

**FOR IMMEDIATE RELEASE**  
February 17, 2005

**CONTACT:** Laura Capps/ Melissa Wagoner  
(202) 224-2633

\*\*\* Below is a fact sheet on medical bankruptcy, a description of the corporate abuses this bill currently ignores, and Senator Kennedy's statement.

## **SENATOR EDWARD M. KENNEDY FIGHTS TO PROTECT AMERICANS FROM A FLAWED BANKRUPTCY BILL**

*OFFERS AMENDMENTS TO PUT THE NEEDS OF THE CRITICALLY ILL, THE  
MILITARY, AND WORKING FAMILIES AHEAD OF PROFITS FROM CREDIT CARD  
COMPANIES AND CORPORATE EXECUTIVES*

Washington, D.C. Today Senator Kennedy fought to change the bankruptcy bill to ensure that it protects the rights of American families. He offered several amendments to address the bill's great weakness: it puts the profits of credit card companies and banks ahead of the needs of hard-working, hard-pressed Americans. Kennedy emphasized that we have recently witnessed the worst corporate misconduct since before the Great Depression, yet this legislation – written by the financial services industry -- currently does nothing to prevent corporate abuse.

Kennedy's amendments focus on protecting the 2 million Americans who face bankruptcy because of illness and the high costs of healthcare, as well as shielding low-income families from the costly burden of legally proving that they are not abusing the bankruptcy code. The Judiciary Committee previously heard testimony from Dr. Elizabeth Warren whose Harvard University study demonstrated that almost half of all Americans who file for bankruptcy every year are the victims of our broken healthcare system, not irresponsible spendthrifts living high on the hog.

“If we're going to pass a bankruptcy bill, lets pass a real one – a bill that protects working families who are forced into bankruptcy because of a serious illness, and military families who face dire hardships. These families have more than met the test of taking personal responsibility and doing the right thing. Now we have a moral obligation to provide solutions that are fair and compassionate, while cracking down on corporate executives who loot their companies at the expense of workers, retirees, creditors and stockholders,” said Senator Kennedy.

In his opening statement, Kennedy cited the stories of some medically bankrupt victims he has met with including Zoraya Marerro, a single mother who suffers from epilepsy while one of her three children has spina bifida. Ms. Marerro no longer qualifies for benefits and cant afford private insurance for her and her son; she is doing everything she can to avoid bankruptcy yet faces a debt of over \$60,000.

The first set of amendments that Kennedy offered would exempt those families facing bankruptcy due to serious medical hardship from also facing the burdensome means test; make sure that reasonable health insurance expenses qualify as permissible expenses in that means test calculation; provide a minimum homestead exemption of \$150,00 for medically distressed bankruptcy filers; and ensure that families below median income are not subjected to means tests requirements.

Kennedy will also fight to stop the travesty of high level corporate insiders who walk away with millions while the company's workers and retirees are left empty-handed. As it stands now this 500 page bill does nothing to strengthen the woefully inadequate laws to prevent corporate abuse. Kennedy's amendments will strengthen the ability of bankruptcy courts to invalidate fraudulent transfers by corporate insiders and will better allow the court to stop inappropriate payments to corporate insiders after the company is in financial distress. Every dollar recovered from these outrageous insider deals is another dollar that will be there to compensate workers, retirees, and other creditors.

