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Senate

BANKRUPTCY REFORM ACT OF 2001

Mr. CARPER. Mr. President, for the last hour or so we have been privileged to hear comments from Senator Hatch and Senator Leahy who discussed the debate of the bankruptcy reform legislation, which took place in the Judiciary Committee over the last several weeks. We now have the opportunity, today and tomorrow, to begin amending the bankruptcy reform legislation that was vetoed by President Clinton last year.

I wish to express my own appreciation to both Democrats and Republicans on the Judiciary Committee for letting the process work, and for moving the process forward.

I especially thank Senator Schumer and Senator Hatch for working out a compromise on those who would use bankruptcy as a way to avoid their responsibilities; or for those who have brought action against family planning clinics, or, frankly, any act of violence, intimidation or threat.

I am appreciative of Senator Leahy and Senator Hatch for the work they have done in trying to make sure that consumer privacy protections are provided in this legislation.

The history of bankruptcy is known by many people. For much of the last century, individuals and businesses have been able to seek protection through bankruptcy in order to put their lives back together, or their businesses back together. Several chapters that exist for bankruptcy are designed to provide a place for consumers to find relief.

In the last decade we have witnessed some of the strongest economic expansion in our

country's history--the longest economic expansion in our Nation's history--yet during the 1990s we have seen an alarming increase in the number of people filing for bankruptcy.

Not all of those people who filed for bankruptcy had any other recourse. In fact, the lion's share of the people who filed for bankruptcy last year--or the year before that and the year before that--were folks who were up against the wall. They needed a way out and for them bankruptcy was that way out.

There are people who lost their jobs; people whose family suffered illnesses; maybe catastrophic illnesses; or marriages that were dissolved; or relationships that came to an end. And because of those situations and others like them, those families need the protection of bankruptcy.

Not everyone who files for bankruptcy needs the protection afforded them in chapter 7. For some who file, chapter 7 is not the appropriate venue, because they have the ability to pay at least a portion of their debt. If an individual can repay some of their debt, they should instead file under chapter 13.

The challenge that the committees in the Senate and House faced last year was to try to figure out a fair way to determine who indeed had the ability to pay something of their debts and who did not.

Among the other reasons why we need reform--it has been alluded to before, and I will touch on it briefly--is that under current bankruptcy law those who have an

obligation to pay child support, or those who have an obligation to make alimony payments, in many cases find those priorities low on their list. And, frankly, they are pretty low on the list of the bankruptcy laws of our land. We need to do something about that. This legislation would. It would raise the priority of child support payments and alimony payments as well.

Currently those who have those kinds of obligations to their children, or to a former spouse, also have to try to use something called the automatic stay as a way to avoid meeting those obligations while their bankruptcy case winds its way through court, and sometimes this can be a long period of time. This legislation would end the automatic stay for child support and alimony payments, making sure individuals are responsible for these personal obligations.

State and local governments are affected as well. As former Governor of Delaware, and former chairman of the National Governors' Association, one of the reasons why the National Governors' Association supported bankruptcy reform was to make sure individuals who had the ability to pay some of their State and local taxes were called upon to do that where it was reasonable. This legislation would do that.

In the end, when people who have the ability to pay, do not pay and walk away from those debts, the rest of us end up paying the costs of their bankruptcy. Businesses and creditors have to swallow the debt. Then, those of us who borrow money--whether it is for a house, or for a car, or for credit card purchases--in the end we pay more than we really ought to. This is not fair to the majority of us who pay our bills.

I have only been in the Senate for about 2 months. One of the comments I have heard most frequently is the old adage "don't let the perfect be the enemy of the good." My

guess is we are going to hear that a lot on the Senate floor this week. I will be the first to say it.

This bill represents in many respects so much that is needed. The changes don't do everything I would like. I will mention a couple of concerns that I have.

I think it was Senator Leahy who spoke a few moments ago about the credit card applications that come to our children.

In some cases rather young children, even to our pets. I think he referred to Rover, Rover Leahy. I do not know if his dog actually did get a credit card application. I would just say we get a lot of mail in our home. I am sure we all do. We probably get more credit card solicitations than we would like. But we simply throw them away if we are not interested.

If credit card issuers or, frankly, others who are extending credit are so foolish as to extend credit to a pet or to a child, who does not have the ability to repay that obligation, that is a poor underwriting decision by the extender of the credit. And they deserve, in the end, what they will get. It is issued probably to someone who either maybe will not use it, or if they do use it, it is perhaps not with the intent of ever paying that obligation.

For the real person who is actually extended the credit card under those circumstances, under this bill, if they do not have the ability to pay, if, indeed, their income is under a median family income, they have a safe harbor. If they have to declare bankruptcy, they will continue to have the ability to file under chapter 7 and will not have to pay that obligation.

Senator Leahy also mentioned the issue of disclosure. We get our credit card statements whenever they come. There is a statement on the credit card that says: If you pay your minimum monthly amount that is due, you can do so and not incur any kind of penalty. The credit card does not say how

long it is going to take you to actually pay off your credit card bill if you only pay the minimum.

I wish there was some way to address that in a way that does not put the extender, the creditor, in harm's way with respect to class action lawsuits. This is a difficult situation.

