Some have said that the Abe Fortas nomination for Chief Justice was filibustered. Hardly. I thought it was, too, until I was corrected by the man who led the fight against Abe Fortas, Senator Robert Griffin of Michigan, who then was the floor leader for the Republican side and, frankly, the Democratic side because the vote against Justice Fortas, preventing him from being Chief Justice, was a bipartisan vote, a vote with a hefty number of Democrats voting against him as well. Former Senator Griffin told me and our whole caucus that there never was a real filibuster because a majority would have beaten Justice Fortas outright. Lyndon Johnson, knowing that Justice Fortas was going to be beaten, withdrew the nomination. So that was not a filibuster. There has never been a tradition of filibustering majority supported judicial nominees on the floor of the Senate until President Bush became President.

Number two, if I recall it correctly, the distinguished Senator from West Virginia did not say ruling such filibusters out of order is against the rules. I do not believe he said that because it is not against the rules. At least four times in the past, some of which occurred when Senator BYRD, the distinguished Senator from West Virginia, was the majority leader in the Senate, there have been attempts to change the Senate's rules on the filibuster. Admittedly, I think in some of those cases the Senate backed down and changed the rules, but the effort was made to change the rules, and in the eyes of the Senator from West Virginia and others they should have and could have been changed by majority vote.

Let me say, in fact, all of the examples the Senator from West Virginia cited of legislative filibusters would not be affected by the constitutional option. That is a constitutional option that would allow judicial nominees an up-or-down vote.

That is a very important distinction because never before have judicial nominees been filibustered. Never before has one side or the other, in an intemperate way, decided to deprive the Senate as a whole from not just its advice function, but its consent function. We consent, or withhold that consent, when we vote up or down on these nominees.

Filibustering against the legislative calendar items has been permitted since 1917, and with good reason. I, for one, agree that this is a very good rule. But those filibusters happen on the legislative calendar. That is the calendar of the Senate; it is our legislative responsibility. The filibuster rule, Rule XXII, is to protect the minority. Frankly, I would fight for that rule with everything I have. But executive nominees, filibustering on the executive calendar is an entirely different situation. And it is one that was not addressed in Senator BYRD's remarks.

I myself had never looked at this very carefully until this onslaught of filibusters against 11 appellate court judges took place on this floor. Then I started to look at it, and others have, too, and we now realize there is a real disregard of a constitutional principle by these unwarranted and, I think, unjustified and unconstitutional filibusters. In these particular cases, every one of those people—every one—had a bipartisan majority waiting to vote on the floor. This distinction is ultimately the critical one. Should a minority be able to permanently prevent a vote on a majority supported judicial nominee? I think the answer is clearly no, and there is nothing in the distinguished Senator from West Virginia's remarks that contradict that conclusion.

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

AMENDMENT NO. 15

Mr. AKAKA. Mr. President, I rise to speak on amendment No. 15, which I will offer to S. 256.

I thank Senators DURBIN, LEAHY, and SARBANES for working with me on this legislation, the Credit Card Minimum Payment Warning Act, and for cosponsoring the amendment.

Mr. President, during all of 1980, only 287,570 consumers filed for bankruptcy. As consumer debt burdens have ballooned, the number of bankruptcies have increased significantly. From January through September of 2004, approximately 1.2 million consumers filed for bankruptcy, keeping pace with last year's record level. The growth in use of credit cards can partially explain this surge. Revolving debt, mostly compromised of credit card debt, has risen from $54 billion in January 1980 to more than $780 billion in November 2004. A U.S. Public Interest Research Group and Consumer Federation of America analysis of Federal Reserve data indicates that the average household with debt carries approximately $10,000 to $12,000 in total revolving debt.

We must make consumers more aware of the long-term effects of their financial decisions, particularly in managing their credit card debt, so that they can avoid financial pitfalls that may lead to bankruptcy.

While it is relatively easy to obtain credit, not enough is done to ensure that credit is properly managed. Currently, credit card statements fail to include vital information that would allow individuals to make fully informed financial decisions. Additional disclosure is needed to ensure that individuals completely understand the implications of their credit card use and the costs of only making the minimum payments as required by credit card companies.

S. 256 includes a requirement that credit card issuers provide additional information about the consequences of making minimum payments. However, this provision fails to provide the detailed information for consumers on their billing statement that our amendment would provide. Section 1301 of the bankruptcy bill would allow credit card issuers a choice of disclosures that they must provide on the monthly billing statement.

The first option included in the bankruptcy bill would require a ''Minimum Payment Warning'' stating that it would take 88 months to pay off a balance of $1,000 for bank card holders or 24 months to pay off a balance of $300 for retail card holders. It would require a toll-free number to be established that would provide an estimate of the time it would take to pay off the customer's balance. The Federal Reserve Board would be required to establish a table that would estimate approximate number of months it would take to pay off a variety of account balances.

There is a second option that the legislation permits. The credit card issuer could provide a general minimum payment warning and provide a toll-free number that consumers could call for the actual number of months to repay the balance.

Both of these options are inadequate. They do not require the issuers to provide their customers with the total amount they would pay in interest and principal if they chose to pay off their balance at the minimum payment rate. The minimum payment warning included in the first option underestimates the costs of paying a balance off at the minimum payment. Since the average household with debt carries a balance has approximately $10,000 to $12,000 in total revolving debt, a warning based on a much smaller balance, $1,000 or under in this case, will not be helpful. If a family has a credit card debt of $10,000, and the interest rate is a modest 12.4 percent, it would take more than 10½ years to pay off the balance while making minimum monthly payments of 4 percent.

As we make it more difficult for consumers to discharge their debts in bankruptcy, we have a responsibility to provide additional information so that consumers can make better informed decisions. Our amendment will make it very clear what costs consumers will incur if they make only the minimum payments on their credit cards. If this amendment is adopted, the personalized information they will receive for each of their accounts will help them to make informed choices about the payments that they choose to make towards reducing their outstanding debt.

This amendment requires a minimum payment warning notification on monthly statements stating that making the minimum payment will increase the amount of interest that will be paid and extend the amount of time it will take to repay the outstanding balance. The amendment also requires companies to inform consumers of how many years and months it will take to repay their entire balance if they make

only the minimum payments. In addition, the total cost in interest and principal, if the consumer pays only the minimum payment, would have to be disclosed. These provisions will make individuals much more aware of the true costs of their credit card debts. The amendment also requires that credit card companies provide useful information so that people can develop strategies to free themselves of credit card debt. Consumers would have to be provided with the amount they need to pay to eliminate their outstanding balance within 36 months.

Finally, our amendment would require that creditors establish a toll-free number so that consumers can access trustworthy credit counselors. In order to ensure that consumers are referred from the toll-free number to only trustworthy organizations, the agencies for referral would have to be approved by the Federal Trade Commission and the Federal Reserve Board as having met comprehensive quality standards. These standards are necessary because certain credit counseling agencies have abused their nonprofit, tax-exempt status and have taken advantage of people seeking assistance in managing their debts. Many people believe, sometimes mistakenly, that they can place blind trust in nonprofit organizations and that their fees will be lower than those of other credit counseling organizations. Too many individuals may not realize that the credit counseling industry does not deserve the trust that consumers often place in it.

Our credit card minimum payment warning legislation has been endorsed by the Consumer Federation of America, Consumers Union, U.S. Public Interest Research Group, and Consumer Action.

I urge my colleagues to support this amendment that will empower consumers by providing them with detailed personalized information to assist them in making better informed choices about their credit card use and repayment. This amendment makes clear the adverse consequences of uninformed choices, such as making only minimum payments, and provides opportunities to locate assistance to better manage their credit card debts.

Mr. President, I ask unanimous consent that the pending amendment be set aside, and I call up amendment No. 15.

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

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Hawaii [Mr. AKAKA], for himself, Mr. DURBIN, Mr. LEAHY, and Mr. SARBANES, proposes an amendment numbered 15.

Mr. AKAKA. 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:

(Purpose: To require enhanced disclosure to consumers regarding the consequences of making only minimum required payments in the repayment of credit card debt, and for other purposes)

On page 473, strike beginning with line 12 through page 482, line 24, and insert the following:

SEC. 1301. ENHANCED CONSUMER DISCLOSURES REGARDING MINIMUM PAYMENTS.

(a) DISCLOSURES REGARDING OUTSTANDING BALANCES .—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

''(11)(A) Information regarding repayment of the outstanding balance of the consumer under the account, appearing in conspicuous type on the front of the first page of each such billing statement, and accompanied by an appropriate explanation, containing—

''(i) the words 'Minimum Payment Warning: Making only the minimum payment will increase the amount of interest that you pay and the time it will take to repay your outstanding balance.';

''(ii) the number of years and months (rounded to the nearest month) that it would take for the consumer to pay the entire amount of that balance, if the consumer pays only the required minimum monthly payments;

''(iii) the total cost to the consumer, shown as the sum of all principal and interest payments, and a breakdown of the total costs in interest and principal, of paying that balance in full if the consumer pays only the required minimum monthly payments, and if no further advances are made;

''(iv) the monthly payment amount that would be required for the consumer to eliminate the outstanding balance in 36 months if no further advances are made; and

''(v) a toll-free telephone number at which the consumer may receive information about accessing credit counseling and debt management services.

''(B)(i) Subject to clause (ii), in making the disclosures under subparagraph (A) the creditor shall apply the interest rate in effect on the date on which the disclosure is made.

''(ii) If the interest rate in effect on the date on which the disclosure is made is a temporary rate that will change under a contractual provision specifying a subsequent interest rate or applying an index or formula for subsequent interest rate adjustment, the creditor shall apply the interest rate in effect on the date on which the disclosure is made for as long as that interest rate will apply under that contractual provision, and then shall apply the adjusted interest rate, as specified in the contract. If the contract applies a formula that uses an index that varies over time, the value of such index on the date on which the disclosure is made shall be used in the application of the formula.''.

(b) ACCESS TO CREDIT COUNSELING AND DEBT MANAGEMENT INFORMATION.—

(1) GUIDELINES REQUIRED.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Board of Governors of the Federal Reserve System and the Federal Trade Commission (in this section referred to as the ''Board'' and the ''Commission'', respectively) shall jointly, by rule, regulation, or order, issue guidelines for the establishment and maintenance by creditors of a toll-free telephone number for purposes of the disclosures required under section 127(b)(11) of the Truth in Lending Act, as added by this Act.

(B) APPROVED AGENCIES.—Guidelines issued under this subsection shall ensure that referrals provided by the toll-free number include only those agencies approved by the Board and the Commission as meeting the criteria under this section.

(2) CRITERIA.—The Board and the Commission shall only approve a nonprofit budget and credit counseling agency for purposes of this section that—

(A) demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides;

(B) at a minimum—

(i) is registered as a nonprofit entity under section 501(c) of the Internal Revenue Code of 1986;

(ii) has a board of directors, the majority of the members of which—

(I) are not employed by such agency; and

(II) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency;

(iii) if a fee is charged for counseling services, charges a reasonable and fair fee, and provides services without regard to ability to pay the fee;

(iv) provides for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

(v) provides full disclosures to clients, including funding sources, counselor qualifications, possible impact on credit reports, any costs of such program that will be paid by the client, and how such costs will be paid;

(vi) provides adequate counseling with respect to the credit problems of the client, including an analysis of the current financial condition of the client, factors that caused such financial condition, and how such client can develop a plan to respond to the problems without incurring negative amortization of debt;

(vii) provides trained counselors who—

(I) receive no commissions or bonuses based on the outcome of the counseling services provided;

(II) have adequate experience; and

(III) have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (F);

(viii) demonstrates adequate experience and background in providing credit counseling;

(ix) has adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan; and

(x) is accredited by an independent, nationally recognized accrediting organization.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we have a lot of urgent problems pressing the Nation and this Congress. We have urgent problems with joblessness. We have urgent problems with the coverage of health care and the costs of health care. We have urgent problems with education. We have urgent problems dealing with poverty. We have problems that go to the heart of fairness and opportunity in this Nation. These are real problems of real people, and they test whether our commitment to America's core values is as important to us as we say it is. But we are not spending this month on any of those issues. We are spending most of the time between now and the March recess on a bill that does nothing about any of these problems, that does nothing for Americans facing job problems,

health problems, and education challenges. We are spending our time on a bill that was written by the credit card industry for the benefit of the credit card industry. We are spending our time on changes in the bankruptcy law which were opposed by the two distinguished national commissions which studied those laws during the 1970s and 1990s.

This is a bill which is opposed by a long list of organizations representing many millions of real people, organizations representing workers, retired Americans, consumers, women's organizations, civil rights organizations, a large group of distinguished law professors and bankruptcy judges, 1,700 prominent doctors around the country, and even some financial service organizations that are truly responsible lenders and care about their customers. I am talking about people such as the CEO of ING Direct, the sixth largest thrift institution in the Nation; people like the CEO of the second largest credit union in the U.S., the North Carolina State Employees' Credit Union.

This is what the CEO of ING Direct told the committee about the bill:

The one-sided provisions of this bankruptcy legislation are bad news for consumers, but they are also bad news for the financial service industry. Consumers are our customers. By creating a form of debt imprisonment, this bill will hobble the most important player in the world economy, the American consumer.

Jim Blaine, the CEO of the North Carolina State Employees' Credit Union, had this to say about the bill:

This bird is a turkey.

So why are we here? Why are we spending our time on this supposed resolution to a nonexistent problem rather than addressing the real problems the Nation faces? It cannot be because the credit card industry needs help. The credit card industry is doing just fine, thank you. The profits of the credit card industry rose from $6.4 billion in 1990 to $20 billion in 2000. By last year, those profits had increased another 50 percent to over $30 billion. Let me say that again. Credit card company profits have gone from $6.4 billion in 1990 to $30.2 billion last year. Why are we spending our time on legislation designed to further enrich what is already one of the most profitable industries in America at the expense of middle-income Americans in financial distress, in most cases through no fault of their own?

This is supposed to be a bill about spendthrifts, about people who abuse the credit system and abuse the bankruptcy system. If that were really what this bill was about, maybe there would be some reason for us to be here. If this were a bill that dealt with the truly incredible abuses of the bankruptcy system that we have seen in the Enron case, in the WorldCom case, in the Adelphia case, and the Polaroid case in my own State, then maybe there would be reason to be spending our time working on this bill.

Look at the Polaroid case in my home State of Massachusetts. Polaroid filed for bankruptcy in 2001. In the months leading up to the company's filing, the corporation made $1.7 million in incentive payments to its chief executive Gary DiCamillo on top of his $840,000 base salary. The company also received bankruptcy court approval to make $1.5 million in payments to senior managers to keep them on board. These managers collectively received an additional $3 million when the company's assets were sold off.

By contrast, just days before Polaroid filed for bankruptcy, it canceled health and life insurance for more than 6,000 retirees and canceled health insurance coverage for workers on long-term disability. It also stopped certain benefits for thousands of workers who were recently laid off. Polaroid workers had been required to pay 8 percent of their pay in the company's employee stock ownership plan, the ESOP programs. When the company declined, their retirement savings were virtually wiped out. Now, that is a real abuse of the bankruptcy system.

But this bill is not about consumers who abuse the system. It is not about corporate executives who have exploited the system to line their own pockets. This is a bill for which the credit card industry hopes to squeeze a few extra dollars a month out of Americans who are out on their luck, people who have been hit hard by medical disasters, guardsmen and reservists who have suddenly been called to duty to serve their Nation, forcing them to leave their families and their businesses behind, people who were fired after years of hard work because their employer sent their jobs abroad. This is not what the Senate should be doing. This legislation is not worthy of the Senate. Our time should be spent helping, not hurting, the working families most in need.

This bill does nothing to protect those hard-working Americans who did everything they could to stave off bankruptcy but were left with no other choice after exhausting their own resources. Yet this Republican bill actually makes it more difficult for good citizens such as these to get the fresh start that the bankruptcy laws are intended to offer.

The idea of a fresh start lies at the heart of our bankruptcy law. In 1833, Supreme Court Justice Joseph Storey, one of the great legal scholars in our history, explained why. He said that bankruptcy laws were intended to divide debtors' remaining assets among their creditors when they could not pay all of their debts, but the purpose was also to relieve unfortunate and honest debtors from perpetual bondage to their creditors. He said that bankruptcy legislation should relieve the debtor from a slavery of mind and body which robs his family of the fruits of his labor.

One hundred years later, the Supreme Court emphasized Justice Story's views. The Bankruptcy Act, it said, is intended to:

relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes.

The power to earn a living, the Court said, is a ''personal liberty,'' and:

from the viewpoint of the wage-earner there is little difference between not earning at all and earning wholly for a creditor.

In short, the same fundamental values which led this Nation to abolish debtors' prisons, also led us to offer debtors a fresh start. They would be required to use their available assets to pay as much of their debt as they could, but no more. They would have full rights to their own future earnings, so that they would not have to live in perpetual bondage to their past debtors.

That is the essence of our free enterprise system. We encourage entrepreneurs. People can borrow money for a car to go to work, for equipment to start a small business, for a tractor to run a farm, for a boat to start a fishing business. When decent people run into financial trouble, we don't write them off forever. We help them get back on their feet so they can provide for their families and contribute to our economy once again. Otherwise, few in America take the risks that our free enterprise depends on. There is a safety net to stop a free fall.

Yet this legislation turns its back on that spirit of American entrepreneurship. It tells our citizens that they cannot get that fresh start unless they can maneuver through a maze of procedural obstacles created by the credit card companies and debt collection agencies. It imposes paperwork burdens that bankrupt Americans can not afford. It forces them to pay for credit counselors, who may be predatory themselves. It forces them to miss work to go to audits of their meager assets. It requires them to hire a lawyer to mitigate this maze, but then tells the lawyer that any error will make the lawyer personally liable.

In short, this bill does everything the mind of the purveyors of predatory plastic could think up to make their cardholders pay in full, and prevent them from getting the ''fresh start'' that bankruptcy offers them. Its purpose is to keep the credit card payments rolling in, and prevent that money from being used to feed their children or pay their hospital bills or make their mortgage payments. It labels them as abusers of the system.

Just listen to the words in the summary of the key standard for the ''means test'' that lies at the heart of this bill. According to this summary, prepared by the Congressional Research Service, you are presumed to be an abuser of the system:

if current monthly income, excluding allowed deductions, secured debt payments, and priority unsecured debt payments, multiplied by 60, would permit a debtor to pay

not less than the lesser of (a) 25 percent of nonpriority unsecured debt or $6000 (or $100 a month), whichever is greater, or (b) $10,000.

Maybe some people can figure that out—most cannot. But that convoluted paragraph determines whether your debts can be discharged in bankruptcy, or not.

This bill is flawed from top to bottom. That is why, since it was first presented to Congress by the credit card industry, it has been opposed by bankruptcy judges, legal scholars, consumer advocates, labor unions, and civil rights groups. They all recognize that its harsh and excessive provisions will have a devastating effect on working families.