## **Medical Bankruptcy – Fact Sheet**

- 1.458 million individuals or couples filed for bankruptcy in 2001. These bankruptcies involved 1.925 million debtors and 1.939 million dependents- a total of 3.864 million people.
- Bankruptcy is up 33 % since Bush took office
- Between 46.2% and 54.5% of all bankruptcies (midpoint estimate 50.35%) were caused, at least in part, by illness or medical debts. Thus, medical bankruptcy involved between 1,850,098 and 2,227,000 Americans in 2001 (midpoint estimate = 2,038,549).
- The number of medical bankruptcies increased approximately 2200% between 1981 and 2001.
- Most medical debtors had some health insurance, but many suffered gaps in coverage:
  - ❖ 75.7% had health insurance at the onset of the bankrupting illness.
  - ❖ 68% had coverage at the time of their bankruptcy filing
  - ❖ 62% had continuous coverage
  - ❖ 1/3 of those with private coverage at onset lost it during the course of illness
  - ❖ Only 2.9% of the uninsured went without coverage voluntarily – most others couldn't afford it
- High medical bills contributed to 60% of medical bankruptcies, with drug costs contributing to 48%. (Drug costs were the major problem for most Medicare-insured

debtors, and many of those with psychiatric disorders). In 35% of cases lost income due to illness was a factor.

- Out-of-pocket medical costs since the onset of illness averaged \$11,854
  - ❖ The privately-insured had the highest costs - \$13,460 – due to the very high costs incurred by those who initially had private coverage but then lost it.
  - ❖ Cancer patients' costs averaged \$35,878.
- Families in medical bankruptcy suffered many privations. In the 2 years before filing for bankruptcy:
  - ❖ 22% went without food
  - ❖ 30% had a utility shut off
  - ❖ 61% went without needed medical care
  - ❖ 50% failed to fill a doctor's prescription

### **Examples of Corporate Abuse**

*The greatest need for change in the bankruptcy laws by far is in the area of corporate bankruptcy. That is where we have witnessed an epidemic of abuse in recent years, the worst corporate misconduct since before the Great Depression. Some of these companies were brought down by outright criminality. Yet we are considering a five hundred page bankruptcy bill that virtually ignores these issues. It does nothing to address the corporate looting by high level insiders. It does nothing to protect the company's workforce from losing their jobs, their health care, and their pensions. This bill should not leave the Committee until those glaring omissions are rectified.*

1) Enron executives cashed out on more than \$1 billion of company stock, knowing the company was in trouble. And shortly before the company declared bankruptcy, it paid its top executives bonuses as high as \$5 million each to stay on. By contrast, Enron workers lost \$1 billion in retirement savings. And thousands of them lost their jobs, as well.

2) With WorldCom's stock price steadily climbing through the 1990s, CEO Bernie Ebbers made out handsomely, buying hundreds of thousands of acres of land in Canada and in the South and a yacht-building business in Georgia. The discovery that he owed the company \$366 million in specially negotiated personal loans helped ease him out the door only a few months before the company declared bankruptcy – but he still was granted a pension worth \$1.5 million a year for life.

Shortly afterward, WorldCom filed for bankruptcy and tens of thousands of employees lost their jobs. WorldCom employees, who had over half of their 401(k) savings in WorldCom stock, lost almost all of their retirement.

3) At Tyco, tens of thousands of employees were laid off in 2002 when the company declared bankruptcy. Former CEO Dennis Kozlowski, by contrast, received

millions of dollars in compensation and his original severance deal promised him \$122 million in cash, 800,000 shares of stock, and a consulting contract. And the Chief Financial Officer was initially granted a \$45 million severance package, even after he had been indicted for grand larceny.

4) As Kmart was teetering on the edge of bankruptcy, the company bought two new corporate jets. Once it finally tumbled into bankruptcy, CEO Chuck Conaway got a \$9 million golden parachute. Meanwhile, Kmart's bankruptcy cost workers over 57,000 jobs and Kmart had to close 600 stores nationwide.

5) A major corporation Kennedy's 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 severance benefits for thousands of workers who were recently laid off.

Polaroid workers had been required to put 8% of their pay into the company's Employee Stock Ownership Plan (ESOP). When the company declined, their retirement savings were virtually wiped out.

**STATEMENT OF SENATOR EDWARD KENNEDY**  
**JUDICIARY COMMITTEE MEETING ON BANKRUPTCY**  
**FEBRUARY 17, 2005**

*(as prepared for delivery)*

I hold in my hand the bill we are considering. It is 501 pages long. We need to take a fresh look at this bill. It was first written many years ago, by the financial services industry. The Senate hasn't taken a serious look at it in four years. A lot has happened since then.

