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TITLE: BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2001
Selected text from Sen. Durbin Statement:

Mr. DURBIN. Mr. President, I rise today, as I did earlier this year, in opposition to the Senate-passed bankruptcy bill, Senate bill 420. It is likely this week we will appoint conferees and start the debate about this bankruptcy bill.

Let me say at the outset, I support bankruptcy reform. A few years ago, as a member of the Judiciary Committee, I was the ranking Democrat on the subcommittee that produced a bankruptcy bill. At the time, we saw a rather dramatic increase of public bankruptcy filings across America, and there also appeared to be, and I believe there are, serious abuses where people are going to bankruptcy court to be discharged from debts when, in fact, they could pay many of those debts. When a person is able to pay their debts and does not, for whatever reason, the economy absorbs it and all of us as consumers are taxed or end up paying the cost of those unpaid debts. It is passed along in one version or another….

Break

Let me tell you another area that really rankles me. This is an amendment I offered on the bill, the bankruptcy bill here on the floor. It relates to a situation called **predatory** lenders. You read about them occasionally and see them on television. We see stories on some of the news reports. Here is what it is. You have people who prey on those who are elderly and not well informed and have them sign up for new debt on their homes, particularly for home improvements or vinyl siding or a new furnace or whatever it happens to be. They put provisions in those **predatory** loans that give them an opportunity to make extraordinarily high interest profits off those **predatory** loans, and they include other provisions called balloon payments and the like.

How many times have you read in the newspaper or watched on TV the story of a retired widow_and it has happened in the city of Chicago where I represent a lot of people_a retired widow who was safely in her little home for which she saved up for her life, and some smooth talker came by and had her sign up for what turned out to be a new mortgage on her home with really bad conditions and terms. So as time went on_usually the work turns out to be shoddy and the debt turns out to be intolerable, and it reaches a breaking point. When it reaches that breaking point, sometimes this person, in retirement, in their safe little family home, stands the risk of losing their home because of these **predatory lending** situations.

These are the most deceptive loans in America. They cost borrowers an estimated $11 billion each year in lost equity, back-end penalties, and excess interest paid.

The American Association of Retired Persons, the largest group of seniors in America, did a survey. Eight out of ten Americans over the age of 65 own their home free of any mortgage. That is good. It shows people have planned ahead. When they reach retirement, they want to have that home and not have to worry about a monthly mortgage payment. We want seniors to be in that position.

However, the unscrupulous lenders out there know those seniors have an asset and if they can get their hands on it, get their hooks into that senior, they set out to do that, and foreclosure is often the result when the senior fails to make these outrageous loan payments. The elderly person, the senior living alone or a person from a low-income neighborhood, can get a cold call from a telemarketer or a visit from somebody knocking on the door, telling them how they can get a new roof or windows: We can give you insulated windows with a little cheap loan; just sign up. It usually puts the unsuspecting victim in danger of losing their home. Almost before the victims know what hit them, they are whacked with outrageous fees, $8,000 or more, slapped with skyrocketing interest rates and battered into a financial hole they never get out of.

This is what happened to Janie and Gilbert Coleman from Bellwood. The Colemans had purchased their home with a court settlement and had no mortgage payment at all.But this elderly couple with a 9th grade education had Social Security disability income and predators mortgage lenders moved in for the kill.

Although the Colemans were first able to meet the $200 monthly payments on a $12,000 loan, 8 years and 5 refinancings later they found themselves $130,000 buried in debt.

They borrowed $12,000. Over a period of 8 years, with all of the refinancing and all of the interest payments on this little home, the debt grew to $130,000. That is what I am talking about.

Six loans were made to the Colemans. Four of these loans were made by a national lender, Associates, including two loans made just seven weeks apart.

Associates repeatedly sold the Colemans insurance that they did not want or need. And twice they were charged more for fees and insurance than they received.

Associates, a lending arm of Citigroup, is now the target of a multimillion dollar lawsuit filed by the Federal Trade Commission.

Associates earned over $1 billion in premiums last year but paid only $668 million in benefits.

This is a situation that is also going to illustrate what I am talking about.

People like 72-year-old Bessy Alexander from the South Side who believed that she was getting a fixed rate **[*S7729]**
but really received a mortgage with an interest rate adjusting upward every 6 months_from an initial rate 10.75 percent to as high as 17.25 percent.

People like Nancy and Harry Swank of Roanoke, IL, who took a small loan from Associates to pay for a new stove and ended up with two loans, one at nearly 19 percent interest, totaling over $76,000, well above the $60,000 value of their home.

They started off buying a stove for their $60,000 home. When it was all over, they owed $76,000 more than the value of their home.

People like 70-year-old Mrs. Genie McNab and other victims of **predatory lending** practices testified in 1998 before the Special Committee on Aging in a hearing chaired by Senator Grassley.

If my colleagues have not done so already, I would encourage them to read the committee report from this hearing for a human face on this issue.

You ask yourself, what does this have to do with the bankruptcy bill that is before us? I will tell you what it does. I said in my amendment that if you have been guilty of violating fair credit practices, if you have taken advantage of people such as those I have described, if you are in a position as a company where you have used the law improperly and now have a foreclosure against someone who is going into bankruptcy court, we will not allow you to walk in and claim you have clean hands in bankruptcy court and take the home. **Predatory** lenders would have been put on notice that when it was all said and done after they battered these elderly people to the point where they can no longer make payments and force them into bankruptcy that our bankruptcy code will not protect these vultures.

My amendment lost on the floor of the Senate by one vote. You think to yourself, if you are going to have a balanced bill that says people shouldn't file for bankruptcy who have used the process, shouldn't the balance in the law also extend to creditors who walk into bankruptcy court and want the protection of our legal system to collect from these poor people who have been swindled out of their life savings? That seems fairly obvious to me. Doesn't it really suggest a balance in the law that we should have?