It allows credit card companies to put their profits ahead of the well-being of our troops serving in Iraq and Afghanistan. Since 9–11 about half a million reservists arid members of the National Guard have been called to active duty, half a world away from their homes and businesses. Many of their families are suddenly facing economic hardship, and their creditors keep calling. They are serving far away, and the small businesses they ran are running into trouble. This bill does nothing to protect the men and women who are fighting for us.

When one reservist left home, his wife had to start leading his construction company, and the company ran into trouble. Their family income plummeted by 80 percent. They lost their savings, lost their credit, and the business is on the rocks—all because a soldier served his country. The troubles of families like that will be even more serious under this bill. Instead of helping to ease the burden, it treats that family like tax evaders or defrauders.

This Republican bill also penalizes innocent victims of today's economy. We are still recovering from the 2001 recession. Nearly 8 million Americans are still unemployed. One in five of those workers has been out of work for more than 6 months. The unemployment insurance safety net they rely on has not been updated to meet today's demands. Jobs in health care, financial services, and information technology are being shipped overseas.

Workers who lose their jobs today have great difficulty finding a new job with comparable wages, benefits, hours, and overall quality. Part-time jobs don't begin to provide the same financial stability—yet today's companies are relying more and more on part-time workers to cut costs. The average part-time worker earns $4 an hour less than a regular full-time worker. Few part-time workers have a health insurance plan or a pension plan.

Huge numbers of working families are being squeezed hard by the current economy. Their ability to live the American dream is increasingly out of reach with each passing year. They find it harder and harder to earn a living—to pay the mortgage, pay the rent, pay their medical bill, pay their food bill, pay their gasoline bill, pay the college bill. Yet the cost of getting by continues to rise faster than family income.

Healthcare costs are out of reach. Health insurance premiums have soared 59 percent in the past 4 years. Drug costs have soared 65 percent.

Housing costs rose 33 percent in the last 4 years. Child care can often cost up to $10,000 a year for one child—more than the cost of tuition at a public college. College costs are rising at double-digit rates. Tuition at public colleges has risen 35 percent in the last 4 years.

Today, hardworking families are balancing on a precarious tower of bills that keep piling. Inevitably, many topple over. They go into debt just to get by. The average family now spends 13 percent of its income to pay debts—the highest percentage since 1986. The average household now has more than $8,000 in credit card debt. More than half of all Americans acknowledge they have too much debt. Three-quarters of that debt is a major reason it's harder to achieve the American dream today. It is no wonder so many families face bankruptcy.

This year, more people will end up in bankruptcy than suffer a heart attack. More people will file for bankruptcy than graduate from college. More children will grow up in families facing bankruptcy than in families facing divorce.

Many of us feel the Bush administration is bankrupt in more ways than one. Its reckless policies are bankrupting the economy and literally bankrupting millions of families. Bankruptcy is up 33 percent since President Bush took office. An American now goes bankrupt every 19 seconds. In Massachusetts, there is a bankruptcy every half hour.

One of the greatest weaknesses of this bill is its failure to address the issue of bankruptcies caused by serious illness or injury. Illness is bankrupting millions of Americans who have done everything right. They have worked hard, played by the rules, earned a good salary, saved their money, even purchased health insurance—only to find all that is not enough.

More than half of all families facing bankruptcy today are facing it because of overwhelming medical costs. They are not irresponsible spendthrifts who bought too much at the mall, or were enticed to go in over their heads in debt by a credit card solicitation they couldn't say no to. They are facing bankruptcy because of a sudden serious illness or a severe injury that caused a mountain of debt they couldn't afford.

The average American facing a serious illness is burdened with more than $13,000 of out-of-pocket expenses, even though they have health insurance. If you have cancer, it is $35,000. That is money you have to pay out of your own pocket for expenses not covered by your health insurance.

If the bill before us passes, those fellow citizens will be penalized twice—once by the failure of the health care system and a second time by the failure of the bankruptcy laws. This bill will only make the second failure even worse.

We need to make sure that bankruptcy continues to be available as a safety net for those Americans—men and women who have spent down their savings on a serious injury or illness, who face huge doctor and hospital bills their insurance didn't cover, who are unable to go back to work after suffering serious medical problems.

They are people such as April Wetherell, a 50-year-old woman from Toms River, NJ, who went back to school after raising her children and received her master's degree in social work. She was serving as a visiting nurse 2 years ago, when she suffered a stroke while recovering from knee surgery. The stroke left her unable to speak, work, or care for her own needs. At the time, April still owed $25,000 in student loans. She had been making payments faithfully on her student loans until her illness left her unable to return to her job. Her health insurance did not cover all her medical costs, and she was left with more than $20,000 in unpaid medical bills. At the time of her stroke, she had about $7,000 in credit card debt, which she had been paying off on time. Even though she had done all the right things, she was forced into bankruptcy because of her serious, incapacitating illness.

Walton Pinkney of Frederick, MD, has been an electrician for more than 10 years. He changed jobs in 2000, and his new employer did not provide health benefits for the first 90 days of employment. Sadly, Walton suffered heart failure during his first month on his new job. His new health plan had not yet taken effect, and he was responsible for more than $45,000 in medical expenses for his heart condition. He tried to return to work, but his employer said his health was too uncertain for him to return. Faced with large medical bills he could not pay after he lost his job, he had to file for bankruptcy in 2003.

Zoraya Marrero is a single mother with three children from Woodbridge, VA. Her oldest child suffers from spina bifida. She received State disability benefits and medical coverage for her child due to the illness. After moving to another State 5 years ago, she no longer qualified for new benefits, and she also had to pay back $60,000 for benefits she had already received. She has been fighting the $60,000 claim and paying her own medical expenses while working in a doctor's office. She cannot afford private insurance, and cannot afford to pay for her son's costly medical care. Overwhelmed by debt, she filed for bankruptcy.

These people had no intention of seeking relief in bankruptcy. They were not ''gaming'' the system to avoid their responsibilities. They and millions of other Americans in similar circumstances filed for bankruptcy, but

only after they had exhausted all the other options—not because they wanted to but because they had to.

In fact, before declaring bankruptcy, they had spent at least 2 years, on average, making very real sacrifices in a futile effort to pay for their health care and make ends meet. One in five went without food. Almost one-third had their electricity shut off.

I am talking about individuals who went into bankruptcy as a result of medical expenses, even though about 65 percent of them had health insurance before they actually went into bankruptcy. That is what they did, according to the Elizabeth Warren report from the Harvard Law School.

One in five went without food, almost a third had their electricity shut off, almost half lost their phone service, many went without needed medical care, and some even moved their elderly parents to less comfortable nursing homes.

As this chart indicates, here is what has happened to the lavish lifestyle of our fellow citizens. These are half of all the bankruptcies at the present time. How did they live, and what did they do for 2 years before filing for bankruptcy? They went without needed medical care, 61 percent; without doctors, 50 percent; utilities turned off, 30 percent; without food, 22 percent; and 70 percent moved their elderly parents to cheaper care facilities.

These are our fellow Americans whom we want to punish with this bankruptcy bill? If you want to go after the spendthrifts, let us do that. But do you think we are going after corporate America in this bankruptcy bill? Read today's newspaper. Here it is: Former WorldCom chief executive, once hailed as one of the most brilliant telecommunications executives, told the packed courtroom, ''I don't know about technology; I don't know about finance; also, I don't know about accounting.''

There it is. The corporate CEOs will be able to escape.

But do you think these hard-working Americans are going to be able to escape anything with this bill at all to deal with WorldCom, Enron, Polaroid? There is absolutely nothing in here. Yet there is the result of what this legislation does.

Generally around here, we have legislation that is reasonably balanced. Not this piece of legislation. The most profitable industry in the country, 100-percent profits in the last 5 years, and they are out there trying to squeeze some additional money ought of these hard-working Americans. I would have thought at least a majority who were going to write this legislation here in the Senate would have tried to do something about corporate bankruptcies. But, no, no. They are letting those individuals alone, and most of those—we come back a little later to discuss how they profited—a number of them even profited after they went into bankruptcy. There is even one individual who profited after he was convicted of larceny. But we are not dealing with those particular issues.

We often talk in America about safety nets. Social Security is a safety net to guarantee financial security for senior citizens. Poverty programs are safety nets for children and families. Our bankruptcy laws are a safety net for millions of families, too.

Americans who live responsibly, do everything right, and still suddenly fall on hard times deserve a second chance, and the bankruptcy laws give them that chance. They can make a fresh start and pull themselves back up. They have renewed hope for the future.

Unexpected financial setbacks for families should not mean the end of their American dream. They should not lose all hope for themselves and their children. It's the old ''cowboy up'' philosophy—when you fall off your horse, you pick yourself up, dust yourself off, and start all over again.

When disaster strikes, when storms buffet a community, Americans respond. We see the images on television and immediately we send a donation to help out. That's the American spirit.

But when financial disaster strikes a family—when a business collapses, when medical bills pile up, when a reservist is called up for extended active duty, when workers lose their jobs because of a plant closing or outsourcing—the economic catastrophes can be hidden from view. That is where our bankruptcy laws come in. We got rid of debtors' prisons almost two centuries ago for a reason. It is the American spirit to help these families through financial disasters.

But this bill will destroy that financial safety net for many, many citizens who deserve help.

This legislation is a bonanza for banks and credit card companies, and a nightmare for millions of average Americans. It rewrites the bankruptcy laws in a way that kicks average families while they're down, in order to pad the already high profits of the credit card industry and other lenders. It is greed, pure and simple.

Predatory credit card companies are doing all they can to urge unsuspecting citizens to pile up huge debts on their credit cards. They especially target the elderly, college students, and the working poor. They advertise nationwide. They send out billions of solicitations every year to entice more people to sign up for their cards. The bold type talks about the minimum monthly payments—but you have to read the fine print to see the exorbitant interest payments that inevitably result.

You cannot go to any college campus, any sporting event, or your mailbox without being solicited for another credit card, no matter how many you already have. Young students, still in their teens, are greeted with a deluge of offers from credit card companies. Before they buy books and find the cafeteria, they see credit card offers with credit linlits in the thousands of dollars.

So, in many cases, the very same companies that have been trying to get a bill like this passed for decades and had their lobbyists write this bill for them in 1997, are the ones who caused the indebtedness that they now complain about.

Does this bill do anything abut that? Absolutely not.

A lot has changed since the Senate last looked at this bill 4 years ago. Health costs are way up, health insurance protection is less obtainable and less affordable, hundreds of thousands of families have suffered economically from military callups, unemployment insurance has not been updated.

The economy is still working its way out of a serious downturn. Corporate mismanagement and fraud have become a way of life in the highest echelons of corporate America.

So I say to each of our colleagues, please consider who wrote this bill and why. Please think about your hard-working constituents who will be dealt a double whammy by this bill if they fall on hard times. Please think about what has happened since we last considered the bill. Please keep an open mind as we discuss the serious problems with this bill and the need for many substantial revisions and additions before it is ready to even be considered for adoption by this body.

We do not work for the credit card companies; we work for our constituents. We can do better than this bill for our constituents, and we must do better than this bill for those we represent.

Mr. President, I will unanimous consent to have printed in the RECORD some of the letters opposing the bill. I will not include all of the letters, but I am going to quote from some of them at this time.

First of all, I refer to a letter from ING Direct to the American Bankers Association urging them to reconsider their support for the bill:

As a member of the American Bankers Association, ING Direct urges you to reconsider your wholesale support for the Bankruptcy Reform Bill currently before the United States Senate. . . . Yet this legislation has not received a thorough review in the last 4 years. It has simply been reproposed without careful thought. . . . It actually encourages further bad lending decisions by removing an important market discipline—the possibility of a clean bankruptcy. Without important changes, millions of consumers, who might otherwise be encouraged into debt by aggressive credit card companies and other lending. They will be unable to clear their names, even if they fall into debt because of an illness or an economic downturn that costs them their employment.

We at ING Direct believe this country is still willing to give working Americans—the engine of our economy, a second chance when debt overwhelms them. This bill seriously limits that second chance. The one-sided provisions of this bankruptcy legislation are bad news for most Americans. But they are also bad news for the financial services industry. By creating a form of debt imprisonment, this bill will hobble the most important player in the world economy—the

American working family. For all these reasons, we ask you to reconsider the ABA's support of this bill in its current incarnation.

This is written by Arkadi Kuhlmann who is the president of the company. It is the sixth largest thrift savings company in the country.

The second letter is from the Consumers Union:

Much evidence suggests that rising consumer bankruptcies are tied to abusive lending practices by creditors. Yet this bill does nothing to address this fundamental problem. Instead, the bill protects predatory lenders who offer credit, with abusive repayment terms, to high-risk consumers. It also provides creditors with additional opportunities to employ strong-arm collection tactics, threatening debtors with new, costly litigation.

Furthermore, the bill protects credit card companies who fail to disclose the true cost of credit they provide to college students and others, who may quickly find themselves trapped in serious debt, ruining their credit ratings for years to come.

This is what they are pointing out.

Furthermore, the bill protects credit card companies who fail to disclose the true cost of credit they provide to college students and others who may quickly find themselves trapped in serious debt, ruining their credit rating for years to come.

I will include those sections. The list goes on. I have a number of letters and communications from consumer groups, from women's groups, children's groups, and from the doctors association that has been formed to bring focus and attention to the impact of this legislation and medical bills on families. I will also include in the RECORD a letter from one of the largest credit unions in the country from North Carolina. I ask unanimous consent that several of these letters be printed in the RECORD.

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

NATIONAL WOMEN'S LAW CENTER,
Washington, DC, February 23, 2005.

Re: Oppose S. 256, The Bankruptcy Act of 2005

DEAR SENATOR: The National Women's Law Center is writing to urge you to oppose S. 256, a bankruptcy bill that is harsh on economically vulnerable women and their families, but that fails to address serious abuses of the bankruptcy system by perpetrators of violence against patients and health care professionals at women's health care clinics.

This bill would inflict additional hardship on over one million economically vulnerable women and families who are affected by the bankruptcy system each year: those forced into bankruptcy because of job loss, medical emergency, or family breakup—factors which account for nine out of ten filings—and women who are owed child or spousal support by men who file for bankruptcy. Contrary to the claims of some proponents of the bill, low- and moderate-income filers—who are disproportionately women—are not protected from most of its harsh provisions, and mothers owed child or spousal support are not protected from increased competition from credit card companies and other commercial creditors during and after bankruptcy that will make it harder for them to collect support.

The bill would make it more difficult for women facing financial crises to regain their economic stability through the bankruptcy process. S. 256 would make it harder for women to access the bankruptcy system, because the means test requires additional paperwork of even the poorest filers; harder for women to save their homes, cars, and essential household items through the bankruptcy process; and harder for women to meet their children's needs after bankruptcy because many more debts would survive.

The bill also would put women owed child or spousal support who are bankruptcy creditors at a disadvantage. By increasing the rights of many other creditors, including credit card companies, finance companies, auto lenders and others, the bill would set up an intensified competition for scarce resources between mothers and children owed support and these commercial creditors during and after bankruptcy. The domestic support provisions in the bill may have been intended to protect the interests of mothers and children; unfortunately, they fail to do so.

Moving child support to first priority among unsecured creditors in Chapter 7 sounds good, but is virtually meaningless; even today, with no means test limiting access to Chapter 7, fewer than four percent of Chapter 7 debtors have anything to distribute to unsecured creditors. In Chapter 13, the bill would require that larger payments be made to many commercial creditors; as a result, payments of past-due child support would have to be made in smaller amounts and over a longer period of time, increasing the risk that child support debts will not be paid in full. And, when the bankruptcy process is over, women and children owed support would face increased competition from commercial creditors. Under current law, child and spousal support are among the few debts that survive bankruptcy; under this bill, many additional debts would survive. But once the bankruptcy process is over, the priorities that apply during bankruptcy have no meaning or effect. Women and children owed support would be in direct competition with the sophisticated collection departments of commercial creditors whose surviving claims would be increased.

At the same time, the bill fails to address real abuses of the bankruptcy system. Perpetrators of violence against patients and health care professionals at women's health clinics have engaged in concerted efforts to use the bankruptcy system to evade responsibility for their illegal actions. This bill does nothing to curb this abuse.

The bill is profoundly unfair and unbalanced. Unless there are major changes to S. 256, we urge you to oppose it.

Very truly yours,

NANCY DUFF CAMPBELL,
Co-President.
MARCIA GREENBERGER,
Co-President.
JOAN ENTMACHER,
Vice President and Director, Family Economic Security.

NATIONAL CONSUMER LAW CENTER INC.,
Boston, MA, February 28, 2005.

DEAR SENATOR: The National Consumer Law Center, on behalf of its low income clients, writes to express our strong opposition to S. 256, the ''Bankruptcy Abuse and Consumer Protection Act of 2005.'' This bill would hurt many Americans who are facing financial problems due to job loss, transition to lower paying jobs, divorce, child-rearing, lack of medical insurance, or predatory lending practices. Although the economy has improved recently for some American families, there are millions of other families that continue to struggle. In fact, real incomes have declined since 1989 for the lowest 60 percent of the American population—including especially single parent households. S. 256 contains a shocking number of provisions which would have a severe impact on families who desperately need to preserve their homes from foreclosure and their cars from repossession, or to focus their income on reasonable and necessary support for dependent children. Here are just a few things the bill's sponsors have failed to discuss:

The key cause of the increase in bankruptcies is surely that more families owe more money. The amount of consumer credit outstanding increased from 789 billion dollars in 1990 to 1.7 trillion dollars in 2001. During this time, there was a steady increase in the amount of debt payments American families made as a percentage of their disposable income. Although the total number of bankruptcies has increased, the number of bankruptcies in relation to the amount of credit outstanding has actually gone down.

A big part of the equation is that some segments of the credit industry, such as credit card companies, make huge profits from lending to American families who cannot afford to pay big card balances and who therefore pay interest on those balances at rates of 29 percent or higher. It is not surprising that when the credit industry sends three billion credit card solicitations each year, they reach some significant portion of American families who will ultimately have financial problems.

The journal Health Affairs recently published a path-breaking joint study by researchers at Harvard Law School and Harvard Medical School that reveals alarming information about the medical causes of bankruptcy. The researchers found that illness and medical bills contributed to at least 46.2 percent, and as many as 54.5 percent of all bankruptcy filings. Families with children were especially hard hit—about 700,000 children lived in families that declared bankruptcy in the aftermath of serious medical problems.

Cutting down the number of bankruptcy filings will not result in savings for the credit industry or for other consumers. The vast majority of debt discharged in bankruptcy would not be paid back in any event, since the debtors involved simply cannot afford to pay. A number of studies have shown that the ''means test'' will raise little in new money for creditors.

S. 256 contains a variety of poorly conceived provisions which are discussed in more detail in our paper entitled, ''What's Wrong with S. 256, Let Us Count the Ways . . .'', available at: http://www.nclc.org/. If enacted, S. 256 would:

Subject debtors to a ''means test'' that fails to screen for abuse and instead penalizes honest debtors by imposing additional costs and filing burdens.