For example, more than two hundred thousand reservists and national guard troops have been called to active duty, far away from their homes and businesses. Their families are facing economic hardship, and their creditors keep calling. Many of them operated small businesses; and without them, those

businesses are now in trouble. This bill does nothing to protect those who are fighting for us.

When one reservist left home, his wife had to run his construction company, but without him there, the company could not compete and lost bids until family income was cut 80%. The family lost its savings, lost its credit, and is in financial shambles. It will probably run into the path of this bill if it is passed, but instead of helping to alleviate their suffering, this bill, in its present form, will treat them like tax evaders or defrauders.

Since 2001, we've also seen the worst corporate scandals in decades. Corporate fraud and mismanagement have forced many companies into bankruptcy. Enron, Worldcom, Adelphia, Polaroid to name but a few. As a result of those bankruptcy proceedings, thousands of their workers have lost not only their jobs, but their health care and pensions. We have a real bankruptcy problem, yet the legislation fails to address these major problems.

This legislation, as presented to us, is terribly unfair. It tightens the screws mercilessly on hard-working families who are down on their luck, while failing to crack down on corporate executives who betray their workers and their stockholders. Under this bill, wealthy individuals can and will continue to hide millions of dollars in assets from their creditors.

If we're going to pass a bankruptcy bill, let's pass a real one. A bill that protects working families who are forced into bankruptcy by a health care crisis, and military families who face dire hardships. A bill that protects working families from the abusive practices of credit card companies. A bill that cracks down on corporate executives who loot their companies at the expense of workers, retirees, creditors, and stockholders.

Families who worked hard and played by the rules are being forced into bankruptcy in increasing numbers. This legislation in its current form will seriously hurt those families.

Even if you supported this bill in the past, I ask you not to jump to the conclusion that, in its current form, it is the right bill for us to be passing in 2005.

First, we must consider the economic environment. We are still recovering from the 2001 recession. Nearly 8 million Americans are still unemployed, and one in five of those workers have been out of work for more than six months. And the unemployment insurance safety net that workers once relied on hasn't been modernized to meet today's demands. Jobs in health care, financial services, and information technology are being shipped overseas.

Today, workers who lose their jobs have a tough time finding new jobs with comparable wages, benefits, hours, and overall quality. Part-time jobs do not provide financial stability, but companies are relying more and more on part-time workers. Part-time workers earn \$3.97 less per hour than regular full-time workers. Few part-time workers have health insurance or pension plans.

Working families are being squeezed in every direction 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 -- and still send their sons and daughters to college. The cost of just getting by keeps rising so much faster than family income.

Health care costs are out of reach. Health insurance premium costs have soared 59 percent. Drug costs have soared 52 percent.

Housing costs are up 44 percent in the last four years. Child care often costs up to \$10,000 per year for one child -- more than the cost of public college tuition. College costs are rising at double-digit rates. Tuition at public colleges has risen 35 percent in the last four years.

Today, hardworking families are just barely balancing on a cliff of piling bills, just hoping they won't topple over. They are forced to go into debt just to get by. The average American family now spends 13 percent of its income to pay debts, the highest percentage since 1986. And the average American household is carrying more than \$8,000 in credit card debt. More than half of all Americans say they have too much debt and three quarters say that debt is a

major reason it's harder to achieve the American dream today. It's no wonder that bankruptcy is on the rise.

This year, more people will end up bankrupt than will suffer a heart attack. More people will file for bankruptcy than will graduate from college. Bankruptcy is up 33 percent since President Bush took office. An American now goes bankrupt every 19 seconds. But almost none of them go bankrupt because they want to. They go bankrupt because they are forced to.

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've 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 that's not enough.

This bill would penalize them twice – once by the failure of the health care system and a second time by the failure of the bankruptcy laws. It will make matters worse.