My amendment was defeated. Who defeated it? The financial institutions that don't want to be held accountable for their lending practices. That to me is one of the sad realities of the law that faces us.

We know who these **predatory** lenders are. When we had this testimony before our committees, we asked them: How do you pick out the homes of the people who you are going after? Well, they said, we look for primarily elderly people_primarily elderly widows, those who appear to be able to make a decision and sign the document but don't have a lot of advice from lawyers, or relatives, or anyone on whom they can rely.

They catch them in the most vulnerable situation. They take advantage of them. They take their money. They take their homes away, and they take it away in our court system. This bankruptcy law which we are now considering should be protecting those people instead of preying on them as it does.

There is a study I would like to share with you entitled "Unequal Burden: Income and Racial Disparities in Subprime Lending in America" by the U.S. Department of Housing and Urban Development. They found that:subprime loans are five times more likely in black neighborhoods than in white neighborhoods. In addition, homeowners in high-income black areas are twice as likely as homeowners in low-income white areas to have subprime loans.

Unsuspecting minority and low- to moderate-income consumers_often equity rich and cash poor_are targeted by **predatory** lenders that extend credit to high-risk borrowers ineligible for conventional loans. Of course, **predatory** lenders do not commit outright fraud. Many of these borrowers lack not only sufficient funds but also financial literacy. And they take advantage of them.

Let me tell you what one of these **predatory** lenders said when he was assured that he would be testifying behind the screen so that the television cameras couldn't see his face. He was so embarrassed and afraid that he didn't want to say this in public.

My perfect customer would be an uneducated woman who is living on a fixed income, hopefully from her deceased husband's pension and Social Security, who has her house paid off, is living off of credit cards, but having a difficult time keeping up with payments, and who must make a car payment in addition to her credit card payments.

There you have it. When you are out there looking for your prey as a **predatory** lender, that is what you are looking for. Your hope is that you push them so deeply into debt that they make all the payments they can until they reach the breaking point and then they go into bankruptcy court and you take the home.

Oh, what a happy day it must be that these **predatory lending** offices just picked up another home from another widow in bankruptcy court.

When I put the amendment on the floor, I basically wanted to spoil this party that these **predatory** lenders have at the expense of senior citizens across America. My amendment failed by one vote. This bill does not address that problem. To think we can call this bankruptcy reform and not offer that kind of balance, as far as I am concerned, is disgraceful.

We have seen the percentage of these **predatory** loans in precincts across the United States. It seems over and over again that these situations are where elderly people have become victims. **Predatory lending** is an epidemic.

Seven years ago, mortgages to people with below average credit was a $35 billion business. Today, it is a $140 billion business.

Who are we talking about? We are talking about somebody's parents, or grandparents, who are caught unsuspecting by one of these **predatory** lenders who are ultimately going to run the risk of losing the home they saved for their entire lives. AARP_with 34 million members_has launched a campaign to fight this problem.

I know Senator Sarbanes of Maryland, the Senate Banking Committee chairman, is going to have hearings this month on lenders that take advantage of vulnerable borrowers. I commend him for his leadership on this important issue.

Why wasn't this included in the bankruptcy bill? We have Senators standing up and saying: We need to protect these predator lenders. That is exactly what happened. I lost by one vote.

Let me talk to you for a moment about credit card disclosure and whether or not there is more information that we can ask for so we can have some balance when it comes to credit card predators across the United States.

There are 78 million creditworthy households in America. Remember that number_78 million. Each year there are 3.5 billion credit card solicitations. As I said, go home tonight and look through your mail. You are going to find them. If it is not there tonight, it will be there tomorrow night asking you to sign up for a new credit card. They are coming at you in every direction_not just through the mail, but in magazines, television; wherever you turn, they want us to sign up for more credit cards. Frankly, I think you understand what they are looking for.

One of the things they like to do is go after college students. There is a brand loyalty here. Major credit card companies think that when they set up a college student for a credit card, the college student will stick with their credit card for the rest of their lives. They do not ask hard questions as to whether the student will pay off the debt.

One of the things that I suggested about the minimum monthly payments was rejected by the credit card industry. I don't think it is a difficult thing to calculate. If you were to pay a 2-percent monthly minimum on a balance of about $1,300, it would take you 93 months to pay it off. We are talking about over 7 years with your minimum monthly payment.

I am not for credit rationing. I believe credit cards have done quite a bit of good for a number of people. The credit card industry knows the fact that 10 or 20 years ago it might have been impossible for someone such as a waitress to get a credit card. Today they can in America. That is a good thing. There are times when credit cards are invaluable for individuals and **[*S7730]**
their families. But we see that the credit card industry is not just offering credit to people who otherwise might not have a chance to get it; we see them overwhelmingly offering credit way beyond the means of people to pay it off. I think the monthly statement should

be a lot more informative.

Let me also go to one other issue before I give the floor to my colleague from Kansas. One of the issues which is part of this is the so-called homestead exemption. The homestead exemption is this: If you go into bankruptcy court and you say you have more debts than you can possibly pay off, you list all of your debts and all of your assets. And many States have said one of the things that you are able to retain is your homestead or your home. The value that you are able to keep depends on the State in which you live. So each State kind of defines what a home can be worth to be exempt from bankruptcy.

On its face it doesn't sound unreasonable that people would be allowed to keep their home even if they are bankrupt. You wouldn't want them to be homeless or out on the street. But there is such a gross disparity in the exemptions States offer for this homestead that we have seen some terrible and outrageous abuses.