Create a ''safe harbor'' from the means test for low-income debtors, but still subject them to increased costs and filing requirements.

Require stricter scrutiny of low-income debtors' expenses in chapter 13 than higher income debtors and make some debtors too rich for chapter 7 and too poor for chapter 13.

Erode bankruptcy's fresh start by making more debts nondischargeable in both chapters 7 and 13.

Promote predatory lending by encouraging creditors to take liens on household goods of nominal value.

Create new creditor opportunities for reaffirmation abuses by weakening current debtor protections and giving creditors safe harbor from liability.

Undermine debtors' ability to save homes and cars in chapter 13.

Drastically reduce fundamental protections afforded debtors under the automatic stay.

Provide vast new opportunities for identity theft and other privacy invasion by making public tax returns and sensitive financial documents of consumers who file bankruptcy.

As an organization which represents poor people, the National Consumer Law Center vehemently disputes the credit industry position that S. 256 will not hurt low-income debtors. It is precisely those debtors who would be hurt the most. The myriad new procedural requirements together with the dozens of provisions which give creditors an opportunity to pursue new types of litigation against debtors will raise the cost of bankruptcy for all debtors. Other provisions will take away important rights under current bankruptcy law to save homes from foreclosure and evictions, and to challenge predatory lending practices. Now is not the time to cut back on the availability of a system which provides a second chance to the unfortunate in the form of a fresh financial start.

Sincerely,

WILLARD P. OGBURN,
Executive Director.
JOHN RAO,
Attorney.

A NATIONAL HEALTH PROGRAM, SELECTED MASSACHUSETTS PHYSICIAN CO-SIGNERS,
Chicago, IL, February 14, 2005.

DEAR SENATOR KENNEDY: We write, as physicians, to urge rejection of Senate Bill 256, which would make bankruptcy filing more difficult and punitive for millions of Americans driven to financial ruin by medical problems. As health costs spiral upward and insurance coverage shrinks, more and more of our patients find that illness results in financial catastrophe and bankruptcy. Only universal, comprehensive health insurance coverage under a national health insurance plan can really solve this problem. But pending such solution, many families' only chance for financial recovery lies in the limited protections available through the bankruptcy courts.

Last year one million Americans filed for bankruptcy in a last-ditch effort to deal with the fallout from a serious medical problem. Unfortunately, the very week that a Harvard Medical/Law School study documented this fact, legislation was re-filed that would greatly reduce the bankruptcy protections available to the medically bankrupt. S. 256 would drive up costs for every family filing for bankruptcy, regardless of whether the reason is too many trips to the mall or a visit to the emergency room. S. 256 would also narrow bankruptcy protection for all families, increasing the ability of creditors to collect from their debtors after bankruptcy regardless of the reason for bankruptcy, and causing many more families to lose their homes and their cars because of medical problems.

We are particularly worried that more punitive bankruptcy laws will further erode access to care for many families under financial duress and result in preventable suffering and even death. Already, families who file for medical bankruptcy suffer severe privations. According to the Harvard study: 61 percent of medical bankrupts didn't seek medical treatments they needed; 50 percent failed to fill a prescription; 22 percent went without food; 7 percent moved their elderly parents to cheaper care facilities.

We make a plea for the one million sick and injured people who turned to the bankruptcy system for relief last year. Please reject S. 256.

Sincerely,

JULIUS B. RICHMOND, M.D.,
Past U.S. Surgeon General and Professor Emeritus, Harvard Medical School.

FEBRUARY 14, 2005.

HARVARD STUDY SHOWS LEGISLATION A DANGER TO MILLIONS BANKRUPTED BY MEDICAL BILLS

PHYSICIANS URGE CONGRESS TO REJECT S. 256

On the heels of a major Harvard University study showing that half of all personal bankruptcies are due to illness or medical bills, more than 1,700 American physicians signed a letter released today opposing legislation that would remove protection from patients financially ruined by medical costs.

Bankruptcy law currently offers some protection to the millions of Americans affected by medical bankruptcies each year. If passed, the bill would effectively close bankruptcy as an option and allow creditors to take the homes, cars and other assets of families who suffer a serious illness or injury.

''It's a sad fact that bankruptcy courts have become the last line of defense for the victims of our broken health system,'' said Dr. David Himmelstein, an Associate Professor of Medicine at Harvard Medical School and lead author of the study. ''For many families affected by a costly illness, the limited protections of bankruptcy are the only chance to get back on their feet.''

In the letter to the leaders of the Senate Judiciary Committee, which is currently considering the bill, the doctors expressed concern that the new bankruptcy rules would further restrict the ability of patients suffering from medical costs to get needed care for themselves and their families.

''Medical debtors' access to care is already severely compromised: more than 60 percent go without a needed doctor visit and half don't fill a prescription because of the costs,'' said Dr. Steffie Woolhandler, who is also an Associate Professor of Medicine at Harvard and co-author of the study. ''For those unable to seek relief from their debts, the situation will undoubtedly get worse,'' she said.

The epidemic of medical bankruptcies, which affect 2 million Americans (including 700,000 children) every year, emphasizes the need for comprehensive health insurance coverage under a national health insurance plan according to the signers, who include former U.S. Surgeon General Julius Richmond.

''Current insurance policies offer paltry protection for the average American,'' said Dr. Quentin Young, National Coordinator of Physicians for a National Health Program. ''Most of those who are bankrupted by medical bills are middle class people who had coverage but were mined by the massive holes in their policies. Rejecting this new bankruptcy legislation is just the first step we need to take in healing our sick health system. We need a system of universal, comprehensive Medicare for all.''

FEBRUARY 28, 2005.

Re: Letter from Responsible Lenders in Opposition to S. 256, The Bankruptcy Abuse Prevention and Consumer Protection Act

Hon. WILLIAM FRIST,
Majority Leader, U.S. Senate.
Hon. HARRY REID,
Minority Leader, U.S. Senate.

DEAR MAJORITY LEADER FRIST AND SENATOR REID: The undersigned financial institutions and associations write in opposition to S. 256. We believe that S. 256 disproportionately harms vulnerable debtors while rewarding creditors who provide excess credit or who impose unfair terms on borrowers. Further, we are concerned that the changes to the bankruptcy code proposed in S. 256 are likely to make more homeowners vulnerable to abusive lending and fraudulent credit counseling practices.

Bankruptcy is first and foremost a means to enable overburdened families to get a fresh start. Nearly all families in the bankruptcy system are there not because they want to evade their obligations, but because they have had a sudden decline in their economic fortunes. More than 90 percent of debtors file for bankruptcy due to unemployment or underemployment, an illness or accident, or divorce. The bulk of the remainder suffered from other legitimate difficulties, including activation for military service, being a victim of crime or natural disasters, or a death in the family.

Abusive lending practices, especially by credit card lenders, are a larger problem than debtor abuse of the bankruptcy system. Growth in the bankruptcy filing rate tends to increase with an increase in the ratio of household debt to household disposable income. Given this fact, the unfettered increase in available credit likely has contributed significantly to the rise in bankruptcy filings in recent years. For example, in 2000 the credit card industry offered almost $3 trillion in credit—more than three times the $777 billion of credit offered in 1993. Excessive credit extension by unscrupulous lenders makes it more difficult for responsible lenders to monitor their debtors and preserve healthy lending portfolios.

Some creditors seem to want to have it both ways: keep interest rates high and underwriting standards loose, while amending the bankruptcy laws to decrease losses resulting from questionable extensions of credit. S. 256 unnecessarily serves the interests of these credit card lenders—who are experiencing record profits—at the expense of the vast majority of families who declare bankruptcy for legitimate reasons. Credit card lenders already cover losses by charging extremely high interest rates at a time of historically low rates, and they are able, should they choose, to limit losses further by tightening underwriting standards. Irresponsible lenders need to be reined in, not rewarded with legislation that further harms suffering families.

S. 256 will effectively deny bankruptcy protection to tens of thousands of innocent lawabiding families who suffer significant setbacks. Many of these families will lose everything they own to creditors while remaining indefinitely subject to their unsecured creditors, unable to ever get back on their feet. Furthermore, by discouraging those who truly need bankruptcy relief from seeking it, S. 256 may increase the number of families that turn instead to unscrupulous lenders and dubious credit counselors who do more harm than good.

First, S. 256 inflexibly forces more borrowers to file under Chapter 13 of the Bankruptcy Code, notwithstanding the fact that an independent academic study on the subject found that less than four percent of debtors who filed under Chapter 7 (where unsecured debt is discharged) couldn't possibly repay any of their unsecured debt under Chapter 13. Some families need to file under Chapter 7 because they cannot afford to meet their housing, car, and student loan obligations (which they generally have to pay under Chapter 7), pay their short-term unsecured debt, and still have money left over for basic household needs. Forcing these people to file under Chapter 13 threatens to exacerbate their suffering without significantly benefiting creditors; you cannot extract blood from a stone. Despite the good-faith

repayment efforts of many debtors, historically nearly two-thirds of all Chapter 13 debtors fail to complete their repayment plans even before additional Chapter 7 debtors, who would be even less likely to complete Chapter 13 plans, are forced to enter Chapter 13. Adding insult to injury, S. 256 makes it extremely difficult for borrowers to file a Chapter 7 bankruptcy once a Chapter 13 repayment plan fails, leaving these borrowers entirely unprotected.

Second, S. 256 creates so many disadvantages to filing bankruptcy that severely strapped borrowers may forego filing altogether and instead try to solve their problems by borrowing money on abusive and unfair terms. For instance, S. 256 makes it harder for debtors to save their cars in bankruptcy, makes it easier for creditors to take basic household goods from debtors, and requires additional procedures that delay initiation of a bankruptcy. Desperate borrowers who should be seeking bankruptcy protection may attempt to solve their problems by responding to solicitations from unscrupulous lenders who push abusive home refinance loans, dishonest credit counselors who bilk debtors rather than help them, payday lenders who profit from families caught in a debt trap, or a host of other bad actors.

While as financial institutions and associations we are well aware that there are problems with our bankruptcy system, current judicial discretion is far preferable to the unbalanced bill before you. We therefore urge you to oppose S. 256 and to revisit the issue of bankruptcy in a manner that equitably meets the interests both of lenders and of vulnerable borrowers.

Sincerely,

Martin Eakes, CEO, Self-Help Credit Union.

Jim Blaine, State Employees' Credit Union, North Carolina.

Terry D. Simonette, President & CEO, NCB Development Corporation.

Calvin Holmes, Executive Director, Chicago Community Loan Fund.

Elsie Meeks, Executive Director, First Nations Oweesta Corporation.

Ceyl Prinster, Executive Director, Colorado Enterprise Fund.

Bill Edwards, Executive Director, Association of Enterprise Organizations.

Mark Pinsky, National Community Capital Association.

John Herrera, Board Chair, Latino Community Credit Union.

Fran Grossman, Executive Vice President, ShoreBank Corporation.

Kerwin Tesdell, CEO, Community Development Venture Capital Association.

AMENDMENT NO. 16

Mr. KENNEDY. Mr. President, I want to speak for a few more moments about the excellent amendment that has been offered by my friend and colleague from Illinois, Senator DURBIN, which I strongly support. Yesterday, in Massachusetts, I had an opportunity to have a meeting with a number of veterans. They actually were disabled veterans. We have 34 Massachusetts young men who have been killed primarily in Iraq. I think we had two killed in Afghanistan, but primarily Iraq. And we have had a number of wounded veterans.

We had a very good meeting about their reentry into the community and what we can do to help them in terms of education, training, and employment. A number of the large companies in Massachusetts have made important commitments to employ veterans, and particularly the disabled veterans. I will mention one: Home Depot, a national company, employed 10,000 veterans last year. They expect to exceed that number this year. It is a very impressive record.

These young people are looking for how they are going to be able to live and have useful, productive, constructive, valuable lives. There is a lot that has to be done, obviously, by the VA and by the various organizations in the State and in the private sector, as well as at the national level, to help them in these ways. We can all be extremely involved and helpful in that endeavor.

One of the central concerns they mentioned during the course of the discussion had to do with the times they heard from a number of their friends and colleagues who were in the Guard and Reserve serving in Iraq. We have 1,000 at the present time serving from Massachusetts and many more in the regular services. They are in the Guard and Reserve. But they told me of the concern their families have in terms of the dangers of bankruptcy and what would happen to these families. I do not think it is enough to say, well, we'll defer this to another day, or the existing laws are going to take care of it. We have a good opportunity to address that. And if we are serious about addressing it, we ought to accept the Durbin amendment. We are either going to be serious about doing this or we are not. The Durbin amendment is a serious effort to address this issue, and it deserves all of our support.

Military families struggle financially for a number of reasons. Often, the low pay for newly enlisted men and women is not enough to support a family. Service men and women are also prey to predatory lending schemes that leave their families high and dry. Military retirees have been victims of pension schemes that destroy their savings. National Guard and reservists often face a loss of income when they are activated and deployed, and their families are left in serious financial distress. Veterans are not getting the federally promised health care benefits they need to stay healthy.

The most recent data available show that in 2003, 20,000 active-duty members filed for bankruptcy. They would be considered active duty, even though they are in the Reserve or Guard because they are on active duty. That is 20,000 members of the Armed Forces whose service to their country resulted in financial ruin. Military service should be the source of pride, growth, and opportunity, not a financial crisis.

That is why Senator DURBIN's amendment is so important. It will ensure fair and strong bankruptcy protections for military families and veterans.

The typical family who files for bankruptcy is at or near poverty at the time they file. It is appalling that America's service men and women, or any veteran, can be plunged into poverty in connection with their service to the Nation.

The base pay for newly enlisted men and women is often between $15,000 and $20,000 a year. That is far from enough to support a family back home. Yet nearly half of all members of the military have dependents who rely on their income. The most recent data shows that more than 6,000 military families are forced to rely on food stamps. Do we hear that? We have 6,000 military families who are forced to rely on food stamps because of low pay. I pay tribute to our friend from Arizona, Senator MCCAIN, who did so much to reduce that number. I am hopeful we can eliminate it during this session of Congress.

In addition, predatory lenders often prey on service men and women. Payday lenders offer high-interest, short-term loans of usually $500 or less, and focus on the military, with their financial inexperience and regular paychecks. These loans result in huge interest rates and often leave the borrower in significant debt that can lead to bankruptcy. The Durbin amendment will protect military members against this shameful practice.

National Guard members and reservists have other types of financial burdens. Since 9/11, 469,000 National Guard members and reservists from the Army, Navy, Marines, and Air Force have been called up for combat tours in Iraq or Afghanistan. That is virtually half a million. Their tours of duty can last for up to 2 years, and the Pentagon is currently considering broadening even that time limit. These deployments can cause extraordinary financial stress for their families.

For example, an Army reservist medic with four teenage kids in Hot Springs, AR left for Iraq, leaving his family's gas station convenience store with no one to operate it. One month later, the family fell into serious financial trouble. They had no choice but to file for bankruptcy.

After the bankruptcy, they couldn't pay their mortgage and had to give up their house. They moved in with the soldier's parents. But because the parents had cosigned on the loan for the store, they were forced to file for bankruptcy, too, or risk losing their own home. The grandfather is disabled, so the grandmother had to go back to work to keep the family financially afloat.

Too many National Guard reservist families face this type of economic distress. Thirty percent of spouses of active reservists report a loss of household income after the reservists' mobilization. Forty percent of all reservists report loss of income. For those who are self-employed, it's even worse. Half of self-employed reservists lose income when they are deployed.

Of spouses who reported lost income, half had monthly decreases from $500 and $2,000 per month, and nearly a quarter lost over $2,000 a month. That's $24,000 a year in lost income that puts a heavy financial squeeze on these families.

With other key expenses rising every year in the Bush administration, it's

even harder for military families to make ends meet. Since 2001, health insurance premiums have soared by 59 percent. Prescription drug costs have risen 65 percent. Housing costs are up 33 percent in the last 4 years.

The last thing Congress should do is make it harder for these families when they face bankruptcy. I urge my colleagues to support the Durbin amendment to protect military families.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I listened with a great deal of interest to my colleague's remarks with regard to the bankruptcy. I will have a few things to say about those remarks in just a few minutes.

Mr. President, I rise in support of the bill, S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The essence of this bill is simple. This legislation is designed to make our bankruptcy system more fair and efficient. As well, this bill would cut down on the ability to abuse the current system.

Before I detail some of the abuses of the system that is being abused, I want to make some other points. First, as I said yesterday, this bill has been in the making for 8 years. The Senate passed it three times already. Prior to Senate passage, the Judiciary Committee held an extensive set of hearings and several markups on this bill. This bipartisan, bicameral bill is ripe for passage. I am pleased to report that yesterday the White House released the following statement of the administration policy on the bill. It is short and to the point and it says the following:

The administration supports Senate passage of S. 256 as reported by the Senate Judiciary Committee. These commonsense reforms to the Nation's bankruptcy laws will help curb abuses of bankruptcy protections, reduce uncertainty in financial markets through improved financial contract netting rules, increase financial education to prevent unnecessary filings and help avoid future credit problems, promote international trade through coordination of cross-border insolvency cases, and provide increased protection for family farmers facing financial distress.

I am pleased that the administration's SAP stressed some of the pro-consumer aspects of the bill. While we want to see that those people who borrow money pay it back and that the value of personal property and responsibility is observed, we also want to help keep citizens out of bankruptcy in the first place.

When honest people simply get over their heads financially, we want to give them a fair chance to have a fresh start. Where there are some who are clearly gaming the present system, there are many who find themselves in unfortunate financial circumstances. Given a chance to begin fresh, they can learn from their experiences and once again become the prudent, bill-paying consumers all of us are taught to be.

The data tell us there is a problem and it is a growing problem. Bankruptcy filings are way up, and I mean way up.

We are fortunate to live in a time of unprecedented economic growth. Stretching all the way back to the Presidency of Ronald Reagan, we have generally seen a sustained increase in economic activity. Personal assets and net worth have grown, when compared with individual liabilities. Yet, precisely at this time, bankruptcy filings have blown through the roof.

These facts might help to put it in perspective. Bankruptcies doubled in the 1980s. They doubled again from 1990 to 2003. In 2004 alone, there were 1.6 million more bankruptcies than during the entire Great Depression. There will be more bankruptcies filed this year than in the entire decade of the Great Depression combined.

What explains this dramatic rise in filings? Probably several reasons are at play. Certainly, one of the critical reasons behind the rising tide of filings under the Bankruptcy Code, as years of study document, are the actions of those who flagrantly abuse our generous bankruptcy laws.

Many of those opposed to the bill suggest that bankruptcy filings were up because more and more people face economic hardship. To some extent, this is no doubt true. But we also know, however, that many bankruptcies stem from old-fashioned, outright fraud and abuse.

