart to show that.

This shows the national bankruptcy data by chapters of those filing. You can see by this number that the filings in 1997 under chapter 7 were 989,372, reaching a higher level of over 1 million in 1998, coming down in 1999, and down further still in the year 2000. The same trend can be found in the same filings for chapter 11 and chapter 13 as well.

What we see then is that over time, this problem, without the passage of Federal legislation, has started to resolve itself. I can't predict what the year 2018 will show. If this slowdown in the economy results in more filings, it is fairly predictable. If we were worried about people who were taking advantage of the bankruptcy system in good times who really didn't need to—we can see that there has been a decline in the number of filings even before we consider the current legislation—no one can say what the future is going to bring in terms of filings. We all recognize that the economic climate is uncertain.

Nevertheless, the data on hand suggests that the so-called explosion of personal bankruptcies has come to an end even without this legislation.

As I said a moment ago, there are areas of bankruptcy law that are still in need of reform. Three years ago, I worked to develop a bipartisan, balanced bankruptcy bill that addressed irresponsible debtors and irresponsible creditors. Ninety-eight Senators voted for it. They agreed that that legislation eliminated abuses on both sides of the ledger while making available information that permitted consumers to make an informed financial decision. That bill was decimated in conference, as I mentioned.

Our bill in the 105th Congress included debtor-specific information that would enable credit card holders to examine their current credit card debt in tangible, real, and understandable terms driving home the seriousness of their financial situation.

My idea was very basic and simple. Every credit card statement ought to say that if you make the minimum monthly payment required by this company, it will take you x number of months to pay off the balance. When you pay it off, this is how much you will have paid in interest and how much you will have paid in principal.

When I made this suggestion, the credit card industry said that it was impossible for them to calculate their information; and if they had to do this on every monthly statement, it was well beyond their means.

I find this incredible, in the day and age of technology and computers, when calculations are being made instantaneously, that they could not put on each monthly statement how many months it would take to pay off the balance if only the minimum monthly payment was made. I don't believe it; never have. I think they are ducking their responsibility. They don't want consumers to know if they make that minimum monthly payment, they are never going to pay off the balance. It might take 8 years. They end up paying a lot more interest than principal.

Why is this important for consumers? Frankly, so they will be informed. They may think twice about making the minimum monthly payment if they cannot afford it. They may think twice about adding more credit to their card. They will be informed consumers making judicious decisions instead of people making decisions without the information available.

I don't think the credit card industry is showing good faith. This is an amendment which they should accept. It would be a good-faith indication to me that they are prepared to go that extra step not to issue credit but to inform creditors. They have been refusing to do it.

This bill also fails to close the homestead loophole. The homestead loophole is a State-by-State creation. In

each State, the decision is made as to what they can really accept from bankruptcy; in other words, what can be protected for you personally if you file for bankruptcy.

One of the areas is the so-called homestead exemption for your home; your residence. Each State has a different standard. Some States are very strict and some are wide open.

Under this bill, someone renting or someone with less wealth will get to keep nothing. But a home owner who has equity in a home that has existed prior to the 2-year cutoff can keep all of his equity. Failing to put a real hard cap on this provision only benefits the rich.

My colleague, Senator KOHL of Wisconsin, has said on many occasions that we ought to get rid of this exemption because fat cats go out and buy magnificent homes, ranches, and farms and call it their home and plow everything they have into them and say to the creditor that they have nothing to put on the table. It is a mistake. Simply to say if they owned it 2 years they are off the hook, I don't believe that is enough.

There is another provision in this bill relative to a system known as cram-down. The cram-down provision we have in the current bill as written is not final. Not only does it go too far, but it actually goes beyond the well-targeted provision originally proposed by the credit card industry. This is a very complex area of bankruptcy.

I note the two people in the rear of the Chamber. One is Natacha Blaine, an attorney on my staff, and Victoria Bassetti on my staff, who have spent several years trying to make sure I understood this provision. It is complicated. But it is very important.

There is an area where we shouldn't let complexity mask the unbalanced nature of the cram-down provision currently in the bill.

Take a look at current law. Under the bankruptcy code, a secured creditor is given favored treatment for the value of the collateral that secures the claim. Further, many nonpurchase money security interests—where credit was not extended to purchase a specific item—can be eliminated.

Or claims of abuse. When we first began the bankruptcy debate, the credit card industry came to us with claims that debtors were intentionally taking on secured debt for items such as automobiles, which experience a rapid decrease in value once they are driven off the lot, and immediately declaring bankruptcy.

In order to address this issue, the industry initially proposed that secured creditors would be protected for the amount of the loan if the bankruptcy was declared within 6 months of such purchase. Thus, as an automobile loses value when being driven off the lot, to the extent such abuse was taking place, the 6-month period would fully protect the creditor.

Congress listened to the credit card industry concerns with respect to cram-down, and adopted the original proposal incorporated in earlier versions of the bill. Although I opposed the amendment in the provision in the committee markup, the language was unfortunately unchanged.

What does the current bankruptcy bill do? The cram-down provision as written in the current bill would prohibit the use of cram-down chapter 13 for any debt incurred within 5 years before bankruptcy for purchase of a motor vehicle, and for any debt incurred within 12 months of bankruptcy for which there is any other collateral. This provision is unjustly tipped in favor of the credit industry, providing little or no protection for debtors.

Let me try to put all of this legal language into simple terms.

You buy a car. You don't have much money, but you need a car to go to work. As soon as you drive the car off the lot—whether it is new or used—it starts depreciating in value. You reach a time later on where your debts have mounted to the point where you can't make your car payment or a lot of other payments. You are not going to file in chapter 7 to try to be absolved of all your debts; you go to chapter 13. You say: I am going to try to pay back what I can pay back. One of the things I want to keep in this bankruptcy is my car because I can't go to work without my car, and I can make money to pay back other creditors under chapter 13.

The court takes a look at the car and says: You might have paid $10,000 for it, but that was several years ago. Now that car is only worth $8,000. So if the company you bought it from took repossession of the car, the most they could get out of it is $8,000. So we will give that company a secured interest, preference in bankruptcy, for the $8,000 value, and the fact that you still owe $2,000 on it will be in the unsecured claims—a little harder to collect on. You end up with your car. You end up paying the credit card company back the value of the car as you have it, and you go to work. I think it makes sense.

You are a person in chapter 13 who said: I am going to try to pay back my debts. But now the credit industry has come in and said: Not good enough. If you bought that car within 5 years of filing for bankruptcy, then you have to pay the entire balance on your secured claim. We are not going to look at the real value of the car; we are going to look at the paper value of your debt.

So a person who wants to keep their car and go to work ends up being a loser.

A 5-year period is totally unreasonable. That is why I think this provision does not really recognize creditors who are stuck and trying to get themselves out of a bad situation.

Keep in mind, the average person filing for bankruptcy has an annual income of around $22,000, $23,000 a year. These are not wealthy people throwing money around, by and large. They are people who have gotten into circumstances they cannot control because of medical bills or a divorce and a lost job. If they go to chapter 13, they are doing their level best to pay off the debts. This bill, as presented to us today, penalizes those people. I think that is wrong. I am going to offer a provision to change that.

Let me tell you of another area——

Mr. LEAHY. Mr. President, will the Senator from Illinois yield for a question?

Mr. DURBIN. I am happy to yield for a question.

Mr. LEAHY. I heard the Senator earlier speaking about the problem the credit card companies say they have in declaring that if you pay the minimum amount what ultimately you are going to owe. I recall the Senator from Illinois made the same point in the Judiciary Committee markup. It struck me that the Senator from Illinois was correct in saying this will be a good thing to put on the credit card.

So I asked a couple people who do programming in computers. I said: The Senator from Illinois has been told they can't extrapolate this; they can't put it on the bill. They said: Bull feathers. That's not the case at all. They said: This is the easiest thing to do. They have teenage interns in their company who would be glad, if you just gave them a couple access codes in the credit card companies, to show them how to program that.

If you can program what the minimum payment is—and the minimum payment might come out to something like $118.39, because it is a certain percentage of the overall, which might be $1,229.81—you are dealing in such strange numbers; every credit card bill is different, every minimum payment is different, but they said with the same program that set that up, you can basically put in a couple more lines of code and it can be figured out.

I mention this because I think that is the same experience the Senator from Illinois has had. I mention it because he is so absolutely right on this. This is not going to add any burden to the credit card companies. It is not going to be an additional cost to them because they already have the computers making the basic computations that are necessary.

Frankly, my question is this: Is it not the studied position of my friend from Illinois that if the credit card companies want to let you know how much you are on the hook with them for, they can easily do it?

Mr. DURBIN. That is exactly right. The Senator from Vermont understands, as I do, that occasionally people find themselves in a difficult position where they can only make the minimum monthly payment in a given month. They have bad circumstances and they are having a tough time of it. I understand that. I think that is something that may happen to any family. But you ought to do it with your eyes wide open, so you realize if you do this repeatedly, making the minimum

monthly payment month after month, you will never get out of the hole; the hole may be there for 7 or 8 years.

Now, why is the credit card industry so reluctant to tell consumers the truth? There was a law passed several decades ago called Truth in Lending. This credit card provision that I am supporting is ''truth in credit cards,'' so they will at least give consumers the information so they can decide what is best for them and their families. They may decide they had better pay off all the balance. Maybe they do not need an extra credit card. They can make a responsible decision.

This whole debate about bankruptcy got started when the credit industry came to my office and said they thought bankruptcy had lost the moral stigma it once had: Too many people are flooding the bankruptcy courts, and they are not very embarrassed by it.

I can tell you, the attorneys and the trustees and the judges to whom I have spoken dispute that. They find people showing up in these courts very sad about the circumstances that surround them. They have done their level best with small businesses and their families, and they are in over their heads and have nowhere to turn. They have a family tragedy they didn't anticipate—usually a medical bill they can't pay—and they wish they never had to be in bankruptcy court.

I also turned to the credit card industry and said: If we are talking about a moral stigma, what is your moral responsibility when it comes to flooding America with credit card applications? When it comes to young people in America, who do not have any source of income, receiving solicitation after solicitation for credit cards, don't you have some responsibility to make sure you are not extending credit beyond a person's ability to pay? They will not accept that responsibility.

Why is it that they focus on college students, for example? They believe in brand loyalty. They think if you are in college and you decide to take a Visa card, or a MasterCard, or a Discover card, or an American Express card, that is going to be your favorite brand of credit. They want to get you early. And some sad things have resulted.

Senator FEINSTEIN of California and I are going to offer an amendment a little later. The amendment is going to set a cap on the total amount of credit available to young people through their credit cards. It is a sensible measure that protects college students and other young adults who are at an age when many are getting their first taste of personal and financial independence. It protects the companies issuing the credit cards from having their customers assume far more debt than they are able to handle.

I do not need to tell you there is an epidemic of credit card default among young people today, especially on college campuses. I can go to a University of Illinois football game in Champaign. I go into the stadium, go up the ramp, and at the top of the ramp someone is waving a T-shirt at me that says ''University of Illinois.'' And I can say: What is this all about? They say: If you will sign up for a University of Illinois credit card, we will give you a free T-shirt. They are doing everything they can to lure students to these credit cards.

Then you go to places such as the University of Indiana, and the dean of students says more students drop out due to credit card debt than to academic failure.

What are the statistics on young people filing bankruptcy in America? In the early 1990s, only 1 percent of all personal bankruptcies were filed by people under the age of 25. By 1996—just a few years later—that figure increased to 8.7 percent—more than an eightfold increase in the proportion of young, college-age people filing for bankruptcy.

Remember, my friends, student loans are not dischargeable in bankruptcy. So if you go into a bankruptcy court because you are in over your head with a credit card, you still have your student loan hanging after you have left the court. That, to me, says we have a scandalous situation on our hands that the credit card industry is exploiting. The amendment Senator FEINSTEIN will offer a little later addresses it.

Let me give you one illustration. Sean Moyer got his first credit card at age 18, when he was a student at the University of Texas. Sean committed suicide at age 22, after he ran up more than $14,000 in debt on his credit cards. His mother told CBS News the following:

> It just did not occur to me that you . . . would give a credit card to an 18-year-old, who was . . . making minimum wage [at a job]. I never thought that he would end up with, I think it was two Visas, a Discover, a MasterCard. When [Sean] died, he had 12 credit cards.

Sean was a smart kid, a National Merit Scholar winner. He was on his way to law school. But in many ways he was a young boy who succumbed to the temptation of easy credit.

As his mother went on to say:

> Anybody that has 18-year-olds knows they are not adults [many times]. I don't care what the law says. They are 18 one minute. They are 13 the [next]. Here they are in college, their first time away from home. They're learning to [try to] manage their money.

We ought to keep people such as Sean Moyer and these young men and women in our mind as we talk about bankruptcy reform. That is why Senator FEINSTEIN's amendment makes so much sense. It sets a reasonable credit cap for all credit cards. We are not saying a young person can't have a credit card. We are talking about unlimited credit, that we get a young person with literally no job with debt of $14,000 or more. This is a reasonable extension of credit for these young credit card holders. It is indexed to the consumer price index to adjust to inflation.

As a further protection, we have in the amendment the statement that if you happen to have the cosignature of your parent or guardian, you might have more credit offered to you.

These simple measures would protect our young people from getting in over their heads with multiple credit cards. It is no surprise that the credit industry hates this like the Devil hates holy water. The idea that they can't go out and lure and hook in all of these young people at a vulnerable point in their lives is something of which they are frightened. They are going to oppose the Feinstein amendment.

Let me talk for a moment about moral stigma, the moral stigma of people with an average income of $22,000 a year going to bankruptcy court, heartbroken over medical bills or divorce or loss of job. How about the moral stigma of these credit card companies, wallpapering college campuses with credit cards the kids just can't keep up with. I know Senator FEINSTEIN plans to reoffer her amendment on the floor. Senator JEFFORDS and I are cosponsors of this sensible, bipartisan amendment. I urge my colleagues to support it.

Balance is certainly the order of the day in this debate. We are a new Congress with a balanced 50/50 Senate. We have a new President, faced with the challenge of uniting an evenly divided electorate. We have a new and real opportunity to work together to pass genuine bankruptcy reform, reform that is balanced, meaningful, and fair.

In a few moments I will send to the desk an amendment to the bankruptcy bill aimed at another area of abuse which should be resolved. It is directed particularly to what is known as predatory lending practices. Much of our discussion concerning reform of the Nation's bankruptcy laws is focused on the perceived abuses of the bankruptcy system by consumers and debtors. Much less discussion has occurred with regard to abuses by creditors who help usher the Nation's consumers into bankruptcy.

I believe there are abuses on both sides and that bankruptcy reform is incomplete if it does not address both sides. Studies have identified a host of predatory financial practices directed at the Nation's financially vulnerable. These studies suggest that many low-income Americans participate in a virtual fringe economy. They may lack access to mainstream banks and financial institutions. They may lack the collateral or the credit rating needed to secure loans for a home, to buy a car, pay for home repairs, or other essential needs. This vulnerable segment of our economy is at the mercy of a variety of credit practices by a variety of offerors that can lead to financial ruin.

High-pressure consumer finance companies have bilked unsophisticated consumers out of substantial sums by aggressively marketing expensive loan insurance products, charging usurious interest rates, urging repeated refinancing, and loading their products

with hidden fees and costs. High cost mortgage lenders have defrauded millions of older Americans with modest income but substantial home equity of their lifelong home ownership investments. Senator GRASSLEY of Iowa, who has been the chairman of the Senate Special Committee on Aging, has held hearings, heartbreaking stories of elderly people, usually women living alone, who are preyed upon by these companies that come in and lure them into signing documents they barely understand for repair of their homes with terms and conditions that are unfair by any standard.

Some auto lenders in the used car industry have gouged consumers with interest rates as high as 50 percent, with assessments for credit insurance, repair warranties, and hidden fees, adding thousands of dollars to the cost of an otherwise inexpensive used car. Pawnshops in some States have charged annual rates of 240 percent or more to customers who have nowhere else to turn for small short-term loans. Abusive credit practices of every stripe harm millions of older and low-income Americans every single year.

During the committee debate on S. 1301, I offered an amendment designed to address and curtail just one bad practice among many predatory high-cost mortgage loans targeted at the low-income elderly and the financially unsophisticated. This amendment was adopted unanimously on a previous bill and was stripped out in conference. The credit industry did not want us to even go after the bottom feeders in their business, the people who prey on the elderly and uninformed.

I will reoffer this language today as an amendment to this bankruptcy bill. This is the exact same language that was in the 1998 bankruptcy bill that passed the Senate 97–1. It is also the same language that many of my colleagues, including Senator Grassley and Senator SPECTER, voted for in the 106th Congress. It is my hope that they will join me in supporting this amendment again.

In recent years there has been an explosion on the market for this type of home mortgage, generally for second mortgages that are not used to fund the purchase or construction of a home. The market is known as the subprime mortgage industry. The subprime mortgage industry offers home mortgage loans to high-risk borrowers, loans carrying far greater interest rates and fees than conventional loans and carrying extremely high profit margins for the lenders.

According to the Mortgage Market Statistical Annual for the year 2000, subprime loan originations increased from $35 billion in 1994 to $160 billion in 1999.

As a percentage of all mortgage originations, the subprime market share increased from less than 5 percent in 1994 to almost 13 percent in 1999. This is not an isolated incident. This is a trend, a trend where people are preying on vulnerable consumers across America, usually widows, usually elderly women, ultimately trying to take away their homes in bankruptcy court.

We are considering a bankruptcy reform bill where we are supposed to be eliminating abuses? For goodness' sake, should we not eliminate the use of the predatory lending which we see is growing by leaps and bounds in this country?

By 1999, outstanding subprime mortgages amounted to $370 billion. Home Mortgage Disclosure Act data shows a substantial growth in subprime lending. The number of home purchase and refinance loans reported under HMDA by lenders specializing in subprime lending increased almost tenfold between 1993 and 1998, from 104,000 to 997,000. I will relate a few stories in a moment that will illustrate the kinds of loans, the kinds of, what I consider, extremely corrupt practices by the credit industry that are rewarded in bankruptcy court.

You will see when this amendment comes up for a vote if the credit industry itself, which prides itself on being a major financial institution in America, is willing to step forward and point out the wrongdoers within its own ranks. Sadly we have seen over the last several years they were not.

The growth of the subprime lending industry is of concern to us for two reasons: First, because of their reprehensible practices called predatory lending practices, which some of these companies use to conduct their business; second, because of the vulnerable people involved, senior citizens, low-income people, the financially unwary to whom they often target their loans.

According to 1998 Home Mortgage Disclosure Act data, low-income borrowers accounted for 41 percent of subprime refinance mortgages. African-American borrowers accounted for 19 percent of all subprime refinance loans. In 1998, when Senator GRASSLEY held the hearing I referred to earlier with the Special Committee on Aging, several people came forward to tell their stories.

William Brennan, director of the Home Defense Program of the Atlanta, GA, Legal Aid Society, put a human face on this issue and this amendment. He told us of the story of Genie McNab, a 70-year-old woman living in Decatur, GA.

Mrs. McNab is retired. She lives alone on Social Security and retirement. In November of 1996, a mortgage broker contacted her and, through this mortgage broker, she obtained a 15-year mortgage loan for $54,000 from a large national finance company. Her annual percentage rate was 12.85 percent. Listen to the terms of the mortgage. She will pay $596.49 a month until the year 2011, when she will be expected, and required, to make a final payment of $47,599.14—a balloon payment for an elderly lady living on Social Security. By the time she is finished with this mortgage that this fellow convinced her to sign for, her $54,200 loan will have cost her $154,967, and she faces a balloon payment of almost $48,000 at the end.