At our one morning of hearings on this bill, we heard briefly from Harvard Law School Professor Elizabeth Warren about the recent Harvard study that undermines the basic premise of this bill: the assertion that people who file for bankruptcy should be presumed to be abusers of the system.

But the study showed that almost half of those who file for bankruptcy every year are the victims of our broken health care system, not irresponsible spendthrifts who choose bankruptcy after making frivolous purchases at the mall.

They are middle income Americans who have faced a serious injury or illness. They have faced huge doctor and hospital bills that insurance didn't cover. They have been unable to work after suffering serious medical problems.

They are people like April Wetherell, a 50 year old woman from Toms River, New Jersey, who went back to school after having children and received her Masters in Social Work. She was working at a visiting nurse agency in 2003 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 of her stroke, April still owed about \$25,000 in student loans. She had been making payments

on her student loans until her illness left her unable to return to her job. Although April had health insurance, it didn't cover all her medical costs, and she was left with more than \$20,000 in unpaid medical bills. At the time of her stroke, April had about \$7,000 in credit card debt, which she had been paying off on a timely basis. Even though she had done all the right things, April was forced into bankruptcy because she was struck unexpectedly by a serious, incapacitating illness.

Or Walton Pinkney of Frederick, Maryland, an electrician for more than 10 years. Walton switched jobs in 2000, and his new employer did not provide health benefits for the first 90 days of employment. Walton collapsed with heart failure during his first month at his new job. Because his new health benefits had not yet taken effect, he was responsible for over \$45,000 in medical expenses related to his heart condition. Although he attempted to return to work, his employer said his health was too poor for him to work. Faced with large medical bills he could not pay after he lost his job, Walton finally had to file for bankruptcy in 2003.

Or Zoraya Marrero, a single mother with three children from Woodbridge, Virginia. Her oldest child suffers from spina bifida. Zoraya received state disability benefits and medical coverage for her child due to the illness. After moving to another state in 2000, she learned that not only did she no longer qualify for benefits, she had to pay back \$60,000 for benefits she'd already received. Zoraya has been fighting the \$60,000 claim and paying her own medical expenses while working in a doctor's office. She can't afford private insurance, and can't afford to pay for her son's costly medical care. Zoraya recently filed for bankruptcy.

These people did not seek bankruptcy relief willingly. They and millions of other Americans in similar situations have filed for bankruptcy only after exhausting all other options.

Professor Warren's study shows that in the two years before they actually declared bankruptcy, those who filed for bankruptcy after suffering serious illness

or injury went through extensive sacrifices as they struggled to pay for their health care and to make ends meet. One in five went without food. Almost one-third had their electricity shut off. Almost half lost their phone service. And many more went without needed medical care. Some even moved their infirm parents to less comfortable facilities.

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 all their resources. This bill actually makes it more difficult for good citizens like these to get the “fresh start” that the bankruptcy laws are intended to offer.

The idea of giving a “fresh start” lies at the heart of our bankruptcy law. In 1833, Supreme Court Justice Joseph Story, one of our great legal scholars, explained why. Bankruptcy laws, he said, were intended to divide a debtor’s remaining assets among his creditors, when he could not pay all his debts. But the purpose was also “to relieve unfortunate and honest debtors from perpetual bondage to their creditors.” Bankruptcy legislation should, Story said, 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 U.S. Supreme Court repeated Justice Story’s message: the Bankruptcy Act 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 for himself and his family, 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 moral values which led this nation to abolish debtors’ prisons, also led us to let bankrupt debtors apply their remaining assets to cover their debts, but then to give them a “fresh start.” They should have full rights to their own future earnings, so that they will not have to live in bondage to their past debtors.