This potential for abusing the system was not fully anticipated when Congress created our current Bankruptcy Code in 1978. A key purpose of this bill is to help crack down on the abuses of the system. In its simplest terms, our bankruptcy laws attempt to distinguish between those who can and those who cannot repay their debts. When a case is filed under chapter 7 of the Bankruptcy Code, the debtor is required to surrender his assets to a bankruptcy trustee for liquidation and distribution to creditors, except for those assets that are exempt under State or Federal law. Yet under this provision of law, the debtor's future income is protected from creditors.

By contrast, those who file for bankruptcy under chapter 13 retain possession of their assets, but pay all or a portion of their debts through plans approved by the bankruptcy court.

For some contemplating bankruptcy, this makes for a simple strategy: Do everything you can to get into chapter 7. Chapter 7 protects all of your future income from creditors. Once you are protected by chapter 7, you pay off secured creditors—such as your mortgageholder—first.

Only then do unsecured creditors get their chance to get paid back.

Experts tell us about 70 percent of consumer bankruptcy filings are chapter 7 filings, and 95 percent of those make no distribution at all to unsecured creditors.

Let me repeat those statistics because they are important. About 70 percent of consumer bankruptcy filings are chapter 7 filings, and 95 percent of those make absolutely no distribution at all to unsecured creditors.

If you are listening to this debate and you are a creditor, these statistics mean you have only a small chance to be repaid if you are an unsecured creditor.

The problem with this is, according to the FBI, about 10 percent of these chapter 7 filings are fraudulent. So what if only 10 percent of filers are abusing the system? This represents $3 billion in costs that can be recovered rather than being passed along to consumers. You and I and everybody else pay for these abuses of the system. We all end up paying for it. The problem with this is, according to the FBI, about 10 percent of these chapter 7 filings are fraudulent. One can understand the financial motive of a debtor running up his or her unsecured credit card debt to pay down his or her secured mortgage just before filing chapter 7, even though he or she knows full well the debts will never be paid back.

The data suggest to many experts that some relatively high-income debtors truly belong in chapter 13 where they will have to establish a plan for repayment for at least some debts. In theory, our bankruptcy courts have the opportunity to defy chapter 7 filing because of ''substantial abuse.'' Yet with so many bankruptcy filings, our courts are often overwhelmed, and in practice few people are bounced out of chapter 7, no matter their actual ability to repay their debts. It should come as no surprise, then, that a few bad apples who could afford to pay some of their debts actively seek to avoid chapter 13 and get into the often less onerous treatment of chapter 7. A key component of S. 256 is a means test that will help prevent such gaming of the system.

Some have attempted to criticize this commonsense safeguard as somehow taking away bankruptcy protection. Let me be clear. The means test does no such thing. All it does is identify those who can repay at least some of their debts. It makes certain they enter into a chapter 13 reorganization and repayment plan rather than let them simply walk away from their obligations, no matter how steep or outrageous. Believe me, there is strong evidence to support this improvement in the law.

The U.S. Trustee Program has been challenging and documenting abuse now for some time. The following examples show why changes are needed in the current system. The primary function of the U.S. Trustee Program is to identify fraud and abuse in the bankruptcy system. In fiscal year 2002, there were 1,470,430 bankruptcy case filings. With such a large number of filers, there will always be those who will try to game the system.

Although some opponents of the bill may minimize the problem of abuse, consider these facts: The U.S. Trustee Program successfully pursued 5,000

chapter 7 debtors for ''substantial abuse'' of the bankruptcy system. The program prevented the discharge of an estimated $59 million of unsecured debt through fraudulent chapter 7 filings. In addition, the Trustee Program obtained disgorgement of more than $1.3 million in attorney's fees in consumer and business cases and imposed almost $534,000 in sanctions against attorneys. This indicates that bankruptcy fraud is no small problem and that reforms are in order.

The evidence of fraud is so widespread that many believe it is no longer sufficient to rely on watchdogs to police these abuses after they have occurred. We must take proactive steps to prevent them from happening in the first place. That is what S. 256 does. The means test contained in the bill will provide a uniform standard to bankruptcy judges to evaluate the ability of bankruptcy filers to repay debts. With some people gaming the current system to avoid paying debts they have taken on, we must make sure that the people who file in chapter 7 actually belong in chapter 7. We should not absolve people of their debts when they have the means to pay them back. Bankruptcy law has always meant that.

This is no exaggeration. Just consider these examples, if you will.

I am told one debtor in California sought to discharge $188,000 in unsecured debt. This person had more than $10,000 a month in expenses. She paid $4,500 a month on the mortgage for her house in San Juan Capistrano and then paid another $2,500 a month on rent for an apartment in Silicon Valley. This woman was spending $7,000 a month for two homes. The simple fact was, however, if the woman got rid of just one of the homes, she would likely be able to fund a chapter 13 plan and repay, rather than ignore her debts. This does not seem to me to be too much to ask. In fact, it just makes common sense.

In another instance, a woman in Dallas filed for chapter 7 bankruptcy attempting to discharge $122,527 in credit card debt. But this is not exactly a hard-luck case, by the way. She was a commercial airline pilot who earned $11,500 per month and paid $3,100 per month for a mortgage on a $385,000 home. Some have cast a skeptical eye on her decision to buy a $50,000 Mercedes just before declaring bankruptcy in order to replace the recently repossessed $90,000 Mercedes. If that is what happened, it just plain is not right.

When somebody obtains 36 credit cards, runs up $283,075 in bills, and then tries to discharge that debt through a chapter 7 filing—as I understand was the case of one gentleman in California—it is not enough to sit back and blame aggressive marketing by credit card companies. We have heard that old saw year after year. Frankly, there is a lot of abuse out there.

One person in Miami sought to discharge $163,744 in unsecured debt even though he had the means to purchase $232 in lottery tickets every month.

Then there is the case of a Tampa couple who had a combined monthly income of $7,000 and a monthly budget of $6,756. Included in that budget was a car payment of $965 a month. In addition to their secured debt, they owed $350,000 in unsecured debt. This consisted of $200,000 in credit card debt and $150,000 in personal loans. They attempted a chapter 7 filing. This couple was bringing in more than they were spending, but they wanted to walk away from it all. Yet a review of their banking records showed that one spouse withdrew hundreds of dollars every month at ATM machines at local casinos. They had money to play blackjack but not pay back there debts. Something, it seems to me, is just not right about that.

We are a compassionate nation, but we should not be fools. A discharge of debt is serious business, but for sound public policy reasons, the United States has decided to allow it in certain circumstances. We want to give our neighbors who get in over their heads a chance to get out of their financial troubles.

Frankly, I suspect that for a majority of those individuals who file for bankruptcy, it must be their worst nightmare, but for some, as I just described, it is a way to avoid responsibility. We do not want to encourage bankruptcy for anyone. When a person takes on a debt, that person makes a promise to pay, and they ought to pay it if they have the capacity to do so.

There is something inherently unfair in denying full restitution to creditors. That being said, as a matter of longstanding public policy, we have decided to allow some people a fresh start and the opportunity to discharge their debts through a chapter 7 liquidation. But many fear that in some instances, our lax policing of those who attempt a chapter 7 filing actually encourages additional bankruptcies.

As a matter of public policy, we must say that those relatively high-income debtors, those capable of paying back their substantial debts, should at least pay something back, and that is all we are requiring here. From now on, those who are capable of financial reorganization, rather than outright liquidation, will have to keep their promises or at least some of their promises.

Some opponents of this legislation minimize these abuses. They deride the means test we devised to solve this problem. The fact is, 80 percent of people filing for bankruptcy will be automatically removed from the means test because their incomes fall below the safe harbor of the median State income. Only 20 percent are asked to answer this rather reasonable question: After medical expenses, schooling expenses, health care premiums, living expenses, and a regular budget, do you have an ability to pay back some of your debt?

That is all. Only 10 percent of the people currently filing for bankruptcy will be moved into chapter 13 under this test. Contrary to the image of a crippling lifetime commitment to one's debtors, those repayment plans are only between 3 and 5 years.

Who passes the means test of this bill? Eighty percent are excluded for falling below the State median income. Another 10 percent are excluded after taking into account school, health, and living expenses. So only 10 percent of bankruptcy filers will ever be moved into repayment plans. I do not think it is too much to ask that these relatively high-income debtors, who can afford to pay their debts, pay back some of what they owe.

To the extent that our current Bankruptcy Code encourages some bankruptcies, I am hopeful that this reform will discourage some of them. The experts and data tell us there are some with high salaries, profligate spending habits, and the ability to pay back their debts. Our laws should not be to just allow them to walk away.

The fact that this type of misconduct is occasionally prevented does not undo the need for permanent systemic reform of our laws. For every one person who is discovered in an abuse of the system, it is likely there are many others whose abuses never see the light of day. There is a culture of abuse in our bankruptcy system that should be addressed.

I am told that in Kentucky one debtor filing for chapter 7 protection failed to mention that he had transferred his one-half interest in a Florida house to his son approximately 7 years before filing for bankruptcy. How convenient. He also failed to mention his transfer of stock to his daughter within 1 year of filing. He was unable to account for the disappearance of $1.125 million in assets, including $300,000 in personal property and even $400,000 in race horses. His hope was to discharge almost $1.8 million in unsecured debt and $795,175 in secured debt.

While this may be an outlier case, the underlying problem of abuse is too frequent an occurrence. The point is not that this person is an average filer; the point is that the system is such a mess that someone would even contemplate making this type of a case.

Unfortunately, this misconduct is all too often encouraged by a bankruptcy bar that ushers people into chapter 7 without ever fully considering the client's ability to repay.

The U.S. trustees had to pursue 653 actions seeking disgorgement of debtors' attorney's fees in fiscal year 2002. At the same time, they pursued 243 other actions for attorney misconduct that resulted in $533,813 in sanctions. Over 75 attorneys were referred to State bar associations or other disciplinary boards.

In the Eastern District of Pennsylvania, a U.S. trustee review discovered that in bankruptcy filings it was common to have boilerplate information entered without regard to the individual debtor's circumstances, internally inconsistent information, and missing financial information.

These are bankruptcy factories that appear to attempt to get as many as possible into chapter 7 without so much as a cursory look at the filer's ability to repay his or her loans or debts.

For the most part, I am proud of our bankruptcy laws. When a debtor gets in over his or her head, we do not ask why. We do not cast blame. Instead, we attempt to help that person pay back the debts. Bankruptcy protection gives Americans the ability to pause, to reorganize, to start over. Bankruptcy offers those with unsustainable debts an opportunity for a fresh start. No one here wants to change this fundamental guarantee. No one wants to alter this basic framework. Yet people are taking advantage of this system. Abuses are increasingly rampant and well documented.

When some people game the system to walk away from debts that they are perfectly able to repay, an injustice occurs that has ramifications for our entire economy. And guess who has to pay for their dishonesty. You and I and everybody else because we pay an average of $400 a year for this bankruptcy system. This bill will help to bring it into a forceful, reasonable purpose.

It was estimated that in 1997 alone more than $44 billion of debt was discharged through bankruptcy. This amounts to a loss of $110 million per day. Someone has to pay for this. The American people, you and I and everybody else, end up paying the bill for at least these dishonest people.

According to one estimate, as I have said, these losses translate into a $400-a-year tax on every household in the country. That might not seem like a lot to some, but for many families $400 is a mortgage or a rent payment.

The cost of bankruptcy to taxpayers: $44 billion in debt discharged per year, or $110 million every day, a $400 yearly bankruptcy tax on every household in the country.

For all the reasons I have laid out, I urge my colleagues to support S. 256. This is a good bill. We have been at this legislation too long to allow this commonsense reform to fail.

By the way, this very same bill, with the Schumer amendment, passed with 83 votes. Without the Schumer amendment, the bill that President Clinton pocket-vetoed was basically the same as this, and it passed with 70 votes, meaning a bipartisan passage.

I will make a few comments on the Durbin amendment that seeks to address some potential problems relating to debt carried by members of our military. We all honor our military for their sacrifices, no question about it. While I am supportive of the intent of the underlying Durbin amendment, the fact is, only about 20 percent of those filing for bankruptcy will ever be subject to a means test. Only about half of those will end up having to repay some of their obligations under the means test. That means that only about 10 percent of those filing for bankruptcy will ever have to actually pay back some of their past debts with future earnings.

I suspect the 1 in 10 fraction will be smaller, perhaps much smaller, for those serving in the military. So when my friend from Illinois calls the means test an onerous test, he is overstating the case.

The purpose of the means test is simple. We are trying to determine which debtors can afford to pay a portion of their past debts from their future earnings. The Durbin amendment has several problems, but its goals are well intentioned and I commend him for his efforts. For example, it is my understanding that under the definition of ''service member,'' all of those employed as commissioned officers of the Public Health Service and the National Oceanic and Atmospheric Administration will qualify for this special treatment. There are few, if any, greater supporters of the commission core of the Public Health Service, but I do not understand why a public health service officer, working side by side with a career civil servant member at the Department of Health and Human Services, should receive any special consideration during bankruptcy proceedings. If a member of the PHS or NOAA is able to pay, as determined by this new means test, which is estimated to affect only 1 in 10 of those filing for bankruptcy today, he or she should pay like any other civil servant or member of the public.

They are well paid. They do not have to go off and borrow beyond their means. They do not have to live beyond their means. They should not have any breaks any better than the regular citizens.

I think the distinguished minority whip has raised and will continue to raise very important points, and I look forward to working with him and the entire Senate to address those points.

If bad actors are preying on our military personnel through nefarious payday loans or other questionable practices, then I encourage Senators SHELBY and SARBANES, the head of our Banking Committee in the Senate, to look into the issue. If there are other social issues that face our military personnel, then we as Members of Congress have an obligation to examine those issues indepth and find the right fixes.

The Durbin amendment also has an additional problem. This involves his creation of a broad exemption to the delicate homestead compromise already so painstakingly embodied in this bill. We have gone over and over it and have finally come to this compromise that does not please everybody, or anybody for that matter, but it is an important compromise and an important aspect of this bill.

We know the Senators from the States of Florida and Texas have made it clear that this issue is important to them. This is an area where we have tried to defer wherever possible to the States, even though other Senators view some of the States' exemptions with skepticism. We should all recognize that opening the door on the homestead provision could work to unravel this bill.

This is also the case with Senator FEINGOLD's amendment on the homestead exemption. This issue is not new. We have debated it year after year, and we have come to a plausible compromise that has passed year after year. This question has been debated over and over again. We have achieved a compromise on the homestead exemption that has demonstrated the ability to win overwhelming support in both Chambers. Both the Durbin amendment and the Feingold amendment tend to upset the balance that has been achieved on this important issue.

As I look at and examine the Durbin amendment, I have identified a few additional concerns. For example, under the terms of the amendment both ''real or personal property that the debtor or dependent of the debtor uses as a residence,'' what does this language mean? How could personal property be used as a residence?

The bottom line is this amendment has many ambiguities. In addition, several of its principal components come into tension with long-settled provisions of this bill such as the homestead and the means test

As all of my colleagues know, there is a right way and a wrong way of doing things. Indeed, many Members of the minority and some of the majority have made that very point with regard to how the USA PATRIOT Act was put together. Senator DURBIN has raised some important issues we must take the time to explore properly, and I believe Senator SESSIONS has appropriately and adequately addressed the central concern of the Senator from Illinois, which is to allow the facts and circumstances of military personnel to be considered in bankruptcy proceedings.

I support S. 256, the bankruptcy bill, and I hope others will as well. We have come very far with this bill, after 8 tough years of work, after repeatedly passing it by overwhelming votes, and then having it shot down because of a killer amendment that gets put on by our colleagues who claim they are working in support of it. We should pass this bill. We should pass it in as clean a form as possible.

Let me say with regard to credit card debt, I think it is a nice, populist appeal here, to blame all the credit card companies for the problems everybody has in our society today. Look, we have an intelligent society, a highly educated society, and I think everybody knows when they take those credit cards and they accrue debt, they are supposed to repay that debt. Frankly, we have far too many people taking advantage of credit cards and not paying their debt.

Where there is fraud, we should go after any credit card company that

commits fraud or abuse against our fellow citizens. But this bill does not fail to resolve these issues.

Could we improve this bill? Yes, I think we could improve it. But if we did, some on the other side would say that is too tough of an improvement. Could others on this side improve it? I suppose so. Could some on that side improve it? I would hope so, but so far we have accepted an awful lot of what the other side has wanted. This bill has been passed by overwhelming votes over the last 8 years, at least four times, as I recall it. At one time it passed through both Houses of Congress and was pocket vetoed by President Clinton.

I would like to make one last point. Unfortunately I have to oppose the Feingold amendment on the homestead matter. I think the purported purpose of the amendment is well intentioned, but I am concerned that it may act to upset the delicate balance and painfully negotiated provisions relating to homestead exemptions. This amendment by Senator FEINGOLD is, I know, well intentioned. But this amendment confuses an important and bipartisan issue, namely the care of the elderly, in a way that could sink this important legislation.

I have worked tirelessly to make sure there are provisions in this bill to protect the elderly, along with women and children, and I think every one of my colleagues who has worked with me on this bill recognizes that fact. The simple truth is this amendment and others like it could kill this bill. The reason has nothing to do with a hostility to the elderly or to any other class of persons, but because the homestead provisions have taken years to negotiate and are the result of painful choices and compromises. They are not totally satisfactory to me, either. But the fact of the matter is, it is the best we can do.

There are many Members of this body who would like to see the homestead provisions changed in some fashion, but to accommodate them any further than what presently exists in this bill would force other Senators who are strong supporters of this legislation to oppose it.

My opposition to this amendment has nothing to do with the elderly and I would not object if every State in the Nation passes laws that would put a similar floor or a higher floor under their respective homestead laws, but that choice belongs to the States and not to the Federal Government. There is a long history in bankruptcy law of deference to States on this issue. Nearly every State in the country has vehemently defended their homestead laws.

I must say I think some States wish to change their laws. If they do, that is their prerogative. The purpose of this bill and the purpose of the current homestead provisions is to curb fraud and abuse. The current provisions impose a 10-year look back for fraud. They impose a 2-year domiciliary requirement that is designed to prevent wealthy debtors from moving from States with low homestead exemptions to States with high or unlimited exemptions and then filing for bankruptcy. These provisions are a compromise, a balance of States rights and Federal imperatives under bankruptcy law and we must let the provision stand as written. I oppose the Feingold amendment and I hope my colleagues on the floor will oppose these amendments as well.

I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I see the Senator from Illinois is here. At this point I ask unanimous consent that immediately following this consent it be in order that I offer a first-degree amendment relating to the matter in the Durbin amendment, provided further that there be 60 minutes for debate equally divided on both amendments concurrently; provided further that at the expiration of that debate the Senate proceed to a vote in relation to the Sessions amendment, to be followed by a vote in relation to the Durbin amendment, with no second-degree amendment in order to either amendment prior to the votes.

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

Mr. DURBIN. Mr. President, if I could, I ask the Senator from Alabama if I could make a unanimous consent request. I ask unanimous consent that Senators BILL NELSON, EDWARD KENNEDY, JOHN KERRY, and HILLARY RODHAM CLINTON be added as cosponsors to my amendment.