When Ms. McNab turns 83 years old, she will be saddled with this balloon payment that she will never be able to make. She will face foreclosure of probably the only real asset in her life—something she has worked for her entire life—and she will be forced to consider bankruptcy. She will face the loss of her home and her financial security, not to mention her dignity and sense of well-being. Ironically, she had to pay this mortgage broker a $700 fee to find her this ''wonderful'' loan—a mortgage broker who also collected a $1,100 fee from the mortgage lender.

Unfortunately, Ms. McNab is a typical target of the high-cost mortgage lender—an elderly person, living alone, on a fixed income. She is just the kind of person who may suddenly have encountered the death of a spouse and the loss of income, a large medical bill, an expensive home repair, or mounting credit card debt. All of these things could push her over the edge, just making regular monthly payments, not to mention a $48,000 balloon payment, at the age of 83.

These are all real-life circumstances which make her an irresistible target for some of the most unscrupulous members of the mortgage industry in America.

According to a former career employee of this industry who testified anonymously at a hearing before Senator GRASSLEY's committee, ''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, is living off credit cards but having a difficult time keeping up with her payments, and who must make a car payment in addition to her credit card payments.''

This industry professional candidly acknowledged that unscrupulous lenders specifically market their loans to elderly widowed women, people who haven't gone to school, who are on fixed incomes, have a limited command of the English language, and people who have significant equity in their homes.

They targeted another such person right here in Washington, DC, by the name of Helen Ferguson. She also testified before Senator GRASSLEY's committee. She was 76 years old at the time. This is what she told us: As a result of predatory lending practices, she was about to lose her home. In 1991, she had a total monthly income of $504 from Social Security. With the help of her family, she made a $229 monthly mortgage payment on her home. However, on a fixed income she didn't have enough money for repairs. She started listening to radio and TV ads about low-interest home improvement loans. She called one of the numbers. She thought she had signed up for a $25,000

loan. In reality, the lender collected over $5,000 in fees and settlement charges for a $15,000 loan.

Again, describing the predatory cases, Ms. Ferguson decided she needed to take out a loan. She thought she was borrowing $25,000. After the fees, she was borrowing $15,000. She was living on $500 a month in Social Security. The interest rate the lender charged her was 17 percent. Her mortgage payments went up to $400 a month—almost twice her original payment. Over the next few years, this lender repeatedly tried to lure Ms. Ferguson into more debt. He called her at home, called her sister at home and at work, and he sent her letters, and, God bless him, he even sent a Christmas card. In March of 1993, she gave in to this lender, borrowing money to make home repairs.

By March of 1994, she could not keep up with her mortgage payments. She signed for a loan with another lender, unaware that it had a variable interest rate and terms that caused her payments to rise to $600 a month and eventually to $723 a month. Remember, $500 a month was her Social Security income. She is now up to $723 a month in mortgage payments. For this loan, she paid $5,000 in broker fees and more than 14 percent in total fees and settlement charges. The first lender also continued to solicit her. She eventually signed up for even more loans. Each time, the lender persuaded her that refinancing was the best way out of her predicament.

Ms. Ferguson was the target of a predatory loan practice known as loan flipping.

Why is this an important discussion in the middle of a bankruptcy bill? Because, frankly, these bottom feeders make terrible loans to vulnerable people who ultimately end up in bankruptcy court, taking away the homes of people such as Ms. Ferguson.

I have tried to convince my colleagues on the committee that if we are going to reform the bankruptcy code, for goodness' sake, why would we reward people who are making these terrible arrangements with elderly, low-income people, with limited education, and taking away the only thing they have on Earth—their homes?

When I say this to the financial industry and the credit card industry, they say, ''You just don't understand the free market.'' The free market? This isn't a free market. This is some of the worst corruption, worst credit practices in America. We are about to protect them with this bill.

Let me tell you what Senator GRASSLEY said about it when he held this hearing back in 1998. My colleague from Iowa has a lot of Midwestern wisdom to share here:

> What exactly are we talking about when we say that equity predators target folks who are equity rich and cash poor? These folks are our mothers, our fathers, our aunts and uncles, and all people who live on fixed incomes. These are people who often times exist from check to check and dollar to dollar, and who have put their blood, sweat, and tears into buying a piece of the American dream and that is their own home.

He goes on to say:

> Before we begin this hearing, I want to quote a victim—a quote that sums up what we are talking about here today. She said the following: ''They did what a man with a gun in a dark alley could not do: they stole my house.''

That is Senator GRASSLEY talking about predatory lenders, who are protected by this bankruptcy bill. That is why I am offering this amendment. They don't deserve this protection. Ms. Ferguson was eventually obligated to make more than $800 monthly payments, although her income was $500—and the lenders knew it from the start. In 5 years, the debt on her home—this elderly lady living on Social Security—increased from $20,000 to over $85,000.

She felt helpless and overwhelmed. It was only after contacting AARP that she realized these lenders were violating the Federal law.

Lump-sum balloon payments on short-term loans, loan flipping, the extension of credit with a complete disregard for the borrower's ability to repay—these aren't the only abusive mortgage practices. Lenders on these secondary mortgages sometimes include harsh repayment penalties in the loan terms, or rollover fees and charges into the loan, or negatively amortize the loan payment so the principal actually increases over time—all of which is prohibited by law, although ordinary homeowners are unlikely to even know that. Some of these homeowners will make it to a lawyer and get help before it is too late. Many of them will be forced into bankruptcy court. They will walk into that court, and this slimy individual and his company, which has given them this terrible loan that violates the law, will stand up proudly, through his lawyer, and take it all away.

This bill will not even address that issue unless the Durbin amendment is adopted.

On March 5, US News & World Report featured a telling article in their business & technology section entitled: ''Sometimes a deal is too good to be true: Big-bank lending and inner-city evictions.'' In the article Jeff Glasser describes two cases that originate from my home state of Illinois that I want to share with you.

The first involves Goldie Johnson. The lender was Equicredit, a subsidiary of Bank of America:

Goldie Johnson is a 71-year-old homeowner who lives on the Westside of Chicago with her daughter and 4 grandchildren. Her income is $1,270 a month from Social Security and pension. Between June 1996 and March 1999, Ms. Johnson entered into at least three refinancing agreements with various subprime lenders and brokers.

In March, Ms. Johnson was contacted through a phone solicitation by a mortgage broker, who promised Ms. Johnson that she could get a new loan that would refinance her two existing mortgages, provide her with $5,000 in extra cash and lower her monthly mortgage payments. Ms. Johnson was in desperate need of cash to repair her kitchen. She agreed to meet with the broker.

She met with broker twice. On second visit she was presented with a myriad of papers to sign.

Ms. Johnson, who suffers from glaucoma was not able to read the documents carefully. In fact, after looking over only a few of the papers she stopped because her eyes became too tired to continue.

Nonetheless, based on the broker's promises and representations that the loan would provide her with cash to repair her kitchen and lower her mortgage payments, Ms. Johnson signed the loan documents. She was not provided with copies of any of the documents.

The mortgage documents created a loan transaction between Ms. Johnson and Mercantile for the principal amount of $90,000 with an annual percentage rate of 14.8 percent.

The transaction created a 15-year loan with monthly mortgage payments of $994.57, excluding taxes and insurance, with a balloon payment on the 180th month of $79,722.61.

The monthly mortgage payment was 80 percent of this retired lady's income.

The final balloon payment—the amount of principal owed after Ms. Johnson pays the lender approximately $1,000 a month over 15 years—was greater than the secured debt on her home before she entered into this agreement.

Ms. Johnson received no proceeds from the transactions. The broker and lender received at least $9,760 in points and fee from the loan. Equicredit is now attempting to foreclose on Ms. Johnson's home.

Then the case of James and Clarice Mason, the lender was Fieldstone, then Household.

James Mason, age 62, with his wife Clarice who died on June 8, 1999, owned and lived in his home on the west side of Chicago since 1971.

In 1991, the Masons successfully paid off the original mortgage on their home.

In 1993, Mrs. Mason became disabled due to diabetes and arthritis.

In 1995, Mr. Mason became disabled due to a stroke. The stroke has left Mr. Mason with brain damage that has impaired his memory and thinking.

In November 1998, Mr. and Mrs. Mason's home was free and clear of all liens.

On or about the end of November 1998, they were repeatedly solicited for home repair work. Mrs. Mason eventually agreed to meet with home repair company and later mortgage broker. They promised the necessary repairs would cost $15,000 and that the broker would help them find financing.

On December 6, 1998, about a week after completing the loan application, Mrs. Mason was hospitalized for complications arising from her diabetes.

On December 7, 1998, Mrs. Mason was visited at the hospital by a broker who explained that he had come to visit Mrs. Mason and to help her complete her loan transaction. What a wonderful person. He then present Mrs. Mason with numerous documents and told Mrs. Mason to sign them. The agent of the company provided Mrs. Mason with no opportunity to review the documents, but assured her that this was the loan she had ''discussed'' with New Look that would allow her home to be repaired.

Mrs. Mason, although unclear about what she was signing, signed all the documents provided by the agent because she trusted him. She believed he was trying to help.

At the time she signed the loan documents, Mrs. Mason was in a disoriented state due to her severe illness. At the time she signed the loan documents, Mrs. Mason's vision was impaired because of a cataract on one of her eyes. At no time was Mr. Mason, co-owner of the home, asked to sign any of the loan documents. Nonetheless, Mr. Mason's forged signature appears on the mortgage agreement. The documents that were ''signed'' created a 30-year loan agreement, with a principle of $70,000.

Under the terms of the loan, Mr. and Mrs. Mason's monthly mortgage payment was to start at $601.41 and adjust upward to $697.

Remember, this is an elderly couple retired with their home all paid for, and to get $15,000 worth of repairs on their home, they signed on to a mortgage that cost them about $700 a month.

Under the terms of the loan, Mr. and Mrs. Mason were charged at least $7,343 in prepaid finance charges.

The home contractor received $35,000.

The Masons received no money.

Work was barely started and never completed.

A suit was filed against the home repair company, broker, and two lenders.

After the suit, the home was severely damaged by a suspicious fire.

Mr. President, I ask unanimous consent that this US News & World Report article be printed in the RECORD.

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

[From U.S. News & World Report, March 5, 2001]

SOMETIMES A DEAL IS TOO GOOD TO BE TRUE

(By Jeff Glasser)

CHICAGO.—One day in March 1999, mortgage broker Mark Diamond arrived on Goldie Johnson's west-side doorstep, his portable photocopier in tow. Here's the 72-year-old retiree's version—from court papers and interviews—of how Diamond's promise to save her thousands of dollars may end up costing Johnson her home: He told her that if she refinanced her mortgage, he could cut her debts and get her up to $8,000 in cash. With the money, she could fix her rotting kitchen floors and replace the rickety basement beams. But to get the cash, she had to act fast. (She believed him. He said he was ''in the business of helping senior citizens.'') He handed her a thick stack of loan papers. Johnson, who suffers from glaucoma, says she could barely read them. ''Don't worry about it,'' he said. So she signed, 13 times.

Johnson says she never saw any cash. The loan she signed saddled her with monthly payments of $994.57—about $200 more than she had been paying—and consumed about 80 percent of her fixed income. A balloon payment of $80,000 would be due the year Johnson turns 86. Meanwhile, Diamond's company fee for selling the loan came to $9,010. ''I've heard of sticking people up with guns, not with pens,'' says Johnson, who cannot pay the mortgage and is fighting to save her home from foreclosure in court. Diamond disputed her account and denied wrongdoing through his lawyer.

What's unusual about the case of Goldie Johnson is that she wasn't simply the alleged victim of a fast-talking predator. Her loan was sold to a company called EquiCredit, a subsidiary of the Bank of America, a prestigious institution not often linked to inner-city evictions. But Bank of America is one of a number of the nation's top commercial banks, including Citigroup and J. P. Morgan Chase, that have recently inked deals with subprime lenders—companies that offer loans to people with less than perfect credit. Subprime loans promise profit margins far greater than do low-interest conventional mortgages.

This foray by the big banks coincides with a surge in the number of subprime loan defaults. Certainly not all subprime loans are predatory. But foreclosures in the Chicago area by subprimes have risen from 131 in 1993 to 4,958 in 1999, according to the National Training and Information Center, a watchdog group. Consumers in other areas are also complaining about lending abuses, causing more than 30 states and dozens of cities to consider curbs on predatory lending.

The upswing in defaults poses a double challenge for the big banks: They must fend off hundreds of lawsuits brought against their subsidiaries. As they do so, they will be asked to bring better practices to an industry derided as ''legalized loan sharking'' by detractors.

The tactics are all too familiar. Critics call one the ''bait'' scam: In Philadelphia, where the 3,226 foreclosures last year were almost double the number in 1997, a poor veteran named Leroy Howard says in bankruptcy papers that he was lured into refinancing his mortgage with an offer of $4,000 in cash and debt relief. When he accepted, his mortgage doubled in size to $40,000, including $9,040 in new fees and charges. Howard's attorney charges the lender made the loan even though it was aware Howard could not repay it; a notation in his file says he would use the cash for food. Citigroup, which acquired the loan's servicing rights, settled the case.

There's the hard sell: In Chicago, it is alleged in court that a home improvement contractor, along with a mortgage broker, went to a local hospital and persuaded a woman admitted there to refinance on unfavorable terms. ''You couldn't tell him no that day,'' says Valerie Mason, daughter of the woman, who has died.

The banks don't condone these tactics. ''Small, unscrupulous lenders don't have to follow the rules,'' says Howard Glaser, chief lobbyist for the Mortgage Bankers Association. The responsible lenders ''get tainted by what the bad actors do.'' The major lenders—including Citigroup and Bank of America—argue that subprime lending doesn't bilk the innocent or gut neighborhoods. Far from it, they say: The vast majority of the loans help people with bad credit to repair their homes and settle their debts. A decade ago, homeowners with imperfect credit would have paid 5 to 10 percentage points more for loans, they say, if they could get a loan at all. The banks also claim that the number of predatory lending cases is minuscule, though consumer advocates disagree. (There are no national data to resolve that dispute.)

Flipping and packing. The taint of predatory lending hasn't deterred major banks from entering the growing subprime market. There were 856,000 subprime loans issued in 1999, six times as many as in 1994. Those loans often produce margins eight times those of conventional mortgages, although there's a greater risk of default and higher servicing costs. Banks can make more money by packaging subprime loans as mortgage-backed securities and selling them to mutual funds.

But can the major banks help curb bad practices? Citigroup will be the largest test case. In November, the company completed a $27 billion acquisition of Associates First Capital, which was spending $19 million to fight more than 700 lending lawsuits. The suits spotlight more questionable tactics. For example, Associates established quotas for refinancing loans over and over, or ''flipping'' them, with no benefit to the consumer, former company employees testified. (Its motto, according to the court papers: ''A loan a day or no pay.'')

Another common practice, employees said, was the ''packing'' of costly insurance products into the price of a loan. Consider the testimony of Rick McFadden, a branch manager in Tacoma, Wash. When he failed to tack on the insurance, the boss would crumple a piece of paper into the phone. ''You hear that?'' the boss would say. ''That's your loan. It doesn't have any insurance on it. . . .'' And into the trash it would go. A Citigroup spokesman declined to comment on the testimony but said the issues ''have been addressed in the pledges we've made.'' Citi settled a Georgia class-action ''packing'' lawsuit in January for $9 million and, U.S. News has learned, a similar suit in Pennsylvania. In reforms announced last fall (including caps on fees and improved training), the company condemned the practices of ''packing'' and ''flipping.''

Still, victims seeking restitution are having a hard time figuring out who is to blame. In Goldie Johnson's case, her loan was solicited by Diamond but ended up in EquiCredit's portfolio. The Bank of America subsidiary then tried to foreclose on Johnson. The company claimed in court, however, that it was not responsible for tactics used to sell the original mortgage. (Since the lawsuit was filed, the loan has been sold again.) The insulation of the banks rankles legal-aid lawyers. ''At some point, the ostrich defense doesn't work,'' says Johnson's attorney, Ira Rheingold.

While lawyers and lenders duke it out, once stable neighborhoods in places like Maywood, Ill., a working-class Chicago suburb, are filled with boarded-up houses resulting from foreclosures. Resident Delores Rolle, 51, says gang members from the Latin Kings took over an abandoned house, put up drapes, and used it for drug dealing. ''This has been a nightmare,'' says Rolle. ''It's Beirut around here.''

Mr. DURBIN. As demonstrated in these cases, the people soliciting these loans have won their trust and confidence, and the homeowners are reluctant to believe that they have been so ruthlessly taken in.

Just this morning the Washington Post reported that the Federal Trade Commission sued the Associates, a lending unit of Citigroup, for its predatory lending practices.

This is not just an occasional storefront operation. The growth of these

predatory loans tells us we are dealing with a national phenomenon. This is what they said at the FTC about this group from Citigroup called Associates:

''They hid essential information from consumers, misrepresented loan terms, flipped loans [repeatedly offering to consolidate debt into home loans] and packed optional fees to raise the costs of the loans,'' said Jodie Bernstein, director of the FTC's Bureau of Consumer Protection. The practices, she said, ''primarily victimized . . . the most vulnerable—hardworking homeowners who had to borrow to meet emergency needs and often had no other access to capital.''

Mr. President, I ask unanimous consent that this article from today's Washington Post be printed in the RECORD.

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

[From The Washington Post, March 7, 2001]

FTC SUES LENDING UNIT OF CITIGROUP

ASSOCIATES ACCUSED OF ''ABUSIVE'' ACTS

(By Sandra Fleishman)

The Federal Trade Commission yesterday sued a recently acquired arm of financial giant Citigroup Inc., accusing it of deceiving often cash-strapped home-equity borrowers through ''systematic and widespread abusive lending practices.''

The case is the largest ever brought for abusive or predatory lending by the FTC, the government's chief consumer-protection agency. If the case is proven, the FTC estimates that it could result in hundreds of millions of dollars in refunds to tens or hundreds of thousands of borrowers.

The suit filed in U.S. District Court in Atlanta names New York-based Citigroup, CitiFinancial Credit Co. and the acquired companies, Associates First Capital Corp. and Associates Corp. of North America, collectively known as Associates.

Associates, which specialized in loans to higher-risk borrowers, was one of the nation's largest home-equity lenders when Citigroup bought it in November for $31 billion. It was then wrapped into the bank's CitiFinancial unit.

Yesterday's action was sought by consumer activists, who for years labeled Associates as the worst predatory lender in the country.

The FTC has been investigating Associates since at least 1998, when the company was a subsidiary of Ford Motor Co. Ford eventually spun it off.

In a statement issued yesterday, Citigroup said, ''We regret that we have been unable to resolve the FTC claims regarding past practices of the Associates without litigation.''

The statement also said: ''From the time we announced our intent to acquire Associates, we indicated our full commitment to resolve concerns that had been raised about their business. To date, we have reached out to nearly a half-million customers including every Associates home loan customer, and we will continue these outreach efforts.''

According to the FTC suit, Associates' aggressive marketing ''induced consumers to refinance existing debts into home loans with high interest rates, costs and fees and to purchase high-cost credit insurance.''

''They hid essential information from consumers, misrepresented loan terms, flipped loans [repeatedly offering to consolidate debt into home loans] and packed optional fees to raise the costs of the loans,'' said Jodie Bernstein, director of the FTC's Bureau of Consumer Protection. The practices, she said, ''primarily victimized . . . the most vulnerable—hardworking homeowners who had to borrow to meet emergency needs and often had no other access to capital.''