That is the essence of a capitalist system – we encourage risk-taking, whether it is borrowing money for a car to go to work, or a limousine to start a small business, or a tractor to run a farm, or a boat to fish the ocean. If a borrower runs into trouble not of his own making – whether a loss of the job, a bad time for the business, a drought, or a poor year for fish, he may not be able to pay off all his debts. But after he pays as much as he can, we do *not* say to him, “you cannot go out and earn a living in the future for yourself and your family – your future earnings belong to your creditors.” As Story said, that would remove the incentives to get back into the economy and contribute to it.

Yet this legislation does exactly that. It tells them that they cannot get that fresh start unless they run a Kafka-esque gauntlet of procedural barriers that will require time and money they do not have. 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 estates.

Just listen to the CRS summary of the key standard for the “means test” that lies at the heart of this bill: 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% of nonpriority unsecured debt or \$6000 (or \$100 a month), whichever is greater, or (b) \$10,000.”

Maybe you can figure that out – most people can’t. But that will determine whether or not you can get your debts discharged in bankruptcy.

The bill is flawed from top to bottom. It uses a “look-back” income formula that ignores the fact that most filers have lost, or are about to lose, their jobs. It uses a stingy IRS formula for permitted family expenditures. It places unnecessarily new burdens on the bankruptcy court system, without improving that system.

That is why, since it was first presented to us, it has been opposed by bankruptcy judges, scholars, practitioners, labor unions, consumer advocacy organizations, and civil rights groups who recognize that its harsh and excessive

provisions will have a devastating effect on working families. Its basic premise was opposed by both of the National Commissions which studied the bankruptcy system during the 1970's and 1990's

Instead of focusing on the Enron's and Worldcom's, where the Executives lined their own pockets and the employees and pensioners were left twisting in the wind, this bill hurts women, children, and hard-working American families - those who truly need the bankruptcy system to prevent unintended financial hardship. Instead of reducing the real abuse by formerly wealthy bankrupts who game the system, it presumes abuse by middle Americans who, as its sponsors admit, rarely do so.

The bill does not address the credit card companies' massive and unseemly nationwide campaigns to hook unsuspecting citizens "like the elderly, college students, and the working poor" on credit card debt. Even family pets have been urged to sign up for their cards. They send billions of credit card solicitations every year. They push cardholders to raise their limits. They encourage making minimum monthly payments without disclosing what that will mean in interest payments before the quickly growing debts are repaid.

These companies are doing fine, so what is the rush in pushing this private interest bill, other than avoiding a close and serious look at the problems this bill would create, or filling the void on the Senate floor? We have plenty of other important legislation we could take up on the floor right now – bills that have widespread bipartisan support and are public priorities – from minimum wage to stem cell research to Drug Reimportation. One morning for a hearing --- one morning for a mark-up on a 500-page bill that is riddled with problems? A bill that was introduced one night and placed on our agenda the next day.

Despite the rush, many of us have tried to play by the rules by seeking to improve this bill in committee. We have circulated many serious and important amendments that would address many of the flaws in the bill. I hope they will be considered seriously

I will start by offering several amendments today that will protect families with high medical costs from this bill's draconian provisions. They will help

families who tried to meet their responsibilities and to do the right thing, but were overcome by the sickness and injury that absorbed their income and savings. The amendments will provide solutions that are fair and compassionate to families who deserve our help, not the antagonism and mean-spiritedness reflected in the present form of this bill.

My first set of amendments will exempt those families facing bankruptcy due to serious medical hardship from also facing the burdensome means test; make sure that reasonable health insurance expenses qualify as permissible expenses in the means test calculation; and provide a minimum homestead exemption of \$150,000 for medically distressed bankruptcy filers.

I also hope to address other issues, and especially to join Senator Durbin in confronting the serious problems that we saw in Massachusetts in the Polaroid bankruptcy and other states have seen in other recent corporate bankruptcies.

I sincerely hope that those who have supported the prior versions of this bill will reconsider and listen carefully to the improvements that are suggested today. We have at least that much of an obligation to those whom this bill in its present form will hurt – those who have already been the victims of a bad economy, a broken health care system, and extended military call-ups.