The bill that is before us this week does provide an example to those of us who are consumers and explains that if we only pay the minimum payment, it may take an extended period of time to pay our credit card bill. It actually uses an example, as I understand it. Creditors, in this case, issuers of a credit card, are to provide on the statement an example that if this is how much you owe, and you pay your minimum payment--and this is the interest rate--this is how long it will take you to actually pay down your obligation. They actually offer a 1-800 number that someone can call to say: "My debt is \$800. That is what my statement says. My minimum payment is \$20 a month. How long will it take me to pay it off?" We can get an answer by calling the 1-800 number.

I wish we had the ability to put a close estimate of what the debt would cost a consumer, and how long it would take to pay off, right on the credit card statement. I am told the reason why the bill out of committee does not do that is because of concerns about class action lawsuits. That is a legitimate concern but, for me, the solution is not a perfect one.

The other issue I wish we could address is the homestead exemption. I understand Senator Kohl may try to address this issue this week. People roll up big debts and then go to a State that has a large homestead exemption, and they put a lot of money, a lot of assets therein, for example, a very expensive home--a quarter of a million dollars, half a million dollars, or million-

dollar home--and then walk away from their other obligations and use that estate, that homestead to protect their assets.

I understand Senator Kohl is going to offer an amendment that makes this practice somewhat more difficult to do. I welcome that provision.

But most of the people who file for bankruptcy are not folks who seek to try to stiff credit card or financial institutions or department stores or anyone else. They are people who are left with little other choice. As I said earlier, they have been dealt, in many cases, a difficult or maybe a crippling blow in their lives. More than 90percent of the people who file for bankruptcy actually need the protection of the laws, and fewer than 10 percent actually have the ability to pay something back.

But of those people who do have the ability to pay something back, I believe--and I suspect almost all of us believe--that they should repay at least a portion of their debts. I don't care if it is only 5 percent of the people who file who have the ability to pay something back--or 4 percent or 3 percent--if they have the ability, they should make that effort. We should expect that of them and of ourselves.

A major challenge the committee has faced, and the Congress has faced, in trying to craft an appropriate balance--weighing the concerns and rights of consumers versus those who extend the credit--is in relation to the tough questions that we have dealt with, such as how do you actually determine the ability to repay? We all come from different family circumstances in terms of employment, marital status, and illness. How do we determine who has the ability to repay? The committee, to its credit, has provided for a safe harbor, essentially to say people whose median family income falls below that of 100 percent of the median family income with respect to their State,

they would automatically have a safe harbor. They could file for bankruptcy in chapter 7, and they basically get a free pass.

What is 100 percent of median family income? I think for a family of four in Delaware, it is about \$45,000 a year. I think in Maryland, it is about \$50,000 a year; and in Alabama, it is perhaps \$35,000 a year.

For those whose family income is between 100 percent of median family income and 150 percent of median family income, they would receive, not a complete pass, but a rather cursory review to see if they would not also qualify for that safe harbor.

So we are talking about, in Maryland, for example, those whose income is between \$50,000 and \$75,000 would be below the 150-percent threshold, and I think would, for the most part, after an expedited review, have the right to file under chapter 7.

I think it is appropriate to ask, for one who files for bankruptcy, what kind of expenses are factored in when determining whether or not a person has the ability to pay? We get beyond these thresholds of 100 percent of median family income, 150 percent of median family income. Is anything else taken into account? As it turns out, a number of payments are. And they are the kind of payments we would expect for people to be able to hold their households together and be able to work.

For example, a person who is asking to file under chapter 7, as opposed to chapter 13, if their income exceeds those thresholds of 100 percent or 150 percent of median family income, they could present documentation to the bankruptcy court indicating how much their housing costs, their rent or mortgage payments are. If they have car payments, those would be appropriate, as well as would education expenses, clothing, and food allowances. Judges are given discretion to address

special needs as well, including medical costs.

Let me close by saying Senator Leahy, in his comments, talked about how many credit card solicitations are mailed out every year. I think he indicated the number is over 3 billion. That is a lot of mail. I would just remind everyone, as those credit card solicitations come into our mailboxes, of course, we do not have to take advantage of all of them. When I drive down the road in Delaware, and I go by an ice cream store or a doughnut shop, as much as I might be tempted to pull in and sample their wares, I do not always do that. We have to show some personal discretion regardless of how tempting those treats might be.

But if financial institutions actually do make money, and if their bottom lines are enhanced to some extent by the adoption of this legislation, my guess is, in the end, they all do not keep that money. My guess is, in the end, if you think about the competition--and it is a dog-eat-dog world these days in the credit card business--if I do not like the interest payment that comes with my credit card, I can find dozens of other issuers with a lower rate. If I do not like the monthly fee that I am asked to pay, I can find dozens of other issuers with lower monthly fees.

I would simply suggest the competitive nature of the business, including the credit card business, is such that for those issuers of credit cards who do not pass along some of those savings to consumers, then their competitors will. If competitors lower their interest rates and reduce or eliminate their monthly fees, those of us who are consumers will move off to take advantage of their lower interest rates and lower fees.

Let me conclude with these comments. I am glad we are at this point in the debate. I look forward to the debate over the next several days. I am very pleased we are going to have this debate. And those who have amendments, if they want to offer them, will

have the opportunity to do so. We will debate them, and vote on them, and then vote on final passage.

I hope the amendments make the bill

even a little better than it is today. I think it is better today than it was going into the committee a week or so ago. I am pleased to participate in the debate.