The suit seeks financial redress but doesn't specify an amount, ''If all of the charges are proven [the amount] could be much more than $500 million,'' Bernstein said. That number is drawn from the Associates financial reports, which show earnings of more than $500 million from 1995 to 1999 in single-premium credit life insurance premiums alone.

Single-premium credit life insurance, which enrages consumer groups, is paid upfront through a home loan, rather than monthly.

Because such insurance was factored into the loans, it added ''hundreds or thousands of dollars to consumers' loan costs,'' and in many instances ran out years before the home loan did, the FTC said. Credit life insurance is a way to cover the borrower's loan payments in the case of death, illness or loss or employment. But the FTC said Associates employees did not always mention or explain products and discouraged consumers from refusing them.

Federal and state regulators cleared the way for the Citigroup-Associates merger last year despite consumer groups' pleas that Citigroup first be required to agree to specific steps to protect consumers.

Yesterday, consumer groups welcomed the FTC suit but sought further action.

''The FTC case backs up what we've been saying, that Associates has been ripping off homeowners across the country,'' said Maude Hurd, president of the Association of Community Organizations for Reform Now.

Citigroup's stock closed yesterday at $48.63, up 38 cents, on the New York Stock Exchange. John Wimsatt, who tracks Citigroup for Friedman, Billings, Ramsey Group Inc., said strong investor confidence in the company reflects ''consensus estimates that it will earn about $15.8 billion'' in 2001 and the belief that the company, aware of the FTC investigation, either put money into reserves to cover the litigation ''or factored it into the purchase price.''

Most of the other 14 predatory lending cases the FTC has brought since 1998 have been settled. One case still in litigation involves Washington-based Capital City Mortgage Corp.

Mr. DURBIN. The problem of predatory financial practices in the high-cost mortgage industry is relevant to bankruptcy because it is driving vulnerable people into bankruptcy. These people are not entering bankruptcy in order to abuse the system. They are filing bankruptcy because the reprehensible tactics of unscrupulous lenders have driven them into insolvency and threatens their homes, cars, and other necessities; frankly, everything they own on Earth.

My amendment prohibits a high-cost mortgage lender that extended credit in violation of the provisions of the Truth-In-Lending Act from collecting its claim in bankruptcy.

I repeat this because the credit industry which opposes this amendment, opposes the following: A suggestion by me that if you have made a high-cost mortgage loan and in doing so violated the provisions of the Truth in Lending Act, you cannot go into bankruptcy court and be protected by the laws of the United States. If you violated the law to create this mortgage, then the bankruptcy court law will not protect you. It is that simple. You wonder why these major credit companies and financial institutions oppose this amendment. They say: If you get your nose under the tent, DURBIN, we don't know where you are going next.

I suggest to them that they ought to look outside their tent for a moment at some of the scummy practices of people who say they are also their brothers and sisters in the mortgage credit industry. They should not make excuses for them and expect the American people to trust the mortgage credit industry when they tell us they have the best interest of consumers in America in their hearts.

The result of my amendment will be that when individuals like Genie McNab, Helen Ferguson, Goldie Johnson, or the Masons, goes to the bankruptcy court—seeking last-resort help for the financial distress an unscrupulous lender has caused her—the claim of the predatory home lender will not be allowed.

If the lender has failed to comply with the requirements of the Truth in Lending Act—a law created by Congress and signed by the President—for high-cost second mortgages, the lender will have absolutely no claim against the bankruptcy estate.

My amendment is not aimed at all subprime lenders or all second mortgages. Indeed, it is only aimed at the worst, most predatory scum-sucking bottom feeders in this industry. My provision is aimed only at practices that are already illegal under the law. It does not deal with technical or immaterial violations of the Truth in Lending Act. Disallowing the claims of predatory lenders in bankruptcy cases will not end these predatory practices always. But for goodness sake', why should we come to this floor and pass a law to protect these people? It is one step we can take to curb credit abuse in a situation where the lender bears primary responsibility for the deterioration of a consumer's financial situation.

AMENDMENT NO. 17

Mr. President I send my amendment to the desk.

The PRESIDING OFFICER. Is the Senator seeking consent to set aside the pending amendment?

Mr. DURBIN. Yes, I ask unanimous consent.

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

The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Illinois [Mr. DURBIN], proposes an amendment numbered 17.

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

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

The amendment is as follows:

(Purpose: To make an amendment with respect to predatory lending practices, and for other purposes)

At the end of subtitle A of title II, add the following:

SEC. 204. 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 failed to comply with any applicable requirement under subsection (a), (b), (c), (d), (e), (f), (g), (h), or (i) of section 129 of the Truth in Lending Act (15 U.S.C. 1639).''.

Mr. DURBIN. Mr. President, I represent to Members of the Senate that my description of this amendment is very simple. Senator GRASSLEY is on the floor, and I can say his hearings before the Select Committee on Aging regarding predatory lending have inspired us to offer this amendment. Some of the statements he made during the course of those hearings about the abuses of predatory lending and the victims across America have led us to offer an amendment on the floor of the Senate to the bankruptcy bill to say these people who are taking advantage of otherwise good citizens should not be allowed the protection of the bankruptcy court. If they violate the law in creating this debt, they shouldn't be able to hide behind the bankruptcy law when they go to court.

I hope even my friends in this Chamber who feel very strongly about the credit and financial industry, during the course of the consideration of this debate on this amendment, will at least find some sympathy and understanding for people such as those I have described—good, hard-working Americans living in retirement who have been victimized by people engaged in illegal practices. I hope we can adopt this amendment as part of the reform of our bankruptcy system to keep in mind some of the victims of the credit system from some of the worst perpetrators.

I yield the floor.

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate resume consideration of the pending Leahy amendment No. 13 at 5:30 pm and there be up to 20 minutes equally divided in the usual form.

I further ask consent that at the conclusion of this debate, the amendment once again be laid aside and the Senate resume consideration of the Wellstone amendment No. 14 and there be up to 60 minutes equally divided in the usual form.

I further ask consent that at the conclusion of the debate on the Wellstone amendment, the Senate proceed to vote in a stacked sequence on or in relation to the Wellstone amendment, to be followed by a vote on or in relation to the Leahy amendment, and that no amendments be in order to either amendment.

Further, I ask that there be 2 minutes equally divided for closing remarks prior to the second vote in the series.

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

Mr. HATCH. As a result of this agreement, at least two back-to-back votes will occur at 6:50 this evening. So I put all colleagues on notice that we will have at least two back-to-back votes.

AMENDMENT NO. 17

Mr. President, as I understand it, the amendment of the distinguished Senator from Illinois, the predatory lending amendment, takes away the lender's right to satisfy a claim to get paid on the debtor's bankruptcy if there was any ''material'' Home Ownership Equity Protection Act violation. The Home Ownership Equity Protection Act is not a predatory lending law. Any attempt to characterize it as such is misleading and inflammatory.

Many legitimate lenders—banks, community banks, and finance companies—make home equity loans which fall under this act, codified section 129 in the Truth in Lending Act. Section 129 recognizes a legitimate sector of the home lending market, certainly one that is not ''predatory'' and already provides ample protection for consumers, both in the form of disclosures and substantive prohibitions and remedies for violations of this act.

First, this is a banking amendment. This is outside the jurisdiction of this committee. Second, and more importantly, this amendment is problematic in its effect in a number of ways. For instance, it will adversely affect the availability of credit to certain consumers, many of whom may be low income and minorities whom this amendment purports to protect. Moreover, the secondary markup for such mortgages will also be affected, thereby placing upward pressure on the pricing of such loans.

A number of the horror stories given are already covered by current law, and we should be enforcing those laws.

It appears this amendment, though seemingly well meaning, might create more problems than it might remotely solve. Already there are numerous protections and built-in super-remedies afforded the borrowers under the Homeownership and Equity Protection Act. For example, a consumer can rescind any loan that violates the provision. This alone takes care of any conceivable problem in bankruptcy. Furthermore, all material violations result in civil liability under the Home Ownership Equity Protection Act and enhance civil remedies such as ''an amount equal to the sum of all finance charges and fees paid by the consumer, unless the creditor demonstrates that the failure to comply is not material,'' in addition to actual damages, statutory damages, attorney's fees, and costs.

Furthermore, to justify the harsh punishment it creates, in addition to those penalties already available in the Home Ownership Equity Protection Act, this amendment does not even require any finding that such a violation was the cause of the debtor going into bankruptcy.

That is not good law. That is not the way we should be making law. Nor does it require that a violation of the Home Ownership Equity Protection Act had to have been found for this draconian remedy to take place.

The result, I am afraid, will be litigation within a bankruptcy proceeding and a bankruptcy judge passing judgment on Federal lending laws. Furthermore, I don't know why every debtor will not allege a violation of the Home Ownership Equity Protection Act in the hopes of winning this lottery of getting your home mortgage wiped out for even minor violations which did not contribute in any way to the bankruptcy of the debtor.

This is just plain bad policy. We can't permit this type of an amendment on this bill. It is one thing to use rhetoric about predatory lenders, but I believe the current law takes care of that, and, frankly, I don't think we should try to disturb it with an amendment that doesn't do the job and, in fact, can do an awful lot of harm.

We have to oppose the sincere amendment of the distinguished Senator. I hope our colleagues will vote it down. It would cause tremendous problems.

Last, but not least, I know my colleague is not trying to do this—or at least I believe he is not trying to do this—but this would lead to all kinds of unnecessary litigation, unnecessary failures, to be able to resolve problems as they arise and, frankly, fly in the face of good bankruptcy legislation.

I think the bill and current law in the bill, combined, do take care of some of the problems about which the distinguished Senator is concerned. But his amendment would cause an awful lot of problems. In the end I think all it would do is lend a lot of solace to a lot of lawyers who want to make a lot of money off what clearly are not reasons for the bankruptcy.

We have to oppose this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I briefly respond to say to my friend from Utah, keep in mind the people you are protecting by opposing this amendment. Keep in mind the institutions which you are trying to protect by opposing this amendment.

These are people who are preying on our parents and grandparents, living in their retirement, subjected to loan terms and conditions that are outrageous by any moral standard.

We are saying is, after they have perpetrated these frauds to the public, after they have literally threatened to take away a home from a retired person with a loan that is unconscionable and violates the law, we want them to have free rein in bankruptcy court to pursue their claim.

I don't think that is right. Why in the world is this Senate spending its good time and the money of taxpayers on hearings involving predatory lending, coming up with all of these wonderful speeches about how terrible these people are, and when we have a chance in the bankruptcy law to finally do something to stop these awful

predatory lending practices, we refuse? We refuse.

All of the moral indignation we were able to muster in these committee hearings about the outrageous examples of what is happening to senior citizens and low-income people, we forget as soon as we come to the floor and start talking about a bankruptcy law.

I don't care about committee jurisdiction. That may be an issue to some; it is not to me. I am more concerned about the people who expect bankruptcy code reform to be sensitive to borrowers as well as lenders. I hope my colleagues in the Senate will support my amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. HATCH. Will the Senator from Florida yield for one last comment?

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, when we had this amendment in the committee, it had to be a substantive violation. The current amendment, as we view it, would provide for triggering with even a technical violation. That would be catastrophic in bankruptcy law. We just cannot support this amendment.

I know the distinguished Senator is trying to do something worthwhile, and I do not believe there should be predatory lending any more than he does, but I do think we take care of it in this bill. But under this current amendment, it is even worse than the amendment he was prepared to offer in committee because even a technical violation would trigger what he wants to do. So I just need to make that point for the record, and I am happy to yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I ask unanimous consent to proceed as in morning business.

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

Mr. GRAHAM. Mr. President, I ask, immediately upon the completion of my remarks, my colleague, Senator CORZINE, be recognized.

Mr. HATCH. Reserving the right to object, I ask Senators how much time they intend to take?

Mr. GRAHAM. We will take approximately 15 minutes apiece.

Mr. HATCH. I have no objection.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. I thank the Chair.

(The remarks of Mr. GRAHAM and Mr. CORZINE pertaining to the introduction of S. 481 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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.

AMENDMENT NO. 17, AS MODIFIED

Mr. LEAHY. Mr. President, I send to the desk a modification of the amendment by the Senator from Illinois, Senator DURBIN. I am advised that this modification has been cleared with Senator HATCH and his side.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, reads as follows:

At the end of subtitle A of title II, add the following:

SEC. 204. 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 subsection (a), (b), (c), (d), (e), (f), (g), (h), or (i) of section 129 of the Truth in Lending Act (15 U.S.C. 1639).''.

Mr. LEAHY. Mr. President, I know we are waiting for other Members to come to the floor. It is interesting. I have listened to the outpouring of grief following the tragic events in Southern California, the shooting in the high school. As a parent, I obviously look at that and can only begin to imagine the terror that was in the hearts of the parents of all the children there—not knowing from the initial reports whether their child was alive or injured. And then, of course, it had to be the worst grief any parent could feel to find out their children had been killed.

I could not help but think of my own son, who teaches high school in that area. But one has to think of anybody, whether they know them, are related to them or not, in such a case because the whole country is involved. It is almost a John Donne reference in this case, and I think of this body having intense debate a couple of years ago after the tragedy at Columbine. It was actually one of our better debates. We discussed—both Republicans and Democrats—the fact that there are a number of different causes—no one magic thing, no one cause that sends a young person out to do such a terrible, almost inexplicable deed; and in each of these instances when they have happened, and in those instances where the police have caught somebody prior to it happening, there is not a common denominator.

If there was some matrix that you could apply to each one of these, it would be, I suppose, easy enough to stop them. But there isn't. It is not just a question of stricter laws, not just a question of more teachers, not just a question of more security; it is not just a question of gun laws. But there are parts of each of those. What was so good about the debate on the juvenile justice bill, which became the Hatch-Leahy juvenile justice bill, is that we referred to each aspect and we debated and voted on everything from counseling for juveniles to stricter laws on juveniles, closing the gun show loophole, providing tools for teachers and communities. We passed the bill by overwhelming margin. It got 73 votes. I think we can all feel that we had done something for the country.

But the bill never came back. It was never voted on again. It went into a conference committee and never came out. There was never a vote there. Yet I wonder, if you are a parent, and you see a child killed, and you think that at least some things could be done to stop this from happening somewhere else, if you would not think that would be a top priority. We obviously thought it was at a time when this Senate was probably embroiled in the most partisan divisions that I have seen in 25 years. You would think that it would because we had 73 votes. This was a case where Democrats, Republicans, liberals, and conservatives, came together and we passed this bill.

But then a decision was made somewhere, and it never came back. It was never voted on again and was never signed into law because the Congress decided never to act on it again. It was a hollow promise to the parents and the teachers and the children of America. We lost any sense of urgency on this bill that got 73 votes.

But we passed the bankruptcy law—a flawed bankruptcy law, in my view—last year. That got 70 votes, less votes than juvenile justice and, by God, we have to bring it right back up here again—not because the owners of the credit card companies are being shot at or their children are being shot at, not because they are all going out of business. In fact, they have record profits and will have greater ones under this bill because the commercial interests have been heard rather than the interests of parents, children, and teachers.

I mention this in passing. I know there are others on the floor seeking recognition, and I will yield in a moment.

If the Senate is to be the conscience of this Nation, don't we have to sometimes ask ourselves what are our priorities? How can any parent, how can any Senator, how can any American, with the carnage in our schools or on our streets, look at some of the terrible things happening with our youth and ask, Why are we in such a hurry to pass a piece of commercial special interest legislation and we cannot bring ourselves to take the final step across the finish line on the juvenile justice bill?

I cannot accept that, and, frankly, it is not that sense of priority that brought me from my State of Vermont to serve in the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, today we are debating an extremely complicated and extremely important piece of legislation, the bankruptcy reform

bill. With the exception of a small number of amendments adopted by the Judiciary Committee last week, S. 420, the bill before us, is the same bill that President Clinton vetoed last year. The passing of a few months, and the change of Presidents has not made this bill any better, or more fair, or more balanced, or more worthy of this Congress than was the one we passed last year. It is still a bad bill and I urge my colleagues to oppose it.

Supporters of the bill have put enormous pressure on the Congress to act quickly and pass the bill again because President Bush has indicated he will sign it. The majority wanted to bring the bill directly to the floor without going through committee, notwithstanding the fact that we have a very different Senate after the last election. We had to fight for every moment of committee consideration. We did succeed in convincing the majority that the Judiciary Committee should consider the bill in committee. We had a quick hearing, and a markup, and I think the bill was improved in the process. Then, the same day that we voted the bill out of committee, the majority leader sought consent to bring the bill up on the floor. I am sorry this rush to judgment is happening. I believe this bill is bad policy, and I believe we will come to regret passing it.

I respectfully suggest that having a new President who is inclined to sign the bill ought to put more pressure on the Senate to do its job in a thoughtful and balanced way, not less. In the past two Congresses, it has been my impression that the Republican majority has made decisions on the substance of this bill in order to stake out a negotiating position vis-a-vis the White House. Twice it has ignored the work done by the Senate on the floor and come up with a conference vehicle that was designed to provoke a veto. In 1998, for example, we passed a bill through the Senate by a vote of 97–1. That is the way bankruptcy reform should be done and has been done in the past. But the majority ignored that bill and brought what was essentially the House bill back from conference, and it failed to become law. Again last year, on issue after issue, including two crucial points—Senator KOHL's homestead amendment and Senator SCHUMER's clinic violence amendment, where the Senate had spoken by clear bipartisan majorities—the bill that came back from the shadow conference was tilted more to the House bill, and the bill was vetoed.

This time there is no administration to push back in negotiations. This time, the bill will not be a product of compromise with the administration. This time the majority will bear responsibility for what it produces and passes. This time for sure we should listen to the experts who have been telling us to slow down and be careful.

Amending the bankruptcy code used to be a nonpartisan exercise, where the Congress listened to experts—practitioners and law professors and judges and trustees, and made careful considered judgments about how the law should work. Now it seems as if we ignore the experts and instead do what the credit industry wants us to do. We use parliamentary tactics to avoid reasoned consideration. Those tactics harm the bill, and discredit the Senate.

Let me now turn to the substance of this legislation. I believe S. 420 will do terrible damage to the bankruptcy system in this country, and even more importantly, to many hard-working American families who will bear the brunt of the unfair so-called ''reforms'' that are included in this bill. This is a harsh and unfair measure pushed by the most powerful and wealthy lobbying forces in this country, and it will harm the most vulnerable of our citizens.

First, let me talk about what is not in this bill, which is directly related to the fact that powerful special interests have shaped it. As I have said a number of times, this bill is not a balanced piece of legislation. The interests that are the strongest supporters of this bill, the credit card companies and the big banks, succeeded in limiting the provisions that will have any effect on the way they do business. These interests gave us and our political parties millions of dollars of campaign contributions and they like the results they achieved in this bill.

If we are going to pass a credit card industry bailout bill, the least we can do is to help save the industry from itself by taking some steps to make sure that consumers are made more aware of the consequences of taking on ever increasing amounts of debt. We have the chance in this bill to require credit card companies to be more open with consumers about the consequences of running a balance on a card, but so far we have not done it. We need more prevalent and more detailed disclosures on credit card statements and solicitations. There are limited disclosure requirements in this bill, but they don't go nearly far enough in my opinion. I am afraid the main reason they do not is the power of the credit card companies.

I will speak about this topic again because I am sure there will be amendments offered to improve the disclosure provisions in the bill. And at that time, I will also call the bankroll on this bill, because the political contributions made by the industry supporters of this bill are truly extraordinary.