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

The Senator from Alabama.

AMENDMENT NO. 16

Mr. SESSIONS. Mr. President, the Senator from Illinois has raised questions concerning the position of military personnel in bankruptcy. I believe his language is overly broad and I believe the concerns he has do not justify the language of his amendment. I cannot support it. I think I will take a minute to discuss his amendment and then discuss the amendment I will offer, which I believe would be more appropriate under the circumstances.

The amendment Senator DURBIN has proposed would create a gaping hole in the means test and in the homestead language—it would exempt certain individuals from those provisions and violate certain principles that have been part of this bankruptcy legislation. As I pointed out earlier today, many of the concerns that are raised here are covered by the Servicemembers Civil Relief Act which we passed in 2003 to modify the Soldiers' and Sailors' Civil Relief Act passed in 1940. The combined acts allow military members to suspend or postpone civil financial obligations during their period in the military service.

Specifically, this act provides as follows. There is an interest rate cap of 6 percent on all debts incurred before the commencement of active-duty service. In other words, before active duty you have a certain rate of income and if you sign up for a note that carries a 10-percent interest, you can have that interest rate reduced to 6 percent while you are activated, on active duty for the United States of America.

There are protections from eviction from your home. It provides for a delay of all civil court proceedings, including bankruptcy and foreclosures of your home; a prohibition on entering default judgments against active-duty personnel members, and the ability to reopen a default judgment if one were to be entered; the ability to terminate property, residential, and automobile leases at will, if you are activated; the continuation of life insurance of at least $250,000 without requiring premiums to be paid; and the tolling of statutes of limitation. In other words, if you are activated and you have a cause of action against someone and you are interrupted in your ability to file that and the time may have otherwise run, the statute of limitations, the time in which you can file a lawsuit, would have run, then you can extend that while you are on active duty.

There is temporary relief for mortgage payments for people on active duty, credit rating protection, penalties for landlords and creditors who violate the act involving fines of up to $100,000 and/or imprisonment. These are a lot of broad protections that indicate to me we are at a point where it would not be necessary or wise to frustrate or undermine or go against the guiding principles that are in this bankruptcy bill. We hammered it out. And I have not agreed with all of them that have been set forth. This is not, in my view, a justification for a very significant carve out to the means test and homestead provisions for those on active duty.

I would have to oppose this Durbin amendment. I believe, however, that we can be more explicit in the legislation and make sure that soldiers, certain persons with medical conditions, and veterans with low income can qualify under the safe harbor of the bill. I am offering an amendment which clarifies that these individuals who may fall under the special circumstances provisions of the bill are explicitly allowed to be covered under the special circumstances provisions of the bill to give them certain advantages. It would deal primarily with the concern that some would be required to pay back a portion of their debt, and this would deal with that.

My amendment includes protections for the following three categories of individuals: those called or ordered to active duty in the Armed Forces, low-income veterans, and individuals with serious medical conditions. These are all situations that we want to make sure the bankruptcy bill's special circumstances clause includes. My

amendment does not create a gaping loophole in our legislation. Instead, it makes clear that people capable of paying back their debt should do so, at least in part, but those incapable of paying back their debt due to military service or a serious medical condition may not be required to do so. I hope my colleagues can support this amendment.

I will just say with regard to the homestead exemption included in the Durbin amendment that this would go against a lot of consensus we finally reached on homestead. Senator HATCH referred to it earlier. The fact is we have decided as a Senate and after debate three different times in passing this legislation on this floor by a overwhelming vote each time that we were not going to overrule the States' definition of homestead.

The State of Florida has a high homestead. In my view, it is too high, but it is in Florida law, and the Senator from Florida may well believe that he needs to defend that law. Many of our Senators say: This is our State's law, and I am not going to vote for a bill with an amendment which overrides my State's law on what the homestead should be. I have a personal belief that it is a necessary provision for us to take, but that has been the consensus, so I have to live with it even though I have been concerned on some of the issues.

We have been consistent in not overruling the State definition of homestead. I note that any State legislature could change their homestead any time they want. They can create a separate homestead rule. If they choose for the military, they could raise it or lower it, they can cap it or put a floor on it—whatever they choose. We have decided, as this bill has been through the Congress several times now, to defer to the States on that issue. I believe it would be inappropriate for us to now carve out this exemption to it.

I yield the floor and reserve the remainder of the time.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank my colleague from Alabama.

Let me make a couple comments.

First, his amendment, which I will oppose and urge all of my colleagues to oppose, puts servicemen and servicewomen in the category in this bill where they are presumed to be abusers in bankruptcy. That is right. The presumption in his amendment is that if you served in the military and file for bankruptcy, that you are abusing the bankruptcy process. He adds language which says that, and, therefore, we want the judge to take a look at these presumed abusers of the bankruptcy process and consider the fact that they happen to be in the military.

The Senator's amendment is entirely opposite of what we are trying achieve with the Durbin amendment. We are trying to presume the obvious. The men and women serving our country overseas who have been activated in the Guard and Reserve, taken away from their families and their businesses, should be presumed not to be abusive of the process but be presumed to be some of our most important citizens. Why do we want to throw them into the presumption of abusing the bankruptcy process? What I want to do is exactly the opposite. If you are serving our country and you face bankruptcy, we want you to walk into that courtroom and, frankly, get a better shake under the law than you currently get.

First, we don't want you to have to go through the hoops that have been created by the credit card industry and big banks for people who supposedly abuse bankruptcy. No. You put your life on the line for America. You were activated to serve in Iraq, and you risk your life every day for us. You lost your business at home, your family went bankrupt, and yet we are giving you a break in the bankruptcy court, unlike the Sessions amendment, which presumes you are an abuser of the process if a serviceman walks into the bankruptcy court.

The second thing we say is military servicemen don't get to pick the States they live in; they are transferred by the military to different places. But while these transfers of their families are going on, they could go bankrupt. If they go bankrupt, why do you have to make this some sort of roulette game as to what laws apply?

You are in the military and you file for bankruptcy. Then you ought to be able to count on several things:

First, the Federal exemptions on personal property. You know you can always turn to that. That means the things that you can keep in your family, in your household, even if you go through bankruptcy.

Second, the homestead exemption. If you happen to be in a State that is tough and doesn't allow you to protect any part of your equity in your home and you have been transferred there in the military, why use that against men and women who are serving this country? Why wouldn't you say, as our bill does, that we will protect up to $75,000 of your homestead?

Some will say: They may live in a State where it has zero homestead exception. That is true. I plead guilty to the charge that I am favoring the men and women in uniform who file for bankruptcy. I am. Unlike Senator SESSIONS' amendment, which presumes them to be abusive of bankruptcy, I presume the opposite, that men and women in the military don't go into bankruptcy just because it is an interesting thing to do. I think they have proven that they are responsible people when they raise their hand and swear an oath to the United States and are willing to risk their lives for our country. That is the presumption of responsibility that should be given to the men and women in uniform—exactly the opposite of the presumption of Senator SESSIONS. His presumption is that they are abusing the process and we will take a second look at it and we will let them come up with more documentation to prove they are not abusing the process.

The last thing my amendment does is to go after the most abusive creditors of the military men and women in America today. I showed the illustrations earlier. Can you imagine that a loan company would actually say to a sailor, airman, a marine, or soldier, we will loan you the money, but we want you to pledge as collateral for the loan your military retirement pay or your disability pay for your injury overseas serving America? They do it. Maybe they are not supposed to. They do it. And they charge these men and women in uniform the most outrageous interest rates in America. It ought to make the credit card companies blush. These pay day lenders charge 100 percent, 200 percent, 400 percent for these soldiers who are trying to keep their families together while they are serving America. My bill, quite honestly, says we are not going to give those creditors a day in court. Those creditors who charge over 36 percent a year in terms of loans to the military cannot collect them in bankruptcy.

I think that, frankly, is fair to these families because once you get into this ''juice loan'' racket that these payday loan companies come up with, there is no end in sight. You are sunk. Mr. President, $3,000 in debt turns into $20,000 before you can blink an eye.

Let me tell you a difference between what has been offered by Senator SESSIONS and what I am offering on this floor. The fact is, these groups support my amendment: the Military Officers Association of America, the Air Force Sergeants Association, the National Consumer Law Center, the National Association for the Uniformed Services, the Enlisted Association of the National Guard of the United States, and many other individual leaders in the Guard and Reserve across our country.

They are not supporting the Sessions amendment. I can understand why. They do not think our service men and women should be presumed abusive of the process. Let me tell you why we need this amendment.

In 1999, 16,000 members of the military in America filed for bankruptcy. Since then, there has been a massive activation of troops, Guard and Reserve, across America. Now we have men and women serving for long periods of time they did not anticipate, with dramatic losses in pay. This cutback in income for these individuals is creating a great hardship.

Thirty percent of all military families report a loss of family income when the spouse is deployed. But listen to the numbers for the National Guard and Reserve. Mr. President, 41 percent of Guard and Reserve families lost income when a spouse was deployed. How do they keep it together? Some of them

rely on relatives. Mom and dad step in. They are proud of their son or daughter serving in the military, they say: We will try to keep the wife, for example, who stayed home, and the children, together, while you are overseas. Do not worry about us. Just come home safely.

They make great sacrifices. Some of them walk away from a business. Those are the ones who get hit especially hard, such as reservists who own their own business and who are activated.

Fifty-five percent of self-employed reservists lost money when they were activated. And the average loss was $6,500. For some people, $6,500 may not mean much. But for these families, it may tip them over the edge. You find them making sacrifices for America, and all I am asking is, if the worst outcome occurs, if service to our country leads to an economic catastrophe for a family, and they have nowhere to turn but to bankruptcy court, for goodness' sake, should not this Senate say to these men and women in bankruptcy, We are going to give you a helping hand; you reached out your hand to help America; we are going to help you in the bankruptcy court?

But, no, not with the Sessions amendment. The Sessions amendment does not give them the helping hand. The Sessions amendment presumes that they abuse bankruptcy and says to the judge: Take that into consideration if you want to let them off the hook and want to let them try again to file for bankruptcy. That is cold comfort, cold comfort to the men and women in uniform, risking their lives for America, who know, back home, the terrible economic circumstances their families are facing.

Some people think I am making this up, but I am not. The anecdotal evidence that we received from all over the United States, as well as the reports that we have had from the military groups that are supporting my amendment, tell me a lot of families are right on the edge. They may not be able to survive this situation. I talked about this gentleman, Mr. Korizon, from Schaumberg, IL, activated for the Persian Gulf war, who left behind a construction company with 26 people. After he had been activated for 6 months, he had to file bankruptcy. He served his country. He kept his word. He kept his promise. He risked his life for America. He lost his business. He filed for bankruptcy. Does he deserve any special consideration in court? The other side of the aisle says no. Get in line. Just another one of those bankruptcies. I think he does.

You take a look at SGT Patrick Kuberry, who owned a restaurant in Denver. His partner in the restaurant was also in the military. They were both activated. Before it was over—both of them activated—they lost their restaurant and filed for bankruptcy. They served our country after 9/11. They protected us, the Members of the Senate, and our families. And they paid a heavy price. They lost the only business they had. Should they get a break in bankruptcy court? Of course they should. I think most Americans would agree they should.

The list goes on and on. I think the list tells the story. We have to be sensitive to the fact that this amendment, which I have proposed, is an amendment which addresses the most basic and fundamental need here.

Let me tell you something else. Senator HATCH of Utah came to the floor earlier. Do you know what he said? He said: I can't understand why so many more people are filing bankruptcy today. Well, he is unlikely to read this book, but I wish he would. It is called ''The Two-Income Trap,'' by Elizabeth Warren and her daughter Amelia Warren Tyagi. She analyzes why people are filing bankruptcy. And it is not because they are immoral. People are filing bankruptcy because: Since the 1970s, the number of involuntary job losses is up 150 percent. Since the 1970s, wage earners missing work due to illness or disability are up 100 percent, divorce is up 40 percent, people losing health insurance is up 49 percent, wage earners missing work to care for a sick child or elderly family member is up 1,000 percent-plus.

Now, add to these circumstances the possibility that you just received notice that your Guard unit has been activated, and you have a sick parent at home and you wonder: How in the heck am I going to keep this together? I was here working my job, trying to be a good son, a good daughter, trying to take care of my parent. What is going to happen? How am I going to meet this need?

These are real family circumstances of people who serve in the military. All I am asking is to make sure that if the worst thing happens, if they have to go to bankruptcy court, not that they get off the hook—they are not asking for that—but only that they get fair treatment. I knew the credit industry would oppose this amendment. I knew they would oppose it because I went after the payday loans and these ''juice loan'' rackets that are taking advantage of the military. They all gather together when you go after one of their own. The predators are treated just like those who are supposed to be respectable. And that is a shame.

I think the credit industry should sit down and have a balanced bill. And I think they ought to sit down at night and thank their lucky stars that men and women in this country step forward every single day and volunteer to keep us safe, to protect our homes and protect our Nation. Is it too much to ask the credit card industry and this big bank lobby that is behind this bill to give them a break in bankruptcy court if the bottom falls out while they are serving America? I cannot imagine it is.

Mr. President, I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I just want to say how strongly I value the contribution of our men and women in uniform. When I was in the Army Reserve I had the opportunity and the honor to call employers of service men and women whom we believed may have been discriminated against because they were fulfilling a military obligation. When I was a U.S. attorney, I filed a lawsuit against a business that terminated someone I believed, and the jury agreed, had been terminated at least in part because of them being a member of the Guard and Reserve.

We need to make sure our military men and women are protected and that they cannot be taken advantage of. I was in Iraq in January, and I met with soldiers there. One told me about his house. He was not able to keep up the payments. I asked him if he knew about the Soldiers and Sailors Relief Act, and he said yes, that was protecting him. Under that act his house could not be foreclosed on. And JAG officers, back there, helped him deal with that. But he was sharing with me one of his frustrations. He also told me he planned to re-enlist.

But I must react adversely to my colleague's statement that the amendment I offer, which expands protections and guarantees certain protections for military personnel over the present language in the statute, presumes military people who file bankruptcy to be abusers. Now, that is not so.

Look. This is the deal. Let's be real frank about it. What he is raising fundamentally is simply whether a person ought to be handled under chapter 13 or under chapter 7. If a military person's income falls below that of the median income in America, he can file chapter 7 and wipe out every debt he has—zilch, zero, walk away free—just like any other American can. And that has not been changed. And as Senator HATCH has indicated, probably close to 90 percent of American individuals who file for bankruptcy relief will be falling in that category.

Mr. DURBIN. Will the Senator from Alabama yield for a question on my time?

Mr. SESSIONS. All right.

Mr. DURBIN. I just want to ask the Senator a question.

Is it not true that you have amended page 12, section (B)(I) of S. 256, which reads in part: ''In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances'' such as being called to active duty in the Armed Forces?

So when I say you are presuming that they are abusing bankruptcy, these are the exact words of your amendment.

Mr. SESSIONS. Well, look, this is the deal. My amendment does not presume abuse. The bill already does that if you file for Chapter 7 and you have above median income. My amendment only

adds language to give examples of what a ''special circumstance'' could be.

This is what we are saying here. The way this statute is written, what it says is if you make above median income in America and you can pay back a portion of your debts, you should not be allowed to go under chapter 7 and wipe them all out. I don't think most military people want to be treated differently from that. If they have come back from active duty and are making $200,000 a year or $75,000 or $100,000 and they have a small amount of debt that they can pay back—it may be substantial—but an amount they can pay back, they will be able to go under chapter 13 and during that period of time the court would decide how much of the debt they should pay back based on their income. And if they have extraordinary circumstances, special circumstances as a result of their military duty, the court can exempt them from going into chapter 13, if it feels that is appropriate.

But fundamentally, this bill says if you are making a higher income and you can pay back part of it, why should you not? Not all of it. It is over 5 years. And the way they do it, the money goes to the court. Certain debts on a percentage basis are paid. And at the end of a maximum of 5 years you are wiped out. They don't make you pay for any more than 5 years. So you pay back a portion of what you owe over a period of 5 years.

This is not abusing people. These are people who have incurred debts, and they can pay some of it back. And they pay it. Most people under this legislation will fall in the other category as exists today, and they will wipe out all of their debts. So this is not abusive legislation. That is important to state.

It also specifically protects veterans who are defined by statute today as low-income veterans. They would be covered by this. There are people with medical expenses. That was defined explicitly as a special circumstance, and active-duty personnel.

As one businessman and fellow Senator indicated, we also have to be careful that if we provide too many special protections for service personnel, we could actually drive up their interest rates when they go out to borrow money because a lender may feel they are a greater risk than otherwise would be the case.

I believe we need to give our servicemen special protections. The Servicemember Civil Relief Act does that. It provides that you cannot foreclose your home while you are on active duty. It provides that your interest rate is reduced if you incurred debts before you go on active duty. You can't exceed 6 percent. They can't take a default judgment against you while you are away. Your statute of limitation is tolled so you can file any action you have that might otherwise be fileable while you are away. You can come back and still have time to do it.

I think we ought to continue to look at it. If there are additional things such as loans and other matters that are important for protection of our military, we need to look at it. But credit card, bank interest rates, those matters are not to be dealt with on a bankruptcy court reform bill. Those pieces of legislation are more appropriately and properly under the jurisdiction of the Banking Committee. That is where they need to be decided and debated.

Mr. BIDEN. Mr. President, I appreciate the sentiment behind Senator DURBIN's amendment, but the fact of the matter is that it is not needed. In the first instance, it is simply not the case that the means test in this bill will prevent our men and women in uniform from receiving the full protection of our bankruptcy laws.

The means test will not apply to any one in military service under the median income in their State. The median income in Delaware for a family of four is $72,680. If a staff sergeant at Dover Air Force Base in Delaware had to file for bankruptcy, he would automatically be exempt, at his pay scale of $34,319. So there is no way, under the means test in this bill today, that he would be denied the full protection of chapter 7. That is precisely why I insisted on that safe harbor in the means test two Congresses ago.

So the very assumption behind the amendment, that we need to exempt service men and women from the means test, is wrong. And if a pilot at Dover, who might well fall above the median income, were to file, he would only be subject to movement to chapter 13 if, and only if, he had enough income after deducting all of his normal expenses, to continue to pay some of his bills. And under chapter 13, he could keep his house and other assets, something filers under chapter 7 cannot do.

As Senator HATCH pointed out earlier, and Senator SESSIONS, too, special protections exist in current law—the Soldiers and Sailors Relief Act—that prevent foreclosure on a house, that cap interest payments. The extra protections sought by the Durbin amendment are already in place.

On the point of the payday loans, I agree that is an abuse that should be halted. Truly unscrupulous lenders that take advantage of anyone, in uniform or not, should be put out of business. But that is in fact a matter for banking regulations, not bankruptcy law. This amendment is closing the barn door after the horse is already gone.