There is another thing missing in this bill. Remember, this bill is supposedly designed to end abuses of the bankruptcy system by people who really can afford to pay off more of their debts. But the biggest abuses, and all the experts agree on this, come when wealthy people in certain states file for bankruptcy by taking advantage of very large or even unlimited homestead exemptions that are available in their States. Some people with large debts even move to a State like Florida or Texas where there is an unlimited homestead exemption, specifically for the purpose of filing for bankruptcy.

The National Bankruptcy Review Commission and virtually all leading academics believe that homestead exemptions are being abused and a national standard is needed. And by a vote of 76–22, the Senate adopted in the last Congress an amendment from my colleague the senior Senator from Wisconsin to close the loophole. That amendment would have put a $100,000 cap on the amount of money that a debtor can shield from creditors through the homestead exemption.

That amendment was stripped out of the bill during last year's secret conference and replaced by a weak substitute. The bill limits the homestead exemption to $100,000, but only for property purchased within two years of filing for bankruptcy. That means that wealthy debtors can plan for bankruptcy by moving to an unlimited homestead exemption state, buying a palatial estate, and then just put off their creditors for two years before filing bankruptcy. If they do that, they can continue to shield millions of dollars in assets and throw off their debts with a bankruptcy discharge. The bill will have no effect on this abuse of the bankruptcy system. This bill does not close the homestead exemption loophole that people like Burt Reynolds and Bowie Kuhn have famously used in the past.

Once again, supporters of this bill chose to ignore reforms that would give this bill some balance. Somehow the interests of wealthy debtors who use the homestead exemption to abuse the bankruptcy system are more important than the interests of hard-working Americans who through no fault of their own—whether from a medical catastrophe, or the loss of a job, or a divorce, are forced to seek the financial fresh start that bankruptcy has made possible since the beginning of our Republic. I will, of course, support Senator KOHL when he offers his original and stronger amendment on the homestead exemption. Any bankruptcy bill that does not deal with homestead exemption abuse is simply not worthy of being called bankruptcy reform.

It is interesting and very revealing to contrast the treatment by this bill of wealthy homeowners who abuse the bankruptcy system with how the bill that was introduced treats poor tenants who need the protection of the bankruptcy system to keep from being thrown out on the street while they try to get their affairs in order. As I mentioned, the provision dealing with the homestead exemption is virtually meaningless. At the same time, the bill President Clinton vetoed includes a draconian provision that denies the bankruptcy stay to tenants trying to hold off eviction proceedings, even if they are able to pay their rent while

the bankruptcy is pending. I think this provision is purely punitive. It will have no impact at all on getting debtors to pay past due rent. It will result in the eviction of people who are not abusing the bankruptcy system, but who are trying to use it for exactly the purpose for which it was intended—to get a fresh start and become once again productive members of our society.

When the bankruptcy bill was before the Senate in the last Congress, I tried very hard to pass an amendment that would have made the bill less harsh on tenants while at the same time denying the protection of the automatic stay to repeat filers who are abusing the system. I modified the amendment to take account of some reasonable hypothetical situations that the Senator from Alabama came up with. But the realtors strongly opposed my amendment. And the Senate rejected it by a nearly party line vote. That was unfortunate. It confirmed my view that this bill is not balanced. It is not rational. It's about punishing people, not just stopping the abuses that we all agree should be stopped.

So I offered my amendment again in Committee this year, and with the help of Senator FEINSTEIN, we actually succeeded in committee in eliminating the unfair and harsh provision of the bill section of the bill and replacing it with a provision that is fair to both landlords and tenants. Mr. President, I sincerely hope that my colleagues will oppose any attempt to eliminate the Feingold-Feinstein amendment that the Judiciary Committee adopted.

Now let me turn to what proponents view as the central feature of this bill, the means test. After much work, I believe this feature of the bill is still flawed and unfair. The means test is the mechanism that the bill's proponents believe will force people who can really manage to pay some portion of their debts into Chapter 13 repayment plans instead of Chapter 7 discharges. The means test requires every debtor to file detailed information on their expenses and income which is then analyzed according to a formula. Those who pass the means test can file a Chapter 7 case; those who fail would have to file under Chapter 13.

The bill includes an important ''safe harbor'' for debtors who are below the median income. The means test does not apply to them. That is a good thing, since studies show that only 2 or 3 percent of debtors would be required to move from Chapter 7 to Chapter 13 under the means test. But even with that ''safe harbor,'' the bill has significant problems. First, the bill specifies that for purposes of determining the safe harbor, the median income for each individual state should be used, rather than the higher of the state or national median income. This will unfairly disadvantage people who live in high cost areas of low median income states. Furthermore, in the Senate bill in the last Congress, we included a safe harbor from creditor motions that applied to people with income less than either the national or the median income. The people who drafted the final bill that President Clinton vetoed and that has been reintroduced ignored that standard. I doubt they really believe it will mean that more abusers of the system will be caught by the means test. But they did it anyway, giving further evidence of the arbitrary nature of this bill.

In addition, the means test still employs standards of reasonable living expenses developed by the Internal Revenue code for a wholly different purpose. These standards are too inflexible to be fair in determining what families can live on as they go through a bankruptcy. They are arbitrary. And they are also ambiguous with respect to things like car payments because they were not designed to be used in this context. We have pointed this out repeatedly over the past few years, but the sponsors of the legislation have insisted on using these inflexible IRS standards.

The safe harbor from the means test also inexplicably counts a separated spouse's income as income available to a mother with children who has filed for bankruptcy, even if the spouse is not paying any child support. This can't be fair. Mothers filing for bankruptcy because their spouses have left them are treated for purposes of the safe harbor as if the spouse's income is still available to them. That is what this bill does. It makes no sense. It's arbitrary and punitive. And while I have heard that there may be some interest in fixing this problem, I understand that the credit industry objected when they tried to do that in the House. So we will see just how strong the industry is here in the Senate when an effort is made to correct this terrible injustice in the bill.

Perhaps the thing that is most curious about the means test is that while we now have a safe harbor for lower income people, they still have to fill out all the same paperwork, doing all of means test calculations using the IRS expense standards. Why is that? If the intent is to exempt lower income debtors from the means test, why have them go through the means test anyway? The burden of the means test for these people is not the result—a tiny percentage would ever be sent to Chapter 13 because of it. No, it's the burdensome paperwork that is the problem. In our hearing, Bankruptcy Judge Randall Newsome made this point very powerfully. He said:

> If S. 220 must contain the means test as presently drafted, then debtors whose incomes are below the applicable median should be entirely insulated not only from its application, but from its paperwork requirements as well.

Here is an example of the problem of making people go through the means test even though they are exempt from it. This bill would deny the protection of bankruptcy to a single mother with income well below the state median income if she doesn't present copies of income tax returns for the last three years, even if those returns are in the possession of her ex-husband. I can see no justification for this result whatsoever.

So for those supporters of the bill who trumpet the safe harbor, I ask you: Why doesn't the bill apply the same safe harbor to creditor motions as the Senate bill did, and why doesn't it exempt people who fall within the safe harbor from the paperwork requirements? I have yet to hear reasonable answers to those questions, which leads me to believe that there are no reasonable answers. This bill is arbitrary, and it is punitive.

This bill also includes a number of ''presumptions of nondischargeability'' provisions, which basically say, ''these debts can't be discharged in bankruptcy because we think they look like people are running up bills in contemplation of bankruptcy.'' In other words, they are abusing the system. They are accumulating debt with no intention of paying it off.

The problem is that these presumptions are unfair. So instead of being a deterrent to abuse of the system, they are simply a gift to the credit industry, and a harsh punishment to hard working people trying to do the best they can to meet their obligations to their families. One such provision creates a presumption of nondischargeability if a debtor takes $750 of cash advances within 70 days of bankruptcy. And $750 in a little more than two months is not much. I think all of us can imagine a single mother with children who loses her job or has unexpected medical bills for her kids and has to use cash advances to buy food for her family or pay her rent. But if that woman files for bankruptcy, the debt to the credit card company is presumed to be fraudulent. That means that the debt from those cash advances will not be discharged by bankruptcy. It will still hang over her head as she tries to get back on her feet and support her family after the bankruptcy proceeding is over. That is not balanced reform. Once again, this bill gives special treatment to credit card companies at the expense of the most vulnerable members of our society. It is arbitrary and punitive.

This example shows how empty the proponent's arguments are when they claim that the bill gives first priority to alimony and child support. Over 100 law professors wrote the Senate last year to contest that claim. Let me quote from their letter:

> Granting ''first priority'' to alimony and support claims is not the magic solution the consumer credit industry claims because ''priority'' is relevant only for distributions made to creditors in the bankruptcy case itself. Such distributions are made in only a negligible percentage of cases. More than 95 percent of bankruptcy cases make no distributions to any creditors because there are no assets to distribute. Granting women and children a first priority for bankruptcy distributions permits them to stand first in line to collect nothing.

The law professors continued:

Women's hard-fought battle is over reaching the ex-husband's income after bankruptcy. Under current law, child support and alimony share a protected post-bankruptcy position with only two other recurrent collectors of debt—taxes and student loans. The credit industry asks that credit card debt and other consumer credit share that position, thereby elbowing aside the women trying to collect on their own behalf. . . . . As a matter of public policy, this country should not elevate credit card debt to the preferred position of taxes and child support.

What the law professors point out so convincingly is that the key issue is not how the limited assets of a debtor are distributed in bankruptcy but what debts survive bankruptcy and will compete for the debtors income when the bankruptcy is over. In a variety of ways, this bill will encourage reaffirmation agreements, and increase nondischargeability claims, which will lead to more debtors having more debt that continues after bankruptcy.

That is what hurts women and children, not the priority of child support claims in the bankruptcy itself. The priority of claims in the bankruptcy itself is almost meaningless since in the vast majority of bankruptcy cases there are no assets to distribute. People are broke and they don't have anything to sell to satisfy their creditors. That is why they file for bankruptcy. You can't squeeze blood from a stone.

One of the interesting things about this bill is the almost Orwellian names of some its provisions. There are a number of them. For example, there is a title of this bill with the name: ''Enhanced Consumer Protection.'' But many of the provisions in this title actually offer little if any protection at all. The weak credit card disclosure provisions are one example. Yes, those may be ''enhanced'' consumer protections, enhanced from nothing, but they aren't considered sufficient by any organization whose primary concern is consumer protection.

There is another section within the so-called ''Enhanced Consumer Protection title called ''Protection of Retirement Savings in Bankruptcy.'' Sounds pretty good. But what the provision does is put a cap on the amount of retirement savings that are put out of reach of creditors in a bankruptcy proceeding. You see, before this bill, there was no limit at all on the amount of retirement savings that can be protected. So this bill is not an enhanced consumer protection at all. It is a step backward for consumers and hard-working Americans who have tried to put aside some money for their golden years.

Incidentally, this provision was nowhere to be found in either the bankruptcy bill that passed the Senate last year or the bill that passed the House in 1999. This is one of those provisions that appeared out of nowhere. In fact, before a firestorm of criticism forced him to reconsider, the Senator who proposed this provision wanted to let consumers waive the existing protection of retirement savings in boilerplate consumer credit agreements. So the $1 million cap is an improvement over what the sponsors of this bill tried to do, but it is hardly a ''protection.'' I understand that Senator KENNEDY may offer an amendment to eliminate this cap, and I will support it.

Here is another Orwellian title. Section 306 is called ''Giving Secured Creditors Fair Treatment Under Chapter 13.'' It ought to be called ''Giving Certain Secured Creditors Preferred Treatment Under Chapter 13,'' because it favors those who make car loans over other secured creditors and over unsecured creditors.

Here is how it works: There is a concept in bankruptcy law currently called ''cramdown'' or ''stripdown.'' It recognizes the fact that the collateral for some kinds of loans can lose value over time, so that it may be worth significantly less than the debt owed. Remember that in a bankruptcy proceeding, secured creditors get paid first. But the cramdown concept says to those creditors, you only get paid first up to the amount of the value of the collateral for the loan. After that, if you are still owed money, you get in line with other unsecured creditors.

To give a more tangible example, if someone owes $10,000 on a car loan, but the car which is collateral for that loan is worth only $5,000, then only $5,000 of that loan is considered secured in a bankruptcy. That makes perfect sense, since the maker of that loan has the right to repossess the car, but if it does that it can only get $5,000 when it sells the car.

What the bill does is to eliminate the cramdown for any car that is purchased within 5 years of bankruptcy. That means that even though the vehicle that secures the loan has lost much of its value, the entire amount of the debt must be repaid in a Chapter 13 plan. This gives special treatment to the lender, but more importantly, it will make it much more difficult for a Chapter 13 plan to work. And that will hurt people who want to pay off their debts in an organized fashion under Chapter 13.

In answer to my written question, Bankruptcy Judge Randall Newsome supplied a detailed example that shows how the elimination of the cramdown option will hurt both debtors and creditors. In his example, a debtor with a seven year old car who files under Chapter 13 under current law will be able to pay off his car loan up to the value of the car with interest and make a meaningful payment of his unsecured debts over the 3 year duration of his Chapter 13 plan. But with the elimination of the cramdown in the bill, he would, he would have no choice but to file in Chapter 7 and allow the car lender to repossess his vehicle. And his unsecured creditors would get nothing. I ask that Judge Newsome's letter to me providing the details of this example be printed in the RECORD.

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

UNITED STATES BANKRUPTCY COURT,
NORTHERN DISTRICT OF CALIFORNIA,
Oakland, CA, February 22, 2001.

Senator RUSS FEINGOLD,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINGOLD: This letter will serve as my response to the written questions you submitted to me on February 20, 2001. Your first question asks whether S. 220 ''will essentially destroy Chapter 13 as an option for debtors who wish to keep their cars. . . .'' As I stated in both my written and oral testimony, I believe that the ''anti-cramdown'' provision in §306(b) of the bill will destroy the incentive for many debtors to file a chapter 13 case. When §306(b) is combined with §314(b), which eliminates the enhanced discharge presently afforded by chapter 13, only those debtors seeking to save a home from foreclosure will find chapter 13 a reasonable option.

A hypothetical will illustrate why §306(b) will hurt both debtors and creditors. Suppose in 1998 Mr. Jones, who is single and lives in an apartment, purchased a 1994 Dodge for $15,000 on credit. At the time he bought the car, its fair market value was only $12,000, but because of his poor credit rating, he was forced to pay substantially over market. Because he can't afford the payments on the Dodge along with his other monthly payments, he files a chapter 13 case in 2001. At the time he files, he still owes $10,000 on the car, and he has other unsecured debts totaling $4,000. Without counting payments on his debts, his monthly income exceeds his monthly expenses by $240 per month. The real fair market value of the car at the time of filing is $5,000. Under present law Mr. Jones could write down the value of Dodge to $5,000 in his chapter 13 plan. Assuming he proposes a plan to pay $240 a month over 36 months, he would be able to pay $5,000 plus interest to the secured creditor, and repay a meaningful portion of his unsecured debt over the life of the plan. But under §306(b) of S. 220, Mr. Jones would be forced to pay all $10,000 of the remaining contract price on the car, because he bought it within five years of filing his chapter 13 case. This is true even though the car is now 7 years old, and the creditor would get substantially less than its present value of $5,000 if the car were repossessed and sold. Depending on the interest rate on the Dodge debt and the chapter 13 trustee's commission, Mr. Jones might not even be able to propose a plan that would pay off the car, pay nothing to his unsecured creditors, and be completed within the 60-month time limit for chapter 13 plans. He would be much better off allowing the secured creditor to repossess the Dodge, file a chapter 7 case, and attempt to buy a newer car, even though the interest rate undoubtedly would be exorbitant. Thus, neither the secured nor the unsecured creditors are paid what they're owed, and the debtor is back in a debt trap. No one benefits.

Your second question concerns the problem of repeat filers. I view this as one of the most serious abuses of the bankruptcy system. It has been most severe in the Central District of California. Nonetheless, I would urge caution in attempting to correct it. No one would seriously argue against amending the bankruptcy code to target those who file repeatedly just to stop a foreclosure or an eviction. But many repeat filers are forced to file a second petition because their first case was dismissed for reasons beyond their control, such as the incompetence of a bankruptcy petition preparer. I have read your proposed

amendment to S. 220, and believe it strikes the appropriate balance. It protects the rights of innocent tenants, while preserving the right of a landlord to rid themselves of a bad tenant without the legal expense of seeking relief from the automatic stay in bankruptcy court.

Please don't hesitate to contact me if I can be of further assistance.

Very truly yours,

RANDALL J. NEWSOME.

Mr. FEINGOLD. Most people file Chapter 13 cases because they want to keep their cars. The cramdown allows them to reduce their car payments to a reasonable amount, leaving enough money to pay off other secured creditors and make a repayment plan work. According the Chapter 13 trustees, who know what they are talking about since they deal with these cases day in and day out, this single provision of the bill will increase the number of unsuccessful Chapter 13 plans by 20 percent. And Judge Newsome states that if this bill becomes law, Chapter 13 will essentially be eliminated as an option for people who wish to hold on to their cars. He writes: ''When § 306(b) is combined with §314(b), which eliminates the enhanced discharge presently afforded by chapter 13, only those debtors seeking to save a home from foreclosure will find chapter 13 a reasonable option.''

Making it more difficult for debtors to get Chapter 13 plans confirmed will lead to more repossessions of cars, and ultimately to more Chapter 7 filings. And even where a Chapter 13 plan can be confirmed and is successful, the anti-cramdown provision will reduce the amount that a debtor can pay to unsecured creditors or for child support or alimony. In essence, under this bill, car payments, on a car worth far less than the debt owed, are given priority over child support. Another example of how this bill is arbitrary and punitive and how the claims of the bill proponents that the bill will help women and children are empty indeed.

The anti-cramdown provision undermines the efficacy of Chapter 13. All the experts tell us that. And I have to point out the irony here. The avowed purpose of proponents of this bill is to move people from Chapter 7 discharges to Chapter 13 repayment plans, yet the bill undermines Chapter 13. I will support an amendment to eliminate this particular provision that is really a gift to the auto industry at the expense of other secured creditors.

There is another provision in this bill that undercuts Chapter 13. The small group of Senators who shaped this bill in a shadow conference accepted a provision from the House bill that says that for those debtors with income above their state's median income, Chapter 13 plans must extend over 5 years, rather than three. That's a 66 percent increase in payments required to complete the plan. In view of the fact that the majority of three year plans fail, the requirement that the debtor go two more years without an income interruption or unexpected expenses will inevitably lead to an even higher rate of Chapter 13 plan failures and discourage even more debtors from filing voluntarily under Chapter 13. I will support the amendment that Senator LEAHY may offer to correct this problem.

I will also support another amendment that may be offered by Senator LEAHY to deal with the damage this bill does to Chapter 13. The bill makes people who voluntarily file under Chapter 13 go through what amounts to a means test using the same wooden and arbitrary IRS standards to determine how much disposable income they have available to pay off their secured creditors. Anyone who has more than the median income will have to limit their monthly expenses to those permitted under the IRS standards. That is going to discourage Chapter 13 filings. If we want to encourage debtors to use Chapter 13 rather than Chapter 7, we have to get rid of that provision.

As I have said before, this bill is at war with itself. Bankruptcy experts from around the country say it will not work. This bill will destroy Chapter 13 as an option for many debtors. If we pass it, I'm convinced that we will be back here trying to fix it once it starts to take its toll on the American people. In the meantime, how many lives will we make harder, how much more heartache are we going to inflict on hard-working Americans?

Mr. President, I will offer an amendment to address another provision of the bill that is bound to inflict heartache on families and children. Section 313 of the bill includes a definition of ''household goods.'' The effect of this definition is to limit the ability of debtors to avoid non-purchase money liens on personal property. I consider the practice engaged in by many finance companies of taking a security interest in personal property that was not purchased with the loan to be highly questionable. The FTC in the early '80s prohibited taking these nonpurchase money security interests in certain household property. But because the list of what constitutes household goods in the FTC regulation is outdated and limited, many finance companies put a lien on every other type of personal property that they can identify. Those liens give them leverage to try to collect on their loans, even if the property is of minimal value. And they have a leg up on getting reaffirmation in bankruptcy if the liens can be enforced.

The Bankruptcy Code of 1978 allows debtors to avoid these liens as long as the property is exempt from foreclosure under the applicable state or federal personal property exemption. But the section 313 definition of household goods would limit the liens that can be avoided to a narrow list of certain goods. The list is based on the FTC regulation from the early 1980s. So essentially, if this provision becomes law, the liens that can be avoided in bankruptcy are mostly the ones that the FTC has already said should be. But anything else that's not on the list can be foreclosed on things like garden equipment, and family heirlooms or paintings of a debtor's parents.

Now remember, the liens we are talking about here are non-purchase money liens, they aren't loans taken out to buy a particular item. There is no evidence that the power to avoid these non-purchase money liens is being abused. It can't be abused, because personal property exemptions are quite limited. No one can shield thousands of dollars of fancy stereo equipment in a bankruptcy. So the definition of household goods in the bill is just a gift to the finance companies who prey on people living at the edge. This bill facilitates these kinds of borderline unethical lending practices. I will have an amendment to substitute for the limited and counterproductive definition in the bill, a broad definition of household goods that many courts are already employing.

I have spoken for quite awhile here about the problems with this bill. In fact, I have probably only scratched the surface. This is an immensely complicated bill about a very technical area of the law. There are provisions in this bill that I would venture to guess that no one in the Senate really understands. We are hearing every day about new problems with this bill, particularly in the business bankruptcy provisions that few people have paid much attention to.

Before I close, I have to mention one provision that was slipped into this bill in the shadow ''conference'' and remains in it today section 1310 barring enforcement of certain foreign judgments. This provision is an example of lawmaking at its worst. It has nothing to do with bankruptcy law whatsoever. It is a provision designed to assist about 200 to 300 investors in Lloyds of London who lost money in the 1980s. These individuals tried to avoid their responsibilities in the British courts and failed, and they have repeatedly failed to have the judgments against them thrown out by American courts. In fact, eight circuit courts have ruled that these investors' disputes with Lloyds should be settled in British courts. So they have been seeking special treatment from the Congress, and if President Clinton didn't veto the bill last year they would have got it.

This provision is opposed by the State Department that rightfully worries about the impact of a law on international economic transactions that gives the back of the hand to respected foreign courts. It also will make it harder to enforce U.S. court orders in foreign courts. The Organization for International Investment, the National Association of Insurance Commissioners, and the Council of Insurance Agents and Brokers oppose the provision because of their concern over its impact on the international insurance market.

Worst of all, this provision smacks of the kind of special interest giveaway

that pervades this bill. But this one is worse because we have had no hearings on this provision, it did not come out of this committee, it did not come out of the Senate or the House, it was just slipped into the bill at the last minute. There is a lot of legislation that I would like to slip into this bill since it does appear that it is on the way to the President's desk. I would like to do something about mandatory arbitration of employment disputes. I would like to require that DNA testing be made available to all inmates on death row. I would like to end racial profiling or pass campaign finance reform. But the interests that support me on these issues don't have an in with the people who are writing this bill. They can't get their pet legislation inserted in this bill in a conference committee. But these investors in Lloyd's did, so they stand to get their way. That's not right. So I may offer an amendment to strike section 1310 and I certainly look forward to seeing it removed from the bill.

It is important to note that if we do our job here and pass some amendments to improve the bill, the fight is not over. Because there is a long record of the conference committees simply ignoring the Senate's work and sending back to us a much worse bill. So I have to say to my colleagues, if you support the bill after the Senate completes its work you must fight to demand that the conference respect the changes that the Senate made. The House has done virtually nothing on this bill. It basically rubber-stamped the conference report from last year. And our rights as Senators to offer and pass amendments are worthless if the conference committee simply returns the bill to the form in which it was introduced.

To conclude, this is the kind of bill where we need to rely on the experts to guide us. And we just haven't done that here. Once again, we have a letter from over 100 law professors, from all across the country. They aren't debtors lawyers, they aren't all Democrats, they don't have an ideological agenda, they just understand the law and care about how it operates. And they plead with us, let me quote from their letter again: ''Please don't pass a bill that will hurt vulnerable Americans, including women and children.''

This is extraordinary. The experts beg us to listen to them. They don't have a financial interest here. They don't represent debtors. None of them is in danger of declaring bankruptcy. They just hate to see this Congress make such a big mistake in writing the laws. They don't want us to ruin the bankruptcy system, which dates back to the earliest days of our country, by passing a bill that is so unbalanced, so arbitrary and so punitive.

I assure my colleagues that I am not opposed to reform of the bankruptcy laws. I know there are abuses that need to be stopped. I voted for a bill in 1998 that passed this Senate with only a handful of votes in opposition. There are things we can do to improve the bankruptcy system. There are loopholes we can close and abuses we can address. We can do it in a bipartisan way. We can write a balanced bill that the Senate and the country can be proud of. We can rely on the advice of experts as we always have in the past. We didn't do that here. We relied on the credit card industry, which has showered Senators and the political parties with campaign contributions, and it shows.

Before we barrel forward on a fast track to pass this bill just because it is where the process ended last year, we have one more chance to listen to the experts. One last chance to step back from the brink of passing a very bad law, a law that I believe we will come to regret. It is a matter of simple fairness and simple justice.

S. 420 is an unfair bill, Mr. President. The Senate can do better. The Senate must do better, for the sake of hard-working people who need our help.

I yield the floor.

The PRESIDING OFFICER (Mr. ALLARD). THE SENATOR FROM DELAWARE IS RECOGNIZED.

Mr. BIDEN. Mr. President, I listened with great interest to my friend from Wisconsin when he talked about showering money by special interests. Yesterday, he and I voted on a bill on ergonomics where the outfit that most wanted that bill not stripped away was the labor community which, if we take his definition broadly, showered money on everyone here. I don't even accept PAC money. Yet I did not hear anybody stand up yesterday and say the reason we voted for ergonomics was that labor showered money upon this body. I find it somewhat unusual that there is such selective judgment about how money is showered on this body.

I wish the Senator was still here. I am also interested in what he constantly refers to as the arbitrary nature of this bill. It seems to me the definition of arbitrary is whatever the Senator from Wisconsin doesn't like, because such an arbitrary bill as this passed with 70 votes last year, and it has been improved even further than last year. It passed with 306 votes just a couple of days ago over in the House of Representatives. It must mean that two-thirds of the Senate last year—and I realize it has changed by several votes on this side now—and 306 of 435 Members over there are obviously very arbitrary. This bill is supposedly so partisan that it has had broad bipartisan support in both the House and the Senate.

I also point out that, having been involved with President Clinton relative to his veto of the bill last year, the single most important thing the President wanted done through the help of Senator SCHUMER—and, through the leadership of Senator SCHUMER, it was done in this bill—was that he was very concerned about a provision that possibly would allow someone who had violated the so-called FACE—that is, bomb an abortion clinic or do physical damage to the building or to persons working in there—to then come along and declare bankruptcy on the grounds that they should not have to pay the civil judgments against them. That meant a great deal to President Clinton, to me, and to a lot of other people.

That was the primary reason President Clinton vetoed this bill last year. That provision is no longer exempted from this bill. It is part of the bill. One of the nondischargeable debts under bankruptcy in this legislation is for someone who has a judgment against them for violating the rule. That is called the FACE law, relating to intimidating or doing damage to abortion clinics or persons who work in them.

I also find interesting one thing the Senator said. I think he is correct. He pointed out that mothers filing bankruptcy even though their husbands are gone must still count their husbands' income.

That is not what was intended in the bill. I will give you an example. On the section from which the Senator from Wisconsin read, there was a drafting error here in all the provisions save one that I am aware of. It says:

> . . .if the current monthly income of the debtor, or in a joint case the debtor and the debtor's spouse. . . .''

That means that if the debtor is all by herself and has not filed for bankruptcy jointly, then you do not count the husband's income. That was not intended. But there is a section where it is written differently and could be read differently. That is in section (7), on page 17 of the bill.

Section 7, in subsection (2) says:

> . . . if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal less than. . . .

It should read: if the current monthly income of the debtor, or in the case of a joint filing by the debtor and their spouse. . . .

It is my intention, as one of the people who supports this bill, to see that it is changed in the managers' amendment, so it reads as it was intended.

But after that, what I heard added up to an awful lot of—how can I say this—well, I will not characterize it. I do not think it was particularly accurate. So since this is the first time I have spoken to this bill on the floor, let me go into a little more detail. But I am going to go into a great deal of detail on each of these amendments that are about to be offered.

First, the idea of a fresh start is absolutely fundamental to the American way of life. Bankruptcy must remain available for those who really need it. And it does. Let's put in perspective what we are talking about. If you listened to the critics of the bill on the floor, it would sound as if we are eliminating bankruptcy. The only issue at stake here is whether or not someone files bankruptcy in chapter 7 or chapter 13. Right now, I might point out to

you, bankruptcy judges are supposed to lay out in chapter 7—chapter 7 is one of those places where you eliminate all your debt. Chapter 13 is where you say: I want to eliminate most of my debt, but I can pay back some of it. I can pay back some small percentage of it. And they set out a schedule to pay back some small percentage of it.

What we are talking about is a situation where someone who files in chapter 7, who is able to pay some of their debt, and should be filing in chapter 13 right now—a bankruptcy judge or a master must, in fact, look at that circumstance and say: This is an abusive filing. He really should be filing in chapter 13. But guess what. There is no uniform standard nationwide. It is left up to every bankruptcy judge to determine what is abusive and what is not abusive.

So what are do we doing here? The essence of what we are doing is laying out the standard at which a bankruptcy judge must look to determine whether or not the filer is abusing the system going into chapter 7 as opposed to chapter 13.

Why are we doing that? We are doing that because a lot of the very people I represent, and that my friend from Wisconsin and others talk about all the time—working-class folks—are getting hurt by the way bankruptcy is abused now. Because what simply happens is, all those debts that they incur—and they never filed bankruptcy before—cost them more money. It costs them more money at Boscov's when they go buy a $100 item because people have declared bankruptcy who could be paying back something. It costs them more money.

The average person in America, the person who really is in a crunch, is hurt the most because interest rates go up, the cost of financing, buying the new bed or refrigerator goes up.

You don't have to just listen to me about this. Unnecessary and abusive bankruptcy costs everyone. The Clinton administration's own Justice Department concluded that our current system costs the economy $3 billion a year. And they made the pursuit and prosecution of bankruptcy abuse a high priority.

This is not an imaginary problem. It is not going away. This week we are taking up a bill that is identical to the conference report that enjoyed strong bipartisan support in the House and the Senate—70 in the Senate and 308 in the House. During the debate, we have already heard from some of my colleagues who claim that they support the general idea of eliminating abuse in bankruptcy, but they oppose the particulars.

Now, again, this costs every single solitary consumer. If you are making $300,000 a year, you don't have to buy your sofa bed on time. If you are making $300,000 a year, you don't have to buy your refrigerator on time. Where I come from—my family —you buy them on time. And it costs them money. It costs them money—a lot more money—because these folks do not write off this debt and say: I didn't get paid. I didn't get paid back for all that was owed me here, so forget it. I will just take it out of my bottom profit line. They say: No. I have to make it up.

So what do they do? They charge my mother and father more money to buy the refrigerator because they can't buy it other than buying it on time.

So I am having it about up to here with how this is hurting so many poor people. I will get to that in just a minute.

During this debate, we have had raised many charges against the legislation. I think it is fair to say that the concerns I have heard so far—and over the last 4 years that we have been dealing with this legislation—I find it fascinating my friend from Wisconsin and others have said that we were going to bring this bill right to the floor. The reason it did not get brought to the floor is yours truly, me. I made it clear they would get none of my support, no one would get my support on this bill if, in fact, it did not go back through the committee system, if it did not go back to the Judiciary Committee, if it did not go through the normal procedure.

As I said, this is the same bill, by and large, with a couple improvements, that passed with 70 votes last year. The biggest charge you hear is this is antiwoman and antichildren who depend on child support, and that it is unfair to low-income families which need the full protection of chapter 7 or straight bankruptcy. I want to briefly address both of these concerns. And I will go into more detail when my colleagues want to come and debate this issue.

First, I want to point out a significant achievement reached in the Judiciary Committee on the question of those who have tried to hide in bankruptcy from the penalties imposed on them for violating the Fair Access to Clinic Entrances Act. Senator SCHUMER, as I mentioned earlier, first brought this issue to our attention. We finally reached an agreement in the committee with this major step forward. The compromise that we put forward is part of the bill that no one—no one—who violates the FACE Act, the Fair Access to Clinic Entrances Act, can, in fact, avoid their responsibility in bankruptcy.

Now as to those specific charges of unfairness. First, there is the claim that the bill will leave women and children who depend on child support worse off than they are today. This is perhaps the easiest charge to refute because the legislation before us today has the endorsement of the National Child Support Enforcement Association. The National Child Support Enforcement Association—they are all the folks in all of our States who sit there behind counters, working for the State, who are trying to collect support payments and child support from deadbeat husbands. These are people on the side of the women and children who need their support payments made to them. They support this bill.

The National District Attorneys Association—and specifically because of the important new protection for women and children who depend on family support payments—and other professionals whose job it is to enforce family support payments every day, from the California Family Support Council to the Corporation Counsel for the City of New York, have endorsed these new protections as well. That is because there are new specific protections for family support payments in this bill.

Let's go through how it currently works. One thing the Senator said is correct: Bankruptcy is a complicated issue. Hopefully, the vast majority of Americans will never have to become acquainted with it.

Under current law, we tell creditors they can't collect debts owed them starting right away, as soon as someone files bankruptcy. Put another way, I go in and file bankruptcy. I owe child support and support payments. I file for bankruptcy. In the vast majority of States, immediately all creditors have to back off, including mom and the kids. That means a woman owed alimony or child support can't collect either.

I am one of the authors of the deadbeat dad legislation to put more pressure on States to go after deadbeat dads. All of a sudden, once somebody files bankruptcy, in most States in America now, mom is out, the kids are out. Bankruptcy stays the proceeding.

All those hard-working folks in the family court in Delaware trying to see to it that Johnny and Mary and Alice get something to eat and mom gets a support payment, they can do nothing. They have to stand back, instead of bringing that deadbeat dad in and arresting him and garnishing his wages. That is why the national child support agencies support this bill. That is why they want it. It improves the plight of women and children who, by the way, can't wait 1 week, 2 weeks, 3 weeks, 10 weeks, 5 months while the bankruptcy is proceeding, as they have to now.

This bill gives child support and alimony the first and highest priority among any claim able to be made in bankruptcy. Do you know where they are under present law, the law my friend seems to love so much? They rank No. 7, S-E-V-E-N. This bill says you have to be fully paid up on child support and alimony before you can be released from bankruptcy. You have to be fully paid up or you don't get out of anything via bankruptcy. A woman collecting child support or alimony must, under section 219 of this bill, be notified of the full array of family support enforcement rights and available options to her under Federal law, including the kind of wage attachments that will trump every other claim in and out of bankruptcy.

So there is an affirmative requirement under this bill. If a woman did not know she had additional rights, she is required, under this law, if we pass it—and I am confident we will—to be notified by the bankruptcy court: By the way, you have these additional rights, and we will help you attach this deadbeat's wages.

All other parties to bankruptcy, from her spouse's creditors to the court that monitors the bankruptcy plan, are notified that the full force of the Federal support enforcement law is part of the bankruptcy proceeding, which it is not now. Under this bill, the fact that other creditors with perhaps deeper pockets might be looking for repayment from her spouse is an asset, not a liability. Those other creditors must provide her and the support enforcement officials this bill recruits, by the way, to assist her with the last known address of her spouse who owes her the support and payments.

I used to be a family court lawyer. Do you know how it works now? The court can't find where Charlie Smith is. The woman is going into court day after day. Charlie Smith has a job. Everybody knows Charlie Smith has a job, but they can't find him. So Charlie Smith files bankruptcy in another State, another place, another time. What happens now? Nothing. What happens under this bill? The creditors who go in saying, I want to repossess Charlie's car, I am going to take Charlie's house, I am going after Charlie's bank account because he owes me money, have to notify the spouse.

Give me a break. No protections? It doesn't exist in present law.

These are concrete, positive steps from start to finish, and even beyond bankruptcy, to assure that payments are made to those who need them. These are real, tangible improvements over the current bankruptcy and child support laws. My friends who talk so much about child support ought to go practice it as I did. They ought to go back home and check, go sit in that family court and find out how it works right now.

Against them we will hear the vague assertion that those payments will compete with ''more powerful creditors.'' The fact is, in actual practice now, and more certainly under this bill, those payments will be accomplished by wage attachments and could not be reached by any other creditor during or after bankruptcy, no matter how powerful or how devious the creditor is.

I heard a little flip on this. I may hear from my friend from Wisconsin and others: Even though that is true, even though in this bankruptcy proceeding you can go out and attach the wages of this deadbeat father, what is going to happen is the devious creditor will still win. Do you know why? Because the deadbeat father will quit his job to spite payment. Then the creditor that repossesses the automobile or goes after whatever debt he has will be ahead of the mother because bankruptcy is over. Come on. If a father is going to do that, he ''ain't'' paying anybody anything. Those payments come out of the deadbeat dad's paycheck before he even sees it. He cannot be forced to choose between child support and other debts. He doesn't have the choice. Those payments are made automatically, straight from the employer to the woman and children who need them. Those who claim otherwise are simply ignorant of the way Federal family support law currently operates. Some of them simply misrepresent the way this legislation protects family support payments in bankruptcy.

Next, we have the assertion that this legislation unfairly locks the door of chapter 7—liquidation or so-called straight bankruptcy—for those low-income families that need it the most. Let's get a few things straight about how the current code operates.

Today, bankruptcy judges are required as a matter of Federal law to dismiss petitions for chapter 7—that is straight bankruptcy—for substantial abuse, particularly if the debtor really has the ability to pay his bills. This reform legislation will provide those judges with specific criteria for determining if the debtor can, in fact, pay some of the bills he or she is asking to be forgiven. If the debtor can pay some of those bills, at least $10,000 or 25 percent of those debts—that is the threshold—then asking for chapter 7 is presumed to be an abuse of the system and you get bumped into chapter 13.

I will bet that most Americans would be very surprised that there is no systematic way for asking the basic question about the ability to pay, no actual means test that exists now under the current code, and it is up to every different bankruptcy judge to decide how he or she wants to make that judgment. That is how our sentencing laws used to be until I wrote and we passed the Sentencing Reform Act. Every judge could have a different sentence.

What did we find out there? We found out that black folks who committed the same crime that white folks committed went to jail longer because there was no standard.

We have national sentencing guidelines and other standards that guide the decisions of judges. This bill simply tells judges how they should go about making the decision that current law requires them to make.

But won't that means test disadvantage those of limited means who truly need and deserve to fully get a chapter 7 liquidation?

Look at the facts. First, this bill will affect, at most, 10 percent of the people who currently file under chapter 7, and only those who have a demonstrable ability to pay.

One of the main reasons for that small number—10 percent—is the means test in this bill would not even apply to anyone who earns less than the median income in his or her State, and for those with less than 150 percent of the median income, there is only a cursory calculation on the ability to pay.