Under the bankruptcy reform bill before us, the test to determine a filer's ability to pay specifically allows for the ''special circumstances'' that could reduce their ability to pay. The Sessions amendment, that we just passed, makes it crystal clear that those special circumstances include service in the armed forces—if that service puts you into a situation where you are unable to pay your legal debts. That can happen to someone called up in the reserves, and it is precisely why that category of special circumstances was put into the bill in the first place.

I could not support this bill if I did not belief that it is already fundamentally fair. This is a bill that received 82 votes the last time the Senate voted on it. I would never call those Senators callous or indifferent to the difficult circumstances our servicemen and women face. They are not. The Durbin amendment assumes all 82 of us got it wrong last time. I do not agree.

With the additional clarification of the Sessions amendment, I am convinced that the concerns raised by Senator DURBIN are fully addressed.

Mr. LEAHY. Mr. President, I stand to voice my support for the amendment offered by my friend and colleague, Senator DURBIN, which will protect our military servicemembers from attempts to penalize them by making it tougher for them to file for bankruptcy, even when the reason they lost all their income is because they answered the call of duty to serve America. I am proud to join my colleague as a cosponsor of this amendment.

We cannot have a thorough debate on bankruptcy reform without considering the economic hardships faced by servicemembers and their families. Calls to serve their country in Iraq, Afghanistan, or elsewhere can cause loss of family income, the closing of a family business, or unexpected expenses. Unfortunately, it is not uncommon for servicemembers and their families to be forced into filing for bankruptcy relief. We need to protect those who are fighting for us.

I support Senator DURBIN's efforts to protect our soldiers, particularly young recruits and junior officers, from sales of inappropriate insurance and investment products on military bases. It is crucial that servicemen and women who sacrifice for their country not be exploited or taken advantage of through dishonest business practices. It is our duty to ensure that America's military personnel are offered first-rate financial products so they can provide for their families and invest in their futures.

I commend Senator DURBIN for his leadership on this issue, and I urge my colleagues to accept his amendment so we can remedy the financial hardships faced by servicemembers who serve our nation and their families.

AMENDMENT NO. 23

Mr. SESSIONS. 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 Alabama [Mr. SESSIONS] proposes an amendment numbered 23.

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

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

The amendment is as follows:

(Purpose: To clarify the safe harbor with respect to debtors who have serious medical conditions or who have been called or ordered to active duty in the Armed Forces and low income veterans)

On page 12, line 10, insert after ''special circumstances'' the following: '', such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances''.

On page 18, line 4, insert after ''debtor'' the following: '', including a veteran (as that term is defined in section 101 of title 38),''.

Mr. SESSIONS. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Alabama has 15 minutes.

(Disturbance in the Visitors' Galleries.)

The PRESIDING OFFICER. The Sergeant at Arms will restore order in the gallery.

The Senator from Alabama.

Mr. SESSIONS. I thank the Chair.

I do not believe our service men and women should be insulted or are being insulted by the amendment I offered to ensure that they have certain special categories of protection under this act. I think they will welcome the amendment. I do not believe, however, that we need to change the overall idea and concept of the legislation, that homestead should be decided by the States and not by this Federal legislation. And if a serviceman is unable to pay his debts, he will be able to file bankruptcy against those. He will be able to wipe out all those debts. If he is able to pay back a portion, like any other citizen, he would be required to pay back that portion under this legislation. I think that is fair.

We need to be careful that they are not in any way adversely impacted by being overseas defending the interests of this country. I do not believe they are under this legislation.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the Senator from Alabama. This exchange is a rare and a good occurrence. As I said before, it is dangerously close to debate which we occasionally have in the Senate. I thank the Senator from Alabama for being here, even though we are on polar opposite sides of the debate. There should be more conversation and dialog on the floor such as this, a competition of ideas.

Nothing I said about his amendment reflects on him or his respect for the military. He has served in the military. I have not. I have great respect for him for having done that. But what I am trying to do with this amendment is to show what I think is appropriate respect to the men and women serving in uniform.

The point I made earlier was that the section of the underlying bill where people are presumed to have abused bankruptcy—in other words, they can pay their debts, but they try to get discharged from bankruptcy from their debt—that section is what the Senator from Alabama amended. So he puts into that section the requirement that the court take a look at the fact that the person filing bankruptcy may be in the military. That is all. That is the only point I am trying to make. I do not question his respect for the military in any way at all.

His amendment misses the point completely. Instead of presuming that the men and women who serve our country are abusing the bankruptcy laws when they go to file bankruptcy, I say stick to the current law. The current law allows a bankruptcy judge to make this determination. The new proposal by Senator SESSIONS, the one we are about to vote on, would require the service man or woman to file copious documents, incur additional legal costs, and then, if they are presumed to be abusing bankruptcy, to go through it all over again. What I am trying to do is spare them from that, and maybe it is soft on my part. Maybe I am not tough enough. I am trying to spare them because they are sparing me the worry about the safety of this country. They are serving this country in uniform. They are risking their lives. Yes, maybe I am going a little further than some would. I don't think it is an unreasonable leap. We understand the economic hardships that activation in the military can lead to.

Let me say a word about what used to be known as the Soldiers and Sailors Relief Act, now the Servicemembers Civil Relief Act.

The Senator from Alabama continues to return to it, saying this is their protection. Well, there is some protection in this law as it currently exists, but not nearly enough. This law, as currently written, does not apply to debts incurred after military service begins. So if you are in the military service and have debts that are incurred because you are overseas—your family debts that could lead you into bankruptcy—there is no protection from the Servicemembers Civil Relief Act. The protections are not automatic. You have to go to court and fight for them, too. Imagine that, fighting for your country overseas and being worried about fighting legal battles back home for lien enforcement on autos and other personal property being taken by self-help repossession. It doesn't fully protect servicemembers' spouses or dependents. These protections are not absolute.

If the creditor can show that the proceedings he instituted do not materially affect the serviceman, they can go forward. This bill, as written, doesn't stop debt collection harassment. This bill, as written, is providing protection that is only temporary at best and not long-term solutions to financial problems.

A member of my staff is active military and he is on detail to my office. I always go to him and ask him about these ideas, because he sees it from the eyes of a serviceman. He sent me a little note about Senator SESSIONS' amendment. He says it keeps the troops subject to the means test, but would allow a call or order to active duty in the armed services, to the extent that such special circumstances justify additional expenses or adjustments of current monthly income. This puts the service member at the mercy of someone else's opinion as to what was justified, what was reasonable. He gives an example, and a good one:

Suppose a soldier decides to keep his family in their home rather than move them in with his parents while he is deployed. You can understand why he might—the comfort of their home, schools the kids are used to. Instead of picking them up and saying I am going overseas and you are moving in with mom and dad, he says stay in the home. Senator SESSIONS' amendment would force that soldier to justify his decision to keep the family in their home, made under circumstances that few outside the military can appreciate. What may seem like a reasonable alternative—picking up the wife and kids and sending them to mom's and dad's house to live in the basement, or in an extra bedroom, may not be reasonable in that soldier's eyes.

What I am asking my colleagues in the Senate is, when you look at this Bankruptcy Code, join me in saying if we are going to give special consideration and help to the men and women in uniform—I don't think that is an unreasonable thing to do; I think we owe it to them—they ought to have a chance to go to court and be spared from this harsh means test and everything included in this bill to prove up where you stand. The judge, the trustee in bankruptcy, and others are going to make the ultimate decision as to whether you receive your bankruptcy.

Secondly, moving these soldiers all around the United States—at least if they file for bankruptcy, give them an option to choose an exemption under Federal law for personal protections and a $75,000 homestead exemption.

Finally, let me say this to these predatory lenders, the payday loan companies. The argument is if you treat them harshly in bankruptcy court, they may not be able to offer these 100-percent, 200-percent, 400-percent interest loans. I hope they go out of business tomorrow, to be honest. A lot of them are snaring these unsuspecting soldiers and marines and sailors into debt they can never get out from under. I think it is horrendous that men and women who serve our country should be subjected to that. I don't think a 36-percent a year annual interest rate, which we allow in the Durbin amendment, is unreasonably low. I think it is a reasonable return for a loan in most circumstances. It is far more than people pay for cars or homes today. They may pay that much on credit cards, if they are not careful. But to say the payday loan lenders are not going to have their day in court to exploit the men and women in uniform, I think, is a reasonable conclusion. It is a conclusion, frankly, that was joined in by a number of military groups that have endorsed this amendment.

For those colleagues following this debate, let me say that, to my knowledge, the Sessions amendment has no support from military families and support groups. It may have the support of the payday loan companies and some of the credit card companies and banks. But supporting my legislation are the Military Officers Association of America, Air Force Sergeants Association, National Association for the Uniformed Services, and the Enlisted Association of the National Guard of the United States. I will stand with my supporters and ask my colleagues to join me in that effort.

Mr. President, at this time I will yield the floor and reserve the remainder of my time. We are under a unanimous consent request, and I note that Senator LEAHY of Vermont has come to lay down an amendment.

If I may get the attention of the Senator from Alabama for a moment. Senator LEAHY is here to lay down an amendment. I would appreciate it if we can amend our unanimous consent request to give the Senator 7 minutes and protect and preserve the time we have remaining in debate.

Mr. SESSIONS. That is acceptable to me.

Mr. DURBIN. Mr. President, I ask unanimous consent that Senator LEAHY be allowed to lay down his amendment and to speak for 7 minutes, and that we return to debate and the previous unanimous consent request.

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

AMENDMENT NO. 26

Mr. LEAHY. Mr. President, I thank the Senator from Illinois and the Senator from Alabama for their usual courtesies. I ask unanimous consent that it be in order to set aside, under our understanding, the pending amendment so I might introduce an appropriately referred amendment for myself, Senator SNOWE, and Senator CANTWELL.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Ms. SNOWE, and Ms. CANTWELL, proposes an amendment numbered 26.

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

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

The amendment is as follows:

(Purpose: To restrict access to certain personal information in bankruptcy documents)

On page 132, between lines 5 and 6, insert the following:

SEC. 234. PROTECTION OF PERSONAL INFORMATION.

(a) RESTRICTION OF PUBLIC ACCESS TO CERTAIN INFORMATION CONTAINED IN BANKRUPTCY CASE FILES.—Section 107 of title 11, United States Code, is amended by striking subsection (b), and inserting the following:

''(b) On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, may, protect a person with respect to a trade secret or confidential research, development, or commercial information.

''(c) The bankruptcy court, for cause, may protect an individual, with respect to—

''(1) any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title; or

''(2) information contained in a paper described in paragraph (1) that could cause undue annoyance, embarrassment, oppression, or risk of injury to person or property.''.

(b) SECURITY OF SOCIAL SECURITY ACCOUNT NUMBER OF DEBTOR IN NOTICE TO CREDITOR.—Section 342(c) of title 11, United States Code, is amended—

(1) by inserting ''last 4 digits of the'' before ''taxpayer identification number''; and

(2) by adding at the end the following: ''If the notice concerns an amendment that adds a creditor to the schedules of assets and liabilities, the debtor shall include the full taxpayer identification number in the notice sent to that creditor, but the debtor shall include only the last 4 digits of the taxpayer identification number in the copy of the notice filed with the court.''.

Mr. LEAHY. Mr. President, the reason for this amendment—and I realize we will not vote on it today and we may vote on it tomorrow, although it may well be accepted—is one of the facts we have today.

The bankruptcy process requires the submission of many documents containing highly personal information. But we must be careful that our efforts to require documentation for accuracy and accountability do not inadvertently create problems for privacy and security.

We are in an age where personal information can be easily digitized and shared, and when it falls into the wrong hands, easily abused.

Identity theft is one danger. We have only to look to the recent debacle of Choicepoint selling the personal data of 145,000 individuals to scam artists. Many of these individuals have already become victims of identity theft, and they are not alone. Last year alone, 9.3 million people were victimized by identity theft. Another danger is tracking or harassing a former battered spouse. We need to minimize these possibilities, while still allowing for accountability.

We took an important first step by ensuring privacy protections for databases of personal information that become assets in bankruptcy. I was pleased to work closely with my colleagues in providing this protection.

But our responsibilities didn't end there. We also need to ensure reasonable privacy protection for personal information that is submitted by the debtors. I am submitting an amendment that will do just that by enhancing the court's discretion to protect personal information, and by requiring truncation of social security numbers in publicly filed documents. The Judicial Conference supports this amendment and I will ask unanimous consent that the Judicial Conference letter supporting the amendment be printed in the RECORD.

I am pleased that my colleagues Senator SNOWE and Senator CANTWELL have agreed to co-sponsor this amendment. They have been leaders on privacy issues, and I appreciate their support.

First, the amendment addresses court discretion in several ways. It allows the court, for cause, to protect personal identifiers, including the debtor's or other person's name, social security account number, date of birth, driver's license number, passport number, employee or taxpayer identification number, and unique biometric data. The personal identifiers protected under this provision are the same ones defined as ''means of identification'' under the Identity Theft Assumption Deterrence Act of 1998. This definition is codified as Section 1028(d) of Title 18 of the criminal code.

The amendment also allows the court, for cause, to seal or redact ''information that could cause undue annoyance, embarrassment, oppression or risk of injury to person or property.'' This standard is drawn from the current civil procedure discovery rules—Fed. Rule of Civ. Procedure 26—and would replace the existing standard in bankruptcy court, which only protects individuals against ''scandalous or defamatory matter.'' This change would allow the court to protect information, such as the home or employment address of a debtor, because of a personal security risk, including fear of injury by a former spouse or stalker. It would also allow the court to protect other information normally considered private, such as medical information.

The amendment would also provide persons the opportunity to request protection of sensitive information not only after it is filed with the court, but prior to filing as well. This protection is particularly important in an electronic filing environment, where information once filed is immediately available to the public.

In addition to enhancing court discretion, the amendment also protects social security numbers. Currently, the bankruptcy code requires debtors to include their tax payer identification numbers, which for individuals is almost uniformly his or her social security number, on any notice the debtor gives to creditors.

Because these notices are also filed with the court, the court's files routinely include unredacted social security numbers, creating the potential for abuse by those accessing public court records.

The amendment would simply allow debtors to limit disclosure to only a part of his or her social security number in notices that it files with the court. Specifically the notice to the court would include only the last four digits. The amendment still protects creditors where necessary, and specifies that creditors who are on the

schedule of assets and liabilities should receive the full tax payer identification number in the notices sent specifically to the creditor.

The idea of truncation isn't new. Just last year, we passed the Fair and Accurate Credit Transactions Act of 2003, and that Act required truncation of credit card and debit card numbers on receipts given to cardholders. Under that law, only the last 5 digits of credit card and debit card numbers can be printed.

Requiring truncation for social security numbers is similarly reasonable. It provides protection against abuse, but still allows for important information sharing to take place.

The bankruptcy process requires submission of many documents containing highly personal information. I spoke about this on the floor yesterday. We must be careful that our efforts to require documentation for accuracy and accountability do not inadvertently create problems for privacy and security.

We are in an age where personal information can be easily digitized and shared, and when it falls into the wrong hands, easily abused. We know what happens with identity theft. Look at the totally irresponsible, outrageous, unbelievable debacle of Choicepoint, selling the personal data of 145,000 individuals to scam artists. It is hard to think of anything being done more irresponsibly than the executives at Choicepoint, unless it is the executives of Bank of America, who ship the data of their customers by commercial airplane—the same kind of flight we have all taken, and all of us have lost luggage. I said yesterday maybe their executives fly by private planes and they don't know what it is like to fly commercial. The point is their irresponsibility.

Many of the individuals who have had data stolen become victims of identity theft. There were 145,000 individuals whose data was compromised with Choicepoint that we know of now. Some have already become victims of identity theft. Last year alone, 9.3 million people were victimized by identity theft. Another danger is tracking or harassing a former battered spouse. I want to make sure we keep accurate information and that people have to say who they are, but we don't want to allow somebody to go into electronic court files and get Social Security numbers and names and addresses and everything else, and then use that information for identity theft or worse. We need to minimize these possibilities, while still allowing for accountability.

We took an important first step by ensuring privacy protections for databases of personal information that become assets in bankruptcy. I was please to work with my colleagues in providing this protection. But our responsibilities did not end there. We also need to ensure reasonable privacy protection for personal information submitted by the debtors. This amendment will do that by enhancing the court's discretion to protect personal information, and by requiring truncation of social security numbers in publicly filed documents.

I have a letter from the Judicial Conference of the United States, Chief Justice Rehnquist presiding, in which they support this amendment. They strongly support this amendment. These are the courts that are going to have to enforce this.

I ask unanimous consent that the Judicial Conference letter supporting the amendment be printed in the RECORD.

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

JUDICIAL CONFERENCE
OF THE UNITED STATES,
Washington, DC, February 25, 2005.

Hon. PATRICK J. LEAHY,
Ranking Democrat, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: I am writing today to express the Judicial Conference's support of two proposed amendments to the ''Bankruptcy Abuse Prevention and Consumer Protection Act of 2005'' (S. 256). Both amendments to the bill would amend the Bankruptcy Code to effect the Judicial Conference's privacy policy and protect confidential or sensitive information from public disclosure. Your support of these amendments to pending bankruptcy reform legislation would be greatly appreciated.

SECTION 107 OF THE BANKRUPTCY CODE

This amendment would implement Judicial Conference policy regarding protection of certain information contained in bankruptcy case files from public disclosure by means of four revisions to section 107 of the Bankruptcy Code. First, the amendment would transform former subsection (b)(1) regarding protection of trade secret or confidential research, development, or commercial information into a new subsection (b). No substantive change would be made to this provision.

Second, the amendment would create a new subsection (c) to allow the court for cause to authorize the redaction of personal identifiers to protect a debtor, creditor, or other person from identity theft or other harm. The amendment incorporates by reference section 1028(d)(7) of title 18, United States Code, a provision of the ''Identity Theft and Assumption Deterrence Act of 1998,'' with regard to the types of personal identifiers that may be redacted. These include the debtor's or other person's name, social security account number, date of birth, driver's license number, alien registration number, government passport number, employee or taxpayer identification number, unique biometric data, unique electronic identification number, electronic address or routing code, and telecommunication identifying information or access device. The amendment would also permit the court to exercise its discretion to protect personal identifiers by means other than redaction where appropriate in the circumstances of the case.

Third, this provision would allow the protection of information under subsection (c) ''contained in a paper filed, or to be filed,'' in a bankruptcy case. This provision is intended to provide persons the opportunity to request protection of the information not only after it is filed with the court, but prior to filing as well. This authority would be especially useful in an electronic filing environment, where information once filed is immediately available to the public.

Finally, this new subsection (c) would have the effect of striking from the current provision ''scandalous or defamatory matter'' as a basis for protection of a person and instead allow the court for cause to seal or redact ''information that could cause undue annoyance, embarrassment, oppression or risk of injury to person or property.'' This language is drawn from Federal Rule of Civil Procedure 26 regarding the issuance of protective orders in the course of discovery. This new provision would expand the authority of the bankruptcy court to allow the court to protect information, such as the home or employment address of a debtor, because of a personal security risk, including fear of injury by a former spouse or stalker. It would also allow the court to protect other information normally considered private, such as medical information which, if publicly) disclosed, could result in untoward consequences to the debtor or others.