Let's go through what that means. Mr. President, in my State of Delaware, a family with a $46,000 income would not even be subject to the means test—you got that?—not even subject to the means test. They are out. They can immediately go to chapter 7, no questions asked, nothing—even if they had the ability to pay.

That is exactly as it is today. In California, a family with a $43,000 income will have the exact same access. In Massachusetts, a family with $44,000 in income will have no change in access to chapter 7; Illinois, $46,000; in Wisconsin, $45,000, no change. That is because this legislation, I might add, at my insistence and that of Senator TORRICELLI, contains a safe harbor for those people. Only if you have more than 1½ times the median income in your State will you be subject to a serious examination about your ability to pay. And even then, if you face what the bill calls ''special circumstances,'' that reduces your income or increases your regular expenses. You will still enjoy the full protection of chapter 7. Specifically—I don't know how many times I have heard this on the floor—if you have ongoing medical expenses, that means you don't have any money left over to pay creditors, you can go straight to chapter 7.

One of the most basic misunderstandings about this bill is that folks with medical bills will have their circumstances ignored, as my friends are saying on the floor here. That is just flat wrong. The standard this bill uses for calculating someone's ability to pay under the means test specifically includes not just medical bills but health insurance, and it even includes union dues.

AMENDMENT NO. 13

The PRESIDING OFFICER. Under the previous order, the hour of 5:30 having arrived, there will now be 20 minutes of debate on the Leahy amendment No. 13.

Who yields time?

Mr. BIDEN. Mr. President, nobody is here to yield time. I will be happy to begin the debate on the Leahy amendment. Obviously, I can't yield time from Senator GRASSLEY or Senator LEAHY's time on this point.

Mr. President, parliamentary inquiry: Since nobody is here to debate the Leahy amendment, is it appropriate to be able to proceed on the bill for another few minutes?

The PRESIDING OFFICER. The Senator may ask unanimous consent to do that.

Mr. BIDEN. Mr. President, I have just been told by the majority and minority staff that I can yield myself some time off of Senator HATCH's time on this amendment. I will cease and desist the moment either Senator LEAHY or Senator HATCH comes forward to debate the amendment.

Back to medical expenses.

One of the most basic misunderstandings is that people with medical bills will have that circumstance ignored. Not only are those expenses explicitly allowed but any other expenses that make sense are allowed. That is under the IRS standards. On top of that, the bill allows additional expenses, including medical expenses for everybody from your nondependent children to your grandparents and your grandchildren.

There are no reasonable medical expenses, from contact lenses to cancer therapy, from yours to your wife's to your grandchild's, that would not be counted as a necessary expense in calculating someone's ability to pay.

So much for this idea that these poor people who have these exceedingly high medical expenses—and they really do—will not be able to declare bankruptcy and do straight bankruptcy in chapter 7.

Again, if you are under the median income in your State, you are not even subject to the calculations anyway. So much for the charges that this legislation is unfair to women and children and to those of limited means. It improves protections for those who depend on alimony and child support, and those below the median income are explicitly excluded from the means test. The means test for those who are above the median income permits all forms of medical and other expenses to be considered in calculating the ability to pay.

Next, often cited is the ''failure'' of this legislation to deal with what is supposedly a major abuse of the current system, the unlimited homestead exemption now permitted in a handful of States.

Let me make this clear. I agree with my friend from Wisconsin that we should have an absolute cap on the homesteading expense. We should not have it like Texas, Florida, and other States that allow the abuse of someone going out and buying a $6 million or $8 million home and then declaring bankruptcy and the home being out of reach of the creditors. That is unfair. I think it should be capped in the $100,000 to $150,000 range nationwide. We tried that. It didn't work. What we did do is this.

Everyone should be outraged at those who thumb their nose and move to Florida or Texas and buy multimillion-dollar homes. As outrageous as these cases might be, this is quite rare. I am afraid those who made the treatment of the homestead exemption the grounds for their rejection of this bill have based their votes on a pretty weak foundation. Here is a GAO report from 1999 in which they found, first, that only 52 percent of bankruptcy cases from a sample in Texas involved a homestead in any way.

Second, only 1.2 percent of those cases involved homesteads—that is homes—of more than $100,000—not a lot of multimillion-dollar homesteaders there, Mr. President. A similar sample from Florida, the other supposedly big offender on this issue, found that .8 percent—less than 1 percent—of the cases with any kind of homestead involved a homestead of more than $100,000—not a lot of multimillion-dollar bankruptcy bungalows there.

Again, Mr. President, as far as I am concerned, a single abuse of the homestead exemption by a filer is one too many. But let's not pretend this bill has turned a blind eye to a major problem. There is not a major problem, but the bill, in fact, does make a major advance over current law.

If I had my choice, it would be a $100,000 cap. If you buy a house within 2 years of filing for bankruptcy, the cap is $100,000, which we have in this bill before us. No change in current law? Well, I will take this bill over current law. Let me explain in more detail what I mean.

Right now, if in fact you go out and buy yourself an $8 million home 2 years before you file bankruptcy, that home is liable to be possessed. Now, if they buy it 2 days before and it is exempt—I am talking about .8 percent of all the filers who claimed the homestead exemption in Florida. For example, I know I am going to file for bankruptcy in 2 years, so now I am going to go out and buy an $8 million home. Let me be clear. I think there should be a flat prohibition of hiding assets in homes above 100,000 bucks. Very few have ever done it. It should be changed, but very few have done it, and we have made a significant change among those who may have done it or who are intending to do it.

Finally, I want to say something about a number of other amendments I expect we are going to see in the course of this debate.

The truth in lending legislation is not a bankruptcy law. There is no evidence presented by anyone here that anyone has gone bankrupt or declared bankruptcy because they have been falsely or not honestly lent money. There is no evidence of that. These amendments are not about bankruptcy law; they are about banking law.

I support more disclosure, and they are clearly within the jurisdiction of the Banking Committee, as I am sure Senator GRAMM will tell us, but I know a number of my colleagues have felt it is essential to require, as they say, some balance in bankruptcy reform legislation by demanding more on the part of lenders as we demand more of debtors.

Fair enough. I support the idea. Last session, I offered, along with Senator TORRICELLI and Senator GRASSLEY, an important amendment that required additional disclosure by lenders. That amendment was added on the floor last Congress.

These new disclosures include a strong notice, a warning that making minimum payments will stretch out the time it will take to pay off the loan and that a 1–800 number must be put on there for you to call to find out how long it would take you to pay.

Those disclosures include more information on so-called teaser rates on the envelope that come in the mail every week.

This bill before us contains some improvements, but that is not related to bankruptcy. That is related to banking and truth in lending, which I support more of.

Additionally, there is the assumption that lenders, not borrowers, are responsible for bankruptcy. The key assumption here is that a rational businessman, a lender, especially credit card lenders, seek out those who have no hope of repayment and foist unbearable debt upon them just so they can fight with them in bankruptcy.

I do not follow the argument, but we can see if there is anything to it. Fortunately, the Congressional Research Service, a nonpartisan organization in the U.S. Congress, for the last few years has looked into the issue at my request.

I direct my colleagues' attention to the CRS report on March 19, 1988, entitled ''Bankruptcy and Credit Card Debt: Is There a Casual Relationship?'' It is not every day we have such a direct response available to a question that is constantly put forward on this floor. This is not industry propaganda. This is not interest group rhetoric. This has nothing to do with campaign contributions, as alleged by my friend from Wisconsin. This is the Congressional Research Service on which we have all come to rely for expert nonpartisan analysis.

The answer to the question is no, credit card debt cannot be shown to be the cause of bankruptcy.

Here is the conclusion of the report:

> The available aggregate data do not show that credit card debt has caused a major shift in U.S. household financial conditions.

Addressing that underlying assumption I spoke of, the report says:

> Is credit card borrowing a trap for the unwary, bringing disorder into the financial houses of an unspecifiable number of atypical families and individuals? Perhaps, but so are medical expenses, divorce, job loss, casino gambling, narcotics, investment scams, and so on. Anecdotal evidence abounds, statistical evidence is scarce.

That was 1998. What has happened since? Last month, I asked the CRS to update its analysis.

Here is the unchanged conclusion—as of February 20—based on the latest data:

> While credit card debt has been the fastest-growing component of household debt, the size of the debt outstanding does not appear to be so great (especially when rising incomes are considered) that it can be held primarily responsible for the steep rise in consumer bankruptcy filings since 1980. At the same time, the claim that credit card companies are creating financial distress by mass-marketing an expensive form of credit to low-income or financially unsophisticated households finds little support . . . .

I know that for some of my colleagues, blaming lenders for bankruptcies is a matter of faith. Unfortunately, it is not a matter of fact.

That is why I will vote against amendments that are properly the jurisdiction of the Banking Committee.

It is not because I think all lenders act responsibly, or that nobody ever got suckered by a credit card company. It is because the best evidence I have to work with tells me that these amendments are not germane to bankruptcy reform.

In closing, I look at the years of debate, hearings, and floor time we have expended on this issue, and I look at the strong, bipartisan majorities that have consistently supported bankruptcy reform throughout this process, and finally, I look at the 70 votes that this very bill—without the Schumer-Hatch language on clinic violence—received in the Senate last year.

Like every bill that has undergone this much debate and consideration, it is the product of compromise. It is not a root-and-branch overhaul of the current bankruptcy code; it makes incremental but important changes in the operation of the current system.

It will affect perhaps 10 percent of those who currently file under chapter 7, and only those who have the demonstrated ability to pay. It adds important new protections for the women and children who depend on child support. It restores, at the margins, some personal responsibility to a system that that in recent years has been the subject of abuse.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. We are considering the Leahy amendment. The Senator from Vermont has 10 minutes.

Mr. LEAHY. I thank the Chair. Mr. President, I hope when the time comes to vote this evening on the Leahy small business amendment that all Senators will vote for it. I have not heard the author of this bill, the chairman of the Judiciary Committee, the majority leader, or anybody else speak in opposition to it. Obviously, they can vote any way they want, but I have yet to hear anybody talk in opposition to it. The time used on the other side was not used in opposition to it.

I hope this is an indication that we will look first and foremost at small businesses, those businesses with under 25 people, to give them parity with the multibillion-dollar corporations.

When we voted last night, many said we were helping small businesses by throwing out the ergonomics rule. While I disagree on that particular rule, I do agree that small businesses should be helped. I grew up in the front of a small business store in Montpelier, VT. We lived in the front of the store. My parents had a small business in the back.

Ninety percent of the businesses in Vermont are small but then many of the businesses nationwide are small businesses. If you define them as 25 employees or less, with 5,541,000 businesses in America, nearly 5 million of them are small businesses.

What I want to do is make sure we protect small business creditors from losing out in the bankruptcy reform process. They ought to be protected.

The way the bill is written now—and I hope this was not intentional—but the way it is written puts large multibillion-dollar credit card companies ahead of hard-working small business people—farmers, ranchers, Main Street mom-and-pop stores. It puts these huge companies ahead of them in collecting outstanding debt from those who file for bankruptcy.

I do not think any one of us intended that. I do not think any one of us actually want to go back home and tell all the farmers, ranchers, and small business people in our States that we put the credit card companies ahead of them.

My amendment gives small business creditors a priority over larger businesses when it comes to distributions of the bankruptcy estate. It provides a small business creditor priority over larger for-profit business creditors.

It does not affect the bill's provisions which give top priority in bankruptcy distributions to child support and alimony payments. We already set certain priorities. We do it for alimony payments. We do it for child support. We ought to do it for our Main Street businesses and our farmers and ranchers. We ought to give them the same kind of leg up over a deep-pocket, multibillion-dollar corporation.

If a large credit card company has John Jones or Mary Smith go into bankruptcy, and they owe them, say, $3,000, and they owe the local feed store $3,000, obviously this $3,000 shows up differently on the bottom line of MasterCard than it does on the bottom line of the Jones Feed and Grain Store. It is a much bigger bite for that small store, and they ought to be given priority.

That is all I am asking for in this. I cannot imagine any small business organization that would not be supportive of this. We should actually be helping small businesses navigate the often complex and confusing bankruptcy process because they are not going to be able to afford a galaxy of lawyers and accountants. The huge companies have these people on retainer because they handle bankruptcy matters all over the place. For the small store, this may be their bottom line for the year. It may be the one bankruptcy they are trying to collect for the year, and they could be out of business as a result. They need priority just to keep pace with big business.

Small business is the backbone of our economy. In fact, I use the same definition of a small business creditor that is already in section 102 of the bill.

All I am saying is same rules, but if you are going to give priority, give the priority not to the multibillion-dollar corporation for whom this $3,000, $4,000, or $5,000 claim is nothing. Give the priority to that small store, that small company on Main Street that may have to really do something. I don't want them to have to get in line behind the huge credit card companies. For them, it may mean the difference between going out of business or not, not the difference between whether it means one one-hundred-thousandth of 1 percent.

Mr. BIDEN. Will the Senator yield?

Would this include an automobile dealer with 20 people that grosses $70 million a year?

Mr. LEAHY. Do we have that many?

Mr. BIDEN. We sure do. Check home. Any automobile dealer that has 20 or more people.

Mr. LEAHY. If we talk about grosses, that would be one that is matching a 20-person unit of a credit card company that would gross several billion dollars.

Mr. BIDEN. I am just asking a question. I hope it does include them. I want to know what you are including. That is all. Would that be included?

Mr. LEAHY. I have used the small business definition that the Senator from Delaware has used in the bill he cosponsored.

Mr. BIDEN. That does mean it would include somebody grossing $100 million, $50 million.

Mr. LEAHY. If you had a car dealer that grossed that amount of money, considering the fact they often make only $100 or $200 on a car, although the cars sell at $30,000 or $40,000. By the same token, the collection unit might be 20 people and they get several billions of dollars.

The bottom line: The percentage of what is going to be the net profits is considerably different.

What this is going to affect—which is why I use the Senator from Delaware and his definition of a small business in the bill—these are the same people, in most likelihood, the mom-and-pop store for whom $3,000 or $4,000 may mean making the mortgage payment.

Mr. BIDEN. Would the Senator set an income level to protect them?

Mr. LEAHY. Are we going to change the definition of small business in the bill that the Senator from Delaware cosponsored?

Mr. BIDEN. To accommodate the Senator, I would be happy to do whatever he would like.

Mr. LEAHY. This is the bill that is presently before the Senate.

Mr. BIDEN. Without an exemption.

Mr. LEAHY. Cosponsored by the Senator from Delaware. I am using his definition.

Mr. BIDEN. But you are using it out of context.

Mr. LEAHY. I think not.

Let me talk about what this does: 5 percent to the small feed and grain store could be the difference for them for the year and whether they make it or don't make it.

Dean Witter said this bill gives just one credit card company alone, MBNA, an increase in net profits of 5 percent. That is $75 million. With most of these small businesses we are talking about, 5 percent is not 5 percent of MBNA.

What we want to do—we carve out a special exemption for credit card companies but leave small business owners fending for themselves—is put the small business owners on at least an equal footing.

The credit card companies say they need an exemption because their debts are typically unsecured. Most of these small businesses are exactly the same.

I yield the floor.

AMENDMENT NO. 14

The PRESIDING OFFICER. Under the previous order, all time having expired, the Leahy amendment is laid aside and there is now 60 minutes of debate evenly divided on the Wellstone amendment No. 14.

Mr. WELLSTONE. Mr. President, I had a chance this afternoon to speak about this amendment at great length and may not need all of my time. I respond to some of the arguments made while I was off the floor. They were not made because I was off the floor; I had to go to markup on an education bill, and another Senator spoke.

Let me take some of the arguments and respond as colleagues sort this out and decide how to vote.

First of all, this amendment provides that no provision of the bankruptcy bill will affect a debtor who files for bankruptcy if the court determines that the debtor filed as a result of overwhelming medical bills, unless the debtor elects to have a particular provision apply.

We are really saying if the goal of this bill is to go after those that have gamed the system—again, I cite the American Bankruptcy Institute's report that, at best, that is 3 percent of the people; there are others who say 10 or 13 percent. Surely in those cases where the court determines that the debtor who files for bankruptcy has filed for bankruptcy because of a major medical bill, we would want to exempt them from the provisions of this legislation. This is somebody who is now going under because of cancer or because of a disabling injury. There, but for the grace of God, go I. These are not people gaming the system.

I also pointed out earlier today—and I think it is important to give this amendment some context—it is unfortunate we are not spending more of our time trying to figure out how to legislate so we can cover the 43 or 44 million people with no insurance, or people who are underinsured, people who go under because of catastrophic expenses.

Sad but true, being able to file for chapter 7 is one of the ways people can rebuild their lives. It is one of the ways people can get back on their feet when they have been knocked down by a major medical bill.

Why is it necessary? The bankruptcy bill purports to target abuses of the bankruptcy code by wealthy scofflaws and deadbeats who, as I said, according to the American Bankruptcy Institute, make up about 3 percent. Yet hundreds of thousands of Americans file bankruptcy every year. They don't file bankruptcy to game the system. They file bankruptcy because of medical bills. That can happen to any of us.

Unfortunately—and I went through these this afternoon—there are at least 15 provisions in S. 420 that make it harder to get a fresh start, regardless of whether the debtor is a scofflaw or a person who must file because they have been made insolvent by medical debt. In the case of those families made insolvent by medical debt, they ought to be exempt from some of the onerous provisions in this bill.

Some of the provisions in the bill include but go beyond the means test. I said this to my colleague from Iowa this afternoon. An analysis in the Wall Street Journal last week said: The bill is full of hassle-creating provisions. Some reasonable, some prone to abuse by aggressive creditors trying to get paid at the expense of others. In a thicket of compromises, Congress risks losing sight of the goal, making sure that most debtors pay their bills, while offering a fresh start to those who honestly can't.

My amendment makes sure we do not deny a fresh start to people who really won't be able to do that with the bill the way it is written. This amendment preserves the fresh start for those debtors who honestly can't because they are drowning in medical debt. That is what this amendment is about.

Let me go through some of the arguments that were made. Is the Wellstone amendment made redundant by the means test in the bill? Absolutely not. Neither the means test nor the safe harbor in the bill applies to the vast majority of new burdens placed on debtors.

I held up the whole bill. The bill is more than just the means test. The bill is this size and the means test is this size.

Under S. 420, debtors will face those hurdles to filing, regardless of the circumstances. Let me give some examples of some of these hurdles. One is the prebankruptcy counseling requirements at the debtor's expense, as if medical debts can be counseled away. Why would you want to say to a family that is being put under by a medical bill, that is going through a living hell, that they have to go through credit counseling and they have to pay for it?

No. 1, they wouldn't be filing for bankruptcy if they weren't at the end of their wits; they wouldn't be filing for bankruptcy if they had a lot of extra change, a lot of extra money. This presumption that they are trying to abuse the system or have been bad managers and need to go through prebankruptcy counseling requirements makes no sense at all. It makes no sense at all when families are being put under because of medical bills.

There are no limits on repeat filers, regardless of personal circumstances. There are changes to existing cramdown provisions in chapter 13 making it more difficult for debtors to keep their car and new tax return filing obligations and new administrative burdens that are expected to raise the cost of filing, even in a simple case, by hundreds of dollars.

The point is, if you are going to try to deal with those people who you think are deadbeats or are gaming the system, for God's sake don't do it for families who are going under because of medical bills and for whom chapter 7 gives them a chance to rebuild their lives.

No. 2, does the Wellstone amendment carve out a serious loophole in the means test? No. The debtor can only get an exemption from this bill if the court finds that the debtor was forced to file because of medical debt. A debtor who has carried some medical debt but filed because he ran up a bunch of credit card bills is not going to meet the standard and he is not going to be protected by this amendment.

I need to make that point again. The debtor can only get the exemption from this bill if the court finds that this family was forced to file for bankruptcy because of medical debt.

Where is the burden of proof? On which side do we want to err? Don't we want to err on the side of making sure, when people have been put under because of medical circumstances, they are able to get a carve-out and go forward and file for chapter 7?

No debtor can get an exemption from this bill unless the court finds that the debtor was forced to file because of medical debt. It is not enough to say, ''I had a medical bill,'' and then you see somebody who has run up all kinds of credit card bills.

Mr. BIDEN. Will the Senator yield? Is he talking about his amendment or the bill?

Mr. WELLSTONE. I am talking about my amendment.

Mr. BIDEN. I thank the Senator.

Mr. WELLSTONE. No. 3, does the Wellstone amendment leave hospitals or medical centers at a disadvantage? No. The amendment doesn't make medical debt a lower priority than other debt. The point is, this doesn't change current law. With this bill, you have auto lenders, you have credit card companies, you have all sorts of people who have a claim. But this particular piece of legislation does not affect the dischargeability or nondischargeability of medical debt at all. This is the same protections that people have right now. We are not changing any current law in terms of whether hospitals are able or not able to get reimbursement.

Can I give a real-world example of how the nonmeans test portion of the bill affects medical debt filing? My colleague from Delaware may want to respond to this Time magazine example about Allen Smith, a resident of Delaware, a State which has no homestead exemption. In other words, he can't shield his home from his creditors.

Ironically, under this bill, wealthy scofflaws can shield multimillion-dollar mansions from their creditors with a little planning. All you have to do is, a couple of years in advance, know you are going to be in trouble. A lot of people with high incomes know that. You hire a lawyer and you are fine.

But Mr. Smith doesn't get that break. As a result, when the tragic medical problems described in the Time magazine article befell his family, he could not file a chapter 7 case without losing his home. Instead, he filed a chapter 13 case, which required substantial payments in addition to his regular mortgage payments for him to save his home. Ultimately, after his wife passed away and he himself was hospitalized, he was unable to make all those payments and his chapter 13 plan failed.

Had Delaware had a reasonable homestead exemption and Mr. Smith been able to simply file a chapter 7 case to eliminate his debts, he might have been able to save his home. Mr. Smith's financial deterioration was caused not by his being a spendthrift, not because he was a bad manager of his budget, not because he did anything wrong. His financial deterioration was

caused by unavoidable medical problems.

Before he thought about bankruptcy, he went to consumer credit card counseling to try to deal with his debt. However, it appears that he went to consumer credit card counseling just over 180 days before the case was filed and he did not receive a briefing, so the new bill would require him to go again. This would have been very difficult, considering his medical problems. In fact, his attorney made several visits to Mr. Smith and his wife, who was a double amputee.

The new bill would also have required a great deal of additional time and expense for Mr. Smith and his attorney through new paperwork requirements and a requirement that he attend a credit education course. Such a course would not have done anything to help prevent the medical problems suffered by Mr. Smith and his wife. He did not get into financial trouble through his failure to manage his money. He is 73 years old and he never had any debt problems.

The bill makes no exemptions for people who cannot attend the course that they are supposed to take, this counseling, due to circumstances beyond their control. So Mr. Smith might never have been able to get any relief in bankruptcy under this new bill.

Do we really want to do this to people? Under the new bill, Mr. Smith also would have had to give up his television and VCR to Sears, which claimed a security interest in the items. Under the bill, he would not be permitted to retain possession of these items in chapter 7 unless he affirms the debt or retrieved the item. Sears may demand reaffirmation of the entirely $3,000 debt under the bill, and to redeem, Mr. Smith would have to pay the retail value.

After his wife died and the income was gone, Mr. Smith did not have the money to pay these amounts to Sears. Since he is largely homebound, loss of the items would have been devastating.

The point is, Mr. Smith's medical problems continued. Under the current law, if he again amasses medical and other debts he can't pay, he could seek refuge in chapter 13 where he would be required to pay all that he could afford. Under the new bill, Mr. Smith cannot file a chapter 13 case for 5 years. The time for filing chapter 7 has also been increased.

There have been a bunch of reports about this bill. I know the proponents think they have been unfair. We all have our own definition of right and wrong here. ABC had a tough piece last night. Time magazine had a tough piece. The Wall Street Journal was tough. Business Week had a tough piece.

Personally, as I said about 50 times today, every time I talk about money and the credit card industry, I have to be careful because you cannot make the assumption that because you have an industry, a powerful industry that has poured the money into doing the lobbying, it is a one-to-one correlation to people's positions. You can't do that. I refuse to do it. People can do that to anybody here on any issue.

But that is not the point. Institutionally, I have to say this is, unfortunately, a classic example of an industry with a tremendous amount of financial wherewithal, with an all-out lobbying effort, which I think is probably well satisfied with this piece of legislation because, frankly, there is very little in this legislation that calls for any accountability on the part of this industry.

You will have an amendment tomorrow that deals with some of the predator practices and the ways in which they push credit cards on children.

But there is a whole lot in this legislation going way beyond a means test—too many provisions, too many hurdles which are too harsh—which make it really too difficult for a whole lot of ordinary people who haven't abused anybody or any system to be able to file for chapter 7.

That is what I think this debate is about. Of course, the people most hurt are the people with the least amount of clout.

I think if this amendment passes, it makes this a much better bill because I don't disagree with the premise. I think the legislation is way too broad. Unfortunately, I think the legislation has some very far-reaching and far-ranging serious implications in terms of how it affects people's lives.

If we want to go after people gaming the system, let's do it. Why not just say when you have a family filing for bankruptcy because of medical bills that we exempt them from all of these different tests and provisions and hurdles that will make it impossible for them to rebuild their lives? That is what this amendment is about.

I yield the floor.

Mr. GRASSLEY. Mr. President, I yield 10 minutes to the Senator from Delaware.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Delaware.

Mr. BIDEN. Mr. President, I appreciate what the Senator is trying to do. It is confusing me a little bit, though—not his intention but the way he phrases it.

He talks about the fact that if someone has a serious medical bill that causes them to move into bankruptcy, which I might add is a real problem, and it is the reason why most people move into bankruptcy, it is not credit cards—you can't have it both ways and stand up on the floor and say the reason people go into bankruptcy is credit card debt. There is no evidence of that. The GAO report doesn't say that. The Congressional Research Service doesn't say that—and then point out, which is accurate, that medical bills cause people to go into bankruptcy in considerable numbers. I do not know the exact number. I don't know whether it is 20 percent, 50 percent, or 70 percent. But it is a lot. I understand what he is saying.

By the way, there is one generic point to which I am sympathetic—that people in fact have real serious medical problems and are forced to liquidate everything they have to pay the medical bills. It is an absolute tragedy. I agree with my friend. That is why I support the national health insurance plan and the need to cover all of those folks.

I also appreciate the fact that he is not engaging in and he never has the idea that because a particular group or group of people support a position, and they have power, that anybody who votes with them is because of the power.

My friend and I voted against the position of the Chamber of Commerce yesterday notwithstanding the fact that labor poured tens of thousands of dollars into the campaigns of Members on this side. And I suspect that labor PACs gave my friend from Wisconsin hundreds of thousands of dollars. They did not give a cent to the Senator from Delaware because I don't take PAC money, and I haven't taken PAC money.

I appreciate the honesty that he is exhibiting, but it confuses me on a couple of points. One, I am from Scranton, PA. That is an area of the country that has been on hard times for a long time. My grandfather Finnigan used to have an expression. He would say: When the fellow in Throop—that was a community south of Scranton—loses his job, it means there is an economic slowdown. When your brother-in-law loses a job, it means there is a recession. When you lose your job, it means there is a depression.

I wonder why we don't include people who lose their jobs and have to declare bankruptcy and can't find employment.

I have a little bit of a problem in terms of singling out one type of that debt that is exempt, but not because it has anything to do with any other industry. I don't know any other industry that cares a whole lot about that. My point is, that is a conceptual problem I am having difficulty getting over.

But the second point I wish to make is that his amendment wouldn't affect what this bill is about. It would affect bankruptcy law tremendously, present bankruptcy law, future bankruptcy law, future bankruptcy changes, and present. It would have a profound impact.

But the reason for this bill is to set a standard on the basis of someone moving from chapter 7 to chapter 13. I remind anybody who is listening to this at home that chapter 7 means if you file in that chapter, all your debts are discharged, and you start brand new. You don't owe anybody anything. You don't try to pay anything off. It is done. Chapter 13 means that the vast majority of your debts are discharged,

but you work out a payment plan because you can think you can pay some of it. Most people who chose chapter 13 in the old days chose it to avoid the embarrassment of chapter 7 so they could pay something off in good faith. They had something to pay, but they couldn't pay everybody. They wanted the court to help them figure out how to divvy out what they could pay.

That is what it is about. There is no standard now that a judge uses. There is a generic standard saying substantial abuse. Right now, a bankruptcy court judge or master has to move someone from 7 to 13 if that judge says, look, you are able to pay something so you should be in 13.

My dad always said: Keep your eye on the ball. The ball here is what this is about. This bill is about whether or not there is a standard we are now going to set beyond the broad standard of substantial abuse that says when you must move from chapter 7 into chapter 13 to pay some of your bills.

By the way, you only get moved into that if you have at least $10,000 to distribute after all of your necessities are taken care of, or you are able to pay 25 percent of your debt over 5 years. If you can't meet that standard, you are not in 13 either. You don't get into chapter 13.

Again, keep your eye on the ball. This bill is about whether or not you can pay some of your bills.

Along comes my friend who says—which may be good public policy. I am not disagreeing with the possibility that anybody who declares bankruptcy because of medical bills can discharge those debts outright, period. They are just in chapter 7. They can, in fact, go there.

I point out to my friend about the case in Delaware. The individual filed in chapter 7. He chose to file in chapter 7. He discharged all of his debts. Unfortunately, my State has what I thought the Senator from Minnesota had been saying. You shouldn't have a homestead exemption. My State doesn't. Had he filed 13, he could have kept his home theoretically. He was not required. He filed in chapter 7.

Mr. WELLSTONE. Thirteen.

Mr. BIDEN. Then he would have been able to keep his home in chapter 13. If I am wrong about that, I will correct the record. But in Delaware, under chapter 7, we don't have this way to hide assets in a house. I think you should be able to keep up to $100,000 of the value of your house. But in 13, you get to keep your house as long as you keep your mortgage payments, and you are allowed to have that portion taken out to keep your house just as you can have that portion taken out to pay your medical bills, or pay ongoing expenses that you have—gas for your car to go back and forth to work, et cetera.

That is the case that would not be affected by this legislation. It would not be made better or not be made worse by this will. What would happen is arguably he wouldn't have to go to 13 if he didn't want to because under this bill, the means test in S. 420 establishes a standard. It establishes a standard. And it goes on to point out that in terms of this whole argument about medical bills, which I went into a little while earlier, unless your means test—in my State, by the way, the means test for a family would be $46,000, and you would have to make more than that to even be considered in the means test, but once you are in the means test, then what happens is special circumstances can be counted, whether or not you can still stay in chapter 7 or get bumped to chapter 13. And the special circumstances relate to medical expenses. The medical expenses are your special circumstances.

If you are in a situation where not only do you have medical expenses that you have to meet but you have the medical expenses and other necessary expenses that are not limited to your own medical expenses—for example, the medical expenses you are paying for your mom, the medical expenses you are paying for your adopted child, the medical expenses you are paying for your sister, the medical expenses you are paying for a family member—those get included so you do not get knocked out of chapter 7 under this law. You can count those medical expenses.

So a judge says: OK, look, under the means test, you have this amount of money. You do not make more than $46,000 in Delaware, so you can stay in chapter 7. We are not even going to consider looking at whether or not you have a right to file in chapter 7. And then, by the way, if you are 150 percent above that income, which gets you up to, what, $60,000, or something like that, whatever the exact number is, then you can say: Hey, wait a minute. I have all these medical expenses so I get to stay in chapter 7 anyway.

My confusion is how this amendment relates to this bill. It relates to bankruptcy generally; I acknowledge that. It is a new standard that we are considering, but it does not go to the assertions made by others that people, because of their medical bills, are getting killed with this legislation.

The very example my friend gave already was an example that occurred in Delaware that had nothing to do with this legislation. His medical bills were so high, the poor devil, and his income was so limited, he lost everything. That is tragic. That is why we need national health insurance. But the passage of this bill would not alleviate that problem. So it is kind of a non sequitur. They are not related.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I am trying to respond to some of what my good friend from Delaware has said. It is true that in the example I gave of Allen Smith, he is not affected by the means test. That is my point. There are 200 pages to this bill. I say to my colleague, I went over some of these provisions this afternoon that affect everyone, regardless of income, regardless of whether or not they file for chapter 13 or chapter 7.

Mr. BIDEN. Will the Senator yield?

Mr. WELLSTONE. I will make a couple points, and then I will yield to get the Senator's response.

My point is, why would you want to have these kinds of rules and these kinds of provisions when you have a family being put under because of medical bills?

I am trying to get all my notes together, one by one.

My colleague said, conceptually why not somebody who has lost their job? That could very well be an amendment that I will have on this bill. It is pretty horrible when people lose their jobs. By the way, the next thing they worry about, when they lose their job, is losing their health care coverage. You sort of assume, if somebody loses their job, they can find another job. But what if somebody has been put under because of a medical bill and they themselves are struggling with a disease or a disabling injury? It seems to me this would be the first, if you will, order of exemption.

My colleague says there are sweeping changes to this amendment. That is true. This bill is also cause for sweeping changes. It depends on whether you think the changes are good, whether you think they are the right thing to do or not. That is where we disagree.

Now, it is true—and this is a key point to make—that what I am doing is saying there ought to be some discretion in the system. My colleague talked about the standards. I do not mind having rigorous or even rigid standards, as long as you do not capture the wrong people. But you are capturing the wrong people. The people who pay the price, as I have tried to argue, are people who, again, as determined by the court are filing for bankruptcy because of medical expenses. I think that is about 50 percent of the cases, at least on the basis of what I have seen.

Although, interestingly enough—and I do not want to have a side debate with my colleague on this—although, interestingly enough, in consumer surveys actually people cite credit card companies as the reason they file for bankruptcy before they do for medical expenses.

Mr. BIDEN. Kind of funny. It is wrong, though; isn't it?

Mr. WELLSTONE. To my mind——

Mr. BIDEN. You can't have it both ways.

Mr. WELLSTONE. You can't have it both ways, but it can be interactive. Frankly, there are a number of variables that come into play. I think my colleague from Delaware is right when he talked about job loss. But, I say to the Senator from Delaware—I do not know if he heard my first response,

which was that I absolutely understand conceptually what he was saying when he said: Why not job loss? And I said that could very well be another amendment—as awful as that is, the place to start is the medical expenses.

In relation to job loss, we have this going on right now with 1,300 taconite workers. You go up there and talk to people. The next thing they are frightened of is that in 6 months they will lose their health insurance. If they worked there a little longer, they lose it after a year. And do you know what else. And I am going to try—and this one I am hoping to get support on from a lot of Senators—the other thing I am worried about, I say to Senator BIDEN from Delaware, is that the retirees are terrified—and ''terrified'' is the right word; and too many of them, I would argue, are dealing with cancer—that LTV, the company, is going to file for bankruptcy and they are going to walk away from their health care obligations. That is a huge concern.

Mr. BIDEN. Right. I agree.

Mr. WELLSTONE. But my argument would be that with the medical, it is not just the bills. I am imagining people who have been stricken with illnesses or disabling injuries. So I thought: Look, if there is any group of people—there, but for the grace of God, go I—it applies to them.

Again, I am not arguing that there isn't discretion. Deliberately, we have discretion put in here. I think the rules are too rigid in this bill. I am not arguing that the means test is the issue. In fact, I said this afternoon—and I say tonight—there are a whole bunch of other provisions—I outlined 12, or 13, or 14 provisions—that I think make it difficult for people to rebuild their lives.

That is the point I am making. I do not see why we can't have an exemption. I think it would make the bill a much better bill, and it would accomplish the goal you are trying to accomplish, which is to not let folks game it. But for the families I am talking about, they are not gaming it.

I yield the floor.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. WELLSTONE. Mr. President, I yield some of my time. I yield 5 minutes to the Senator from Delaware.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. That is very generous of the Senator.

I would like to make three points, and I will try to make them quickly.

One, the point of the Senator's amendment is—and I agree with the thrust of it because there should be no discretion—no discretion—if, in fact, you are bankrupt because of medical bills, then you automatically are out, period. It is done. You do not owe anybody anything; finished, over, done, period. I understand that. And I sympathize with that.

I do not want anybody to mix apples and oranges unintentionally or in listening to this debate. What would be implied from this debate or assumed from this debate is somehow, by the passage of this bill, people with medical bills will be put at a greater disadvantage than they are under the present system. That is not true.

In the broader question of whether or not bankruptcy law—period—should be for people who have no ability to pay their bills because they have medical bills, or have no ability to pay their bills because of the loss of their job, or have no ability to pay their bills because they are deemed to be incompetent, even though they have an estate that exists out there—they are all different things that have nothing to do with the question of whether or not this legislation should pass or should fail. Based on the argument my friend from Wisconsin is making, we should eliminate the bankruptcy law that exists now. We should have no bankruptcy law because this does not exist in the present bankruptcy law.

It doesn't exist in present bankruptcy law. Let's not get confused. If the Senator wishes to make the argument that this is an important exemption that should be written into bankruptcy law as it exists or as it is amended, I understand that; I empathize with it. But if it is to make the case that people with severe medical bills are more disadvantaged under the changes we are proposing than the law that exists now, I don't buy that argument.

I will conclude by saying the only reason I spoke to the question of and agreed with the Senator that I think at least 50 percent of all bankruptcies are filed because of medical bills—at least 50 percent—if that is true, then my friend from Illinois and my other friend from Wisconsin and my friend from Massachusetts are dead wrong when they say the majority of bankruptcies are filed because of credit cards. That means that that can't be true.

Let's just look. I ''ain't'' slow; I did pretty well in math. It is really simple. With fifty percent of 100 percent based upon the fact that you have too many medical bills and you are required to go bankrupt, that means that all other bankruptcies, for whatever reason, amount to 50 percent, which means that credit card bankruptcies must be less than 49 percent—at least less than 49 percent.

According to the study we have gotten, there is no evidence that they have contributed at all to the increase in bankruptcy.

I might add, I am anxious to debate the predatory practice of sending the kids the credit card and all that stuff. With the limits they put on the credit card, those limits that you get when you get that credit card at the front end, these people that can't pay that back are so few that they are not even in the game of declaring bankruptcy. They are not even in the game. The college student who gets a credit card and blows it up and spends $1,000 on the credit card, they don't declare bankruptcy because of a $1,000 debt they don't pay. That is malarkey.

They declare bankruptcy because they run up tens of thousands of dollars in loans to go to college. That is why you should support the Schumer-Biden amendment to make sure that people can deduct the cost of college from their taxes. That is why we should provide for health care for all Americans so we don't have them declaring bankruptcy because of this.

Bankruptcies increase in direct proportion to people losing their health insurance—in direct proportion. Senator KENNEDY stands on the floor—and no one knows more about it than he—and points out that fewer and fewer people have health care coverage since we started this debate on health care because my friends on the other side of the aisle are reluctant to provide for health care for people.