SECTION 342(C) OF THE BANKRUPTCY CODE

This amendment to the bill would amend section 342(c) of the Bankruptcy Code to implement Judicial Conference policy that social security account numbers be protected from public disclosure in court documents.

Section 342(c) of title 11, United States Code, currently requires a debtor to include his or her taxpayer identification number, which for an individual is almost uniformly his or her social security account number, on any notice the debtor gives to his or her creditors. Debtors are required to give such notice in various contexts, including the filing of adversary proceedings, such as a complaint to determine the dischargeability of a debt, or contested matters, such as a motion to avoid a lien impairing an exemption.

As a copy of such notice is required to be filed with the court, court files routine include unredacted social security account numbers of debtors. By requiring only the last four digits of a taxpayer identification number to appear an the notice, the debtor's fun social security account number will no longer appear in the court file and thus be protected from public disclosure.

The amendment also adds a provision to section 342(c) to require that adequate notice of the bankruptcy filing is given to a creditor who is added to the case after the initial notice of the case has been sent. The taxpayer identification number would be treated in the same manner in the notice to a newly added creditor as the number was treated in the initial notice to the original creditors. The debtor is directed to send to the newly added creditors a notice of the bankruptcy filing containing the debtor's full taxpayer identification number, but to include only the last four digits of the number in the copy of the notice filed with the court.

Thank you far your consideration of these proposed amendments. If you have any questions or concerns, please have your staff contact Michael W. Blommer, Assistant Director, at (202) 502–1700.

LEONIDAS RALPH MECHAM,
Secretary.

Mr. LEAHY. Mr. President, I am pleased my colleague from Maine, Senator SNOWE, and my colleague from Washington State, Senator CANTWELL, have agreed to cosponsor this amendment. They both have been leaders of privacy issues. I appreciate their support.

Here is what the amendment does: It addresses court discretion in several ways. It allows the court for cause to protect personal identifiers, including the debtor's or other person's name,

Social Security account number, date of birth, driver's license number, passport number, employee or tax identification number, and unique biometric data. The personal identifiers protected under this provision are the same ones defined as ''means of identification'' under the Identity Theft Deterrence Act of 1998. This definition is codified in Section 1028(d) of Title 18 of the criminal code.

The amendment also allows the court, for cause, to seal or redact ''information that could cause undue annoyance, embarrassment, oppression or risk of injury to person or property.'' This standard is drawn from the current civil procedure discovery rules. This change would allow the court to protect information, such as the home or employment address of a debtor because of a personal security risk. Unfortunately, many times that risk is from a former spouse or a stalker. It would also allow the court to protect other information normally considered private, such as medical information.

The amendment would provide persons the opportunity to request protection of sensitive information not only after it is filed with the court, but prior to filing as well. This protection is particularly important in an electronic filing environment, where information once filed is immediately available to the public.

In addition to enhancing court discretion, the amendment also protects Social Security numbers. Currently, the bankruptcy code requires debtors to include their tax payer identification numbers (which for individuals is almost uniformly his or her social security number) on any notice the debtor gives to creditors. Because these notices are also filed with the court, the court's files routinely include unredacted social security numbers, creating the potential for abuse by those accessing public court records.

This amendment would simply allow debtors to limit disclosure to only a part of his or her social security number in notices filed with the court. Specifically the notice to the court would include only the last four digits.

This amendment still protects creditors where necessary, and specifies that creditors who are on the schedule of assets and liabilities should receive the full tax payer identification number in the notices sent specifically to the creditor. What it means is somebody cannot get on line, get all this information, sell it, or do whatever they want to.

The idea of truncation isn't new. Just last year, we passed the Fair and Accurate Credit Transactions Act of 2003, and the Act required truncation of credit card and debit card numbers on receipts given to cardholders. Under that law, only the last 5 digits of credit card and debit card numbers can be printed. Requiring truncation for social security numbers is similarly reasonable. It provides protection against abuse, but still allows for important information sharing to take place.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Alabama.

Mr. SESSIONS. Mr. President, I note that with regard to, I believe the new name for it is the Servicemembers Civil Relief Act, which is the updated Soldiers and Sailors Relief Act, is a good piece of legislation. It provides tremendous protection for our men and women who have been called to active duty and sent around the world to defend our interest. It is very important legislation. We updated it not too long ago, in 2003. Maybe it needs to be updated again.

A bill structuring the rules of procedure for a bankruptcy in America is not the place to enter into debate about the refined procedures that might be necessary to give greater protection than we give today to our service men and women.

I suggest very strongly that to those who disagree there are enough protections, let's consider that. Let's look at that and see if we can do a better job of providing relief. The danger we get into is this: If we start amending what homestead is and having a Federal law dominate state homestead laws, which has not been done in our history, is not the current law, and we have rejected time and again in many different ways, I think we jeopardize the bipartisan consensus we had that led to a vote that passed this legislation last time without the Sessions amendment, which I think provides additional benefits for servicemen. We passed it 83 to 15. I think one time it passed with 97 to 1 votes; another time 78 votes. This is legislation that has had four markups in the Judiciary Committee. We debated it there. We have had long debates on the floor. As a matter of fact, as I recall, we spent 2 weeks on it every time it has been before the Senate, and it is projected we might go 2 weeks again on this legislation.

I know my friend from Illinois is concerned about soldiers. I also know he does not support the bill, or at least has not been a supporter of it. I expect it would not hurt his feelings if this amendment, which would upset the agreements we reached on homestead, led to the defeat of the bill. It would not hurt him at all. We had a Schumer amendment last time on a very discrete issue, a very controversial issue that ended up blocking final passage of the bill. We do not need to do that this time.

I believe there are strong protections for our service men and women. I do not think, as a matter of principle, that a serviceman should be exempt from the means test. The means test is not harsh. It does not mean ''mean;'' it means ''means,'' income, how much is your income, and if your income is above the median income in America and you can pay back some of those debts, I think anybody ought to do that, if they can. That is the principle of the bill.

We proceed at some risk when we start carving out exceptions. Senator FEINGOLD wants to change the homestead exemption for those over 62. I see the Chair, a distinguished new Senator with a young family. There are a lot of young people out here who bought a house. If we change the homestead law, why just do it for seniors? Why not for everybody? Maybe a family with two or three kids needs protection more than somebody who is 62. I don't know. I am saying, we have dealt with those issues. We have decided we would allow the States to set the homestead limit. That was a good decision, a defensible decision. That is one as a Senate, each time it has come forward, that we have reached that agreement, and I believe we ought to stay with it.

I do not think it reflects any diminishment or lack of respect for the men and women in uniform. I respect them. I care about them. We have done many things for them and I want to do more. I was proud to sponsor the legislation that increased the death benefits from $12,000 to $100,000 and increased the servicemen group life from $250,000 to $400,000. The President has submitted that as part of the supplemental. I hope we get that done. We need to do a lot of things for our military, but altering the bankruptcy bill under the guise of helping our military in a way that could actually jeopardize a bipartisan consensus would be the wrong approach.

I am concerned about it. For that reason I have to object to the Durbin amendment and suggest the amendment I have offered will do the things he wants to see done or needs to be done without jeopardizing our consensus.

I yield the floor and reserve the remainder of my time.

Mr. DURBIN. Mr. President, how much time is remaining in the debate?

The PRESIDING OFFICER. There is 2 minutes 34 seconds remaining in debate.

Mr. DURBIN. On which side?

The PRESIDING OFFICER. On the Senator's side, and 7½ minutes for the Senator from Alabama.

Mr. DURBIN. If only 2½ minutes remain on our side, if I can get the attention of the Senator from Alabama, if he is prepared to close the debate—I ask the Senator from Alabama, it is my understanding he has 7½ minutes remaining; I have 2½ minutes remaining, and 2½ minutes is all I need to close. I do not know if the Senator from Alabama wants to use up more of his time and even it out.

Mr. SESSIONS. In my litigation experience, the plaintiff gets the final word. So the Senator should use his time and I will finish. I may yield back some of that time.

Mr. DURBIN. Fine. Let me do that, then. I ask unanimous consent that before we vote on the Durbin amendment, we have 4 minutes equally divided to explain our positions on the Durbin amendment.

The PRESIDING OFFICER. Is there objection?

Mr. SESSIONS. I do not have any objection.

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

Mr. DURBIN. The first vote for my Senate colleagues will be on the Sessions amendment. The Sessions amendment changes S. 256, the bankruptcy bill, in the section where the bill establishes a presumption that people are abusing bankruptcy. In other words, they are not entitled to bankruptcy. The Sessions amendment says that the judge should consider whether the person who has filed for bankruptcy is in the active military service and is therefore a special circumstance. So Senator SESSIONS leaves the military men and women in the section of this bill where one presumes to be abusing the law. I do not approach it in that way at all, and that is the reason why the military groups and families are supporting my amendment and not the Sessions amendment.

As I said earlier, Senator SESSIONS certainly respects the military, but we can show our respect for the military by saying if they are activated to serve this country, if they are removed from their family, removed from their job, removed from their business, and terrible things happen and the business fails or their family goes into bankruptcy and they have to go back to America with their life and limbs intact and file in bankruptcy court, we are going to give them special consideration. They did something special for America; we are going to do something special for them. We are not going to make them jump through all the hoops that have been created by this new bankruptcy law that are expensive, time consuming, and loaded with documents that need to be filed. We are going to protect their home for $75,000 worth at least, wherever they happen to be assigned in the military. We are going to protect their basic possessions that they can have after the bankruptcy is over, and we are not going to protect those creditors and lenders which abused them by charging interest rates which were sky high. We will not give them their day in court.

The PRESIDING OFFICER. The time of the Senator from Illinois has expired.

Mr. DURBIN. I urge my colleagues to oppose the Sessions amendment and support the Durbin amendment, which has the endorsement of the military groups and families.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I will make a few general points. This is not a harsh bill. People who make below median income can use the same bankruptcy procedures they always have. Spouses and children are going to have a tremendously better position in this bankruptcy bill vis-a-vis their alimony and child support payments than we have ever given them before. There are a lot of good things in this bill.

I reject the suggestion that this is a bill written by credit card companies to meet their special interests. What we have is a bankruptcy court system that is not working well. It is being abused in a lot of different ways.

I do not know how we came up with the idea to use the language—and the Senator is correct, it does say abusing the system. It could just as well as have said people who make above median income will not be guaranteed not to pay back some of their debts because, as a matter of policy, the Congress has decided that if they make above median income and can pay some of their debts back over a period of up to 5 years, if the Court so declares, then they ought to pay some of that back. I do not think that is harsh or mean. And all other debts are being wiped out. People cannot sue you, creditors cannot call on you. Your phones cannot be stopped. People can be fined if they harass you for the collection of those debts. That is not a harsh thing.

The way it was written, it uses that word ''abusive,'' that we consider it an abuse if you file to wipe out all of your debts when you have a higher income. It might have been better to have said we just do not think you ought to not pay something back if you make above median income. That is the way lawyers write language and that is the way we stuck with it, but it should not be taken in any personal way. It is just a statement of policy of the Congress about who ought to pay back their debts.

There is talk like it is a credit card company's fault that someone takes their card and goes out and runs up $3,000 or more in debts on that card, and it is their fault if someone does not pay it back, that they deserve what they get and they gave away $3,000. Who pays for that? It is the consumers in the long run who pay for that.

It has been said that they send credit cards to children. Under American law, if a young person receives a credit card and actually goes out and uses it and it is in his or her name, they do not ever have to pay a dime back. A minor is not bound by such a contract as that. The credit card company would be the total loser in that arrangement.

They are bringing all these issues up about credit cards. They bring the issues up about health care and insurance and people who do not have insurance or do have insurance. They raise the question of the military. They raise the question of old people. But I just point out that we have considered all of that. We have considered that for 8 years now in great detail, and we have hammered out a bill that I believe is fair and just and has received 83 votes in this body last time for final passage. I believe we will see another big vote this time.

The amendment I have offered is a fair solution to the concern of our military men and women. If it is not, we ought to look at the Soldiers and Sailors Relief Act and see if we can make it stronger if that is the right step. Let us keep the bankruptcy law, the court procedures of the Federal bankruptcy system, consistent and harmonious with the philosophy we started with and have carried on with this bill.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent that Senator MIKULSKI be added as a cosponsor to my amendment.

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

Mr. SESSIONS. Mr. President, I believe the Sessions amendment is before the body. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

Does the Senator from Alabama yield back his remaining time?

Mr. SESSIONS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to amendment No. 23.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Minnesota (Mr. COLEMAN), the Senator from Texas (Mr. CORNYN) and the Senator from Virginia (Mr. WARNER).

Further, if present and voting, the Senator from Minnesota (Mr. COLEMAN) and the Senator from Texas (Mr. CORNYN) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from Minnesota (Mr. DAYTON) and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 63, nays 32, as follows:

[Rollcall Vote No. 12 Leg.]

YEAS—63

Alexander	DeMint	Lugar
Allard	DeWine	Martinez
Allen	Dole	McCain
Baucus	Domenici	McConnell
Bennett	Ensign	Murkowski
Biden	Enzi	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Brownback	Frist	Roberts
Bunning	Graham	Santorum
Burns	Grassley	Sessions
Burr	Gregg	Shelby
Byrd	Hagel	Smith
Carper	Hatch	Snowe
Chafee	Hutchison	Specter
Chambliss	Inhofe	Stevens
Coburn	Isakson	Sununu
Cochran	Johnson	Talent
Collins	Kohl	Thomas
Conrad	Kyl	Thune
Craig	Lincoln	Vitter
Crapo	Lott	Voinovich

NAYS—32

Akaka	Corzine	Jeffords
Bayh	Dodd	Kennedy
Bingaman	Dorgan	Kerry
Boxer	Durbin	Landrieu
Cantwell	Feingold	Lautenberg
Clinton	Harkin	Leahy

Levin	Pryor	Sarbanes
Lieberman	Reed	Schumer
Mikulski	Reid	Stabenow
Murray	Rockefeller	Wyden
Obama	Salazar	

NOT VOTING—5

Coleman	Dayton	Warner
Cornyn	Inouye	

The amendment (No. 23) was agreed to.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, would the suggestion of an absence of a quorum be in order?

The PRESIDING OFFICER. It would.

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

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

Mr. FRIST. Mr. President, for the information of Senators, this will be the last rollcall vote tonight. We will be coming in tomorrow at 9:15. We will have 1 hour of morning business. After that morning business, we will have two rollcall votes in all likelihood. So we need people back early in the morning. After that, another amendment will be introduced, and we may well have another vote prior to lunch tomorrow. I have talked to the Democratic leader and the managers on both sides, and that is agreeable. This will be the last rollcall vote tonight.

AMENDMENT NO. 16, AS MODIFIED

The PRESIDING OFFICER. There are 4 minutes evenly divided. Who yields time?

The Senator from Alabama.

Mr. SESSIONS. Mr. President, the Senator from Illinois has suggested that I go first on his amendment. I know he would like to do the closing argument. He is very good at that.

The Senator from Illinois suggests that we are accusing military persons who file for bankruptcy as abusers if they qualify for the means test. That is an incorrect statement of what we are about with the amendment we just passed and what the bankruptcy bill is about. This legislation provides that if a bankruptcy filer makes above median income—this explains a lot about the bill—then absent special circumstances, a filer can be required to pay back at least a part of the debts they owe, only if they make above median income. It also provides that if their income falls below median income, they can stay in chapter 7 and wipe out all their debts just as they always have. If a debtor's income is above median income and special circumstances apply, they still may be eligible to avoid chapter 13, wipe out all their debts under chapter 7.

The amendment I just offered and just passed explicitly states that when one is called to active military duty in the Armed Forces, that can be a special circumstance that could protect them and provide an additional opportunity to not go into chapter 13.

An expert testified at the committee last week that about 80 percent of the people who file are below median income and that about 7 percent in addition will qualify under the special circumstances. The amendment we just passed protects our servicemen and guarantees they will be considered under special circumstances.

We should vote down this amendment because it also sets a homestead limit in violation of State law and contrary to the philosophy of this bill.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent that Senator CORZINE be added as a cosponsor of the Durbin amendment.

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

Mr. DURBIN. I yield 30 seconds to the Senator from Massachusetts, Mr. KENNEDY.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we are having a difficult time enough now in meeting our goals for the Reserve and the Guard. Unless we pass the Durbin amendment, we are going to have a much more difficult time. If you support the Guard and the Reserve and support our troops, you will support the Durbin amendment.

Mr. DURBIN. Mr. President, I thank the Senator from Massachusetts.

How many of us have seen men and women going off to serve our country to risk their lives knowing that they are leaving behind families and their businesses and knowing the economic hardship they will face? Some of them are going to be forced into bankruptcy. We have case after case where it has happened. All the Durbin amendment says is, if you have to file bankruptcy after this new bankruptcy reform bill were to become law, the bankruptcy system will consider the fact that you have served our Nation by exempting you from certain aspects of this new bill. We will not push you into a means test, but we will consider your individual circumstances.

We will give you a homestead exemption of $75,000 regardless of where you have been assigned for military duty. We will protect your personal assets with the Federal personal exemption regardless of where you have been assigned to duty and where you have to file bankruptcy.

There are those who say this is a special favor for the armed services. It is, and I believe it should be. They risk their lives for us. They should not risk their home and their finances as well. We ought to stand behind them. Yes, you can vote for the Sessions amendment and for the Durbin amendment as well. They are not inconsistent.

The PRESIDING OFFICER. The question is on agreeing to the Durbin amendment No. 16, as modified.

Mr. DURBIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Minnesota (Mr. COLEMAN) and the Senator from Texas (Mr. CORNYN).

Further, if present and voting, the senator from Minnesota (Mr. COLEMAN) and the senator from Texas (Mr. CORNYN) would have voted ''nay.''

Mr. DURBIN. I announce that the Senator from Minnesota (Mr. DAYTON) and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 38, nays 58, as follows:

[Rollcall Vote No. 13 Leg.]

YEAS—38

Akaka	Harkin	Nelson (FL)
Bayh	Jeffords	Obama
Bingaman	Kennedy	Pryor
Boxer	Kerry	Reed
Cantwell	Kohl	Reid
Clinton	Landrieu	Rockefeller
Conrad	Lautenberg	Salazar
Corzine	Leahy	Sarbanes
Dodd	Levin	Schumer
Dorgan	Lieberman	Specter
Durbin	Lincoln	Stabenow
Feingold	Mikulski	Wyden
Feinstein	Murray	

NAYS—58

Alexander	DeMint	McCain
Allard	DeWine	McConnell
Allen	Dole	Murkowski
Baucus	Domenici	Nelson (NE)
Bennett	Ensign	Roberts
Biden	Enzi	Santorum
Bond	Frist	Sessions
Brownback	Graham	Shelby
Bunning	Grassley	Smith
Burns	Gregg	Snowe
Burr	Hagel	Stevens
Byrd	Hatch	Sununu
Carper	Hutchison	Talent
Chafee	Inhofe	Thomas
Chambliss	Isakson	Thune
Coburn	Johnson	Vitter
Cochran	Kyl	Voinovich
Collins	Lott	Warner
Craig	Lugar	
Crapo	Martinez	

NOT VOTING—4

Coleman	Dayton
Cornyn	Inouye

The amendment (No. 16) was rejected.