I just want a little truth in advertising here; that is all. It is OK, beat up on the credit card companies, don't like them. Beat up on the big companies, don't like them. This is an ironic position for me to be in after 28 years in the Senate. No one has ever accused me of being a friend of the banking industry. I have been around for a long time. Let's get it straight; you can't have it all ways here.

My friend comes to talk about the predatory practices. There are predatory practices, I acknowledge that. But are they the reason bankruptcies are increasing? Maybe. I see no evidence of it. No one has shown any evidence of that. The only report that was done indicates the opposite. If 50 percent related to health care, then obviously it isn't because of any particular industry.

I thank my colleague for his generosity.

I ask my friend from Iowa—he was not on the floor—I am defending his position. The Senator from Minnesota yielded me 5 minutes of his time. If he needs time, I hope the Senator will lend him the 5 minutes he would have lent me.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENT NO. 13

Mr. GRASSLEY. Mr. President, I believe we can accommodate the Senator from Delaware and the Senator from Minnesota. We have 20 minutes remaining. I will yield myself 5 minutes. Then it is my understanding that Senator HATCH needs some time to respond to the Senator from Minnesota. I will take my time to address an amendment that we are going to be voting on when we vote on two amendments in just a few minutes. That amendment is the amendment by the Senator from Vermont, Mr. LEAHY.

The amendment would allow small businesses to be given special treatment as compared to other businesses. When the words ''small business'' are used around the U.S. Congress, everybody looks up because we know that

small business is the engine of advancement in America, creating the new jobs.

I have to say that albeit his amendment may be well intended because we want small businesses to succeed—and I would be the first one to say that—Senator LEAHY's amendment would be detrimental to this bill and also to many small businesses as well as those he says he is trying to help.

I will explain to the Senate now why I believe his amendment is intended to help small businesses of some very small size and help other businesses that are just a little larger but still very much a small business.

He would do this by creating three categories of unsecured creditors in chapter 7, chapter 12, and chapter 13 proceedings under our bankruptcy code. Priority creditors would be paid first, then small business creditors, and then general business creditors that are not small business creditors are the last in line. I will repeat that. It would give priority creditors the option of being paid first, then small business creditors, and then general business creditors that are not small business creditors are the last in line.

This idea is different from the way bankruptcy has been treated historically where we have only given special treatment to creditors with extraordinary circumstances. What I mean to say is that we have created a priority status for those who have compelling reasons to go first, such as child support, which has dominated this debate on bankruptcy reform for 3 years now. After child support, people who might be killed by drunk drivers is an example, or the importance of high priority for back pay and wages. If you don't have a compelling reason such as these categories I have just listed, then creditors otherwise are given equal treatment.

I have to conclude that this is an antibusiness amendment. It would, for instance, require a law firm or a payday loan shark of five members to be paid before an auto repair shop with 30 employees. Also, the amendment could have an unintended result, such as larger businesses being deterred from offering credit to people who may really need it. Further, this issue has not been examined at all. We don't know for sure what the implications are.

I hope my colleagues will oppose this amendment. Do not be sucked into voting for it because it has a title of small business, because it has small business of a certain category but it hurts small businesses generally.

I yield the floor and yield whatever time Senator HATCH might consume.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 14

Mr. HATCH. Mr. President, I thank my colleague. I appreciate all the work he has done on this bill through the years and here today as well. He and I have walked arm in arm on this bill for a long time.

We have tried to accommodate our friends on the other side in innumerable ways. We have accommodated them. It seems as if we can never quite satisfy some on the other side. I am not finding fault with them; they are very sincere on these amendments, but there is no way we could go with some of the amendments that have been offered.

I am going to talk about the amendment of the distinguished Senator from Minnesota, excepting those with high medical expenses from all provisions of this reform legislation.

The effect of that amendment: If a debtor can demonstrate ''the reason for filing was a result of debts incurred through medical expenses,'' the debtor is exempt from every provision of S. 420, except those they might elect to have covered.

I can imagine that is not going to be much of an election. The amendment would create a major loophole, if we were to accept or vote up the Wellstone amendment. S. 420 already allows all medical expenses to be deducted in determining the ability to pay.

If for some reason a debtor could not deduct them under the IRS guidelines, the debtor can demonstrate that there are ''special'' circumstances. So the only people this amendment would help are well-off people who have the ability to pay but also suffered medical problems.

The amendment unwisely creates two classes of debtors. One class must use the bankruptcy bill as S. 420 would amend it, and another class can use bankruptcy law as it exists today or pick and choose what provisions of this new law apply to it.

To allow some group of citizens, no matter how unfortunate, to pick and choose what parts of the law will apply to them is absolutely unprecedented. But that is what the amendment of the Senator from Minnesota would do. It would allow debtors to evade the child support, alimony, and marital property settlement provisions of this bill that help women and children. The debtor who owed child support could evade his basic responsibilities to pay child support by fitting under the loophole created by this Wellstone amendment.

I have worked long and hard to solve these problems. I have to tell you, I think we have them solved, to a large degree, in this bill. I think people on both sides of the aisle are appreciative we have worked so hard for women and children.

The Wellstone amendment would allow debtors to evade the homestead exemption caps imposed by this bill. His amendment is unworkable. Creditors would not know if they had to make the truth in lending disclosures this bill imposes on them until after the debtor filed for bankruptcy. Yet the disclosures must be given in credit card solicitations and on monthly statements.

The amendment would have the strange effect of apparently exempting creditors from complying with consumer protections in this bill, such as the reaffirmation reforms that we have here, such as the restrictions on creditors who fail to credit plan payments properly, such as the privacy protections, and so forth.

So I hope my colleagues will recognize this amendment for what it is. It is an amendment that will not work. It is not fair. It would benefit only those who could afford to pay their medical bills, and it would not do anything for others. It would allow a loophole so people could pick and choose in legislation that we ought to all be subjected to or have to comply with, or that we ought to all benefit from, depending upon the use of the particular bill because all of those factors are part of it.

I hope our colleagues will vote against this amendment. It is an unwise amendment. It would devastate this bill in many respects, and it would not accomplish what the distinguished Senator would want to accomplish because I know his goal is to help those who are unfortunate. That is our goal, too. That is why we have special circumstances in this bill, to help those who are unfortunate, who should not have to comply with some of the aspects of the bill. His amendment basically helps those who should not be helped, who ought to be able to pay for their own expenses, and who can pay for them.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WELLSTONE. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. WELLSTONE. Mr. President, I wonder whether my colleague—I think I have 2 minutes—will grant me 2 minutes. I won't need more than 4 minutes.

Mr. GRASSLEY. Yes.

Mr. WELLSTONE. Mr. President, I tried to respond to what colleagues have said. I want to respond to one point my friend from Utah made. The question is whether the amendment carves out a serious loophole in the means test. The answer is no.

The debtor can only get an exemption from this bill if the court finds that the debtor was forced to file because of medical debt. Again, I say to my colleague, I don't have any problem with rigorous standards, or even rigid standards, as long as you don't capture the wrong people. This legislation captures the wrong people. There ought to be some discretion in the system that says, yes, go after those people who are gaming the system—although I think we have very different views about what percentage they are. But for God's sake, when it is a family being put under, through no fault of their own, because of a major medical illness or injury and, therefore, medical bills,

and the court finds that indeed the debtor was forced to file because of a major medical bill, that is where I would argue we ought to have an exemption for these families from any number of the different provisions in this bill that are meant to deal with people involved in gaming the system, which will make it so difficult.

I have listed a lot of these provisions all day. Why would we not, if the purported purpose of this legislation, I say to two good Senators, is to go after people who are gaming the system, to go after some of the abuses, why would we not want to have this very simple exception for people who are filing for bankruptcy because of major medical expenses? That is all this does, as determined by the court.

I yield the remainder of my time.

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. HATCH. 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. HATCH. Mr. President, I listened to our distinguished colleague from Minnesota. I have to say this bill takes care of people who cannot afford to pay their medical expenses. His amendment would allow those who can afford to pay for them a loophole to get out of paying for them.

The poor really are taken care of in this bill because of the means test we have provided. But the wealthy, even though they have a tremendous capacity to earn money in the future, would be able to get out of all of the provisions of this bill under his amendment if they have medical expenses they can't afford to pay for at that particular time, but they clearly have the ability to pay for it in the future.

This bill is to try to stop that kind of abuse. That is why I cannot support the amendment of the Senator. I know he is trying to do what is right. As a practicality, under bankruptcy law, it would be one of the worst things you could put in this bill. So this is a harmful and unnecessary amendment that would undermine the important reforms in the bankruptcy bill.

Under this amendment, all the debtor who is fully able to repay his debts would have to do to get out of repaying them is to show he filed for bankruptcy because of medical expenses—somebody fully capable of paying his or her bills. S. 420 already allows for unlimited medical expenses to be deducted in determining the ability to pay, and its means test only applies to those who have income above the national median income and have the ability to pay at least 25 percent of their debts over 5 years.

So the amendment of the distinguished Senator is ill-advised. It would be a travesty as part of this particular bill, where we are trying to solve problems and trying to get those who can pay to live up to the responsibilities and not use the bankruptcy laws as a methodology of getting out from under debts they are capable of paying.

I hope our colleagues will vote against this amendment.

Mr. GRASSLEY. How much time remains, Mr. President?

The PRESIDING OFFICER. Five minutes. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, the Senator from Minnesota has been building a Potemkin village against this bill over a period of 3 years. We have dealt with many of the houses and buildings that have been put up. First, it was child support. That has quieted down. Then it was the unemployed. That has quieted down. Then it was those who were in a divorce with special problems. That has quieted down.

We have destroyed almost every one of these homes in your village except this one of medical expenses, and it keeps coming up. It started last spring when the Time magazine story came out about how this bill was so unfair to certain families in America.

I assure the Senator that every one of those families mentioned in that story would have been able to take bankruptcy even if our bill were law. Most of those are people who had medical expenses.

This paper house of medical expenses comes up again. I have said so many times in this debate, not just this year but last year, that we allow under this bill 100 percent of the medical expenses to be deducted in determining whether somebody can file under chapter 7 and have the ability to pay. If 100 percent of expenses are not enough, will 101 percent or 102 percent or 110 percent satisfy the Senator? I would almost be willing to give it to the Senator.

I know the Senator says he has to have his amendment or we go through a certain procedure. What does the Senator from Minnesota think the whole process of bankruptcy is about? If we did not have that process, everybody would be gaming the system. We have people gaming the system now.

I just read a story put out by the credit union people about somebody from the Senator's State who had made it very clear why he was going into bankruptcy, and he spent the next 3 months traveling through the South after he retired.

What we are trying to do is bit by bit destroy these faults, these structures built against this bill, and I think we have destroyed them all. I hope this vote on the amendment of the Senator from Minnesota will put this issue of medical expenses to rest once and for all.

The very same people the Senator wants to make sure get a fresh start, I want to make sure get a fresh start, and they are going to be able to do it under our bill. They do not need the amendment of the Senator from Minnesota to do it.

I yield the floor. 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. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. HATCH. Mr. President, do we have the yeas and nays on both amendments?

The PRESIDING OFFICER. The yeas and nays have only been ordered on the Leahy amendment.

Mr. HATCH. I ask for the yeas and nays on the Wellstone amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to amendment No. 14. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

The PRESIDING OFFICER (Mr. CHAFEE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 34, nays 65, as follows:

[Rollcall Vote No. 16 Leg.]

YEAS—34

Akaka	Feingold	Mikulski
Baucus	Graham	Murray
Bayh	Harkin	Nelson (FL)
Boxer	Hollings	Reed
Cantwell	Inouye	Rockefeller
Clinton	Kennedy	Sarbanes
Corzine	Kerry	Schumer
Daschle	Landrieu	Stabenow
Dayton	Leahy	Wellstone
Dodd	Levin	Wyden
Dorgan	Lieberman	
Durbin	Lincoln	

NAYS—65

Allard	Domenici	McConnell
Allen	Edwards	Miller
Bennett	Ensign	Murkowski
Biden	Enzi	Nelson (NE)
Bingaman	Feinstein	Nickles
Bond	Frist	Reid
Breaux	Gramm	Roberts
Brownback	Grassley	Santorum
Bunning	Gregg	Sessions
Burns	Hagel	Shelby
Byrd	Hatch	Smith (NH)
Campbell	Helms	Smith (OR)
Carnahan	Hutchinson	Snowe
Carper	Hutchison	Specter
Chafee	Inhofe	Stevens
Cleland	Jeffords	Thomas
Cochran	Johnson	Thompson
Collins	Kohl	Thurmond
Conrad	Kyl	Torricelli
Craig	Lott	Voinovich
Crapo	Lugar	Warner
DeWine	McCain	

ANSWERED ''PRESENT''—1

Fitzgerald

The amendment (No. 14) was rejected.

Mr. HATCH. Mr. President, I move to reconsider the vote.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 13

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate on the Leahy amendment.

Who yields time?

Mr. LEAHY. Mr. President, last week the distinguished majority leader said we needed to pass this bill to help small business creditors in bankruptcy. I agree with him. Tonight we can take a bipartisan step to do just that.

This amendment provides small business creditors with the priority distribution from the bankruptcy estate. They make up 90 percent of the businesses in our country. These are the mom-and-pop stores across the country—the feedstores, the small ranchers, and the small farmers. They are the backbone of our economy.

We are already giving different preferences in this bill. All I am saying is that if you have to have the first preference to a multibillion-dollar credit card company, or the stores on your main street of your hometown, when you list those preferences, give the stores the first preferences. It doesn't let any debtors off their debt, but it helps the small businesses of America.

Mr. HATCH. Mr. President, this amendment would discriminate against any business with more than 25 employees with regard to their ability to collect debts in bankruptcy. Instead of allowing the bankruptcy process to proceed fairly, this amendment would prevent businesses with more than 25 employees from being paid a single penny until smaller businesses were paid in full. It is an improper way to proceed in bankruptcy. We should not discriminate against anybody and let the process takes its course.

I hope our colleagues will vote against this amendment.

I move to table the amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to table the amendment.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 58, nays 41, as follows:

[Rollcall Vote No. 17 Leg.]

YEAS—58

Allard	Enzi	Murkowski
Allen	Frist	Nelson (NE)
Bayh	Gramm	Nickles
Bennett	Grassley	Roberts
Biden	Gregg	Santorum
Bingaman	Hagel	Sessions
Bond	Hatch	Shelby
Brownback	Helms	Smith (NH)
Bunning	Hutchinson	Smith (OR)
Burns	Hutchison	Snowe
Campbell	Inhofe	Specter
Carper	Jeffords	Stevens
Chafee	Johnson	Thomas
Cochran	Kyl	Thompson
Collins	Lieberman	Thurmond
Craig	Lott	Torricelli
Crapo	Lugar	Voinovich
DeWine	McCain	Warner
Domenici	McConnell	
Ensign	Miller	

NAYS—41

Akaka	Dorgan	Levin
Baucus	Durbin	Lincoln
Boxer	Edwards	Mikulski
Breaux	Feingold	Murray
Byrd	Feinstein	Nelson (FL)
Cantwell	Graham	Reed
Carnahan	Harkin	Reid
Cleland	Hollings	Rockefeller
Clinton	Inouye	Sarbanes
Conrad	Kennedy	Schumer
Corzine	Kerry	Stabenow
Daschle	Kohl	Wellstone
Dayton	Landrieu	Wyden
Dodd	Leahy	

ANSWERED ''PRESENT''—1

Fitzgerald

The motion was agreed to.

The PRESIDING OFFICER. The Senator from Kansas.

MORNING BUSINESS

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Senate now be in a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

RULES OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, in accordance with rule XXVI, paragraph 2, of the Standing Rules of the Senate, I ask unanimous consent that there be printed in the RECORD the rules of the Committee on Energy and Natural Resources.

RULES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

GENERAL RULES

Rule 1. The Standing Rules of the Senate, as supplemented by these rules, are adopted as the rules of the Committee and its Subcommittees.

MEETINGS OF THE COMMITTEE

Rule 2. (a) The Committee shall meet on the third Wednesday of each month while the Congress is in session for the purpose of conducting business, unless, for the convenience of Members, the Chairman shall set some other day for a meeting. Additional meetings may be called by the Chairman as he may deem necessary.

(b) Business meetings of any Subcommittee may be called by the Chairman of such Subcommittee, Provided, That no Subcommittee meeting or hearing, other than a field hearing, shall be scheduled or held concurrently with a full Committee meeting or hearing, unless a majority of the Committee concurs in such concurrent meeting or hearing.

OPEN HEARINGS AND MEETINGS

Rule 3. (a) All hearings and business meetings of the Committee and its Subcommittees shall be open to the public unless the Committee or Subcommittee involved, by majority vote of all the Members of the Committee or such Subcommittee, orders the hearing or meeting to be closed in accordance with paragraph 5(b) of Rule XXVI of the Standing Rules of the Senate.

(b) A transcript shall be kept of each hearing of the Committee or any Subcommittee.

(c) A transcript shall be kept of each business meeting of the Committee or any Subcommittee unless a majority of all the Members of the Committee or the Subcommittee involved agrees that some other form of permanent record is preferable.

HEARING PROCEDURE

Rule 4. (a) Public notice shall be given of the date, place, and subject matter of any hearing to be held by the Committee or any Subcommittee at least one week in advance of such hearing unless the Chairman of the full Committee or the Subcommittee involved determines that the hearing is noncontroversial or that special circumstances require expedited procedures and a majority of all the Members of the Committee or the Subcommittee involved concurs. In no case shall a hearing be conducted with less than twenty-four hours notice. Any document or report that is the subject of a hearing shall be provided to every Member of the committee or Subcommittee involved at least 72 hours before the hearing unless the Chairman and Ranking Member determine otherwise.

(b) Each witness who is to appear before the Committee or any Subcommittee shall file with the Committee or Subcommittee, at least 24 hours in advance of the hearing, a written statement of his or her testimony in as many copies as the Chairman of the Committee or Subcommittee prescribes.

(c) Each member shall be limited to five minutes in the questioning of any witness until such time as all Members who so desire have had an opportunity to question the witness.

(d) The Chairman and Ranking Minority Member of the Committee or Subcommittee of the Ranking Majority and Minority Members present at the hearing may each appoint one Committee staff member to question each witness. Such staff member may question the witness only after all Members present have completed their questioning of the witness or at such other time as the Chairman and the Ranking Majority and Minority Members present may agree. No staff member may question a witness in the absence of a quorum for the taking of testimony.

BUSINESS MEETING AGENDA

Rule 5. (a) A legislative measure, nomination, or other matter shall be included on the agenda of the next following business meeting of the full Committee or any Subcommittee if a written request for such inclusion has been filed with the Chairman of the Committee or Subcommittee at least one week prior to such meeting. Nothing in this rule shall be construed to limit the authority of the Chairman of the Committee or Subcommittee to include a legislative measure, nomination, or other matter on the Committee or Subcommittee agenda in the absence of such request.

(b) The agenda for any business meeting of the Committee or Subcommittee shall be provided to each Member and made available to the public at least three days prior to such meeting, and no new items may be added after the agenda is so published except by the approval of a majority of all the Members of the Committee or Subcommittee. The Staff Director shall promptly notify absent Members of any action taken by the Committee or Subcommittee on matters not included on the published agenda.

QUORUMS

Rule 6. (a) Except as provided in subsections (b), (c), and (d), eight Members shall constitute a quorum for the conduct of business of the Committee.

(b) No measure or matter shall be ordered reported from the Committee unless twelve Members of the Committee are actually present at the time such action is taken.

(c) Except as provided in subsection (d), one-third of the Subcommittee Members shall constitute a quorum for the conduct of business of any Subcommittee.