Mr. SESSIONS. I move to reconsider the vote.

Mr. GRASSLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I am glad we are now finally considering S. 256, the Bankruptcy Reform Act of 2005. Although a few amendments were accepted during the Judiciary Committee markup a couple weeks ago, and we did that to accommodate Democratic Members, this bill is practically identical to the conference report that both the House and Senate conferees signed

in the 107th Congress, minus the poison pill abortion amendment.

Many of my colleagues know I have been working on this bill for quite some time now and that there has always been strong bipartisan support for passing bankruptcy reform. I started working on bankruptcy issues in the mid-1990s, and I did that with my colleague, then-former Senator Heflin of Alabama. We served together as either chairman or ranking member of the Administrative Oversight Subcommittee for a period of, I believe, 12 years.

During this period of time, we created what became known as the National Bankruptcy Review Commission. We held numerous hearings in the subcommittee on various topics dealing with the subject of bankruptcy reform.

In the 105th Congress, Senator DURBIN and I passed out of the Senate a bankruptcy bill by a vote of 98 to 1, but it never got to conference.

In the 106th Congress, Senator Torricelli and I worked closely and negotiated many compromises. We were able to vote out of the Senate a Grassley-Torricelli bill by a vote of 83 to 14. The Senate then approved the bankruptcy conference report by a vote of 70 to 28. Mr. President, 53 Republican Senators and 17 Democratic Senators voted for that conference report, but President Clinton pocket-vetoed the bill, and although we had the votes to override it, we were, unfortunately, not to have that opportunity. That is what a pocket veto is all about.

In the 107th Congress, I introduced, with Senator BIDEN, the same language of the conference report agreed to by both the House and Senate in the previous 106th Congress.

We passed the bankruptcy bill by a strong bipartisan vote of 85 to 13, with further changes made to address concerns of Democratic Party members. We went to conference with the House and reached an agreement on a conference report. During that conference committee, numerous amendments were negotiated with Democrats who opposed the bill. We negotiated in good faith, but the inclusion of what has become known as the Schumer abortion language ultimately proved to be unacceptable to the House and we were not able to get to the finish line.

The Senate tried to address the bankruptcy bill in the 108th Congress. The House passed the conference report language without the abortion provisions, but the Senate never took it up. In addition, the House amended a Senate bill with a bankruptcy bill and requested a conference, but Senate Democrats denied us the ability to have a conference on that bill.

So after three Congresses, we are here again in the 109th Congress trying to pass bankruptcy reform. My Democratic colleagues, Senator CARPER and BEN NELSON, have joined me, as well as Senators HATCH, SESSIONS, and others, on this bill, S. 256, the Bankruptcy Reform Act of 2005. The bill continues in the tried and true spirit and tradition of this bill being bipartisan, so we do have that bipartisan support on its introduction, and from the votes we have had on amendments today, it looks like that bipartisanship is still going to hold. So I hope my colleagues will not be fooled when longstanding opponents to this bill, even though they may never number more than 15, vociferously claim that the bankruptcy bill is really controversial and really unnecessary because those statements, made by the very small number of people in this body who do not think we need to do anything on bankruptcy reform, everything they are saying is far from the truth.

I note that throughout the years, we really bent over backward in trying to accommodate Democratic Senators' concerns with the bill's process, even in this Congress. I do not think that it is any surprise to anyone that my position is that the bankruptcy bill is still very much simply unfinished business after all of these compromises throughout now the fourth Congress. This bill has passed both the House and the Senate a total of 11 times between these two Houses of Congress. It is about time that we get the job done now. Hence, simply unfinished business, even though some of my colleagues will try to make this be a totally brand-new debate, just like we were starting over with the purest bill that I would prefer, but because purest bills never get through the Senate, it takes bipartisanship.

We are where we are because of compromise and unfinished business, and hopefully we will move this bill to the House and to the President, somewhat I hope a repeat of what we did 3 weeks ago with the class action tort reform bill. That is why at the beginning of this Congress I reintroduced the bipartisan conference report that was arrived at in the 107th Congress with only one change, and that change is to leave the poison pill of the Schumer abortion language out of it.

Remember that this compromise that I introduced in this year, the 107th Congress, minus the Schumer amendment, otherwise is exactly the same language negotiated when the Democrats had a majority. It was two Congresses ago when Senator JEFFORDS changed from being a Republican to an Independent, sitting with the Democrats. They took over the Congress, and it is that Democratic Senate that negotiated this agreement for the Senate. That is the bill we are working on now as the underlying provision.

The Schumer abortion language that tanked the bill in the House, in the 107th Congress, is left out. Other than that, the bill was basically the exact same language that Senate Members, both Republican and Democrats, have supported.

The reason I did this is because we had reached many carefully crafted compromises and had a good bipartisan product. I did not think that we had to go through committee this time because this bill had been done so many times before, but Majority Leader FRIST insisted that it go through regular order. The Judiciary Committee held a hearing and markup on this bill.

So my colleagues are clear, the committee accepted five amendments to further accommodate Democratic members. The committee also defeated a number of other amendments that were clearly offered to open issues and weaken the bill.

I would like to make my position crystal clear. We have all cooperated and compromised at great length in order to enact this legislation that fixes an unfair bankruptcy regime, provides new consumer protections, helps children in need of child support, and makes other necessary reforms to a system that is often open to abuse. I do not believe there is any need to reopen this bill and to disrupt those many compromises we have already reached with our Democratic colleagues, and more importantly with the House of Representatives.

I hope this clarification on the history and procedural process of the bill will show that, one, the bill is a bipartisan effort; two, that we have been working on bankruptcy reform for too long and have gone over all the fine points of the bill in great detail; and, three, that we have bent over backward to allow a fair process to move forward with this bill.

I discussed the merits of this bankruptcy reform bill. There is broad public support for reforming our bankruptcy system. The vast majority of people believe that individuals who file for bankruptcy protection should be required to pay back some of their debt if they have the ability to do so, and that is precisely what this bankruptcy bill attempts to do.

Most people think it should be more difficult for individuals to file for bankruptcy. Most Americans are tired of paying for high rollers who game the current bankruptcy system and its loopholes to get out of paying their fair share. Most people recognize that too many people are filing for bankruptcy. Too many people are gaming the system, and the numbers are up in historically high proportions in recent years that prove that. Bankruptcy filings were at an alltime high even during the boom years of our economy. Opponents to the bill act as if there is nothing to worry about, but the fact is we have a bankruptcy crisis on our hands.

I want to visit with my colleagues about how this bill will change the way bankruptcy is being treated. Simply put, bankruptcy is a court proceeding where people get their debts wiped away. Every time a debt is wiped away through bankruptcy, somebody loses money. Of course, that is common sense, and when somebody who extends credit has their obligations wiped away in bankruptcy, they are forced to make a decision. Should this loss simply be

swallowed as the cost of doing business or are prices raised for other customers to make up for another's losses?

Presently, when individuals file for bankruptcy under chapter 7, a court proceeding takes place and their debts are simply erased. But every time a debt is wiped away through bankruptcy, someone loses money. When someone loses money in this way, he or she has to decide to either assume that loss as a cost of business or raise the price for other customers to make up for that loss.

When bankruptcy losses are infrequent, lenders maybe are able to swallow that loss. But when they are frequent, lenders need to raise prices for other consumers to offset their losses. These higher prices translate into higher interest rates for future borrowers. The result of the bankruptcy crisis is that hard-working, law-abiding Americans have to pay higher prices for goods and services because somebody else did not make good on their obligations to pay. This bill would make it harder for individuals who can repay their debt to file for bankruptcy under chapter 7. This would lessen, then, the upward pressure on interest rates and prices. It is only fair to require people who can repay their debts to pull their own weight. But under current bankruptcy law, an individual can get full debt cancellation in chapter 7 with no questions asked.

The Bankruptcy Reform Act of 2005 asks the very fundamental question of whether repayment is possible by an individual. It is this simple: If repayment is possible, then he or she will be channeled into chapter 13 of the Bankruptcy Code which requires people to repay a portion of their debt as a precondition for limited debt cancellation. In other words, people who have the ability to pay will not get off scot-free anymore.

This bill does this by providing for a means-tested way of steering people who are filers, who can repay a portion of their debts, away from chapter 7 bankruptcy. This test employs a legal presumption that chapter 7 proceedings should be dismissed or converted into chapter 13 whenever the filers earn more than the State median income and can repay at least $6,000 of his or her unsecured debt over a 5-year period of time.

In calculating a debtor's income, living expenses are deducted as permitted under IRS standards for the State and locality where the debtor lives. Legitimate expenses such as food, clothing, medical, transportation, attorney's fees, and charitable contributions are taken into account in this analysis, as provided under Internal Revenue Service guidelines.

Moreover, a debtor may rebut the presumption by demonstrating special circumstances. So the means test takes into account a debtor's income, a debtor's expenses, and allows a debtor to, even beyond that, show special circumstances which would justify adjustments to the means test.

In this way, the bankruptcy reform bill preserves the principle of a fresh start for people who have been overwhelmed by medical debts or sudden, unforeseen emergencies. As stated by the Government Accounting Office, the bill allows for the 100-percent deductibility of medical expenses before examining repayment ability. The bill preserves fair access, then, to bankruptcy for those people who are truly in need.

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. This bill clearly provides that people of limited income can still file under chapter 7 and get that fresh start. There is a specific safe harbor built in for these individuals, so their debts can be wiped away, as is done right now.

I point this out because so often during this debate it is going to be pointed out to you, inaccurately, that somehow poor people are not getting that opportunity for a fresh start. So I want to repeat: There is a safe harbor for poor people. But the free ride is over for people who have higher incomes, and who can repay their debt.

Personal responsibility has been one of the main themes of the bankruptcy reform bill, going back to my first introduction. But even before that, since 1993, the number of Americans who declared bankruptcy has increased, would you believe it, over 100 percent. While no one knows all the reasons underlying the bankruptcy crisis, the data shows that bankruptcies increased dramatically during the same timeframe when unemployment was low and real wages were at an all-time high.

I believe the bankruptcy crisis is, in fact, a moral crisis. People have to stop looking at bankruptcy as a conventional financial planning tool, where honest Americans have to foot the bill for those who do not pay their honest debt. It is clear to me that our lax bankruptcy system must bear some of the blame for the bankruptcy crisis. A system where people are not even asked whether they can pay off their debts obviously contributes to the fraying of the moral fiber of America. Why should people pay their bills when the system allows them to walk away with no questions asked? Why should people honor their obligations when they can take the easy way out through bankruptcy?

I think the system needs to be reformed because it is fundamentally unfair. This bill will promote personal responsibility among borrowers and create a deterrence for those hoping to cheat the system. This bill does more than provide for a flexible means test that gives judges discretion to consider the individual circumstances of each debtor in order to determine whether they truly belong in chapter 7. It also contains tough new consumer protections. But the opponents of this bill do not seem to realize that. So I want them to pay attention as I describe new procedures to prevent companies from using threats to coerce debtors into paying debts which could be wiped away once they are in bankruptcy.

The bill requires the Justice Department to concentrate law enforcement resources on enforcing consumer protection laws against abusive debt collection practices. It contains significant new disclosures for consumers, mandating that credit card companies provide key information about how much they owe and how long it will take to pay off their credit card debts by only making the minimum payment. That is a very important consumer education for every one of us.

Consumers will also be given a toll-free number to call where they can get information about how long it will take to pay off their own credit card balances if they only pay the minimum payment. This will educate consumers and improve consumers' understanding of what their financial situation is.

Credit card companies that offer credit cards over the Internet will be required for the first time ever to fully comply with the Truth In Lending Act, so claims that this bill is unbalanced are off base.

Moreover, the bill makes changes which will help particularly vulnerable segments of our society. Child support claimants are given a higher priority status when the assets of a bankruptcy estate are distributed to creditors.

Here again, I make crystal clear that the bankruptcy bill makes significant improvements for child support claimants. This bankruptcy bill does not hurt them, as opponents of the bill are trying to claim. In fact, the organization, the very organization that specializes in tracking down deadbeat dads, feels this bill will be a tremendous help in collecting child support.

The people on the front lines say the bankruptcy bill is good for collecting child support. An example: The bill provides that parents and State child support enforcement collection agencies are given notice when a debtor who owes child support or alimony files for bankruptcy. Bankruptcy trustees are required to notify child support creditors of their right to use child support enforcement agencies to collect outstanding amounts due.

In addition, the bill requires creditors to provide the last known address of debtors owing support obligations upon the request of the custodial parent.

The bill goes further—requiring that the identity of minor children be protected in bankruptcy proceedings.

Concerns expressed by opponents to the bill about this being a flawed part of it just don't hold water.

The bill also makes great strides in cracking down on very wealthy individuals who abuse the bankruptcy system. If you listen to our critics, you might get the impression that the homestead exemption is a giant loophole that this bill does not deal with, and that we are busy protecting the rich.

The GAO looked at the question of how frequently the homestead exemption is abused by wealthy people in bankruptcy. The GAO found that less than 1 percent of bankruptcies filed in States where there are unlimited homestead exemptions involve homesteads over $100,000. That means 99 percent of bankruptcy filings were not abusive.

This is not a loophole at all. In fact, the provision in this bill with respect to homestead is a significant improvement from current law. There is a Federal cap on homestead exemptions in current law.

Under the current bankruptcy law, the debtors living in certain States can shield from their creditors virtually all of the equity in their home. Consequently, some debtors relocate to these States to take advantage of the mansion loophole provisions that are, in most cases, in their constitution. This bill would take a strong stand against this abuse by requiring that a person be a resident in a State for 2 years before he can claim the State's homestead exemption. Current requirements can be as little as 91 days.

The bill further reduces the intent for abuse by requiring a debtor to own the homestead for at least 40 months before he can use State exemption law. Current law doesn't have any such requirement.

Furthermore, the bill would prevent individuals who have violated security laws or individuals who have engaged in criminal conduct from shielding their homestead assets from those whom they have defrauded or injured. Specifically, if a debtor was convicted of a felony, violated a security law, or committed a criminal act intentionally, or engaged in reckless misconduct that caused serious physical injury or debt, the bill overrides State homestead exemption laws and caps the debtor's homestead at $125,000 as the amount that would be protected.

To the extent that the debtor's homestead exemption was obtained through the fraudulent conversion of nonexempt assets during the 10-year period preceding the filings of the bankruptcy case, this bill requires such exemption to be reduced by the amount attributable to the fraud.

These homestead provisions were delicately compromised between those who believe that the homestead should be capped through Federal law—I am one of those—or others who are uncomfortable with a uniform Federal cap which may violate their own State constitution.

So, please, tomorrow when this debate is conducted on changing this provision that has been so carefully worked out over a period of at least two Congresses, don't believe it when people say we have a gaping loophole. The homestead provisions in the bankruptcy bill will substantially cut down on the abuses that might be referred to.

I would like to talk about another thing this bankruptcy bill does which is so important for those of us who represent agricultural States. This bill makes chapter 12 of the Bankruptcy Code, which gives essential protections to family farmers, a permanent chapter in the Bankruptcy Code. The bill enhances these protections. It makes more farmers eligible for chapter 12. The bill lets farmers in bankruptcy avoid capital gains tax. This is very important because it will free up resources to be invested in farming operations that otherwise would go down the black hole of the Internal Revenue Service. Farmers need this chapter 12 safety net.

In addition, the bankruptcy bill will for the first time create badly needed protections for patients in bankruptcy hospitals and nursing homes. Let me provide an example of what could happen right now without the patient protections contained in this bill.

At a hearing I held on nursing home bankruptcies, I learned about a situation in California where a bankruptcy trustee just showed up at a nursing home on a Friday evening and evicted the residents of that nursing home. The bankruptcy trustee didn't provide any notice whatsoever that this was going to happen. There was absolutely no chance for the nursing home residents to be relocated. The bankruptcy trustee literally put these elderly people out on the street and changed the locks on the doors so that they couldn't get back into the nursing home. The bankruptcy bill will prevent this from ever happening again. These are protections that we will be giving these deserving senior citizens for the first time.

The truth is that bankruptcies hurt real people. It isn't fair to permit people who can repay to skip out on their debts. Yes, we must preserve fair access to bankruptcy for those who truly need a fresh start. This bill does not in any way compromise that century-old principle of our Bankruptcy Code.

This bankruptcy reform act does that—it guarantees a fresh start. It lets those people who can pay their debts live up to their responsibilities as well.

Let us restore the balance. Let us pass this bill. This bill is a product of much negotiation and compromise over three Congresses. It is fair, it is balanced, but, more importantly, it is a bill that once got to President Clinton and he pocket-vetoed it. This bill that passed by overwhelming majorities of both Houses of Congress is long overdue legislation.

I urge my colleagues to support this legislation but, more importantly, help us defeat amendments that are opening all of the carefully crafted compromises that we worked on over the last 3 to 4 years.

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

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

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that there now be 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.

SUPREME COURT'S RULING IN ROPER V. SIMMONS

Mr. President, today, the Supreme Court struck down the death penalty for juvenile persons 17 years old or younger. I commend the Court for its wise and courageous decision.

Three years ago, the Supreme Court held that the eighth amendment to the Constitution prohibits the execution of the mentally retarded. In reaching that decision, the Court emphasized the large number of States that had enacted laws prohibiting executions of the retarded after 1989, when the Court had earlier declined to hold them unconstitutional. As the Court observed in reaching its decision 3 years ago to ban them, ''It is fair to say that a national consensus has developed'' against such executions.

The Court cited several factors showing why executing the mentally retarded is unconstitutional: Mentally retarded persons lack the capacity to fully appreciate the consequences of their actions; they are less able to control their impulses and learn from experience, and are therefore less likely to be deterred by the death penalty; they are more likely to give false confessions, and less able to give meaningful assistance to their lawyers.

Today, the Supreme Court recognized that this logic also applies to the execution of juveniles. The Court cited a number of factors—including the rejection of the juvenile death penalty in the majority of States, the infrequency of its use even where it remains legal, and the consistency of the trend toward abolition of the practice. It concluded that these factors provide ''sufficient evidence that today our society views juveniles, in the words used respecting the mentally retarded, as 'categorically less culpable than the average criminal' ''

Today's ruling is a welcome victory for justice and human rights. Since the death penalty was reinstated in the United States in 1976, there have been 21 executions of juvenile offenders. In the last 5 years, only the United States, Iran, the Democratic Republic of Congo, and China have executed a juvenile offender. It is long past time that we wipe this stain from our Nation's human rights record.

Other steps need to be taken as well to reform our system of capital punishment.

For too long, our courts have tolerated a shamefully low standard for